

No. E081147

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

KIMESHA WILLIAMS, ET AL.,
Defendant and Appellant.

Riverside County Superior Court, Case No. SWF1907576
The Honorable Timothy F. Freer, Judge

RESPONDENT'S BRIEF

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INTRODUCTION

Kimesha Williams and Candace Townsel targeted 84-year old Afaf A. at Pechanga Casino, followed her into the restroom, and forcefully stole her purse, causing her to fatally strike her head in the process. Video surveillance and witness testimony show that appellants coordinated their actions, with Townsel acting as a lookout while Williams executed the robbery. A jury convicted appellants of murder, robbery, and elder abuse, and found true a robbery-murder special circumstance allegation. The trial court sentenced appellants to prison for life without parole.

Appellants raise several claims on appeal. First, Williams and Townsel argue their felony murder and robbery convictions and true findings on the robbery-murder special circumstance allegation should be reversed because there is insufficient evidence to show force or fear was used to take Afaf's purse from her person or her immediate presence. Afaf's injuries, including a forearm abrasion consistent with her purse being snatched and severe head trauma, confirm the use of force. Alternatively, the robbery could have been committed through fear, given the significant age and size difference between appellants and the elderly victim, making it reasonable to infer Afaf was intimidated and unable to resist.

Next, Townsel argues that the evidence is insufficient to establish her intent to aid and abet or conspire to commit robbery. Substantial evidence supports the jury's findings regarding Townsel's robbery conviction and the true finding on

the robbery-murder special circumstance because the record demonstrates her active involvement in the crime, either as an aider and abettor or as a co-conspirator with Williams. Townsel's coordinated actions with Williams—including giving a non-verbal cue to Williams signaling her intention to target Afaf, following Afaf into the restroom, standing guard to prevent others from entering, and fleeing the scene together—show her intent to assist in or facilitate the robbery. Based on these facts, the jury was entitled to conclude that Townsel shared a common criminal purpose with Williams.

Townsel further argues that even if the robbery conviction is affirmed, there is insufficient evidence to uphold her murder conviction and special circumstance finding because there is insufficient evidence that she acted with reckless indifference to human life. Although Townsel was not the actual killer, her active role in the robbery, failure to intervene, actions in facilitating the crime, and flight following the crime demonstrate her disregard for the grave risk of harm to Afaf, an 84-year-old vulnerable victim. Accordingly, substantial evidence supports the jury's finding that Townsel acted with reckless indifference to human life during the robbery.

Williams and Townsel argue that their convictions for elder abuse should be reversed due to the erroneous instruction allowing the jury to convict them on a legally invalid theory of "permitting" the victim to be harmed or to suffer. Appellants forfeited this claim by failing to object to the instruction below. Further, the prosecutor clarified any instructional ambiguity by

correctly telling the jury that the elder abuse offense required proof that Williams and Townsel actively caused harm to Afaf through direct assaultive conduct. In any event, any error was harmless in light of the other properly given instructions and the jury's convictions as to murder and robbery, which demonstrate that it understood the need for proof of harm.

Lastly, Williams contends that her parole revocation restitution fine should be stricken. Respondent agrees. The fine should be stricken as to both appellants.

STATEMENT OF THE CASE

On February 8, 2023, a Riverside County jury convicted Williams and Townsel as charged of first degree murder with a special circumstance of murder in the course of robbery (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(17)(A) [count 1]; all further unspecified statutory references are to the Penal Code), robbery (§ 211 [count 2]), and felony elder abuse (§ 368, subd. (b)(1) [count 3]). (11 RT 2469-2472; 2 CT 353, 442-445, 447-456.) As to count 3, the jury found true the allegation that the elder abuse proximately caused death of a person 70 years old or older (§ 368, subd. (b)(3)(B)). (11 RT 2470-2473; 1 CT 99-100; 2 CT 444-445, 447-456.) Williams subsequently admitted a prior serious felony conviction allegation (§§ 667, subds. (a), (c), (e)(1), 1170.12, subd. (c)(1)). (12 RT 2515-2516; 3 CT 620.)

