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

In re ROBERT C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT C.,

Defendant and Appellant.

F068438

(Super. Ct. No. JL004063)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Sally Espinoza, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J. and Peña, J.

INTRODUCTION

On September 13, 2013, appellant, Robert C. (currently 18 years old), was charged in a petition filed pursuant to Welfare and Institutions Code section 602 with (1) resisting arrest, a misdemeanor (Pen. Code, § 148, subd. (a)(1), count 1) (undesigned statutory references are to the Penal Code), (2) robbery, a felony (§ 211, count 2), (3) battery, a misdemeanor (§ 242, count 3), and (4) violation of the terms of his probation (Welf. & Inst. Code, § 777, subd. (a), count 4). The juvenile court sustained the allegations on October 2, 2013. The juvenile court committed Robert to the Department of Corrections, Department of Juvenile Justice on October 23, 2013, for a maximum term of confinement of nine years four months.

Robert contends there was insufficient evidence adduced at the jurisdiction hearing to prove that he committed robbery or battery. Robert also contends his trial counsel was ineffective for failing to object to evidence of his whereabouts the date of the offense based on Global Position System (GPS) log data that he submits was inadmissible. We reject these contentions and affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL SUMMARY

As Zachary S. was walking home on August 30, 2013, he was pushed to the ground and a black rag cloth was placed over his face. Zachary heard one of the assailants asking him if he had any money. Zachary replied that he had no money, but the assailants told him to empty his pockets. Zachary was carrying only his cell phone and an MP3 player, which he removed from his pockets and gave to the assailants. Zachary saw the two assailants running away.

Zachary recognized Robert as one of the assailants because they attended the same school and had two classes together. Zachary told the police that Robert was one of his assailants after being shown Robert's photograph and identified Robert at the jurisdiction hearing. Zachary had very little interaction with Robert and had had one prior minor

argument with Robert. Because he was scared, Zachary told police investigators that he was not 100 percent sure Robert was one of the assailants.

Zachary thought only one person pushed him, but he was not sure which assailant was responsible. Zachary also was unsure which assailant took his property. Only one assailant asked Zachary if he had money. During the attack, one assailant was in front of Zachary and the other was either next to Zachary's head or behind him. Zachary further explained that both assailants came up to him. Also, Zachary said both assailants held him down. One assailant held Zachary down by the shoulders and the other held him down by his legs. Zachary remembered both assailants running away together after the robbery.

One time after the incident Robert talked to Zachary and acted friendly. Robert asked Zachary why he was not talking to him. This scared Zachary.

Los Banos Police Officer Preston Jelen worked as a school resource officer at the school Zachary and Robert attended; he investigated the robbery. Jelen explained that Zachary told him he shared a class with the assailant. Because Robert was on a GPS monitor, Jelen contacted the probation department and obtained Robert's GPS tracking log. There also were rumors circulating around the school involving the incident.

The tracking log indicated that Robert was in the area of the assault on the day and at the time of the incident. Robert's walking speed from the school averaged one to two miles per hour. Once Robert got close to the area of the incident, his speed increased briefly. There were then gaps in the GPS timeframe. After a short interval, Robert sprinted up to seven or eight miles per hour before stopping briefly at a corner.¹ Jelen

¹Two days prior to the robbery incident, Robert failed to follow school rules and got into an argument with a school administrator. When Jelen attempted to help Robert, Robert walked away from Jelen and the administrator. When Jelen ordered Robert to come back, Robert failed to do so. Jelen attempted to handcuff Robert, who turned his wrist away to avoid being handcuffed. Robert was detained at that time for violation of school rules and his probation.

later learned that the probation department conducted a search of Robert's home and did not find Zachary's stolen property.

Zachary initially told Jelen that he was 90 percent sure Robert was one of the perpetrators of the assault. Jelen could tell, however, that Zachary was visibly scared. Jelen told Zachary to come back the next day. When Zachary did so, he told Jelen that Robert was one of the perpetrators of the assault.

