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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MATILDA VASQUEZ,

Defendant and Appellant.

B267286

(Los Angeles County
Super. Ct. No. BA433342)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Edmund W. Clarke, Jr., Judge. Affirmed.

Roberta Simon, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Scott A.
Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and
Respondent.

Defendant Matilda Vasquez appeals from the judgment entered following a jury trial that resulted in her conviction of one count of second degree robbery (Pen. Code, § 211). The trial court sentenced defendant to the midterm of three years for the robbery conviction and imposed the appropriate fines and fees. Defendant's sole contention on appeal is that there is insufficient evidence to support her conviction. Although the evidence against defendant is almost entirely circumstantial, it is sufficient to support the jury's verdict.

BACKGROUND

From January 23 to 25, 2015, Gem Faire held a jewelry show at the Marin Center in San Rafael. Several hours after the show ended, jewelry dealer Nabeel Hasan left the Center with \$250,000 to \$300,000 in inventory and drove to a Super 8 motel in Selma, California, arriving about 11:30 p.m. As Hasan was walking into the lobby, he noticed a black SUV drive in through the back side of the motel parking lot. The SUV parked next to Hasan's car.

Hasan went to the lobby counter and spoke to the manager. As they were talking, Hasan noticed three men running through the parking lot toward the building. Two of the men had their faces covered and were wearing hoodies. The third person did not have his head covered.

The two masked men came into the lobby. The men took Hasan's bags, including the bags containing his jewelry. As Hasan watched the men leave, the third man pointed at him and screamed, "Don't move. Don't move. Don't move."

The masked men got into the back of the SUV, which had been moved closer to the lobby door. The man who had yelled at Hasan got into the front passenger seat. The SUV drove away, demonstrating there was a fourth

person in the vehicle. Selma police came to the motel and took a statement. Police were unable to locate the SUV.

Two days after the robbery, Deisi Gonzalez called Carlos Parra, a jewelry fence who secretly cooperated with the FBI. Gonzalez offered to sell him gold, gemstones, pearls and jewelry that came from San Francisco. The two arranged to meet at a Holiday Inn Express near Los Angeles International Airport.

Two days later, on January 29, law enforcement personnel placed the hotel under surveillance. They observed Gonzalez and Diego Rojas arrive together, with Rojas carrying an Abercrombie bag. They also observed defendant and Julio Ruiz being dropped off by the driver of a black Nissan Murano. Defendant, Gonzalez, Rojas and Ruiz went to the hotel room designated for the meeting with Parra, and were arrested in the hallway outside the room. Hasan's jewelry was found in an Abercrombie bag on the floor near Gonzalez.

Soon thereafter, law enforcement personnel conducted a traffic stop of the Nissan Murano seen at the hotel. Defendant's brother Fernando Vasquez (Vasquez) was the driver.¹ Jonathan Braunortiz was one of the passengers. Both men were arrested. Officers observed the vehicle had a paper plate reading "Nissan Marin." A search of the Murano's Vehicle Identification Number showed the vehicle was registered to the Orange Empire Auto Center in Orange. The car's license plate number was 5USN016. Nissan Marin was located at 511 Francisco Boulevard East in San Rafael, near the municipal yacht harbor.

¹ Vasquez was tried with defendant but is not a party to this appeal.

The subsequent law enforcement investigation uncovered evidence that Gonzalez and Braunortiz had each taken a room at a Travelodge located at 865 Francisco Boulevard East in San Rafael for the night of January 24.² Cell phone records for defendant and Vasquez placed them in San Rafael on January 24 as well. Vasquez's cell phone received a text on January 24 with the address of the Travelodge. Defendant's cell phone used a cell phone tower (tower) near the Travelodge the evening of January 24 at 9:12 p.m. The phone used that tower during the night, at 1:18 a.m., 1:19 a.m. and 4:45 a.m., and again in the morning of January 25 at 9:42 a.m., 9:43 a.m., 9:48 a.m., 9:50 a.m., 9:51 a.m. and 11:09 a.m.