On April 21, 2023, the trial court sentenced Williams and Townsel to prison for life without the possibility of parole (LWOP) for the murder convictions in count 1. (12 RT 2527-2528, 2530-2532; 3 CT 618-621, 681-682, 685, 691.) The court also imposed determinate middle terms of three years for the robbery

convictions in count 2 and three years for the elder abuse convictions in count 3, as well as a determinate term of seven years for the elder abuse allegations attached to count 3, but stayed execution of those terms (§ 654). (12 RT 2527, 2531-2532; 3 CT 618-621, 687, 693.) The court struck Williams's prior serious felony conviction enhancement on the People's motion. (12 RT 2534-2535; 3 CT 621.) The court imposed various fines and fees, including a \$300 parole revocation fine under section 1202.45. (12 RT 2528, 2530, 2532-2534; 3 CT 619, 621, 690, 692, 686, 696.)

Williams and Townsel filed timely notices of appeal. (3 CT 613 [Williams], 680 [Townsel].)

STATEMENT OF FACTS

A. Facts underlying the charged offenses

During the early morning hours of August 31, 2019, Williams and Townsel gambled and wandered aimlessly throughout the Pechanga Hotel and Casino in the city of Temecula. (5 RT 538; 7 RT 1209; 10 RT 1997-2001, 2017-2020; People's Exh. 1A.) Video surveillance recorded the events of that morning, and the footage was played for the jury. (5 RT 908; 10 RT 2118 [People's Exh. 1A].)

Williams and Townsel remained in the casino for several hours but began exiting via the valet lobby at approximately 7:27 a.m. (5 RT 907-909; 9 RT 1815-1817; 10 RT 2048-2050, 2052-2053; People's Exh. 1A.) At the same time, Youannes A., age 93,

arrived at the casino with his wife, Afaf A., age 84,¹ and both immediately went to the restroom. (3 RT 310-311, 314, 316, 318, 370; 5 RT 908; 9 RT 1799-1800; 10 RT 2048, 2050, 2052.) Afaf was holding a large pink purse on her left arm which contained approximately \$800 to \$900 in cash. (3 RT 316, 321-325, 372-373; 5 RT 730; 10 RT 2048; People's Exh. 1A.) Afaf had recently suffered a neck fracture, but was no longer wearing a brace, did not have any problems walking, and was in good health at the time. (3 RT 311-313, 371-372.)

After observing Afaf, Williams and Townsel stopped walking and looked at each other; Townsel rubbed her stomach a few times and the pair immediately diverted their path of travel to follow Afaf. (5 RT 907-909; 10 RT 2048-2050, 2052-2053, 2066-2067; People's Exh. 1A.) At 7:28:43 a.m., Townsel stood at the restroom entrance while Williams made a looping motion with her hand in a form of nonverbal communication. (10 RT 2053; People's Exh. 1A.) At 7:28:47, Townsel entered the restroom; Williams followed. (10 RT 2054-2055, 2073; People's Exh. 1A.)

At 7:29:03 a.m., casino patron Dawn W. entered the restroom. (5 RT 771-773; 10 RT 2053; People's Exh. 1A.) Dawn observed Williams and Townsel, whom she described as "suspicious," and explained, "It was just a vibe I got from them, and they were looking at me suspiciously." (5 RT 774-775, 778, 782.) When Dawn exited the stall after using the restroom, she

¹ Afaf was five feet four inches tall and weighed 164 pounds. (6 RT 1143.) Williams was six feet two inches tall and weighed 320 pounds. (3 CT 651.) Townsel was five feet four inches tall and weighed 297 pounds. (3 CT 625.)

saw appellants standing outside her stall—which she found unusual and made her feel afraid—and explained that Townsel stood as Williams crouched down and stuck something into either her pant leg or sock. (5 RT 786-788, 790-792, 816, 818-819, 826-827, 835, 838, 843-845; 10 RT 2037.) Dawn said hello to appellants and Williams responded, “Hi.” (5 RT 792-793, 818-819, 827-828.)