SUFFICIENCY OF THE EVIDENCE

Robert contends there was insufficient evidence that he participated in the robbery or that he committed a misdemeanor battery. We disagree.

In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the entire record in the light most favorable to the judgment to determine whether it contains 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. The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. It is the trier of fact, not the appellate court, that must be convinced of a 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 also might reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; see *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320; *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In reviewing a challenge to the sufficiency of the evidence, appellate courts do not determine the facts. We examine the record as a whole in the light most favorable to the judgment and presume the existence of every fact the trier of fact reasonably could deduce from the evidence in support of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, questioned on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Unless the testimony of a single

witness is physically impossible or inherently improbable, it is sufficient for a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

An appellate court must accept logical inferences that the jury might have drawn from circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396 (*Maury*).) Before setting aside the judgment of the trial court for insufficiency of the evidence, it must clearly appear that there was no hypothesis whatever upon which there was substantial evidence to support the verdict. (*People v. Conners* (2008) 168 Cal.App.4th 443, 453; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

Robert argues that the evidence showed only that he may or may not have looked like one of the alleged perpetrators and that the victim failed to give any physical description of the alleged perpetrators. Because the victim told the investigating officer that he was only 90 percent certain of the person who assaulted him, Robert challenges the sufficiency of the evidence that he perpetrated either the robbery or the battery.

Although the victim initially indicated 90 percent certainty that Robert was a perpetrator of the robbery and battery, he appeared visibly afraid to Jelen. On the day of the incident, the victim identified Robert from a photograph. The day after the incident the victim identified Robert as one of the two perpetrators. In his testimony during the jurisdiction hearing, the victim identified Robert as one of the two perpetrators and explained clearly seeing Robert, a fellow classmate in school, fleeing the scene of the crime.

Just before the attack, the victim said both perpetrators were next to him, one in front of the victim and the other to the rear or near his head. Most importantly, the victim also testified that one perpetrator held his shoulders down during the robbery and the other held down his legs. Because Robert was holding the victim down against the victim's will, he was guilty of battery. Because Robert was applying force to the victim during a theft of the victim's property, Robert was a participant in the robbery, either as a direct perpetrator or as an aider and abettor.

Even if Robert did not place the black rag cloth over the victim's head, did not demand money, and did not receive the victim's cell phone and MP3 player, there was substantial evidence before the juvenile court that Robert aided and abetted the robbery and committed battery by holding down either the victim's shoulder or his legs. We reach this conclusion without reference to or use of the GPS evidence.

ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL

Robert contends that his counsel was ineffective for failing to object to the officer's testimony regarding his (Robert's) location at the time of the offense based on the GPS data log. Robert challenges the accuracy of the GPS data, as well as its admissibility on hearsay and the failure to authenticate the data. We find the admission of this testimony harmless in light of the victim's eye-witness testimony.

Robert's challenges can be construed to be a challenge to the effectiveness of his trial counsel. The defendant has the burden of proving ineffective assistance of trial counsel. To prevail on a claim of ineffective assistance of trial counsel, the defendant must establish not only deficient performance, which is performance below an objective standard of reasonableness, but also prejudice. A trial court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Tactical errors generally are not deemed reversible. Counsel's decisionmaking is evaluated in the context of the available facts. To the extent the record fails to disclose why counsel acted or failed to act in the manner challenged, appellate courts will affirm the judgment unless counsel was asked for an explanation and failed to provide one, or, unless there simply could be no satisfactory explanation. Prejudice must be proved affirmatively. The record must affirmatively demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (*Maury, supra*, 30 Cal.4th at p. 389.)

Even if we assume for the purposes of argument that trial counsel's failure to object to the GPS testimony fell below professional norms, Robert has failed to establish

prejudice from the admission of the testimony. Even without the GPS evidence, there was substantial, credible evidence before the juvenile court that Robert, the victim's classmate, was one of two perpetrators in a robbery and a battery. This being so, Robert has failed to establish that, but for his counsel's unprofessional error in failing to object to the GPS evidence, the result of the proceeding would have been different.

DISPOSITION

The orders of the juvenile court are affirmed.