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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.

RUDOLPH JOSEPH HERNANDEZ,

Defendant and Appellant.

G047901

(Super. Ct. No. 08NF1682)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Carla M. Singer, Judge. Affirmed.

Nancy L. Tetreault, 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, Kristine A. Gutierrez and Elizabeth M. Carino, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Rudolph Joseph Hernandez of residential burglary (Pen. Code, §§ 459, 460, subd. (a); all further statutory references are to this code; count 1), first degree robbery (§§ 211, 212.5, subd. (a)); counts 2 and 3), false imprisonment by violence (§§ 236, 237, subd. (a); counts 4 and 7), assault with a semiautomatic firearm (§ 245; count 5), and carjacking (§ 215; count 6). It also found true that as to count 1, two non-accomplices were present during the residential burglary, as to counts 1, 4, 5 and 7, defendant personally used a firearm (§ 12022.5, subd. (a)), as to counts 2, 3, and 6, defendant personally used a firearm during the commission of a robbery or carjacking (§ 12022.53, subd. (b)), and counts 2, 4, 5, and 6, defendant inflicted great bodily injury (§ 12022.7, subd. (a)). The court sentenced defendant to 28 years in prison.

Defendant contends insufficient evidence corroborated his accomplice's testimony. We disagree. Although defendant also initially argued the court improperly imposed the upper term on the firearm enhancement on count 5, he has since withdrawn that claim. The judgment is affirmed.

FACTS

Early one morning in May 2008, Diana Jimenez, who rented a room from George Geroncin, woke up to two men standing in her bedroom. She recognized the voice of one as Aaron McWhorter's, who also used to rent a room from Geroncin. McWhorter later identified the other man as defendant.

Defendant placed a gun to Jimenez's head as McWhorter rummaged through her night stand. Defendant then duct taped her wrists, feet, and head. After a few hours, defendant came back and told Jimenez they were leaving. Jimenez found Geroncin sitting on the floor of the garage with his hands bound behind his back and

blood on his face and head. Jimenez cut Geroncin loose and left to call the police. As she did so, she noticed Geroncin's white Denali SUV was missing from the garage, as were the wheels and rims of his Porsche, and items belonging to Jimenez.

That same morning around 7 a.m., defendant's ex-girlfriend, Crystal Hopkins, saw defendant drive up in a white SUV and began bringing things into her apartment and garage. Hopkins left the apartment because defendant did not drive a white SUV, and continued to "bring[] in rims and stuff" even after she asked him to stop.

Police later discovered Geroncin's SUV parked around the corner from Hopkins's apartment building. Inside Hopkins's apartment and garage, officers found many items taken from Geroncin's house and located a gun hidden in a pillow in the apartment. Officers arrested McWhorter and defendant.

McWhorter testified for the prosecution at trial. According to McWhorter, defendant agreed to rob Geroncin with him. Upon breaking into Geroncin's house, McWhorter and defendant started looking for a safe. They moved Geroncin to the garage and defendant kicked him until McWhorter was convinced there was no safe. They then tied Geroncin up with duct tape and began removing items from the house.

When they realized McWhorter's jeep was too small to transport the items, McWhorter and defendant loaded the items into Geroncin's SUV and took the wheels and rims from his Porsche. They left Geroncin's house around 5:30 to 6:00 a.m., with McWhorter driving his jeep and defendant driving Geroncin's SUV. Defendant informed McWhorter he was taking the SUV to Hopkins's apartment and later parked it around the corner from her apartment building. McWhorter later met up with defendant at Hopkins's apartment and saw many of the items they had stolen.

McWhorter was still at Hopkins's apartment when the police arrived and arrested him and defendant. On the way to the police station, McWhorter informed a detective that defendant's gun was hidden in a pillow in Hopkins's apartment.

McWhorter later pleaded guilty and gave a detailed statement of his involvement in the burglary in exchange for a plea bargained sentence. McWhorter also identified photographs of property he and defendant had taken from Geroncin's home.

DISCUSSION

Defendant contends his convictions must be reversed because McWhorter's accomplice testimony placing him at the scene of the charged offenses "was not corroborated by independent evidence." We disagree.

"Evidence that sufficiently corroborates an accomplice's testimony ""must tend to implicate the defendant and therefore must relate to some act or fact which is an element of the crime[,] but it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged." [Citation.] [Citation.] [Citation.] The evidence necessary to corroborate accomplice testimony need only be slight, such that it would be entitled to little consideration standing alone. [Citation.] It is enough that the corroborative evidence tends to connect defendant with the crime in a way that may reasonably satisfy a jury that the accomplice is telling the truth. [Citation.] Corroborative evidence may be entirely circumstantial. [Citation.] The determination by the trier of fact 'on the issue of corroboration is binding on the reviewing court unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime.'" (*People v. Narvaez* (2002) 104 Cal.App.4th 1295, 1303 (*Narvaez*).

Here, the police found all of the items that McWhorter testified he and defendant had taken from Geroncin's house in Hopkins's apartment and garage where defendant had unloaded them just shortly after burglary. Defendant himself acknowledges the evidence showed he "received the stolen property[and] stored the

stolen property at [Hopkins's] apartment.” This evidence, by itself, is sufficient to corroborate McWhorter's accomplice testimony. “It is established that “[t]he possession of recently stolen property is sufficient to support corroboration for an accomplice's testimony.”” (*Narvaez, supra*, 104 Cal.App.4th at p. 1304 [applying rule to robbery case]; see also *People v. Robinson* (1960) 184 Cal.App.2d 69, 77 [applying rule to burglary case]; *People v. Bridges* (1946) 73 Cal.App.2d 913, 914 [same].)

Thus, the independent evidence and defendant's admission that he possessed the property stolen from Geroncin's house alone suffices to corroborate McWhorter's accomplice testimony and that defendant was present at Geroncin's house at the time of the charged offenses. Even so, we note Jimenez's testimony that Geroncin's white SUV was missing when she went into the garage, Hopkins's testimony that she saw defendant driving a white SUV that did not belong to him shortly thereafter and unloaded property from Geroncin's house into her apartment and garage, and the evidence that police found Geroncin's SUV around the corner from Hopkins's apartment and a gun hidden in a pillow in the apartment as McWhorter testified to, provides further corroborating evidence. It is thus of no moment that: (1) forensic evidence of defendant's presence in Geroncin's house was not found; (2) neither Geroncin, who died in 2009 from unrelated causes, nor Jimenez were able to identify defendant as the man who accompanied McWhorter to Geroncin's house; or (3) the prosecution did not call all possible witnesses who could have provided independent corroboration of McWhorter's testimony. (See *People v. Simms* (1970) 10 Cal.App.3d 299, 313 [jury instruction that prosecution not required to call all possible witnesses or produce all physical evidence was “correct statement of law”].)

Regarding defendant's claim “he merely received the stolen goods to resell,” “whether the corroborating evidence is as compatible with innocence as it is with guilt is a question of weight for the trier of fact[.]” (*People v. Ruscoe* (1976) 54

Cal.App.3d 1005, 1012.) Finally, as to the letter written by McWhorter purportedly exonerating defendant and the alibi defense testified to by defendant's current girlfriend, these were matters for the jury to evaluate (*People v. Smith* (2005) 37 Cal.4th 733, 739) and do not undercut the sufficiency of the corroboration of McWhorter's testimony.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.