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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUNIUS MACARTHUR TURNER,

Defendant and Appellant.

B238590

(Los Angeles County
Super. Ct. No. YA080522)

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven R. Van Sicklen, Judge. Affirmed.

Sara Richland, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Junius MacArthur Turner of one count of grand theft (Pen. Code, § 487, subd. (a))¹ and found true the allegation that he was on bail in an unrelated case (§ 12022.1). The trial court sentenced him to state prison for a total term of four years. He appeals from the judgment of conviction, contending that the evidence is insufficient to prove that value of the items taken exceeded \$950, and that therefore his conviction of grand theft must be set aside. We affirm the judgment.

BACKGROUND

Defendant worked at a UPS facility, where he loaded packages. On January 12, 2011, as defendant was screened with a metal-detecting wand by security guard Gabriel Padilla prior to leaving work, the metal detector sounded. Padilla asked defendant to remove his jacket. Defendant said it was the buttons on his jacket and tried to continue to exit. Padilla followed, and defendant turned back into the UPS facility. Padilla saw defendant drop five white cell phones to the ground. Padilla picked them up and escorted defendant to the security office. Padilla summoned, among others, defendant's supervisor, Kerwin Sampson. When Padilla left to call the police, leaving Sampson and defendant alone in the office, defendant gave Sampson five more phones, all black in color.² Shown a photograph depicting the ten phones, Trevor Gresham, a sales representative for T-Mobile, testified that all the phones were T-Mobile My Touch 4G phones which had a retail value of \$400 each if new, \$100 to \$200 if refurbished, and \$50 if refurbished and discounted pursuant to a contract rate plan.

¹ Undesignated section references are to the Penal Code.

² Defendant contends that the evidence is insufficient to prove that he gave Sampson five phones. As we explain in our Discussion, he is incorrect.

As necessary, we discuss additional evidence below in our Discussion.

DISCUSSION

As here relevant, grand theft requires that the “personal property taken is of a value exceeding nine hundred fifty dollars (\$950).” (§ 487, subd. (a).) Defendant contends that the evidence is insufficient to prove that he took property exceeding \$950 in value, and that therefore his conviction of grand theft must be vacated. His contention has three primary strands: (1) the evidence was insufficient to prove that he stole ten rather than only nine phones; (2) Trevor Gresham was not qualified to opine on the value of the phones and gave no basis for his opinion, and (3) even if Gresham’s opinion testimony proved the value of the phones, each phone may have been worth only \$50, and therefore the evidence did not prove the total value of the phones taken to be more than \$950.

Of course, we review the evidence in the light most favorable to the judgment, presuming in support thereof all reasonable inferences that can be drawn from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

A. The Number of Phones

As to the number of phones defendant took, Gabriel Padilla testified that he saw defendant drop five white cell phones to the ground. Padilla picked them up, escorted defendant to Padilla’s office, and placed the white phones on top of his desk. He then summoned defendant’s supervisor, Kerwin Sampson, as well as another supervisor and a union representative. Later, he stepped out to call the police, leaving Sampson alone in the office with defendant.

At that time, according to Sampson, defendant removed either four or five additional cell phones (Sampson was not sure of the number) from his clothing. The phones were black.

Padilla testified that when he returned, Sampson and defendant were still in his office, and Padilla observed additional phones, all of which were black, on top of a shelf. The phones had not been there previously.

Shown a photograph depicting ten cell phones (People's Exh. No. 12) in two rows, Padilla testified that the top row contained the five white phones that he saw defendant drop. The other five phones were the black phones he had observed upon returning to his office after calling the police.

Sampson recalled that a photograph was taken of the phones defendant gave him. When shown People's Exhibit No. 12, he testified that it showed "the phones in question." He then explained: "To be certain, I don't know exactly which phones . . . that were disclosed and I don't know which phones were previously disclosed," obviously referring to the phones defendant gave him (the "phones . . . that were disclosed") and the phones Padilla saw defendant drop (the "phones [which] were previously disclosed"), but he added that "[t]hese are the phones in question. This is the photo that was taken of the phones." He then answered "Yes" when asked if People's Exhibit No. 12 was the photograph "taken of the phones from [Padilla's] office that night." With regard to the bottom row of five phones in the photograph, he testified that he "recall[ed] these phones at the bottom," and he recognized that they were on "the security office's desk," referring to Padilla's office desk.

