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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL EDWARDS,

Defendant and Appellant.

D058703

(Super. Ct. No. SCN262743)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed.

A jury convicted Samuel Edwards of four counts of robbery (counts 1-4) and found true allegations that he personally used a firearm in the commission of the offenses. Edwards appeals, contending there was insufficient evidence to support the convictions on counts 3 and 4 and the related firearm enhancements. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

May 24 Robbery (Count 1)

On the night of May 24, 2009, Tiffany Brown drove Edwards, Rashun Mitchell and Clayton Gaunce to a Holiday Inn Express in Oceanside. (All further date references are to the year 2009.) Edwards and Mitchell are both African-American, and Gaunce is White. While Mitchell went inside the hotel, Edwards and Gaunce put on masks, hats and sweaters. Gaunce gave Edwards a silver gun.

Jillian Gomez was the front desk clerk at the hotel that night. Around 11:30 p.m., Mitchell came to the door and Gomez let him inside. After Mitchell left, Edwards walked in, pointed a gun at Gomez and directed her to unlock the door for his accomplice. Edwards and Gaunce took Gomez's wallet from her purse and money from the cash drawer in the hotel. Before leaving, the men forced Gomez to lie face down and tied her hands behind her back with zip ties.

May 25 Robbery (Count 2)

Later that night, Brown drove Edwards, Mitchell and Gaunce to the Best Western in Oceanside. The three men put on masks, hats, and dark colored "hoodies" and told Brown to go inside the hotel. Brown went in the hotel to determine if there was a plexiglass barrier at the front desk and then returned to the car. Gaunce again gave Edwards the gun and the three men got out of the car.

Juan Sarmiento was the front desk clerk that night at the Best Western. Shortly before 3:00 a.m., three men came into the hotel. Two of them were wearing "hoodies" and one was wearing a mask. The man wearing the mask pointed a silver gun at

Sarmiento and ordered him to get on the ground. The men tied Sarmiento's hands behind his back with zip ties and asked him where the money was kept. After taking approximately \$300, the men left the hotel.

When Edwards, Gaunce and Mitchell returned to Brown's car, Edwards was holding the gun. Brown drove them away from the hotel and took Edwards and Gaunce to the Mt. Vernon Inn where they were renting a room.

May 29 Robbery (Count 3)

On May 29, Evan Beattie was working the front desk at the Best Western in Oceanside. At approximately 2:30 a.m., two individuals wearing ski masks came into the hotel lobby. One of the men was wearing a dark colored "hoodie" and the other had on a jacket with a hood. Beattie immediately noticed that one of the men was pointing a silver or chrome colored gun at his head. The men jumped over the counter, ordered Beattie to get on the ground and then tied his hands behind his back with zip ties. They asked where the safe was located and after Beattie told them there was no money in the safe, they asked him about the cash drawer. The men took approximately \$190 from the cash drawer and left the hotel.

May 30 Robbery (Count 4)

On May 30, Neil Shamon was working as the night clerk at the Mt. Vernon Inn in Escondido. At around midnight, three men walked into the hotel. One of those men pointed a silver gun at Shamon and demanded to know where the money was located. After Shamon told them the money was in the register, the men walked behind the counter, forced Shamon to put his hands behind his back, and tied him up with zip ties.

A guest at the Mt. Vernon Inn, Sandy Machin, entered the lobby and noticed that the hotel was being robbed by two African-American men and either a White or Asian man. When Machin turned around and walked out, one of the African-American men chased him and told him not to say anything. The other African-American man came out of the lobby, put a silver gun to Machin's forehead, and also told him not to say anything. Machin testified that the African-American man that chased him was not Edwards.

The three men left the hotel with approximately \$600. Machin went back into the hotel lobby and untied Shamon. Shamon called the police.

Investigation

On June 3, police officers found Edwards, Gaunce and two other people in a hotel room at the Best Value Inn in Escondido. Gaunce and Edwards said that the room was registered to them. Inside the room, officers found a silver gun behind the television. They also found a black "hoodie" with gloves and a ski mask in the pockets.

A DNA analysis performed on the gun showed that at least two people contributed to the DNA found on the trigger, with Gaunce being a major contributor. Edwards was a major contributor of DNA found on the mask and sweatshirt.

DISCUSSION

Edwards argues there was insufficient evidence to support his convictions on counts 3 and 4 where, unlike counts 1 and 2, there was no accomplice testimony. He further contends that even if the evidence was sufficient to prove he participated in those crimes, it was insufficient to prove he personally used a firearm.

