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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON M. CRAWFORD,

Defendant and Appellant.

2d Crim. No. B255559
(Super. Ct. No. SA083647-01)
(Los Angeles County)

Brandon Crawford appeals his conviction by jury for second degree robbery (count 1: Pen. Code, § 211)¹, attempted second degree robbery (count 2; §§ 664/211) and possession of a firearm by a felon (count 3: § 29800, subd. (a)(1)) with special findings that he was a principal armed with a firearm (§ 12022, subd. (a)(1)) on the robbery counts. Appellant admitted a prior strike conviction (§§ 667, subd. (d); 1170.12, subd. (b)) and a prior serious felony conviction (§ 667, subd. (a)), and was sentenced to 15 years state prison. Appellant contends that the trial court erred in permitting the victim to make an in-court voice identification of appellant. We affirm.

Facts and Procedural History

Using the alias "Jim," appellant acted as a front man in a Craigslist robbery. On February 10, 2013, Jeorge Rojas saw that "Jim" was selling a Range

¹ All statutory references are to the Penal Code.

Rover on Craigslist for \$17,000. When Rojas called about the ad, Jim said that he was moving out of state and had to sell the vehicle quickly. Jim had a deep voice and sounded like a very educated African-American man.

That evening, Jim phoned and told Rojas to meet him the next day at 5430 Alvern Circle, Hawthorne. He told Rojas to bring \$17,000 cash and to not waste his time. When Rojas and his girlfriend, Charlotte Noonan, drove to the address on February 11, 2013, the Range Rover was not there. Rojas called two or three times but the calls went to Jim's voicemail.

Jim called back, said that his phone was about to die, and called back on a blocked phone number. Jim told Rojas to park down the street on the next block. Rojas's girlfriend, Noonan, was driving and heard Jim's voice on the phone speaker. Rojas and Noonan drove to Flight Street where they saw a black Range Rover.²

After Rojas and Noonan parked, an African American male in a burgundy SUV circled the block two or three times. A few minutes later, appellant walked out from a bush area next to the Range Rover, and looked up and down the street as though he was waiting for someone.

Noonan stayed in her car as Rojas walked up to appellant with the \$17,000. Appellant introduced himself as "Jim" and the two shook hands. It was the same voice that Rojas heard on the phone. Noonan was in her car with the widows down and also recognized Jim's voice.

Appellant confirmed the he had the car documents and invited Rojas to look at the Range Rover. As Rojas reached to open the driver's side door, two African-American men jumped out of the bushes with handguns. The first gunman pointed a revolver at Noonan and asked, "Where is the money?" Noonan said that

² Jennifer Garcia owned the black Range Rover but did not know it was being used to lure robbery victims. Garcia regularly parked the vehicle on the street four or five times a week.

Rojas had it. The gunman took Noonan's purse which had \$500, a digital camera, and her wallet and credit cards.

The second gunman wore a hoodie and pointed a semiautomatic handgun at Rojas. Rojas yelled at Noonan to get out of there. Appellant was calm, continued to "stand[] around," and did not run. Noonan fled in her car as the second gunman chased Rojas down an alley. Rojas jumped a school yard fence, broke his tibia, and asked the children to get help.

After the police arrived, Rojas identified appellant in a photo lineup. He said that Jim was "a male Black, 5 feet[,] 11 inches, 190 pounds, a gap between his front teeth, clean cut, and educated with a phone number from Craigslist at 310 871-9012." Noonan gave a similar description and identified appellant in a separate photo lineup.

. After the robbery, Rojas found three car ads on Craigslist with Jim's phone number. In response to a search warrant, Craigslist provided Jim's phone number, email, and Internet I/P address. Time Warner Cable confirmed that the I/P address was registered to appellant and serviced appellant's apartment. Police detectives determined that the email address was registered to "James Jones" and that the phone number listed in the ad was a prepaid, disposable number. The phone was purchased on February 7, 2013, at an AT&T store about half a mile from appellant's apartment. The phone records had a log of the phone calls and voicemail to and from Rojas.

A police surveillance team observed appellant drive a burgundy Tahoe SUV from February 25, 2013 through March 1, 2013. Rojas and Noonan confirmed it was the same SUV that circled the block before the robbery. On March 1, 2013, appellant was arrested in the SUV with a red flip phone and a white iPhone. After appellant was jailed, Detective Alicia Elliot served a search warrant and found a .45 caliber semiautomatic pistol, a .45 caliber magazine, and a .38 caliber revolver in the kitchen cabinet above appellant's refrigerator.

