

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	No. 12-634-1
	:	No. 12-634-2
SANTOS CENTENO, et al.	:	

MEMORANDUM

Juan R. Sánchez, J.

January 9, 2014

Defendants Santos Centeno and Baldwin Centeno ask this Court for judgments of acquittal or alternatively, a new trial for their convictions of assault and robbery. They assert there was insufficient evidence to support the verdict and/or evidentiary error substantially influenced the verdict. For the reasons set forth below, the Court finds Defendants are not entitled to judgments of acquittal or a new trial, and their motions will be denied.

BACKGROUND

Defendants' convictions stem from two separate incidents, both involving assault and robbery. First, on the evening of June 16, 2012, Ashish Lokhande was attacked, beaten, and robbed (June 16 incident). He has no memory of the event; a Park Ranger discovered him lying near the sidewalk on the west side of Fourth Street between Chestnut Street and Walnut Street in Philadelphia, Pennsylvania. Four days later, on the evening of June 20, 2012, Joseph Crumbock and his wife Dana Wilson were attacked, beaten, and robbed at the same location (June 20 incident). Defendants Santos Centeno and Baldwin Centeno were charged in a five count indictment for assault and robbery crimes arising out of these incidents. Each count also contained

a charge for aiding and abetting.¹

On June 25, 2013, after a jury trial, Baldwin Centeno was found guilty on counts one and two, arising from the June 16 incident, and acquitted on counts three, four, and five. Santos Centeno was found guilty on counts one, two, four, and five, arising from both the June 16 and June 20 incidents, and acquitted on count three.

DISCUSSION²

Both Baldwin and Santos Centeno ask this Court for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29 for convictions on counts arising from the June 16 incident. Santos Centeno separately requests a judgment of acquittal for his conviction on counts arising from the

¹ Count one was assault, and aiding and abetting assault, resulting in serious bodily injury on June 16, 2012, in violation of 18 U.S.C. § 113(a)(6) and 2. Count two was assault, and aiding and abetting assault, by striking, beating, or wounding on June 16, 2012, in violation of 18 U.S.C. § 113(a)(4) and 2. Count three was robbery, and aiding and abetting robbery, of money and a cellular phone on June 16, 2012, in violation of 18 U.S.C. § 2111 and 2. Count four was assault, and aiding and abetting assault, by striking, beating, and wounding on June 20, 2012, in violation of 18 U.S.C. § 113(a)(4) and 2. Count five was robbery, and aiding and abetting robbery, of money and a cellular phone on June 20, 2012, in violation of 18 U.S.C. § 2111 and 2. The parties were charged with aiding and abetting on all counts, so they could have been found guilty on each count even if they only acted only as aiders or abettors. *See* 18 U.S.C. § 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”).

² In addition to seeking judgment of acquittal and new trial, Defendants also argue the Government’s evidence failed to sufficiently establish the June 16 incident occurred within United States territorial jurisdiction, and therefore, this Court does not have jurisdiction over this case. During the trial, the parties stipulated that the curb and sidewalk along the west side of Fourth Street between Chestnut and Walnut was within Independence National Historical Park and thus, within the territorial jurisdiction of the United States. Defendants argue the testimonial record demonstrates the actual situs of the assault was not determined by any of the witnesses, and all of the witnesses placed the victim of the June 16 incident either in the street or by the sidewalk on the street, both of which are managed by the City of Philadelphia and outside federal jurisdiction. However, no witness testified the attack happened on the street, and even though the Government admitted the victim ended up on the street, the only eyewitness to the incident (Christopher Robles) indicated the events leading up to the attack and the attack itself took place on the sidewalk. The Court, therefore, has jurisdiction over this case.