Cell phone evidence placed all six suspects in San Rafael on January 25. Vasquez's cell phone contained photos dated January 25 with geographical locations of Yacht Club Drive, Vivian Street and Piombo Place in San Rafael. One photo showed defendant, Vasquez and Braunortiz standing at the rear of a black SUV. A second photo showed Vasquez, Braunortiz and Rojas at the rear of the SUV. A video showed all four at a marina. Ruiz's cell phone used a tower near the municipal yacht harbor and Nissan Marin in San Rafael between 11:37 a.m. and 11:42 p.m. on January 25. Defendant's cell phone used a tower near the municipal yacht harbor and Nissan Marin to receive two calls at 11:17 a.m. and a third call at 2:44 p.m. Nissan Marin is .6 miles from the Travelodge.

² The Travelodge rooms were in the names of Deisi Gonzal and Jonathan Brand. The hotel clerk testified that she thought Gonzalez's driver's license was the identification provided by Deisi Gonzal at registration. Braunortiz's driver's license shows his name as Jonathan Brand Ortiz. The clerk testified that she sometimes shortened long names.

Surveillance video from the Marin Center showed a woman who looked like Gonzalez visiting the jewelry show in the late afternoon of January 25. A still from the video introduced at trial showed a time of 3:17 p.m.

The jewelry show closed at 5:00 p.m. Cell phone records place five of the suspects at the Marin Center at or after 5:00 p.m.³ Gonzalez, Vasquez, Braunortiz and Rojas last used their cell phones in the area at 7:37 p.m. or 7:38 p.m. Defendant used her phone once, at 5:13 p.m.

Hasan packed up his jewelry and left the Marin Center at 7:00 p.m. Hasan did not like bridges and took a circuitous route towards his home in Los Angeles. He drove north from San Rafael around the bay, taking the 101 north to the 37 east to the 780 east to the 680 south. Hasan stopped in Dublin and ate dinner at a Taco Bell located at 7123 Village Parkway. He estimated that he arrived at the Taco Bell “between 8:30 and 8:45. Almost 9:00.”

Cell phone records indicate the suspects took the same route to Dublin as Hasan. Defendant’s cell phone received a call at 7:50 p.m. using a tower along the 37 freeway, along the route Hasan took. Braunortiz’s phone began a 28-minute call at 8:13 p.m. using a tower near Benicia, where the 780 and 680 meet, along the route Hasan took.

Braunortiz’s 28-minute call ended on a tower in Dublin near the Taco Bell at 8:41 p.m. Defendant, Gonzalez, Vasquez and Rojas also used their cell phones near the Taco Bell at about the same time Hasan was eating his dinner there. Defendant made one outgoing call from that location.

³ Ruiz did not use his cell after 11:42 on January 25 until January 26. His location during this time period cannot be determined by his cell phone records.

Hasan left Dublin between 9:00 and 9:15 p.m. He continued east along the 580 to the 99, then drove south along the 99.

Cell phone records indicate the suspects followed. Rojas's phone made a 55-minute phone call to Gonzalez's phone number, which lasted from 9:43 to 10:38 p.m. The first tower used was near Modesto, the last near Madera. Both locations were along the 99 freeway.⁴ Defendant's phone used a tower near Madera at 10:39 and 10:40 p.m. to receive calls from Vasquez.

Hasan exited the freeway near Selma and went to a Super 8 motel intending to spend the night there. He estimated that he arrived at the motel at about 11:30 p.m. It could have been earlier.

The suspects were in the Selma area at about the same time. Defendant's phone used several towers north and south of Selma to make or receive multiple calls between 11:16 and 11:37 p.m. The outgoing calls were to Vasquez and Braunortiz. Vasquez's phone used a tower in Selma at 11:15, 11:16 and 11:17 p.m. Braunortiz's phone used a tower in Selma at 11:21 and 11:32 p.m. Gonzalez's phone used a tower in Selma at 11:17, 11:18, 11:19 and 11:20 p.m.

Although law enforcement officers in the Selma area did not find the vehicle used in the robbery, Hasan testified at trial that the black Nissan Murano Vasquez was driving in Los Angeles looked very similar to the SUV used by the robbers.

The parties stipulated that on January 29, after the suspects were arrested at the Holiday Inn Express in Los Angeles, Hasan went to the LAPD

⁴ Rojas did not use his phone again until 10:59 a.m. on January 26. His location during this time period cannot be determined by his cell phone records.

and participated in a field showup. He identified Rojas as one of the men who participated in the robbery. Hasan did not identify anyone else.

Defendant and Vasquez did not present any evidence in their defense.