At trial, Rojas identified appellant and was asked if he could identify appellant's voice. Over defense objection, appellant was ordered to say, "Hi, I'm Jim." Rojas testified that it was same voice he heard on the phone and when he met Jim face to face.

Appellant defended on the theory that he was duped by the robbers to pose as the seller. An African-American man named Hassan owed him money and told appellant that he was in the process of selling a Range Rover to pay him back. When appellant stopped to admire the Range Rover, a Hispanic man approached and asked "Do you have the paperwork?" The Hispanic man (Rojas) was assaulted by a "guy in a hoodie" and ran down the street. Appellant said it was "a pretty scary situation" and that he ran. Appellant denied posting ads on Craigslist, denied that Hassan and Marvin were at the robbery scene, and denied knowing about the firearms and ammunition in his apartment.

In rebuttal, Detective Alicia Elliot testified that appellant discussed the robbery in a *Miranda* interview (*Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694]). Appellant told the detective that he responded to a similar Craigslist ad and was robbed by Hassan and Marvin who lived in the neighborhood. Appellant confronted them after the robbery, got his wallet back, and let Hassan and Marvin use his MacBook to place a Craigslist car ad. On the day of the robbery, Hassan asked appellant to pose as the seller because he was "clean-cut." When Rojas arrived, appellant did not know the robbery was "going down" and was surprised when the "guys" jumped out with the handguns. Appellant also told the detective that the handguns in his apartment were purchased "off the street."

In-Court Voice Identification

Appellant argues that the in-court voice identification was unduly suggestive and denied him due process because there was no pretrial line up. Although a defendant may request a pretrial voice identification lineup, there is no absolute right to a lineup before an in-court identification. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1155.) "[I]t has long been recognized that '[i]n the case of in-

court identifications not preceded by a lineup . . . , the weaknesses, if any, are directly apparent at the trial itself and can be argued to the court and jury without the necessity of depending on an attempt to picture a past lineup by words alone.' [Citation.]"

(*Ibid.*) The failure to conduct a pretrial lineup does not, by itself, render an in-court voice identification impermissibly suggestive. (*Ibid.*; *Evans v. Superior Court* (1974) 11 Cal.3d 617, 625.)

Rojas testified that the seller had a deep voice, sounded well educated, and introduced himself as Jim. The prosecution asked: "If you hear defendant speak here in court, I know you already I.D. him through the photo six-pack, and you I.D. him here in court, would that also enhance your identification of defendant?"

Rojas responded, "Absolutely."

Over defense objection, appellant was asked to stand up and say "Hi, I'm Jim." Rojas said that it was the voice he heard on the phone and in the field.

Appellant makes no showing that the prosecution, in asking Rojas to make the voice identification, improperly suggested what response Rojas should make. (*People v. Ochoa* (1998) 19 Cal.4th 353, 413; *People v. Osuna* (1969) 70 Cal.2d 759, 765.)

Assuming that the one-on-one identification procedure was suggestive, it affected the weight of the evidence and was for the jury to assess. (*People v. Sims* (1976) 64 Cal.App.3d 544, 552-553.) "Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable features." (*Manson v. Braithwaite* (1977) 432 U.S. 98, 116 [53 L.Ed.2d 140, 155].)

Appellant argues that the trial court erred in overruling his Fifth Amendment objection to the in-court identification. It is settled that the privilege against self-incrimination does not extend to voice lineups which are a form of nontestimonial, physical evidence. (*United States v. Wade* (1967) 388 U.S. 218, 221-223 [18 L.Ed.2d 1149, 1154-1155]; *People v. Johnson* (1992) 3 Cal.4th 1183, 1222.) "The speech patterns of individuals are distinctive physical characteristics that serve to identify them just as do other physical characteristics such as color of eyes, hair, and skin, physical build and fingerprints." (*People v. Ellis* (1996) 65 Cal.2d 529,

534, fn. omitted.) The sound of appellant's voice and Rojas's ability to identify it was relevant to establish appellant's identity. "Voice is a competent means of identification and a person may be identified by such means alone. [Citation.]" (*Connell v. Clark* (1948) 88 Cal.App.2d 941, 947.)