June 20 incident. Under Rule 29, the Court “must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” Fed. R. Crim. P. 29(a). A district court must “review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt[] beyond a reasonable doubt based on the available evidence.” *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005) (quoting *United States v. Smith*, 294 F.3d 473, 476 (3d Cir. 2002)). “A finding of insufficiency should be confined to cases where the prosecution’s failure is clear.” *Id.* (internal quotation marks omitted). Although there must be a logical and convincing nexus between the evidence and the guilty verdict, the “fact that evidence is circumstantial does not make it less probative.” *Gov’t of V.I. v. Williams*, 739 F.2d 936, 940 (3d Cir. 1984) (quoting *United States v. Bycer*, 593 F.2d 549, 550 (3d Cir.1979)). The motion for judgment of acquittal will be granted “only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.” *Id.* (citation and internal quotation marks omitted).

Defendants assert they should be acquitted because they were, at most, merely present during the assaults and robberies, and no reasonable jury could have concluded they were either principal participants or aider and abettors of the substantive offenses. In order to establish liability based on aiding and abetting, the Government must prove the defendant acted with the specific intent of facilitating the crime. *United States v. Garth*, 188 F.3d 99, 113 (3d Cir. 1999). “Mere knowledge of the underlying offense is not sufficient for conviction.” *Id.* The defendant must have associated himself with the venture and “sought by his actions to make it succeed; he must have been a participant and not merely a spectator.” *United States v. Powell*, 113 F.3d 464, 467 (3d Cir. 1997).

With regard to the June 16 incident, Defendants maintain the only evidence tying them to the assault and robbery is the testimony of Christopher Robles, who travelled to Philadelphia with the

Defendants and witnessed the incident while sitting in Baldwin Centeno's car. Defendants contend his testimony is an insufficient basis for conviction for three reasons: First, Robles's testimony is uncorroborated and highly suspect because he was intoxicated during the incident. Second, although he witnessed the attack, Robles could not specify who exactly hit the victim, and prior to testifying in front of the grand jury, he admitted telling two park rangers he never saw Baldwin Centeno hit anyone. Third, the Government should not have been allowed to treat Robles as a hostile witness and ask him leading questions during trial.³

Baldwin Centeno also maintains that even though after the attack the assailants entered Baldwin Centeno's car and he drove the car away from the scene, his driving the car does not mean he participated in the substantive offenses; he was the only person able to drive because he not drinking and he wanted to remove himself and his car from a dangerous situation. Santos Centeno argues the fact he did not drive the car is further proof he was at most merely present and did not participate in the attack.

These arguments are not availing. As to Robles's testimony, the jury could (and did) evaluate it themselves and decide how much weight it deserved. Robles stated several times that during the June 16 incident, Baldwin and Santos Cento were "around" or "near" the victim. *See, e.g.*, Trial Tr. 58, 64, 65, 69, June 20, 2013. He also stated that Defendants were part of the group of people who attacked the victim and no one else was around the victim at the time. *Id.* at 65, 70, 74. Further, Defendants, and the other people in the group, returned to and drove away in Baldwin Centeno's car immediately after the victim fell to the ground. *Id.* at 80-82. Aside from Robles's testimony, the jury could rely upon the video surveillance of a car similar to Baldwin Centeno's car leaving the scene of the crime at a high rate of speed and FBI Agent Wendell Cosenza's testimony that signals from Lokhande's phone placed it in Camden, New Jersey, near both of the Defendants'

³ This third argument is addressed below.

homes, hours after the attack. In addition, even though Santos Centeno did not drive the getaway car after the attack, the jury could consider the similarities of the June 16 incident and June 20 incident (both occurred at the same location and involved the same type of crime) and the fact several eyewitnesses established Santos Centeno's presence at the scene on June 20, and infer Santos Centeno did not participate in the June 16 incident by mistake or accident. They jury could also use evidence of the June 20 incident when determining whether Santos Centeno committed the June 16 incident because the June 20 incident exhibited his characteristic modus operandi or method of operation.⁴

During oral argument on the motion for judgment of acquittal as to counts one and two, Defendants repeatedly stressed the Court should grant judgments of acquittal based on *United States v. Barber*, 429 F.2d 1394 (3d. Cir. 1970). In that case, the Third Circuit found the evidence was insufficient to sustain the defendant's conviction for aiding and abetting criminal misconduct

