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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS JOEL RAMIREZ,

Defendant and Appellant.

G047781

(Super. Ct. No. 12HF2134)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Laura A. Glennon, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Luis Joel Ramirez of petty theft (Pen. Code, § 484, subd. (a)) as a lesser included offense to robbery, commercial burglary (*id.* §§ 459, 460, subd. (b)), and simple battery (*id.* § 242). The trial court denied defendant's motion to reduce the burglary count to a misdemeanor and sentenced him to three years formal probation on the condition he serve 300 days in jail, with credit for 270 days. Defendant contends insufficient evidence supports the finding he had the requisite intent to steal before entering the store and that the court erred in allowing evidence he attempted to jump onto a bicycle belonging to someone other than him. Finding no error, we affirm.

FACTS

Sanjeev Kumar was working at a 7-Eleven when defendant walked in. Defendant attracted Kumar's attention when he walked into an aisle and stuffed something into his pocket while looking over his shoulder. When defendant walked by the counter to exit, Kumar asked what he had placed in his pocket but defendant did not answer and continued walking out.

At the same time, a woman parked her bicycle outside the store. As she walked inside, defendant grabbed the handlebars and attempted to get onto the bike. But before he could do so, she pushed him off the bike. Defendant stumbled and one or two packages of condoms with 7-Eleven price labels fell out of his pocket.

When defendant started to walk across the street, Kumar told a coworker to call the police and ran after defendant, yelling for him to stop. But defendant kept walking, Kumar grabbed him by the collar and made him walk back to the store. Upon reaching the store, defendant tried to bite Kumar and get away. Defendant kept saying, "Let me go. Let me go." A person entering the store helped Kumar subdue defendant and place him face down on the ground with his hands behind his back.

Defendant was still resisting and trying to get away when police arrived and took control of him. While being handcuffed, defendant spit on an officer's face, causing another officer to roll defendant over onto his stomach and handcuffed him with his hands behind his back. As the officer did so, he noticed defendant was intoxicated and, upon searching his pockets and backpack, found another package of condoms, \$1.46, and a partially empty bottle of vodka. Each package of condoms costs about \$4.59.

DISCUSSION

1. Sufficiency of the Evidence of Intent to Steal When Entering the Store

“Every person who enters any . . . building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.” (Pen. Code, § 459.) “The defendant’s intent to commit the crime must exist at the time of entering the building.” (*People v. Gbadebo-Soda* (1995) 38 Cal.App.4th 160, 166.) Defendant contends his burglary conviction should be reversed because there was no evidence he had the necessary intent to steal when he entered the store. We disagree.

In reviewing a sufficiency of the evidence claim, “we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

“Because intent is rarely susceptible of direct proof, it may be inferred from all the facts and circumstances disclosed by the evidence. [Citations.] Whether the entry was accompanied by the requisite intent is a question of fact for the jury. [Citation.] ‘Where the facts and circumstances of a particular case and the conduct of the defendant reasonably indicate his purpose in entering the premises is to commit larceny or any felony, the conviction may not be disturbed on appeal.’” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245.)

For the crime of burglary, “[p]ossession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt.” (*People v. Banks* (1976) 62 Cal.App.3d 38, 42.) Also, “circumstances such as flight after being hailed by an occupant of the building [citation] . . . will warrant the conclusion by a jury that the entry was made with the intention to commit theft” (*People v. Jordan* (1962) 204 Cal.App.2d 782, 786-787; see also *People v. Ramirez* (2006) 39 Cal.4th 398, 464; *People v. Frye* (1985) 166 Cal.App.3d 941, 947), as will evidence a defendant “had no money” on his person (*People v. Earl* (1973) 29 Cal.App.3d 894, 898, disapproved on another ground in *People v. Duran* (1976) 16 Cal.3d 282, 292).

Here, because defendant was found in possession of several stolen packages of condoms, only slight corroboration was needed to establish defendant’s guilt. (*People v. Banks, supra*, 62 Cal.App.3d at p. 42.) That corroboration exists in defendant’s flight from the store and the fact only \$1.46 was found on his person when searched by officers despite the cost of each package being \$4.59.

Defendant argues there was no evidence he “fled” from the store because there is no evidence he ran. But a physical act of running is not essential to flight.