Appellant asserts that a suggestive identification procedure violates a defendant's due process rights if, based on the totality of the circumstances, it is unreliable. (*Manson v. Braithwaite, supra*, 432 U.S. at p. 114 [53 L.Ed.2d at p. 154].) Appellant, however, bears the burden of showing that the identification was unreliable. (*People v. Cunningham* (2001) 25 Cal.4th 926, 989-990.) The relevant factors include "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." (*Manson v. Braithwaite, supra*, 432 U.S. at p. 114 [53 L.Ed.2d at p.154].)

Applying these factors, we conclude that the in-court voice identification was reliable and did not taint the trial. It is uncontroverted that Rojas phoned ten times and was familiar with Jim's voice. Rojas spoke to Jim directly and listened to the voicemail messages. Appellant told Rojas where the Range Rover was parked, told him to bring cash, and greeted him the next day. Rojas recognized the deep distinctive voice as did Rojas's girlfriend, Noonan.

Appellant argues that Rojas was too focused on the robbers' handguns to identify Jim's voice. Rojas, however, did not see the gunmen until after appellant introduced himself. Before the robbery, Rojas and appellant exchanged many phone calls. Rojas estimated that he spent 30 minutes talking to appellant. Before he was asked to identify Jim's voice, Rojas identified appellant in a photo lineup, gave the police a complete physical description, and identified appellant in court.

Appellant contends that the voice identification was unreliable because the robbery was committed a year before the trial. That goes to the weight of the evidence and was for the jury to decide. The jury received a CALCRIM 315

instruction on eyewitness identification which stated, among other things, that it should consider the time that elapsed between the robbery and the in-court voice identification.³ It is presumed that the jury understood and followed the instructions. (*People v. Morales* (2001) 25 Cal.4th 34, 47.) Appellant makes no showing that the in-court voice identification gave rise to a substantial likelihood of misidentification or violated his due process rights. (*People v. Osuna, supra*, 70 Cal.2d at p. 765; *Simmons v. United States* (1968) 390 U.S. 377, 384 [19 L.Ed.2d 1247, 1253].)

Harmless Error

Assuming, arguendo, that the in-court voice identification was unreliable, any error in its admission was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705, 711].) Appellant admitted that he was standing next to the Range Rover when Rojas was robbed. Appellant told a detective that he knew the robbers, Hassan and Marvin, and let them use his computer to place the car ad.

Appellant contends that the voice identification was a key piece of evidence to show that he was Jim. The voice identification was offered to enhance an identification that had already been made. The Craigslist records, internet records, and phone records all linked appellant to the robbery, as did appellant's email address. The disposable phone number listed in the ad was purchased at an AT&T store, next to a

³ The jury was instructed that, in evaluating identification testimony, it should consider whether the witness had contact with the defendant before the robbery, how well the witness could see the perpetrator and the circumstances affecting the witness's ability to observe, whether the witness was under stress, the description provided by the witness and how the description compares to the defendant, the time that elapsed between the robbery and the time when the witness identified the defendant, whether the witness was asked to pick the perpetrator out of a group, whether the witness ever failed to identify the defendant, whether the witness changed his mind about the identification, how certain the witness was when he made the identification, whether the witness and the defendant are of different races, whether the witness was able to identify the defendant in a photo lineup, and whether there were any other circumstances affecting the witness's ability to make an accurate identification.

Starbucks, less than half a mile from appellant's apartment. Appellant frequented the area and used the phone to call Rojas, as reflected in the phone records. A few days after the robbery, a police surveillance team observed appellant drive the burgundy SUV to the Starbucks and purchase coffee there.

Rojas and Noonan identified appellant in the photo lineups, identified his burgundy SUV, and identified the handguns used in the robbery. Similar handguns were found in appellant's apartment. Appellant told Detective Elliot that he purchased the handguns "off the street" yet, at trial, denied knowing anything about the weapons. Appellant did say that the robbers, Hassan and Marvin, asked him to pose as the seller because he looked "clean-cut" -- the very words used by Rojas to describe Jim's physical appearance.

The evidence was overwhelming, refuted all defense theories, and supported the finding that appellant was a key player in the robbery. As in every sufficiency-of-the-evidence case, "[t]he test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) We may not substitute our judgment for that of the jury, reweigh the evidence, or reevaluate the credibility of the witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) There is no reasonable likelihood that the voice identification evidence prejudiced appellant or resulted in a substantial likelihood of irreparable misidentification. (*Manson v. Braithwaite, supra*, 432 U.S. at p. 107 [53 L.Ed.2d at p. 149].)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Kathryn A. Solorzano, Judge
Superior Court County of Los Angeles

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