At 7:30:33 a.m., another casino patron, Tamara M., entered the restroom. (4 RT 538-539, 541, 569; 10 RT 2054; People’s Exh. 1A.) Tamara described having to walk around a large, intimidating woman who appeared to be waiting for a stall, even though only one stall was occupied and the others were open. (4 RT 542-544, 546-548, 551, 571; 10 RT 1972-1973.) At 7:31:29 a.m., Dawn quickly left the restroom without washing her hands. (5 RT 793, 843; 5 RT 906; 10 RT 2073-2074.) During Dawn’s time in the restroom, the floor was dry and had no debris. (5 RT 806-807.)

Approximately 30 seconds after Tamara entered a stall, she heard a noise that she compared to gagging or throwing up, a sound she described as “pshhh, pshhh, pshhh” and a loud thud, as if someone had fallen to the ground. (4 RT 551-554, 561, 617, 642-645; 10 RT 1973-1974, 1976.) At 7:32:10 a.m., more than a minute after Tamara reported hearing a loud thud, Townsel exited the restroom but remained near the entrance. (5 RT 909-910; 10 RT 2056-2057, 2072, 2074; People’s Exh. 1A.) Next, Tamara exited the stall and saw Afaf laying still on the ground. (4 RT 555-558, 561; 10 RT 1974-1975, 2059.)

At 7:32:38, Pechanga housekeeper Carmen G. tried to enter the restroom, but Townsel blocked the entrance and loudly asked, “Do you work here?” (3 RT 396-398, 400-403, 410, 422-423; 10 RT 1969, 1986, 2057.) At the time, Carmen wore her Pechanga work uniform and carried two mopheads and a lunch box. (3 RT 402-403, 412, 425.) Townsel shouted, “Are you done in there?” (2 RT 439-440; 5 RT 764.) At 7:32:42, Williams walked out of the restroom and left with Townsel; Carmen then entered the restroom. (3 RT 403-404, 412, 424-425; 10 RT 2075; People’s Exh. 1A.)

Once inside the restroom, Carmen saw Afaf lying faceup on the floor near the hand dryer and shaking. (3 RT 404-405, 407, 431-432; 4 RT 515-516; 10 RT 1967-1968, 1971, 1984-1985.) Carmen believed Alaf “wanted to scream” because she made “poof poof” motions with her lips, as if blowing out air. (3 RT 405-406, 427, 431-432; 4 RT 516.) Carmen left the restroom and immediately called for help. (3 RT 405-406, 413-414, 429-430; 10 RT 1970, 2058-2059.) Meanwhile, at 7:33:19 a.m., Tamara left the restroom and sought assistance from a security officer. (5 RT 573; 10 RT 2059.) During both Carmen’s and Tamara’s time in the restroom, the floor was dry and had no debris. (3 RT 440-441; 4 RT 574-575.)

While appellants were on their way out of the casino, Townsel skipped and waved her hands in the air. (5 RT 897-898; People’s Exh. 1A.) Williams and Townsel then got into their car and sped off. (5 RT 898-899; People’s Exh. 1A.)

A public safety lieutenant for the casino responded to the restroom area where several EMTs were attending to Afaf, who was lying on the ground bleeding from her head. (3 RT 408; 4 RT 648-650, 661-663; 5 RT 709-711, 851-852; 6 RT 1069-1073, 1078, 1086-1089.) Law enforcement officers from the Riverside County Sheriff's Department also responded to the casino. (5 RT 884-886, 889-890; 8 RT 1562-1563; 10 RT 1960-1962, 2047.) There was nothing on the floor—such as liquid, vomit, or fluid—that could have caused the fall. (4 RT 653-655.) Afaf's driver's license was found on the restroom counter (5 RT 712-713, 744, 855, 879-880; 6 RT 1097; 10 RT 1964-1964), but after an extensive search, police were unable to locate her purse (5 RT 891-892, 900; 8 RT 1577-1579; 10 RT 1962).

