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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

IGNACIO RODRIGUEZ AVILES, JR.,

Defendant and Appellant.

F063228

(Super. Ct. No. F11901355)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Wayne R. Ellison, Judge.

David Annicchiarico, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Cornell, Acting P.J., Gomes, J., and Franson, J.

A jury convicted appellant, Ignacio Rodriguez Aviles, Jr., of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), and found true an enhancement allegation that he personally used a deadly or dangerous weapon in the commission of that offense (Pen. Code, § 12022, subd. (b)(1)). The court imposed a prison term of six years, consisting of the five-year upper term on the substantive offense and one year on the enhancement.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant, apparently in response to this court's invitation to submit additional briefing, has submitted a brief in which he argues, as best we can determine, that the evidence was insufficient to support his conviction and that he was denied his right to the effective assistance of counsel. We affirm.

FACTS

Dante Tucker testified to the following: At approximately 6:00 p.m. on the evening of February 26, 2011 (February 26), he was standing outside an Asian food market talking to his male friend Vicki while his two other friends, Billy and Lay, were inside the store, when appellant approached and asked Vicki if he wanted to buy some drugs. Tucker was holding his cell phone, attached to which was a key chain, in his left hand. Vicki said something to appellant—Tucker did not remember what—and Tucker “said no,” at which point appellant, who was holding a “silver thing” about the size of a pen in his hand, swung his right arm at Tucker and with his left hand snatched the cell phone out of Tucker's hand.

At that point, appellant ran to a minivan that was parked approximately 45 feet away. There was a man standing outside the van and a woman sitting in the driver's seat.

Appellant and the man got into the van and it drove off. The van was burgundy in color except for the door on the passenger side which was blue or gray.

Tucker immediately went into the food store and found Billy. The two then ran to Billy's car, which was parked nearby, got in, and, with Billy driving, "chased after [the van]." The van eventually stopped in an alley, and appellant and "the guy that was with him" got out and ran off. Tucker and Billy made a mental note of the van's license plate, went back to the store, and called the police.

City of Fresno Police Officer Benito Soto testified that while investigating a report of an armed robbery on February 26, he spoke to Dante Tucker, who told him the following: A person approached him outside the store and asked if he wanted to buy some "crack." The two "had some kind of argument" about Tucker declining the offer, at which point the person "became angry and grabbed [Tucker's] phone from his hand." Tucker "turned to get his phone back," at which point the person "pulled out a knife or some kind of bladed object."

Tucker testified he did not tell the investigating officer appellant took the cell phone *before* swinging at him.

Vicki Sisuonthone testified to the following: At approximately 6:00 p.m. on February 26, he was standing outside the "Oriental Market" in Fresno's Chinatown with Dante Tucker. Tucker had a cell phone "[a]round his neck." A "guy," after walking past Tucker and Sisuonthone, "walked back towards [them]" and "said something about drugs" that Sisuonthone interpreted as an offer to sell drugs. Both Sisuonthone and Tucker responded in the negative. Tucker "kept looking at" the person, who apparently "got mad" and asked, "why are you looking at me?" At that point, the person swung his right arm at Tucker and "snatched [Tucker's] phone from his neck." Sisuonthone did not identify appellant as the person who robbed Tucker.

Christina Hernandez, who was granted use immunity, testified to the following: Appellant is her “common law husband’s brother.” On February 26, Freddie, her adult son, and appellant were at her house when she arrived home. Subsequently, at appellant’s request, she drove him to “Chinatown” in her van. Freddie and her two young children were also in the van. The van is burgundy in color, with one blue door.

Appellant got out of the van near the fire department. Hernandez, who had no plans to wait for appellant, drove “around the corner,” at which point Freddie “jumped out[,] looking for [appellant].” Shortly thereafter, she heard “yelling” and she saw appellant “come around the corner.” He was running toward the van. The “car door opened” and appellant “jumped in,” followed by Freddie. Appellant was yelling at Hernandez “to go.” Hernandez yelled, asking “What’s going on?” There was no response, and she drove off.

Hernandez was “[u]pset” and “afraid.” She drove around the corner, “yelling at [appellant] to get out.” She stopped, and appellant and Freddie got out of the van and walked away. Hernandez drove home.

Later that day, police officers came to her house. She talked to them “about [the] event in Chinatown” and gave them appellant’s name.

City of Fresno Police Officer Richard Mora testified that appellant was spotted and arrested outside a residence on March 8, 2011.

Hernandez further testified to the following: In April 2011, appellant drove up to her house in his wife’s truck. He was honking the horn, “roaring his engine,” “yelling the B word over and over,” and repeatedly yelling “I’m gonna get you.” Next, appellant drove his car into Hernandez’s gate, knocking it down. Prior to this incident, except for

the events of February 26, there had been no “argument” or “trouble” between Hernandez and appellant.¹

DISCUSSION

Appellant suggests the evidence was insufficient to support his conviction. Specifically, he asserts “there are lots of statements that ... contradict[] each other.”²

In reviewing a challenge to the sufficiency of the evidence supporting a conviction, we resolve neither credibility issues nor evidentiary conflicts. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “[T]he reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate 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.) “Reversal on this ground [i.e., insufficiency of the evidence] is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Notwithstanding the conflicts in the evidence of the events of February 26, when we apply the principles set forth above, we conclude substantial evidence supports the conviction and therefore, reversal is not warranted.

¹ Prior to Hernandez’s testimony regarding the April 2011 incident, appellant moved to exclude evidence of this incident under Evidence Code section 352. The court denied the motion.

² In this instance, and in other quotations from appellant’s supplemental brief, unnecessary capitalization is omitted.

Appellant also argues that evidence favorable to the defense was “not submitted.” Appellant gives two “example[s]” of this purportedly favorable evidence: “the 911 emergency call” and “the receipt for the payment of the phone [paid] to Tucker” [*sic*]. As best we can determine, this amounts to a claim that he was denied his constitutional right to the effective assistance of counsel by his counsel’s failure to introduce evidence favorable to appellant. There is no merit to this contention.

In order to establish ineffective assistance of counsel, a criminal defendant must show both deficient performance—“that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates,” and prejudice—“that it is reasonably probable a more favorable determination would have resulted in the absence of counsel’s failings.” (*People v. Price* (1991) 1 Cal.4th 324, 386.) Appellant has not made the required showing.

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is affirmed.