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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SIRJEROL McLEOD,

Defendant and Appellant.

E057460

(Super.Ct.No. FVA1200294)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

On August 13, 2012, a first amended information charge defendant and appellant Sirjerol McLeod and codefendant Alfred McLeod with three counts of violating Penal Code section 211, second degree burglary (counts 1, 2, 3), and one count of violating Penal Code section 422, making criminal threats (count 4). The information also alleged that defendant was a minor, who was at least 16 years of age at the time he committed the charged offenses, pursuant to Welfare and Institutions Code section 707, subdivision (d)(1).

On September 5, 2012, a jury convicted defendant and codefendant of three counts of second degree robbery, as alleged in counts 1 through 3. The jury, however, could not reach a verdict on count 4, and the court declared a mistrial. Thereafter, on the People's motion, the court dismissed count 4.

On October 3, 2012, the trial court sentenced defendant to a total term of seven years in state prison. The sentence was comprised of the upper term of five years for count 1, with consecutive sentences of one-third the midterm, or one year each, for counts 2 and 3.

The trial court awarded defendant a total of 256 days of credit for time served: 223 actual days and 33 conduct days pursuant to Penal Code section 2933.1.

On November 1, 2012, defendant filed a timely notice of appeal.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. The People's Case

1. February 16, 2012

On February 16, 2012, at approximately 8:00 p.m., San Bernardino police officers were dispatched to a residence regarding a robbery in the front yard. The victims, Ms. Valadez and her boyfriend Mr. Moran, told officers that they believed they had been followed from Wal-Mart. Immediately prior to the robbery, Valadez and Moran had been shopping at Wal-Mart in San Bernardino, and they had approximately \$3,000 in cash. While there, they purchased a television, a computer tower, diapers, and other items; they paid approximately \$900 in cash for their purchases.

After Valadez and Moran left the store, they loaded their purchases into their vehicle and headed to a residence to pick up their daughter. On their way, as they stopped at a stop sign, they noticed a vehicle following them with flashing headlights. Valadez testified that she thought the vehicle was a Malibu, but she could not remember the color. Moran testified that the vehicle was green, but he could not tell what type of vehicle it was. As they pulled into the driveway of the residence, Moran saw the vehicle that had been following them drive by the residence and then park across the street, about two houses away.

Valadez got out of the vehicle and walked toward the house while Moran remained in the driver's seat. Valadez testified that an African American male, wearing a bandana covering his nose and mouth and carrying a gun, ran toward her and pushed her

to the ground. Valadez testified that her wallet, containing money, flew out of her hand and the male picked it up. Moran testified that the same male ordered him to get out of the vehicle, onto the ground. As Moran complied, a second male approached, grabbed the vehicle's keys and the television they had just purchased. Moran saw the other male take the computer tower from the vehicle's backseat. Moran further testified that he saw the males run to the vehicle parked down the street and leave. He believed it was the same vehicle, with the flashing headlights, that they had seen following them.

One of the officers searched the area around where the suspect vehicle was parked. In the gutter, next to the curb, he recovered Valadez's wallet, and in the grass near the vehicle, he found a small BB gun pistol.

As part of the police investigation, officers obtained surveillance video taken by the Wal-Mart loss prevention department during the time Valadez and Moran said they were in the store. Portions of that video, and still shots taken from the video, were shown to the jury. Detective Hale testified that the video showed Valadez and Moran shopping, checking out, and loading their purchases into their vehicle. The video also showed two people, whom Detective Hale identified as defendant and codefendant, walking through the aisles of Wal-Mart and sitting at an empty checkout station at approximately the same time Valadez and Moran were checking out. Detective Hale also testified that the video showed the two suspects getting into a vehicle prior to the victims' getting into their vehicle. The video also showed both vehicles leaving the Wal-Mart parking lot around the same time.

Both Valadez and Moran told officers that they could not identify the males who robbed them. Valadez testified at trial that she recalled that one of the males was about six feet tall and wearing basketball shorts and a sweater. At the preliminary hearing, however, she testified that she could not recall what the suspects were wearing. Moran described the male who pushed Valadez as tall and thin, wearing a black jacket. Moran described the person who took his keys as wearing a gray sweater. Neither could identify the race of the person who took the keys.

2. February 20, 2012

Mr. Perez testified that around noon on February 20, 2012, he went to the Wal-Mart in Fontana to cash his paycheck. As Perez waited in line, he thought a man was staring at him. The man was wearing a green beanie and was sitting at a table in the McDonald's restaurant, which is located inside the Wal-Mart. Once Perez cashed his check, he put the money (approximately \$740) in his jacket pocket and walked out of the store.

Perez drove his vehicle about five blocks, to his home in Fontana and parked in front of his house. As Perez walked toward his mailbox, a dark green Chevy Malibu pulled up, and a male exited the vehicle from the front passenger's side. The male pointed an air rifle toward Perez's face and said, "Give me all your money or I'll shoot you." Perez testified that the driver of the vehicle yelled, "Just shoot him and take his wallet." Perez gave the male his wallet, and the male also took Perez's vehicle keys. The male then got back into the passenger side of the vehicle and they drove away.