Paramedics responded and transported Afaf to the hospital, where she later died. (3 RT 319; 6 RT 1017-1019; 10 RT 2045-2046.) During Afaf's autopsy, a forensic pathologist observed several injuries on Afaf, including an abrasion on her left forearm, a contusion on the back of her head, and bruising behind her left ear—suggestive of a skull fracture. (6 RT 1136, 1141-1142, 1145, 1152-1153.) The arm injury was consistent with a purse being snatched with force off Afaf's arm. (6 RT 1182.) An internal examination of the skull and brain revealed fracture lines radiating from the apparent impact point at the back of the head, along with hemorrhaging at the front of the brain. (6 RT 1152-1153, 1158-1163, 1173-1174.) The injuries, which the forensic pathologist described as "severe," were consistent with either an unprotected or accelerated fall from standing height. (6

RT 1165-1170.) The cause of death was determined to be blunt force impact injuries to the head. (6 RT 1164.)

B. Prior crimes evidence

1. Prior crimes involving Williams

In April 2013, Williams took a \$14 slot machine ticket from a patron at Morongo Casino. (9 RT 1738-1743, 1747-1751.)

When confronted, she denied the theft, but was later identified. (9 RT 1749-1750; 10 RT 1946-1952, 1954-1956.)

In November 2015, Williams stole a wallet containing \$2,500 from a woman's purse at Pechanga Casino while an accomplice distracted the victim. (8 RT 1490-1493, 1496-1499, 1502-1507, 1509-1513, 1516-1517; 9 RT 1769-1770, 1772-1773; People's Exh. 94.) Williams was later convicted of grand theft. (10 RT 1958.)

In December 2015, Williams followed an 82-year-old man into a restroom at Morongo Casino, stole a bag from his walker, and was caught on surveillance leaving with it before entering the women's restroom. (7 RT 1345-1351, 1354-1356; 9 RT 1779-1782, 1784-1786; People's Exh. 99.) After leaving the restroom, Williams went to a kiosk to redeem a ticket or use the ATM, then immediately left the casino. (7 RT 1370-1375; 9 RT 1785-1786.)

In May 2019, at Morongo Casino, Williams grabbed \$20 worth of chips from a male patron while playing blackjack before he could respond to her request to borrow them. (8 RT 1419-1422, 1425-1426.) After losing the hand, she falsely promised to repay him but never returned. (8 RT 1426-1428.) The casino reimbursed the man, and Williams repaid the casino when

confronted by a security officer later that night. (8 RT 1432, 1434-1439.)

On the morning of August 31, 2019, Williams falsely claimed a cell phone from the Pechanga Lost and Found desk, though it belonged to another patron who had left it the previous night. (9 RT 1848-1853; 7 RT 1209-1210, 1216, 1220, 1223-1228.) Williams still had the stolen phone when arrested days later. (9 RT 1859-1860, 1864-1866, 1885; People's Exh. 116.)

2. Prior crimes involving Townsel

In September 2015, Townsel concealed socks in her waistband at Kohl's and left without paying. (9 RT 1831-1838.) One pair of socks was returned, and Townsel was convicted of petty theft. (9 RT 1838-1839; 10 RT 1910-1912, 1958.)

In November 2017, surveillance at Soboba Casino showed Townsel steal a purse from a slot machine player, enter the restroom, and exit without the purse. (8 RT 1533-1538, 1541-1542, 1547-1549, 1552-1553; People's Exh. 114.) A security guard eventually located the purse, but the owner's wallet and phone were missing. (8 RT 1539-1541, 1556; People's Exh. 114.)

In October 2018, Townsel was caught on Sephora's surveillance video stealing cosmetics by placing them in a tote bag. (8 RT 1445-1446, 1448, 1450-1453, 1458-1460; People's Exh. 113.) Law enforcement stopped Townsel in the parking lot and recovered the items. (8 RT 1449, 1454; 9 RT 1758-1760.)

In December 2018, Townsel placed clothing and cosmetics from Macy's into handbags near the exit and left with some items before being stopped by mall police and returning the merchandise. (8 RT 1462-1470, 1472-1476, 1482.)

