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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY JAVIER AGUILAR,

Defendant and Appellant.

C067127

(Super. Ct. No.
09F07087)

Following a jury trial, defendant Danny Javier Aguilar was convicted of battery with serious bodily injury (Pen. Code, § 243, subd. (d); statutory references that follow are to the Penal Code) and misdemeanor petty theft (§§ 484/488) as a lesser included offense of grand theft (§ 487, subd. (c)). The trial court suspended imposition of sentence and placed defendant on probation, subject to various conditions including 300 days in county jail.

On appeal, defendant contends there is insufficient evidence to support his convictions. We affirm the judgment.

FACTS

On September 17, 2009, M.D. found an advertisement on Craigslist offering a new GPS navigation system for \$80. M.D. called the phone number from the advertisement and agreed to meet with the seller at a shopping center near Interstate-80 and Truxel Road. The seller said he would be in a white Chevrolet Tahoe.

When M.D. arrived at the mall, defendant was in the driver's seat of the Tahoe with a woman in the passenger seat. M.D. and defendant got out of their vehicles and met in the parking lot. Defendant handed the GPS to M.D., who plugged it into his van's cigarette lighter to see if it worked. M.D. determined the system worked, but was not new.

M.D. told defendant he would pay less since the GPS was not new, and defendant agreed to lower the price to \$60. M.D. then got the money from his van. Taking what he thought was \$60 in \$20 bills, M.D. paid defendant. When defendant counted the money, M.D. realized that he had accidentally given him \$80. M.D. told defendant he gave him too much money, and then tried to grab the money, tearing the tip of it. Defendant then made a fist; M.D. did not see defendant swing his fist, but next remembered lying on the ground bleeding as defendant got in his vehicle and left.

Defendant is six foot, one inch tall and weighs 175 pounds. He was 19 at the time of the trial. M.D. weighed 140 pounds, and was 55 at the time of the trial.

M.D. was bleeding from his eye, nose, and mouth, and his eye, gums, and face were swelling. One tooth was knocked out; another tooth was hanging by the skin, so M.D. pushed it back into his gum. As a result of his injuries, M.D. had one tooth replaced with a false tooth, along with two root canals and a bridge.

According to M.D.'s ophthalmologist, M.D. sustained "blunt trauma to both eyelids and to the tear duct of his right lower eyelid with laceration." He suffered a laceration to his right inner eyelid which went all the way through the eyelid and the tear duct. M.D. underwent surgery to place a stent in his right tear duct, which remained for three months. The ophthalmologist believed M.D.'s injuries were the result of more than one blunt force blow.

M.D. got into his van and went to a nearby Del Taco for help. M.D. was bleeding so heavily that Del Taco employee Jose R. at first thought he spilled a large amount of ketchup. M.D. went to the bathroom to clean up, and then asked someone to call 911. He did not call 911 on his own because his Blackberry mobile telephone, which had been clipped to his belt, was missing.

Jose R. saw that M.D. was bleeding from his face and shaking. M.D. told Jose R. that he had been beaten and his

phone was taken. Jose R. then called 911 and asked for help for M.D.

Sacramento Police Officer Matt Armstrong went to the restaurant. M.D. was upset and shaking. He was bleeding from the mouth, had a red eye and was mopping up blood from his face. M.D. reported that he had been elbowed in the face, knocked to the ground, and then punched several times in the face while he was on the ground.

Officer Armstrong obtained contact information about defendant from the Craigslist advertisement. He called the telephone number on the advertisement and left several messages. Defendant returned the call within five minutes, and supplied an address within two miles of the mall.

Officer Armstrong met defendant at the address. Defendant, who had blood on his clothing, gave M.D.'s Blackberry to Officer Armstrong. He also gave the officer four \$20 bills, three of which had ripped corners. Defendant's mobile phone contained a text message to his girlfriend, which read: "I jus [sic] got into a fight. I beat this nigga ass." Defendant told Officer Armstrong he had removed the ad because he was afraid of getting into trouble over the fight.

Defendant first told Officer Armstrong he got the GPS from his grandmother. He then said that he bought the GPS from his friend Tommy R. for \$80. When Officer Armstrong contacted Tommy R., defendant interrupted the conversation to admit that he actually got the GPS on Craigslist for \$40, and thought the item was stolen.

Officer Armstrong arrested defendant, who M.D. later identified at a field showup. Another officer returned to the parking lot with M.D., where they found the bracket for the GPS and the holster for M.D.'s Blackberry. M.D. gave the GPS device, which was still in his van, to the officer.

M.D. initially told his dentist that he suffered his injuries in a car accident. He lied to his dentist out of embarrassment and to keep from frightening his family. M.D. told his dentist about the attack at the next visit.

Defendant testified that he did not agree to M.D.'s proposal to sell the GPS for \$60. M.D. handed \$80 to him and then tried to snatch the money away as defendant counted it. M.D. then reached for the money after defendant put it in his pocket, causing defendant to swipe his hand and back away. After M.D. grabbed defendant's collar, defendant flinched and then hit M.D. with his elbow. M.D. hit the side of the van and fell while holding onto defendant, taking defendant to the ground with him. After M.D. pulled defendant's shirt over his head, defendant tried to push M.D. away with his hand. M.D. bit defendant on the wrist, causing defendant to hit him two or three times with his fist. Defendant then picked up a Blackberry he thought was his, and left.

