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

In re CHRISTIAN L., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTIAN L.,

Defendant and Appellant.

F070589

(Super. Ct. No. 13CEJ600172)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Kimberly J. Nystrom-Geist, Judge.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Franson, J. and Peña, J.

The court readjudged appellant Christian L. a ward of the court after it sustained allegations charging him with second degree robbery (Pen. Code, § 211) and violating his probation (Welf. & Inst. Code, § 777). On November 12, 2014, the court committed appellant to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice for a maximum term of confinement of six years four months.

On appeal, appellant contends the evidence is insufficient to sustain the court's finding that he committed second degree robbery. We affirm.

FACTS

On August 11, 2014, appellant was arrested for violating his probation in some prior cases and was charged with second degree robbery as a result of an incident that occurred on July 29, 2014.

On August 12, 2014, the probation department filed a petition alleging several probation violations.

On August 18, 2014, the district attorney filed a subsequent petition charging appellant with second degree robbery.

On October 6, 2014, at a contested hearing on the subsequent petition Carlos M. testified that on July 29, 2014, at approximately 11:00 p.m. he was at a friend's apartment in Fresno, California, when he let Freddie M. borrow his cellphone. Appellant soon arrived and told Carlos, "What's up? Let's fight." Although Carlos said, "No," appellant continued trying to fight him. Appellant then came at Carlos and tried to hit him with his fist, but Carlos backed up and told him, "It's not worth me fighting with you." Carlos also pulled out a box cutter for protection, held it at his side, but did not expose the blade. Freddie then showed Carlos a pellet gun that looked like a firearm and said, "None of that's going to happen."

Carlos saw appellant lean over to Freddie and whisper something in his ear. Freddie and appellant then walked away without returning Carlos's phone. After giving the box cutter to a friend, Carlos followed Freddie and told him, "What are you doing?"

You're walking away with my phone." Freddie replied, "It's my phone." Freddie then pulled out the pellet gun, pointed it at Carlos, and said, "Back up," as he and appellant both stood there laughing and giggling. Carlos asked Freddie, "You're really going to shoot me over a phone?" Freddie replied, "It's my phone. It's my phone." While Freddie had the pellet gun pointed at Carlos, appellant kept walking and said, "Forget him. Don't give him the phone." Carlos followed Freddie and appellant until they walked out of the apartment complex through a gate. Carlos then borrowed a cellphone and called 911.

Fresno Police Detective Donald Dinnell testified that he interviewed appellant while he was in custody at juvenile hall. Appellant told Dinnell he wanted to fight with Carlos because Carlos had posted something about appellant on Facebook and had talked negatively about a street gang. Appellant admitted challenging Carlos to fight and calling Carlos a derogatory name because he refused. According to appellant, when he walked toward Carlos, Carlos pulled out a box cutter and held it up in his right hand in "a stabbing position." At that point, Freddie lifted his shirt and exposed a pellet gun that he had at his waistband and Carlos put the box cutter away. Appellant continued challenging Carlos to fight but he refused. Eventually appellant got tired of challenging Carlos to fight and he stated, "This [expletive], this guy is not going to fight, Let's take off and leave him here. I want the phone taken." Appellant then walked away with Freddie who kept the phone in his possession. Carlos attempted to get the phone back and appellant told him, "Fool, this phone is ours now." According to appellant, Freddie displayed the pellet gun but did not withdraw it. Eventually, Freddie gave the phone to appellant and appellant traded the phone with a drug dealer for a half ounce of marijuana. Appellant also told Detective Dinnell that the pellet gun belonged to him and that he gave it to Freddie earlier that day. After the incident with Carlos, appellant took the pellet gun and hid it at a friend's apartment.

Appellant testified that he had a long-running feud with Carlos. On July 29, 2014, he attempted to get Carlos to fight and Carlos displayed a box cutter with an exposed blade that he held at his side. Freddie then pulled up his shirt and showed Carlos a pellet gun at his waistband that appellant had given Freddie earlier and Carlos “froze up.” Appellant continued to challenge Carlos to fight, but they did not fight. According to appellant, he gave the pellet gun to Freddie earlier that day because he knew Carlos would be armed with a box cutter and appellant expected trouble from him. However, he did not instruct or have an agreement with Freddie to rob anyone. Although appellant agreed that Detective Dinnell’s testimony regarding appellant’s statement to him was accurate, appellant claimed he did not mean to steal anything from Carlos.

