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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re VICTOR M., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR M.,

Defendant and Appellant.

G051566

(Super. Ct. No. DL048286-005)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Donna L. Crandall, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Christen Somerville, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Victor M. appeals from the juvenile court's finding that he committed second degree robbery (Pen. Code, §§ 211, 215, subd. (c))¹ at a retail store. On appeal, he argues there was a lack of substantial evidence to satisfy the "force" element of robbery. The evidence demonstrated that after he had left the store, the victim grabbed Victor's backpack, and Victor resisted, causing the victim to fall to the ground. We conclude this satisfies the "force" element of robbery and accordingly, we affirm the juvenile court's orders.

I

FACTS

At the time of the incident giving rise to this case, Victor was on probation after being declared a ward of the court for possession of methamphetamine. Victor and a companion entered a CVS retail location in Anaheim around 9:00 p.m. one evening. Both wore backpacks. David Mugica, the supervisor on duty, saw them enter the store and go directly to the alcohol section. He thought this seemed suspicious, so he began observing their conduct for the next five to 10 minutes.

Eventually, both minors began exiting the store. They did not stop to purchase anything at the cash register. As they were leaving, Victor grabbed a bouquet of flowers from a display near the door, and walked out the door. As they did, the alarm went off.

To Mugica, this indicated they had stolen items. The store used "auto cap[s]" which were sensor stickers placed on merchandise. Unless deactivated at the register, they would cause the alarm to sound when the item was removed from the store. As they left the store, Mugica told them they needed to pay for the flowers. They started to run, and Mugica went after them. Within a couple of hundred feet, Mugica caught up to Victor and grabbed his backpack. Victor struggled to prevent Mugica from grabbing

¹ Subsequent statutory references are to the Penal Code unless otherwise specified.

the backpack. Victor swung his elbow from his chest to his back to push Mugica’s arm off the backpack. The elbow did not make contact with Mugica. Victor continued to run. Mugica again reached for the backpack and Victor fell. Mugica stumbled with him, and a bottle of alcohol from CVS fell out of the backpack. When Mugica tried to pick up the bottle, Victor’s companion struck Mugica in the back of the head with a skateboard.

The Orange County District Attorney’s Office filed a subsequent petition the day after the incident, alleging Victor committed second degree robbery. After a contested hearing, the juvenile court found the allegation true. The court ordered Victor to continue to be a ward of the court, and ordered him to serve 47 days in juvenile hall with credit for 47 days. Various probation conditions were imposed, as well as fines and fees.

Victor now appeals.

II

DISCUSSION

The only issue on appeal is whether there was substantial evidence of “force” within the definition of the robbery statute.

Standard of Review

“Our role in considering an insufficiency of the evidence claim is quite limited. We . . . review the record in the light most favorable to the judgment [citation], drawing all inferences from the evidence which supports the . . . verdict. [Citation.]” (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382.) Substantial evidence is “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.]” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) We presume the existence of every fact the trier of fact could

have reasonably deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

“In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for 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 upon which a determination depends. [Citation.]” (*People v. Maury* (2003) 30 Cal.4th 342, 403.) “Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young, supra*, 34 Cal.4th at p. 1181.)

Before a verdict may be set aside for insufficiency of the evidence, a party must demonstrate “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Relevant Law

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211; see *People v. Kelley* (1990) 220 Cal.App.3d 1358, 1366.) Robbery “occurs when property is forcefully retained in the victim’s presence, even when the victim was not present at its initial caption.” (*People v. Gomez* (2008) 43 Cal.4th 249, 264.) The robbery continues “as long as the loot is being carried away to a place of temporary safety.” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1165.) The “force or fear” element may occur at any point during which the property is being carried to a place of temporary safety, as the crime has not yet concluded. (*People v. Gomez, supra*, 43 Cal.4th at p. 257.)

Sufficient Force

In his opening brief, Victor argues that he did not apply force to the victim either when the property was taken or during the chase that followed. He asserts the evidence shows only that he took the items from the store and ran, and Mugica's attempts to grab the backpack did not result in any physical contact, which he asserts is necessary to establish the element of force.²

The force required to elevate a mere larceny into a robbery need not be great, merely that “the perpetrator exert some quantum of force in excess of that ‘necessary to accomplish the mere seizing of the property.’ [Citations.]” (*People v. Anderson* (2011) 51 Cal.4th 989, 995.) It must be sufficient to overcome the victim's resistance. (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259.) Using force during an attempted escape to retain stolen property is ““sufficient to satisfy this element of robbery.”” (*People v. Hodges* (2013) 213 Cal.App.4th 531, 543.)

Victor appears to be under the impression that physical contact between the persons of the victim and perpetrator is required. There is nothing magical, however, about contact between persons as opposed to an object. There are cases, both new and old, holding that force was used when an object was knocked from a person's hands. (See *People v. Burns, supra*, 172 Cal.App.4th at pp. 1255, 1259 [grabbing purse from the elbow of the victim who tried to clutch the purse constituted sufficient force]; *People v. Clayton* (1928) 89 Cal.App. 405, 411 [knocking property out of the victim's hands in two attempts constituted sufficient force].)

Although those cases concerned the taking of the property during the initial phase of the robbery rather than during an attempt to flee, as is the case here, force is force, and Victor articulates no principled reason why the two should be treated

² In his reply brief, he attempts to parse Mugica's testimony in an apparent attempt to show inconsistencies. Any minor inconsistencies, which is what these are, are not pertinent in a substantial evidence inquiry.

differently. Despite the fact that their bodies did not touch, Victor's actions when Mugica grabbed the backpack were sufficient contact to result in Victor's stumble, which precipitated Mugica's fall as well. This constituted force greater than that necessary to accomplish fleeing with the property. (See *People v. Anderson*, *supra*, 51 Cal.4th at p. 995.) Accordingly, we conclude the force element was satisfied.

III

DISPOSITION

The juvenile court's orders are affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.