Officer Armstrong testified on rebuttal that defendant did not have a bite mark on his wrist and did not mention being bitten. Defendant told Officer Armstrong that he picked up the Blackberry because he thought it was the GPS device. When told

the GPS was still in M.D.'s car, defendant replied "I don't know. Maybe I thought it was my Blackberry."

DISCUSSION

Defendant contends there is insufficient evidence to support his convictions. This contention plainly fails.

Defendant was convicted of battery with serious bodily injury and petty theft. Battery with serious bodily injury requires the People to prove that defendant willfully and unlawfully used force of violence on M.D., inflicting serious bodily injury. (§§ 242, 243, subd. (d).)

"The elements of theft by larceny are well settled: the offense is committed by every person who (1) takes possession (2) of personal property (3) owned or possessed by another, (4) by means of trespass and (5) with intent to steal the property, and (6) carries the property away. [Citations.] The act of taking personal property from the possession of another is always a trespass unless the owner consents to the taking freely and unconditionally or the taker has a legal right to take the property. [Citation.]" (*People v. Davis* (1998) 19 Cal.4th 301, 305, fns. omitted; see also § 484.)

In determining the sufficiency of the evidence, we ask whether "'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" [Citation.]" (*People v. Hatch* (2000) 22 Cal.4th 260, 272, italics omitted.) We resolve neither credibility issues nor

evidentiary conflicts; we look for substantial evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable." (*People v. Scott* (1978) 21 Cal.3d 284, 296.)

M.D.'s testimony constitutes substantial evidence for both offenses. According to his testimony, M.D. tried to take some of the money back from defendant and defendant then balled up his fist. After that, M.D. was on the ground unconscious, having suffered significant injuries to his face, teeth, and right eye. Expert medical testimony indicated M.D.'s injuries were the result of multiple blunt force traumas. M.D. had a right to at least some of the money in defendant's hands, because he had overpaid him for the GPS, a fact that defendant knew, since he counted the \$80. When M.D. regained consciousness, he learned that his mobile phone for work, a Blackberry worth between \$400 and \$500, was missing. Defendant later gave the phone to the officer who interviewed him. A reasonable trier of fact could conclude that defendant struck M.D. and inflicted the injuries. The jury could also reasonably reject any contention that defendant, 35 pounds heavier and over 35 years younger than M.D., struck him in self defense. Finally, the jury could find that defendant took the Blackberry from M.D.

M.D.'s account is corroborated by other evidence. Defendant left the scene while M.D. was on the ground,

unconscious and bleeding in the mall parking lot. His flight supports an inference of consciousness of guilt. (*People v. Mason* (1991) 52 Cal.3d 909, 941.) This inference is reinforced by defendant's text to his girlfriend, in which he brags about beating up a man. M.D.'s credibility is reinforced by his highly upset and excited countenance after the attack, as testified to by Jose R. and Officer Armstrong.

Defendant claims M.D. was so effectively cross-examined that he was not a credible witness. He claims "[M.D.] made up palpably ludicrous stories like 'accidentally' counting out \$80, when the price was \$60, then coincidentally giving [defendant] the \$80, but being refused return of the \$20." In a similar vein, defendant asserts that "yanking at money in a strange person's hand is itself the sort of conduct which can provoke a frightened rapid response" and "[p]eople do not commonly assault one another in a business transaction over \$20." From this, defendant concludes: "By all accounts and rational inferences [M.D.] got the GPS in his car, gave the \$80, then either tried to talk [defendant] out of a done deal, and/or just tried to physically revoke the deal by yanking away money for an item, still installed in his car when police checked it later." To supplement this point, defendant points out that the jury rejected M.D.'s testimony about the Blackberry's value by acquitting defendant of grand theft, and that the People chose not to proceed with a robbery charge and great bodily injury allegation that were in the initial complaint.

Defendant's argument asks us to find his testimony credible and to reject M.D.'s. As we have said earlier, on appeal we decide only whether there is substantial evidence to support the verdict. There was such evidence here. While there were some inconsistencies in M.D.'s testimony, this is to be expected from almost any witness, particularly one for whom English is a second language, one who was injured in a violent assault, and one who is testifying to a highly traumatic event which took place almost a year prior to that testimony. (See *People v. Walker* (1957) 155 Cal.App.2d 273, 275.) On this record, we could not possibly reject a jury's finding that a witness was credible based on some inconsistencies in that witness's testimony.

Defendant's other contentions are frivolous. That the jury convicted defendant of the lesser included offense of petty theft in spite of M.D.'s testimony that the Blackberry was worth between \$400 and \$500 does not permit us to find that M.D. was not credible. Likewise, the prosecutor's decision not to seek greater charges against defendant has no bearing on the evidence to support the conviction.

Defendant's substantial evidence claim is patently without merit.

DISPOSITION

The judgment is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MAURO _____, J.