(*People v. Cannady* (1972) 8 Cal.3d 379, 391.) What is essential is that the defendant leave the premises to avoid arrest or observation. (*People v. Bonilla* (2007) 41 Cal.4th 313, 328-329.) The record shows defendant did that. He failed to respond when Kumar asked what he had stuffed into his pocket and instead continued walking out of the store and attempted to take a woman's bicycle before she pushed him off. Defendant then continued walking away despite Kumar telling him to stop, forcing Kumar to go after him and bring him back to the store, where defendant tried to bite Kumar and get away, repeatedly saying, "Let me go." From this, a reasonable jury could infer defendant had attempted to flee but was prevented from doing so.

Defendant asserts there was no evidence "he did anything more than simply take hold of [the bicycle] and then abandon the effort when he was pushed by the owner" and the fact he had some money in his pocket suggests it was "possible that he had entered the store with intention of buying something." But "[a]lthough the jury is required to acquit a criminal defendant if it finds the evidence susceptible of two reasonable interpretations, one of which favors guilt and the other innocence, it is the jury, not the appellate court, which must be convinced of his guilt beyond a reasonable doubt." (*People v. Millwee* (1998) 18 Cal.4th 96, 132.) We may not invade the province of the fact finder by reweighing the evidence, re-evaluating the credibility of witnesses or substituting our own conclusions for the jury's findings. (*People v. Ochoa, supra*, 6 Cal.4th at p. 1206.) Based on the record, the jury could properly reject defense counsel's closing argument defendant had no intent to flee or run and that "there's plenty of things to buy at 7-Eleven for [\$]1.46." Because it does not "clearly appear that upon no hypothesis whatever is there sufficient evidence to support" the judgment, we may not set it aside. (*People v. Kwok, supra*, 63 Cal.App.4th at p. 1245.)

2. Admission of Evidence the Bicycle Belonged to Someone Else

Defendant argues the court erred in admitting evidence that someone other than him owned the bicycle he tried to take because it was “not probative of the offense charged and . . . suggested that [he] has the character of a thief.” We are not persuaded.

Evidence is properly excluded under Evidence Code section 352 (section 352) if its probative value is “substantially outweighed” by the probability that its admission will necessitate undue consumption of time or create a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (*People v. Cudjo* (1993) 6 Cal.4th 585, 609.) “[T]he trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time.” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124) and “its exercise of that discretion ‘must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice’” (*id.* at pp. 1124-1125).

In denying defendant’s motion to exclude the evidence, the trial court noted it had previously determined the jury could infer he was getting onto someone else’s bike by the fact the woman had immediately tried to stop him and did not think evidence that the bike in fact belonged to someone else “changes the calculus very much.” Rather, it considered the evidence important because it completes the picture and shows “why the woman would try to stop him.” Without that evidence, the court had believed it was strange why a woman would do that and “frankly think that is a basis for relevance.” It also agreed with the prosecutor the evidence was relevant to the issue of whether defendant used force in committing the robbery charged in count 1, defendant’s rationality or irrationality at the time, and his state of mind. Although there was some prejudice, it did not “think that the prejudicial effect of that substantially outweighs the

probative value” because he was not charged with trying to take the bike, his presence on the bike was momentary, and the real issues for the jury was what happened after Kumar caught him and whether defendant was acting in self-defense. Defendant has not shown the court abused its discretion.

The evidence the bicycle belonged to the woman was relevant and probative for the reasons stated by the trial court. We thus reject defendant’s claim the evidence “contributed nothing other than a highly inflammatory uncharged offense that damaged [his] character by making him look like an inveterate thief and robber.”

As to prejudice, section 352 was designed to prevent, not the harm to a defendant that naturally results from introduction of relevant evidence against him, but rather the harm that results from introduction of relevant evidence that is likely to induce the jury to reward the prosecution or to punish the defendant based on an emotional reaction to the evidence rather than a logical evaluation of the issue to which the evidence is relevant. (*People v. Howard* (2010) 51 Cal.4th 15, 32.) Relevant factors include whether the uncharged acts were more inflammatory than the charged conduct, the possibility that evidence of the uncharged acts might confuse the jury and how recent were the uncharged acts. (See *People v. Poplar* (1999) 70 Cal.App.4th 1129, 1139.)

The subject evidence here was brief and no more inflammatory than the charged conduct described in Kumar’s testimony. Further, defendant has not asserted, and we discern no possibility, the evidence confused the jury. Finally, the attempt to take the bike occurred just after defendant left the store and was relevant to give the jury a complete picture as to why the woman pushed defendant off the bike. In sum, the evidence the bicycle belonged to the woman had a high degree of probative value, and little or no potential for creating undue prejudice and the court did not err in admitting it.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.