During cross-examination appellant agreed that when Carlos was telling Freddie to give him the phone back, appellant replied, “Fool, this phone is ours now.” He also claimed he did not know the phone belonged to Carlos. However, he admitted that he did not ask Freddie where the phone came from because he knew it came from Carlos.

After hearing argument, the court sustained the robbery allegation against appellant. The court also took judicial notice of the proceeding and found that the appellant violated his probation in two prior cases.

DISCUSSION

Appellant contends that the evidence merely established that he approached Carlos with the intent to provoke a fight and that Freddie displayed the pellet gun only in response to Carlos displaying a box cutter. He further contends that he may have encouraged Freddie to take the cellphone from Carlos but that there was no evidence that either of them took the phone by means of force or fear. Additionally, he contends that even if he was an accomplice in the theft of the phone, no evidence was presented that appellant developed the intent to steal Carlos’s cellphone until after the confrontation and brandishing of weapons. Thus, according to appellant, the evidence is insufficient to sustain his adjudication for robbery. We reject these contentions.

“We apply the substantial evidence standard of review. [Citation.] Thus, we review the entire record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the alleged crimes beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could deduce from the evidence, and if the circumstances reasonably justify the trier of fact’s findings as to each element of the charged offense, we must affirm even if the circumstances and evidence would support a contrary finding.” (*In re Brandon G.* (2008) 160 Cal.App.4th 1076, 1079-1080.)

“Robbery is the taking of “personal property in the possession of another against the will and from the person or immediate presence of that person accomplished by means of force or fear and with the specific intent permanently to deprive such person of such property.”” (*People v. Clark* (2011) 52 Cal.4th 856, 943.) “In California, ‘[t]he crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety.’ [Citation.] It thus is robbery when the property was peacefully acquired, but force or fear was used to carry it away.” (*People v. Anderson* (2011) 51 Cal.4th 989, 994.)

Freddie initially acquired the cellphone peacefully from Carlos. Carlos, however, testified that Freddie pulled out a pellet gun and pointed it at him when he protested that Freddie and appellant were taking his phone. Thus, Freddie had not yet reached a place of relative safety when he used force to maintain possession of the phone. Further, the court could reasonably infer from Freddie’s statement that the phone belonged to him, his use of a weapon to maintain possession, and the exchange of the phone for marijuana that Freddie had the specific intent to permanently deprive Carlos of the phone. It could also reasonably conclude that Freddie robbed Carlos of his cellphone.

“[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*People v. Beeman* (1984) 35 Cal.3d 547, 561.)

“For purposes of determining aider and abettor liability, the commission of a robbery continues until all acts constituting the offense have ceased. The taking element of robbery itself has two necessary

elements, gaining possession of the victim's property and asporting or carrying away the loot. [Citation.] Thus, in determining the duration of a robbery's commission we must necessarily focus on the duration of the final element of the robbery, asportation.

“Although for purposes of establishing guilt, the asportation requirement is initially satisfied by evidence of slight movement [citation], asportation is not confined to a fixed point in time. The asportation continues thereafter as long as the loot is being carried away to a place of temporary safety. Therefore, in order to fulfill the requirements of *Beeman, supra*, 35 Cal.3d 547, for conviction of the more serious offense of aiding and abetting a robbery, a [defendant] must form the intent to facilitate or encourage commission of the robbery *prior to or during the carrying away of the loot to a place of temporary safety.*” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164-1165.)

Appellant conceded that when Carlos protested that appellant and Freddie were taking his phone, he told Carlos, “Fool, this phone is ours now.” Additionally, appellant told Officer Dinnell that once he determined Carlos was not going to fight, appellant told Freddie that he wanted “the phone taken” and when Carlos attempted to get his phone back appellant told Carlos that the phone was, “ours now.” The court reasonably concluded from these statements that appellant was aware of Freddie's unlawful purpose and that he aided and encouraged Freddie through these statements to rob Carlos of the phone.

The foregoing circumstances also refute appellant's contention that all he did was attempt to fight with Carlos and that Freddie displayed the pellet gun only in response to Carlos displaying a box cutter. Further, as noted above, since appellant harbored the intent to steal Carlos's phone during its asportation, appellant aided and abetted the robbery offense even if he did not develop this intent until after the initial confrontation. Thus, the evidence amply supports the court's adjudication of appellant for robbery.

DISPOSITION

The judgment is affirmed.