DISCUSSION

Defendant contends the evidence shows only that she was with the other suspects in San Rafael on January 25, her cell phone was in the car with the other suspects on the drive from San Rafael to Selma, and she was with three of the suspects at the Los Angeles hotel on January 29. She claims there is no evidence that she had knowledge of what the others were doing or planned to do, or that she assisted their conduct. She maintains such a conviction violates her state and federal constitutional rights to due process.

1. Sufficiency of the evidence

In reviewing the sufficiency of the evidence, “courts apply the ‘substantial evidence’ test. Under this standard, the court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses *substantial evidence*—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.]” (*People v. Cuevas* (1995) 12 Cal.4th 252, 260-261.) In so doing, the court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

The standard of review is the same when the prosecution relies on circumstantial evidence to prove guilt. (*People v. Bean* (1988) 46 Cal.3d 919, 932.) “Although it is the duty of the jury to acquit a

defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment." (Id. at pp. 932-933.)

2. Law

A person who conspires with others to commit a felony is guilty as a principal. (*People v. Maciel* (2013) 57 Cal.4th 482, 515.) A conspiracy consists of two or more persons agreeing to commit a crime, together with the commission of an overt act by one or more of these parties in furtherance of the conspiracy. (*People v. Homick* (2012) 55 Cal.4th 816, 870.)

The existence of a conspiracy may be inferred from the relationships, conduct, interests, and activities of the alleged conspirators. (*People v. Homick, supra*, 55 Cal.4th at p. 870.) If the evidence supports an inference that the parties explicitly or tacitly came to a mutual understanding to commit a crime, it is sufficient to prove a conspiracy to commit a crime. (*People v. Maciel, supra*, 57 Cal.4th at pp. 515–516.)

Similarly, "a person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) "[O]utside of the natural and probable consequences doctrine, an aider and abettor's mental state must be at least that required of the direct perpetrator." (Id. at p. 1118.) "[A]n aider and abettor will 'share' the perpetrator's specific intent when he or she knows the full extent of the perpetrator's criminal purpose and gives aid or

encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 560.)

Among the factors which may be considered in determining aiding and abetting are presence at the crime scene, companionship, and conduct before and after the offense. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.) Evidence of a defendant's involvement in a conspiracy to commit a crime will often also show the defendant intended to aid and abet the commission of the crime. (See *People v. Maciel, supra*, 57 Cal.4th at p. 518.)

3. Analysis

Defendant spent two days in San Rafael with the other suspects before accompanying them on their drive to Selma. It is reasonable to infer that defendant became aware of her companions' criminal purpose during their time together in San Rafael.

The first manifestation of her companions' criminal purpose was the placement of the Nissan Marin paper plate on the Murano. It is reasonable to infer that Vasquez acquired the paper plate while in San Rafael the weekend of January 24-25, since Nissan Marin was close to the Travelodge where a number of the suspects stayed, and defendant and Rojas both used cell phone towers which covered the area around Nissan Marin. The most obvious purpose of using a paper plate would be to conceal the real license plate on the vehicle. This suggests a criminal purpose. Since defendant appears in photos on January 25 with the Murano, it is reasonable to infer that she was aware of the switch to the Nissan Marin paper plate before the robbery.

The second manifestation of her companions' criminal purpose was their presence outside the Marin Center for a two-hour period after the jewelry show closed, as shown by their cell phone records. A photograph of

the Marin Center introduced into evidence at trial does not show any other businesses in the immediate vicinity which might provide an innocent explanation for the suspects' presence in that location at that time. Waiting for two hours outside a closed business in a vehicle with a false paper license plate suggests a criminal purpose related to the business.

Even though defendant's companions had shown a criminal purpose, defendant chose to accompany them on their circuitous route from the Marin Center to Selma. Defendant acknowledges that cell phone records show her cell phone was used to make and receive calls along the route, but argues this does not show she was the one using the phone. Cell phone records demonstrate that cell phones belonging to the five other suspects were used in San Rafael, creating an inference that each suspect had his or her cell phone with him or her during the trip. There is no reason to believe that defendant gave her cell phone to one of the other suspects to use on the drive to Selma, while defendant herself remained alone in San Rafael with no car, no cell phone and no apparent way home. The cell phone use creates a strong inference that defendant herself was in the car on the journey.

