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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBI MONIQUE KNOWLES et al.,

Defendants and Appellants.

A138489

(Contra Costa County
Super. Ct. No. 51300391)

Defendants appeal from convictions, following a jury trial on second degree robbery charges (Pen. Code, §§ 211, 212.5, subd. (c)),¹ of a lesser included offense, misdemeanor petty theft (§§ 484, 488). The trial court suspended imposition of sentence and placed defendants on three years' probation subject to numerous conditions, including serving 15 days in the county jail. The court further ordered that once defendants satisfy the enumerated conditions they can apply for early termination of probation. Defendants' appellate counsel have raised no issues and ask this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to the defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendants were notified of their right to file a supplemental brief, but have not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

BACKGROUND

On October 18, 2012, the district attorney for Contra Costa County filed a complaint alleging defendants committed second degree robbery (§§ 211, 212.5, subd. (c)) on October 16, 2012, at a Target store. A preliminary hearing was held on December 26, 2012, and defendants were held to answer. On January 10, 2013, the district attorney filed an information charging defendants with second degree robbery and also alleging a serious or violent felony enhancement allowing for sentencing to state prison (§ 1170, subd. (h)(3)(A)). As of January 14, 2013, defendants did not waive time to trial, and jury trial commenced March 15, 2013.

Retired Oakland Police Sergeant Leon Wycoff testified for the prosecution. He had been shopping at the Target store in Pinole on October 16, 2012, and as he was exiting he noticed an altercation—a Black male was on top of a Black female on the ground, with a second Black female apparently trying to pull the male off. As he walked out the door he heard the man tell the woman on the ground she could not leave because she was shoplifting. He assumed, then, that the male was a security officer. He approached, showed his Oakland Police Department badge and removed the female, who he identified as defendant Knowles, from the back of the male. He saw a large black bag and thought there might also have been a large black woman's purse. He told Knowles, who claimed to have a receipt, she needed to go back inside and sort out the situation. When she refused, he placed her in handcuffs. She calmed down and continued to claim she had receipts. The male said they had video tape of the women putting items in the bags. Wycoff subsequently went back in the store with defendants to the security office to wait for on-duty officers to arrive. He asked whether anyone was hurt; defendants made no response. The security officer dumped the garments onto the floor. Defendants continued to claim they had receipts. Wycoff never saw a receipt.

The Target security officer, Lamar Johnson, also testified for the prosecution. Johnson received a call from a store employee when defendants entered the store. He immediately picked them up on video camera and watched them as they proceeded through the store into the women's department. His interest was piqued in part because

one of them was pulling, rather than pushing a cart, conduct associated with shoplifting. Their large purses were in the cart, and they selected various items and placed them in the cart. When they entered the shoe department, Johnson went out on the floor to observe them. When they entered the snack section, they opened the purses and put items inside. They ultimately selected a laundry basket, and purchased it and a couple of other items. They then exited the store. He followed them out, and put his hand on the cart, which still had the two purses in it. He identified himself, once, as "Target security." When defendant Powell stated she was not going anywhere with him, he grabbed her arm to make an arrest. Knowles approached his back and grabbed his neck. He told her if she stopped, he would let Powell go. Once he did, they both attacked him, and a scuffle ensued. He was bitten and his sweater was ripped. After the retired officer restrained Knowles, he eventually got Powell back to the security office and handcuffed. The cart with the purses was brought in, and in the purses he found the items he had observed defendants select and place in the purses. The total value of the items was \$128.37. Johnson authenticated and narrated the events of a videotape of defendants. On cross-examination, Johnson said he also saw defendants put some items back on the shelves and hand one item back to the cashier.

Defendant Knowles called Linda Brandt as a character witness. Brandt testified that in high school defendant participated in the peer mediator program designed to resolve disputes without violence, and had a reputation for honesty and nonviolence. Defendant Powell called Mitchell Wilson, who testified he has known her since she was a child and has high regard for her truthfulness and peacefulness.

During closing argument, defense counsel focused on and urged a not guilty verdict on the robbery charge. The jury found defendants not guilty of the robbery charge and guilty of the lesser included misdemeanor offense of petty theft. The court suspended imposition of sentence and placed defendants on three years' probation subject to numerous terms and conditions, including serving 15 days in the county jail, which they could serve through the Sheriff's work alternative program, and 60 hours of community service. Defendants received presentence custody credits totaling eight days

(four actual days, plus four days of good time/work time). The court also stated that once specified conditions were satisfied, defendants could seek early termination of probation.

DISCUSSION

Upon review of the record, we discern no arguable issues. Defendants were ably represented by counsel at all times. The trial court did not abuse its discretion in holding an Evidence Code section 402 hearing and thereafter ruling, pursuant to Evidence Code section 352, that a 12-year-old arrest for statutory rape, resulting in an apparent deferral of prosecution and a subsequent dismissal of the charge, could not be used to impeach the Target security officer. The court also did not abuse its discretion in concluding there was timely disclosure of the arrest to the defense. The court's ruling that there was no failure by the prosecutor to provide discovery as to information about Target's security practices is supported by substantial evidence. The court did not err in denying defendants' Penal Code section 1118.1 dismissal motions. There was no error in the instructions, including the self-defense instruction, given the evidence in the case. The trial court did not abuse its discretion in suspending imposition of sentence and placing defendants on three years' probation; all of the terms and conditions were proper and within the court's discretion.

DISPOSITION

Defendants' petty theft convictions and the orders suspending imposition of sentence and placing them on probation are affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.