

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONSO TORRES et al.,

Defendants and Appellants.

B226903

(Los Angeles County
Super. Ct. No. KA089427)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant Alfonso Torres.

Michele A. Douglass, under appointment by the Court of Appeal for Defendant and Appellant Adan E. Barajas.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Robert S. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Following a jury trial, appellants Alfonso Torres and Adan Barajas were convicted of bringing alcohol into a jail facility (Pen.¹ Code, § 4573.5; count 1) and possession of alcohol in a jail facility (§ 4573.8; count 2). Each appellant admitted he had several prior felony convictions. Barajas was sentenced to seven years in state prison consisting of the upper term of six years on count 1 plus one year for a prior conviction pursuant to section 667.5, subdivision (b). Torres was sentenced to ten years in state prison consisting of the upper term of six years on count 1 plus one year for each of four prior convictions pursuant to section 667.5, subdivision (b). Both appellants were sentenced to a concurrent upper term of six years on count 2.

Barajas contends there was insufficient evidence to support the conviction on count 1 and Torres joins this claim. Both appellants also contend the trial court erred by neglecting to stay imposition of punishment on count 2 pursuant to section 654, subdivision (a). We reject the claims and affirm the judgment.

II. FACTS

On October 28, 2009, Sergeant F. Martinez, a correctional officer at a minimum security prison fire camp, was monitoring the front entrance of the prison. With the use of binoculars, he observed a gray sedan drive through the front entrance of the camp. The vehicle stopped near a food warehouse and trash can. The driver exited the vehicle. Although the officer's view was obstructed by trees, he could hear the trunk open and close. The driver returned to the vehicle and drove quickly away, repeatedly honking the horn. The officer observed nothing in the area of the departing vehicle that justified honking the horn. Because there was normally no trash can in the area where the car stopped, the officer suspected a "drop" had occurred.

¹ All statutory references are to the Penal Code.

Sergeant Martinez repositioned himself so that he had a direct view of the trash can. Approximately 20 minutes after the vehicle left, two inmates, i.e., appellants, ran from one of the prison buildings directly to the trash can. Barajas arrived first and placed his hands in the trash can for two to three seconds. Torres stood behind Barajas. Barajas pulled out white trash bags. As he turned around, Torres grabbed one of the bags and the two men ran back to the building.

Shortly thereafter, Lieutenant D. Ellis, a correctional officer, heard a noise coming from behind a three and one-half foot wall near the “router room.” He leaned over the wall and observed appellants crouched down and “going through the three different trash bags.” All three bags were open. Each appellant had his hands in a bag but the officer was unable to determine whether it was the same bag. Barajas turned his head toward Torres and said something to the effect of, “Which one is mine?” The officer grabbed the bags and escorted appellants to an administrative building. Three bottles of vodka were discovered in one of the bags. Other items disbursed amongst the bags included various hygienic items, vitamins, underwear, socks, tobacco, and a cellular telephone with a charger.

III. DISCUSSION

A. Sufficient Evidence Supported The Verdict On Count 1

In order to prove the crime of bringing alcohol into a prison camp, there must be sufficient evidence that the accused “knowingly” brought an alcoholic beverage into the prison. (§ 4573.5.)

“““To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.”” [Citations.]” (*People v. Valdez* (2004) 32 Cal.4th 73, 104.) The reviewing

court is prohibited from reweighing evidence or reassessing a witness's credibility. (*People v. Lindberg* (2008) 45 Cal.4th 1, 37-38.) The standard of review remains the same even if the conviction was based on circumstantial evidence. (*People v. Story* (2009) 45 Cal.4th 1282, 1296.)

A principal in a crime may be guilty as a direct perpetrator of the crime or as someone who aids and abets the commission of the crime. (§ 30.) “A person aids and abets the commission of a crime when he . . . , (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.’ [Citations.]” (*People v. Hill* (1998) 17 Cal.4th 800, 851.) While it is generally correct that neither mere presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission, “[a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense.” (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094; *People v. Campbell* (1994) 25 Cal.App.4th 402, 409.) In view of these factors, the evidence sufficiently demonstrated appellants acted together to assist the driver of the vehicle in successfully transporting alcohol into the prison camp.

Under the circumstances presented in this case, successful completion of the crime required the participation and cooperation of camp inmates and a civilian delivery person. The trash can was required to be in an atypical location to create a depository for the delivery person. Additionally, a signal was necessary to alert the inmates that the contraband was present so that it could be retrieved before it was discovered by a correctional officer or a garbage collector.

A rational trier of fact could have concluded the driver's incessant honking was a signal, predetermined by the participants in the crime, to alert the recipients that the contraband had been deposited in the receptacle. Appellants' dash to the trash can suggested as much. Furthermore, after the contraband was retrieved, appellants acted in concert – they ran away together and settled in at the same safe haven until they were

apprehended rummaging through their bounty. Barajas’s statement, “Which one is mine?” could have been interpreted by the jury as circumstantial evidence that appellants had prior knowledge of the contents of the trash bags.

Appellants did not stumble upon the contraband. Rather, a rational trier of fact could have concluded appellants served as the inmates needed to facilitate the transportation of all three bags of contraband into the prison facility.

B. Section 654 Is Not Applicable

Respondent concedes appellants’ arguments that section 654 precluded imposition of sentence on count 2 – possession of alcohol in a jail facility. We find appellants’ arguments unpersuasive and decline to accept respondent’s concession.

Section 654, subdivision (a) provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” Thus, section 654 proscribes multiple punishment for distinct crimes charged in separate counts that result in multiple verdicts of guilt “[i]f all of the offenses were incident to one objective” (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) But, section 654 is not applicable if a defendant has “separate, although sometimes simultaneous, objectives” (*Id.* at p. 1212.)

“Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court’s determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence. [Citation.]” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Although the trial court did not make express findings on the issue, “a finding that defendant’s crimes were divisible inheres in the judgment. If that implied finding is

supported by the evidence, it must be upheld.” (*People v. Nelson* (1989) 211 Cal.App.3d 634, 638; *People v. Osband* (1996) 13 Cal.4th 622, 730-731.) Appellants committed two distinct criminal acts, suggesting two separate objectives. Their run to the receptacle demonstrated knowledge of the prearranged signal that indicated the contraband had been deposited and amounted to circumstantial evidence that they participated in planning and/or assisting the delivery of contraband.

Once the bags were dropped in the trash can, the crime of bringing alcohol into the prison camp was completed. Appellants’ objectives then shifted to possession. Appellants took possession of the trash bags and ran to a safe haven. Thus, the two separate objectives – transportation into the camp and taking possession of the contraband once it reached the facility – were separately punishable.

Section 654 may preclude multiple punishment for these offenses if a defendant were to personally carry contraband into a prison facility. But this is not such a case. The court did not abuse its discretion by imposing sentence on count 2.

IV. DISPOSITION

The judgment is affirmed.

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KUMAR, J.^{*}

We concur:

TURNER, P. J.

KRIEGLER, J.

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.