Viewing the evidence in the light most favorable to the judgment, Sampson and Padilla's testimony was more than sufficient to prove that defendant stole 10 phones in all (the five white ones Padilla recovered after he dropped them and the

five black ones defendant gave to Sampson), and that those ten phones were depicted in People's Exhibit No. 12. Only by an entirely unreasonable parsing of Sampson's testimony, without reference to Padilla's, can defendant contend otherwise.

B. Gresham's Testimony

Defendant contends that Trevor Gresham's testimony did not provide substantial evidence to prove the value of each phone. He is incorrect.

Gresham was a retail sales leader for T-Mobile. He testified that he had worked for the company for about two-and-a-half years, and had received training (both in orientation and while on the job) in the various products T-Mobile has. He identified the phones shown in People's Exhibit No. 12 as My Touch 4G phones. The retail price of such phones, sold new, is approximately \$400. Asked about refurbished phones, he testified that if purchased on the internet, a refurbished phone would "probably [cost] like anywhere between \$100 to \$200." If purchased pursuant to a discount as part of a contract plan, a refurbished phone would probably cost \$50.

To the extent defendant contends on appeal that Gresham was not qualified to opine on the value of the phones and provided no adequate reasons for his opinions, he has forfeited the contention by failing to object in the trial court. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140.) Moreover, "[i]t is settled law that incompetent testimony, such as hearsay or conclusion, if received without objection takes on the attributes of competent proof when considered upon the question of sufficiency of the evidence to support a finding." [Citations.] (*People v. Panah* (2005) 35 Cal.4th 395, 476.) In any event, viewing the evidence under the proper standard on appeal, it may reasonably be inferred that Gresham's

position as a retail sales leader, and his training over two-and-a-half years of employment regarding T-Mobile phones, adequately qualified him to give an opinion on the value of such phones, new and refurbished. In addition, to the extent defendant complains that Gresham was incompetent to testify about the value of refurbished phones because he testified that sales representatives “don’t sell refurbished phones,” the contention is disingenuous. It was defendant’s trial attorney, not the prosecution, that sought to, and did, elicit the testimony regarding the value of refurbished phones.

In short, defendant has no legitimate basis on appeal to contend that Gresham’s testimony was insufficient to prove the value of the phones he stole.

C. Aggregating the Value of the Phones

Assuming Gresham’s testimony proved the value of the phones, defendant contends that there was no evidence that the phones were new, that they might have been refurbished, and that therefore there was no substantial evidence that any phone defendant stole was worth more than \$50 or \$100. Because defendant asserts that the evidence showed at best that he took only nine phones, he argues that the aggregate value of the phones does not exceed \$950.

We have already rejected defendant’s contention that he stole only nine, rather than ten, phones. Moreover, the value of stolen property is the fair market value, that is, the “[h]ighest price’ . . . in terms of what the articles would be sold for in the open market if neither buyer nor seller was under any urgent necessity to either buy or sell them. *If some stores would underprice the items or would give them away that would not be representative of the fair market value.*” (*People v. Pena* (1977) 68 Cal.App.3d 100, 103, italics added.)

Here, even if all of the ten phones defendant stole were refurbished, each was worth (according to Gresham's testimony) at least \$100 to \$200. Only if they were discounted pursuant to a contract plan would they be worth less, i.e., \$50. But such a discount pursuant to a provider service contract does not reflect fair market value for the phone alone. Thus, given that defendant stole 10 phones, each (even if refurbished) worth at least \$100, and given that individual items taken as part of a single offense may be added together to determine whether the offense constitutes grand theft (*People v. Gray* (1976) 65 Cal.App.3d 220, 226), the evidence was clearly sufficient to prove that defendant stole property exceeding \$950 in value.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.