A. *Standard of Review*

In determining the sufficiency of the evidence to support a guilty verdict, "the relevant question is 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." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319 (*Jackson*)). "[T]he 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." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) "Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence. [Citation.] [Citation.] We "'presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" [Citation.] [Citation.]" (*People v. Clark* (2011) 52 Cal.4th 856, 943.) The same principles apply to our determination of the sufficiency of the evidence to support a true finding on a firearm enhancement. (See *People v. Alvarez* (1996) 14 Cal.4th 155, 225.)

B. *Sufficient Evidence Supported the Jury's Verdicts on Counts 3 and 4*

There was considerable evidence from which the jurors could have reasonably found that Edwards participated in the robberies charged in counts 3 and 4 at the Best Western and Mt. Vernon Inn. Officers found a black "hoodie" and a ski mask in Edwards's hotel room. Edwards's DNA was on both of those items. Officers also found a silver gun hidden behind the television.

Surveillance videos of the four robberies showed two men in dark hooded sweatshirts or jackets participating in the robberies. Those men appear to be the same individuals in each instance. One of the men in the videos relating to counts 3 and 4 is brandishing a firearm. Although it is difficult to ascertain the color of the firearm in the video pertaining to count 3, it appears to be silver. The silver color of the gun is clear in the video pertaining to count 4.

The testimony of the victims is consistent with the videos. Beattie testified that two individuals wearing dark hooded sweatshirts or jackets robbed the Best Western while he was working on May 29. According to Beattie, one of the men pointed a silver or chrome colored gun at his head. Machin, a witness to the Mt. Vernon Inn robbery on May 30, testified that he saw two African-American men and either a White or Asian individual robbing the hotel. Two of the men were wearing dark "hoodies." Machin and Shamon, the night clerk at the Mt. Vernon Inn, both recalled that the gun used in the robbery was silver.

Additionally, all four hotel robberies were committed in a similar fashion over a short period of time. The perpetrators wore dark hooded clothing, displayed a silver gun, and tied their victims' hands behind their backs with zip ties. These characteristics are distinctive and support a strong inference that the same individuals were involved in the crimes.

Based on the totality of the evidence and all reasonable inferences drawn from that evidence, the jury could reasonably find that Edwards was involved in a robbery spree

that spanned over a week. Thus, there was sufficient evidence to support the jury's guilty verdicts on counts 3 and 4.

C. True Findings on Firearm Enhancements on Counts 3 and 4

"A firearm use enhancement attaches to an offense . . . if the firearm use aids the defendant in completing one of its essential elements." (*People v. Masbruch* (1996) 13 Cal.4th 1001, 1012.) Moreover, "a gun may be used "'in the commission of"' a given crime even if the use is directed toward someone other than the victim of that crime." (*People v. Granado* (1996) 49 Cal.App.4th 317, 329-330.) Thus, "a defendant uses a gun 'in the commission' of a crime when he or she employs the gun to neutralize the victim's companions, bystanders, or other persons who might otherwise interfere with the successful completion of the crime." (*Id.* at p. 330.)

With respect to the true finding on the firearm enhancement on count 3, the Best Western robbery on May 29, we conclude there was sufficient evidence to prove Edwards "personally used" a firearm. The surveillance videos of counts 1 and 2 show at least two men entered the hotel lobbies; the first one was holding a gun and another was wearing a red hat. As Edwards points out, the person wearing the red hat must have been Gaunce because the evidence showed that Edwards had the gun and was the first person to enter the hotels. Similarly, the surveillance video of count 3 shows that the first robber entered the hotel with a gun and was followed by a man in a red hat. Based on the similarity of the crimes and the way they were committed, the jury could reasonably infer that Edwards was the individual with the firearm, as opposed to the one in the red hat.

With respect to the true finding on the firearm enhancement on count 4, the Mt. Vernon Inn robbery on May 30, we conclude the evidence was sufficient to prove Edwards "personally used" a firearm. The evidence showed that three perpetrators committed the robbery at the Mt. Vernon Inn, two African-Americans and one Asian or White individual. It was undisputed that Edwards and Mitchell are both African-American, and Gaunce is White. Machin testified that when he saw the robbery taking place, he left the hotel lobby and an African-American man chased him. According to Machin, that man was not Edwards. The other African-American man then came out of the lobby and put a gun up to Machin's forehead. Based on this evidence, the jury could reasonably infer that Edwards was the individual using the firearm.

In sum, there was sufficient evidence to support the firearm enhancements on counts 3 and 4.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.