At trial, Perez described the male with the rifle as African American, between 15 and 16 years old, having no facial hair or tattoos. He thought the male was between five to six inches taller than him; Perez is five feet six inches tall. Perez also described the driver as having a tattoo on his neck and said he recognized the driver as the same person who had been staring at him in the Wal-Mart store as he stood in line. Perez, however, admitted that on the day of the incident, he told the investigating officer that he could not see the driver. Furthermore, Perez admitted that at the preliminary hearing, he testified that he could not identify the person who robbed him and could only say that the driver was African American.

As part of the police investigation, officers reviewed surveillance video taken by the Fontana Wal-Mart loss prevention department during the time Perez was in the store. It showed the cash checking area, the McDonald's restaurant located inside the store, and the front and back entrances of the store. Portions of the video and photos taken from the video were shown to the jury.

3. February 24, 2012

On February 24, 2012, a Fontana Wal-Mart loss prevention officer saw two people sitting in the McDonald's restaurant, located inside the store. He believed the two people were the suspects depicted in the surveillance video of February 20, 2012. The officer stood at the jewelry counter observing the two people, while another loss prevention officer went to retrieve the surveillance video to confirm the identity of the individuals. However, before the other officer returned, the two individuals exited the store and got

into a green four-door vehicle. The loss prevention officer continued to watch the suspects, at the same time contacting the police.

Around 8:30 p.m., Fontana police officers responded to a report that a Wal-Mart employee was observing robbery suspects in the store parking lot. The employee reported that the suspects may have been involved in a robbery a few days earlier. The officers located a green Chevy, matching the reported description of the vehicle, parked in the Wal-Mart parking lot. The officers detained both of the vehicle's occupants; they were later identified as defendant (sitting in the front passenger seat) and codefendant Alfred (sitting in the driver's seat). The officers searched the vehicle and found a "pump action pellet rifle," a purple bandana, a blue bandana, and two pairs of gloves.

Defendant and codefendant were both read their *Miranda*¹ rights. Codefendant Alfred told one of the officers that he had driven the Chevy Malibu to the Fontana Wal-Mart on February 20, 2012. Defendant told one of the officers that he drove the same vehicle away from the Wal-Mart and followed Perez to his residence. Defendant also told the officer that as he drove away from Perez's residence, he threw Perez's keys out the window and onto the 215 Freeway in the area of Orange Show Road.

B. Defense Case

Codefendant Alfred testified that he was in the San Bernardino Wal-Mart on February 16, 2012, and the Fontana Wal-Mart on February 20, 2012, as shown on the surveillance videos presented by the People. He also admitted that he was driving his

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

girlfriend's 1998 green Chevy Malibu on each of those dates. Codefendant Alfred further stated that defendant was with him at the Wal-Mart on each of those dates. However, codefendant Alfred denied committing the robberies, as charged. He said he had gone to the San Bernardino Wal-Mart to buy a CD, but did not find what he wanted. He then waited by the cash register to pick up marijuana, as he had prearranged with an individual who instead met him in the parking lot on a bike.

Codefendant Alfred testified that the gloves and bandanas police found in the vehicle did not belong to him. He stated that the gloves belonged to his stepson. Alfred also testified that the guns found in the vehicle belonged to him. He had used them to shoot pigeons at his mother's house and left them at her house. He had just picked the guns up on February 24, before police arrested him and searched his vehicle.

Defendant did not testify.

III

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his three-page, handwritten letter brief, defendant appears to make a single argument—that there is insubstantial evidence to support the verdict because the

prosecution failed to meet its burden of proof that defendant was the perpetrator in the crimes. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

When determining whether the evidence was sufficient to sustain a conviction, “our role on appeal is a limited one.” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We must examine the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence from which the jury could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) Substantial evidence—meaning, evidence that is reasonable, credible, and of solid value—must support each essential element of an offense. (*Id.* at pp. 577-578.) If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, 326.)

In determining whether substantial evidence exists, “we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses.” (*People v. Cortes* (1999) 71 Cal.App.4th 62, 71.) “Although it is the duty of the [trier of fact] 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 [trier of fact], 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.” [Citations.]” (*People v. Bean* (1988) 46 Cal.3d 919, 932-933.) The standard of review applies even “when the conviction rests primarily on circumstantial evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

In this case, defendant contends that there is insubstantial evidence to prove that defendant was involved in the crimes. Defendant points out that the victims could not properly identify defendant: “[Victim 1] stated he couldn’t identify me [defendant] in a line up,” “[Victim 2] stated that he don’t no [*sic*] who robbed him,” and “[Victim 3] stated that she don’t [*sic*] recall the faces that pushed her down or the person that took her T.V. or computer monitor [and] [a]lso stated she couldn’t identify the suspects.”

Notwithstanding the witnesses’ testimony, there was substantial evidence to support the jury’s verdict. As summarized in detail *ante*, defendants were identified through surveillance video taken at different locations relating to the crime, by the description of their vehicle, by the weapons used during the commission of the crimes and the weapons found in their vehicle, by observations made by a Wal-Mart loss prevention officer, and by statements defendant made after being arrested. Again, “““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.” [Citation.]” (*People v. Bean, supra*, 46 Cal.3d at pp. 932-933.)

We have now concluded our independent review of the record and found no arguable issues.

IV

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.