⁴ Under Federal Rule of Evidence 404, "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). However, the evidence "may be admissible for another purpose, such as proving. . . identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2). In this case, the jury was instructed on the limitations of the evidence concerning the similarities of the June 16 and June 20 attacks. Upon consent by both parties, the Court instructed the jury that "[i]n determining whether a defendant committed the offense charged on one of the nights in question, you may consider evidence regarding the events on the other night in question for the limited purposes of deciding whether a defendant . . . acted with a method of operation as evidenced by a unique pattern or did not commit the acts for which he is on trial by accident or mistake." Trial Tr. 96-97, June 25, 2013. The Court warned the jury that they "may not conclude that simply because a defendant committed certain acts on June 16th, he must also have committed certain acts on June 20th and vice versa" and they "must still determine whether there is proof beyond a reasonable doubt that the defendants committed each charged offense on June 16th and each charged offense on June 20th." *Id.* at 97. In addition "[y]our decision on any one defendant, or any one offense . . . should not influence your decision on any of the other defendants or offenses. Each offense and each defendant should be considered separately." *Id.* at 94. Thus, the jury was instructed and could properly rely, albeit not unlimitedly, on the similarities of the two events when determining whether Santos Centeno was guilty of the June 16 incident.

and reversed the district court's denial of his motion for judgment of acquittal. *Id.* at 1397. The only evidence against the defendant was the fact he was one of a large group that approached and confronted officers just before an outbreak of violence. *Id.* The Court explained although a jury could properly find the defendant was present during the attack, there was no proof he used threatening words or gestures, displayed weapons, or performed any other sinister act. *Id.* at 1396. Further, the record did not indicate if the defendant joined the group out of simple curiosity or some more aggressive intention, and the key eyewitness misidentified him. *Id.* at 1396-97. In reaching its decision, the Court stressed "mere presence at the scene of a crime, even in the company of one or more principal wrongdoers, does not alone make one an aider or abetter." *Id.* at 1397.

This case is distinguishable from *Barber* in many ways. First, *Barber* involved a group of fifteen people, whose relationship to each other was not clear, whereas here, the group consisted of only five people, and, according to Robles, the members were friends (or "associates") with each other. Robles also testified no one outside of this small group was near or around the victim during the incident. In addition, circumstantial evidence shows Defendants were more than merely present during the June 16 incident. Defendants arrived at the scene of the incident together and the entire group, including Defendants, fled the scene together. The victim's cellphone indicated it was near Defendants' homes hours after the attack. Perhaps most importantly, Baldwin Centeno drove the assailants away in his car and Santos Centeno was identified by eyewitnesses in a very similar attack four days later. This evidence, in addition to direct evidence establishing Defendants' presence during the June 16 incident (namely, Robles's testimony), differentiates the situation in this case from that in *Barber*.

Thus, a reasonable juror could have found Defendants intimidated the victim and emboldened

the other assailants, Defendants blocked the escape of the victim, and/or Defendants enabled the flight of the other perpetrators, all of which would be sufficient to establish aiding and abetting liability. Because there is plenty of evidence upon which a reasonable juror could conclude Defendants were direct participants or aiders and abettors in the June 16 incident, Defendants' motion for acquittal as to counts one and two will be denied.

Santos Centeno separately asserts he should be acquitted for the charges arising from June 20 incident. However, the evidence for Santos Centeno's conviction for the June 20 incident is overwhelming. Both victims identified Santos Centeno, either during the trial or outside the courtroom by photo array, and the description of the perpetrator given by Park Ranger Nicholas Iannelli, who witnessed the end of the attack, matched Santos Centeno's physical characteristics. In addition, Ranger Iannelli recorded the license plate of the getaway car, which was traced to the mother of Baldwin Centeno's child and was the same car Defendants occupied in Camden two days later.⁵ Given this incriminating evidence, it is clear a reasonable juror could find Santos Centeno was at the very least an aider and abettor, if not a principal assailant, in the June 20 incident. Thus, his motion for acquittal as to counts four and five will be denied.