Although defendant's cell phone received several calls during the drive from San Rafael to Selma, she used her phone to make outgoing calls on only two occasions. Her first outgoing call used a tower in Dublin at 8:42 p.m. She did not make another outgoing call for over two and a half hours. At 11:16 p.m., she made a series of eight phone calls in 16 minutes. Six of the calls were to Vasquez and two to Braunortiz. The calls used two towers around the Super 8 motel in Selma. Thus, the only two times defendant made calls were when Hasan stopped for dinner and when he went to the motel in Selma.

The second set of calls are particularly incriminating. It would be a remarkable coincidence if defendant was not involved in the robbery but nevertheless suddenly began communicating with one or two of the men who were actively involved in the robbery as she approached the scene of the robbery.⁵ It is possible that one call could involve an innocent person noticing that the Murano had unexpectedly exited the freeway, calling to find out the reason. That is an unlikely explanation for eight calls. A more reasonable interpretation of the timing suggests that defendant was playing a supporting role in the robbery.

The evidence of defendant's conduct during the weekend of January 24-25 is sufficient to support an inference that she agreed with her companions to commit the crime of robbery. (See *People v. Homick, supra*, 55 Cal.4th at p. 870 [existence of conspiracy may be inferred from the relationships, conduct, interests, and activities of the alleged conspirators].) Defendant does not dispute her companions committed an overt act in furtherance of the conspiracy. Thus, the evidence is sufficient to support defendant's conviction for robbery under a conspiracy theory of culpability. This evidence is also sufficient to support an inference that she was aware of her companions' intent to commit robbery and provided aid or encouragement to facilitate their commission of the robbery. (See *In re Juan G., supra*, 112 Cal.App.4th at p. 5 [factors to consider in determining aiding and abetting include presence at the crime scene, companionship, and conduct before and after the offense].) This is sufficient to support her conviction for robbery under an aiding and abetting theory of culpability.

⁵ Four of the six suspects in this case were men. Hasan testified that three of the robbers were men. Arithmetically, Vasquez or Braunortiz had to be one of the robbers. Both may have been robbers.

Further, even if defendant's decision to stay with her companions over the weekend of January 24-25 could be viewed as the innocent behavior of a person far from home who needed a way home, her behavior upon her return to Los Angeles is not consistent with innocence. Defendant drove to the Holiday Inn Express in Los Angeles with three of the suspects in the robbery, and met up with the other two suspects. Defendant, Gonzalez, Ruiz and Rojas then went to the room of a jewelry fence with the jewelry stolen from Hasan. There is no apparent legitimate explanation for the trip to the hotel except to meet the fence and sell the stolen jewelry. A jury could find that a person who was innocently along with friends when the friends decided to commit a robbery would not meet up with those friends four days later to sell the proceeds of the robbery.⁶

Taken as a whole, the evidence shows that defendant was with the other suspects before the crime, had foreknowledge of their criminal intent, accompanied them as they followed the intended victim, communicated with at least one of the robbers at the time of the robbery and rejoined the

⁶ Although the People did not argue this theory of the case, defendant's presence at the hotel supports an inference that she had a possessory interest in the jewelry and, when arrested in the hallway, had joint possession of it. When a defendant is in conscious possession of recently stolen property, a jury may infer that she is the person who stole the property as long as there is slight corroborating evidence which tends to link the defendant to the theft. (*People v. Gamble* (1994) 22 Cal.App.4th 446, 452-453.) In general, any evidence tending to connect the defendant to the crime is corroborating evidence. (*Id.* at p. 452, fn. 1.) Evidence showing the defendant had an opportunity to commit the theft is corroborating evidence (*ibid.*), as is evidence showing the defendant's participation in the sale of the stolen property. (*People v. Sorrentino* (1956) 146 Cal.App.2d 149, 160.) Here, defendant was with the other suspects during the preparation for the robbery and was nearby when the robbery occurred. Several days later, she rejoined the suspects to attempt to sell the stolen jewelry. This is sufficient corroborating evidence linking defendant to the robbery.

suspects several days after the robbery to sell the robbery proceeds. A rational trier of fact could have found defendant guilty of robbery beyond a reasonable doubt under either a conspiracy or aiding and abetting theory of liability.

Since we have determined that “a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt, the due process clause of the United States Constitution is satisfied [citation], as is the due process clause of article I, section 15, of the California Constitution.” (*People v. Osband* (1996) 13 Cal.4th 622, 690.)

DISPOSITION

The judgment of conviction is affirmed.

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BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.