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Digest: People v. Gomez

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Opinion by Corrigan, J., with George, C. J., Baxter, J., Werdegar, Chin, J., and Moreno, J. Concurring Opinion by Kennard, J.

Issue

Was a robbery committed when the victim, having not been present when certain property was seized by the defendant, appeared as defendant was leaving the scene of the crime and while being followed by the victim, fired his handgun in an attempt to scare the victim away?

Facts

On January 12, 2004, shortly before 5:00 a.m., defendant Alphonso Gomez broke into a restaurant.¹ He took money from an ATM machine in the lobby, searched the upstairs, and then left the building.² The restaurant manager, Raymond Baltazar, observed defendant leaving and followed him in his truck while calling the police.³ Defendant fired two shots at Baltazar to scare him off and was arrested shortly thereafter.⁴

Defendant was convicted of second-degree robbery and commercial burglary and received a sentence of twenty years for firing a gun during the robbery.⁵ He appealed his robbery conviction on the basis that the victim was not present when he initially took the money.⁶ The Court of Appeal affirmed, reasoning that, “defendant’s use of force to *retain* the stolen property and remove it from [the victim’s] immediate presence was sufficient to support the robbery conviction.”⁷ The Supreme Court of California, granted review.⁸

Analysis

The California Penal Code defines robbery as “the felonious taking of personal property in the possession of another, from his person or

¹ *People v. Gomez*, 179 P.3d 917, 919 (Cal. 2008).

² *Id.*

³ *Id.*

⁴ *Id.* at 920.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* (citing *People v. Estes*, 194 Cal.Rptr. 909 (Ct. App. 1983).

⁸ *Id.* at 917.

immediate presence, and against his will, accomplished by means of force or fear."⁹ All the elements of force or fear and the victim's presence must be present to aggravate larceny to robbery.¹⁰ However, the Court concluded, "no artificial parsing is required as to the precise moment or order in which the elements are satisfied."¹¹

1. Force or Fear

The Court relied on over three decades of precedent to support the proposition that the force or fear element may aggravate larceny to robbery after possession of the property ("caption") is achieved and continuing through to the carrying away of the property ("asportation").¹² In *People v. Anderson*, the Court found that a robbery was committed when the property was acquired in a peaceful manner, because force or fear was used to take it away.¹³ Similarly, in *People v. Cooper*, the Court found that a robbery continued throughout the asportation until the property was taken "to a place of temporary safety."¹⁴

2. Immediate Presence

The Court found that the immediate presence element of robbery was "broadly" defined as "an area over which the victim, at the time force or fear was employed, could be said to exercise some physical control . . . over the property."¹⁵ The Court reasoned that, since robbery is a continuing offense under *Cooper* and *Anderson*, this element, like the force or fear element, may elevate larceny to robbery even if it is not present at caption but is present at the asportation.¹⁶

The Court said that the Court of Appeal correctly relied on *People v. Estes* for the proposition that the immediate presence element of robbery can be satisfied when the victim is not present at the time of the taking.¹⁷ In *Estes*, the Court of Appeal held that a shoplifter was guilty of robbery by using force to prevent a security guard from retaking the stolen property.¹⁸ The court in *Estes* reasoned that, "a robbery occurs when defendant uses force or fear in resisting attempts to regain the property or in attempting to remove the property from the owner's immediate presence regardless of the means by which defendant originally acquired the property."¹⁹

⁹ *Id.* at 920 (citing CAL. PEN. CODE § 211).

¹⁰ *Gomez*, 179 P.3d at 920.

¹¹ *Id.*

¹² *Id.* at 920-21 (citing *People v. Lopez*, 79 P.3d 548 (Cal. 2003)).

¹³ *Id.* at 921 (citing 414 P.2d 366 (Cal. 1966)).

¹⁴ *Id.* (citing 811 P.2d 742 (Cal. 1991)).

¹⁵ *Id.* at 922 (quoting *People v. Hayes*, 802 P.2d 376 (Cal. 1990)).

¹⁶ *Id.* at 923.

¹⁷ *Id.* (citing 194 Cal. Rptr. at 909 (Ct. App. 1983)).

¹⁸ *Id.* (citing 194 Cal. Rptr. at 909 (Ct. App. 1983)).

¹⁹ *Id.* at 923-24 (quoting 194 Cal. Rptr. 909).

3. Sufficiency of the Evidence of Robbery

The Court found sufficient evidence that defendant used force to retain money that was in Baltazar's immediate presence.²⁰ The Court reasoned that "[t]he parties' distance from each other at the time of this shooting was not so great as to preclude defendant's conviction for robbery."²¹

Holding

The Court held that "the crime of robbery occurs when property is forcefully retained in the victim's presence, even when the victim was not present at its initial caption."²²

Concurrence

Justice Kennard reiterated his disagreement with *Cooper* and contrasted the majority's holding from the holding in that case.²³ He said that the issue in this case is different from the issue in *Cooper*, and that the majority's conclusion, unlike the conclusion in *Cooper*, is grounded in statutory and decisional law and leads to liability that is proportionally related to the culpability of the offender.²⁴

Legal Significance

As a result of this case, the crime of larceny will be elevated to robbery in California if the victim of the larceny is within the immediate presence of his property which is being stolen at any point during the larceny and force or fear is used by the perpetrator. Thus, this case signifies that a victim does not need to be present throughout the entire course or even the beginning of a larceny for the crime to be elevated to a robbery. Rather, the victim must merely be in the immediate presence of the crime during some point of its commission and the perpetrator must exert the elements of fear or force.

²⁰ *Id.* at 928.

²¹ *Id.*

²² *Id.* at 927.

²³ *Id.* at 928.

²⁴ *Id.* at 929.