In the alternative, Defendants move for a new trial because there was evidentiary error, which substantially influenced the outcome of trial. Pursuant to Federal Rule of Criminal Procedure 33, "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). Under the Rule, a new trial may be granted if there was 1) evidentiary error that had a substantial influence on the verdict, or 2) the verdict constitutes a serious miscarriage of justice. *United States v. Parrott*, No. 09-245, 2010 WL 760388, at *2 (E.D. Pa. Mar. 4, 2010). When an evidentiary error exists, "[a] new trial is required

⁵ This car also matched the car leaving the scene of the attack on June 16, as depicted in surveillance video tape.

. . . only when the ‘errors, when combined, so infected the jury’s deliberation that they had a substantial influence on the outcome of the trial.’” *Id.* (quoting *United States v. Thornton*, 1 F.3d 149, 156 (3d Cir.1993)). In evaluating a Rule 33 motion, the court “does not view the evidence favorably to the Government, but instead exercises its own judgment in assessing the Government’s case.” *Id.*

Defendants assert they are entitled to a new trial on counts one and two because the Court erred in allowing the Government to ask Robles leading questions on direct examination, and this error had a substantial influence on the verdict. Federal Rule of Evidence 611 permits leading questions on direct examination “when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.” Fed. R. Evid. 611(c)(2). The Rule makes it clear that the trial judge has broad discretion to determine when a witness can be led in order to develop testimony. *See id.* advisory committee’s notes (“The matter clearly falls within the area of control by the judge over the mode and order of interrogation and presentation and accordingly is phrased in words of suggestion rather than command.”); *see also United States v. McLaughlin*, No. 95-113, 1998 WL 966014, at *1 (E.D. Pa. Nov. 19, 1998) (explaining a trial judge is in the best position to make the determination of whether direct or leading questions best serve the object of the examination).

In this case, Robles was resistant and unwilling to respond directly to many questions during his direct examination. He also was testifying pursuant to a subpoena, further demonstrating his reluctance to be in the courtroom. Most importantly, he identified with an adverse party; he admitted he was “friends” with Santos Centeno and “associates” with Baldwin Centeno, he traveled with them to Philadelphia from Camden on the night of June 16, 2012, and he was found in a car with them on June 22, 2012. Thus, it was not error to allow the Government to treat Robles as either a hostile witness or a witness identified with an adverse party and ask him leading

questions. The motion for a new trial on this basis will be denied.

Lastly, Santos Centeno separately argues he is entitled to a new trial on counts four and five because the verdict is inconsistent with the manifest weight of the evidence introduced at trial and constitutes a miscarriage of justice. Under a miscarriage of justice theory, “[a] district court can order a new trial on the ground that the jury’s verdict is contrary to the weight of the evidence only if it believes . . . that an innocent person has been convicted.” *United States v. Johnson*, 302 F.3d 139, 150 (3d Cir. 2002) (citations and internal quotation marks omitted); *see also United States v. Brennan*, 326 F.3d 176, 189 (3d Cir. 2003). As explained above, the evidence against Santos Centeno for the June 20 incident, even when not viewed most favorably toward the Government, is overwhelming. Therefore, his motion for a new trial on this basis will be denied.

In light of the evidence against the Defendants, the burden of proof, and the substantive law, Defendants’ convictions must stand. Accordingly, the motions for acquittal and new trial will be denied.

An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

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ORDER

AND NOW, this 9th day of January, 2014, for the reasons set forth in the accompanying Memorandum, it is ORDERED Defendant Baldwin Centeno's Motion for Judgment of Acquittal or New Trial Pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure (Document 87) and Defendant Santos Centeno's Motion for Judgment of Acquittal or a New Trial Pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure as to Counts Four and Five of the Indictment (Document 152) are DENIED.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.