3. Prior crimes involving Williams and Townsel

In July 2019, an adult dancer was making a purchase at a 7-Eleven when the cashier warned her about nearby gang members who were watching her. (7 RT 1233-1236.) The cashier informed the dancer that he knew Williams and Townsel, who were also present in the store, and brought them over. (7 RT 1236-1238.) For safety, the dancer arranged for Williams and Townsel to follow her home. (7 RT 1239-1240.) Once there, Williams asked for \$10 for gas. (7 RT 1240.) When the dancer attempted to give them the money, Williams grabbed all the \$780 she had. (7 RT 1243, 1246.) The dancer chased their car, which was stopped by law enforcement for a traffic violation near the dancer's home. (7 RT 1247-1249, 1261-1264, 1266-1267.) Law enforcement recovered \$345 in cash, and appellants were both convicted of petty theft. (7 RT 1270-1271, 1275; 10 RT 1958-1959.)

That same month, Williams and Townsel were at a jewelry store where they swapped natural diamond stud earrings for lab-grown ones. (7 RT 1298-1306, 1308-1309, 1312.) Although the surveillance video showed Townsel bending over as if to pick something up, the real diamond earrings were never recovered, and both women were searched with no results. (7 RT 1316-1317, 1319; 10 RT 1930-1932.)

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S VERDICTS REGARDING THE FIRST DEGREE MURDER, ROBBERY, AND ROBBERY-MURDER SPECIAL CIRCUMSTANCE

Williams, joined by Townsel, argues that the felony murder and robbery convictions and the true findings on the robbery-

murder special circumstance allegations should be reversed because there is insufficient evidence to show force or fear was used to take property from the victim. (WAOB 18, 21-26 [Arg. I.]; TAOB 24 [Arg. I.])

The record demonstrates that the violent snatching of Afaf’s purse caused both an abrasion on her forearm and a severe head injury, while the substantial size difference between appellants and the elderly victim, combined with witness testimony describing appellants’ intimidating behavior, further supports the elements of force and fear. Given this evidence, the jury was entitled to find both force and fear were used during the commission of the robbery.

A. A conviction is based on sufficient evidence where the evidence, viewed in the light most favorable to the judgment, allows any rational trier of fact to find the essential elements of the crime

In reviewing a challenge to the sufficiency of the evidence, courts examine the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence—that 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. (*People v. Morales* (2020) 10 Cal.5th 76, 88; *citing, Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) In doing so, a reviewing court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Powell* (2018) 5 Cal.5th 921, 944.) This court does not reweigh evidence or reevaluate a witness’s credibility, and this court presumes every

reasonable inference in favor of the judgment. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.) If the circumstances reasonably justify the jury’s findings, the judgment must be affirmed even if the circumstances might also reasonably support a contrary finding. (*Ibid.*) Given this court’s limited role on appeal, an appellant challenging the sufficiency of the evidence “bears an enormous burden.” (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.)

B. Ample evidence supports appellants’ convictions for felony murder and robbery, as well as the true findings on the robbery-murder special circumstance, because the record shows appellants used force or fear

Murder is defined as “the unlawful killing of a human being, or a fetus, with malice aforethought.” (§ 187, subd. (a).) However, “[t]he felony-murder rule makes a killing while committing certain felonies murder without the necessity of further examining the defendant’s mental state.” (*People v. Chun* (2009) 45 Cal.4th 1172, 1182.) First degree murder includes, as relevant here, “[a]ll murder . . . that is committed in the perpetration of, or attempt to perpetrate . . . robbery . . .” where the perpetrator of the robbery or attempted robbery was “the actual killer.” (§ 189, subs. (a) & (e)(1).) To prove a robbery-murder special circumstance, the jury must have found that the “murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit” a “[r]obbery in violation of Section 211 or 212.5.” (§ 190.2, subd. (a)(17), (a)(17)(A); see CALCRIM No. 540A.)

“Robbery is ‘the taking of personal property of some value, however slight, from a person or the person's immediate presence by means of force or fear, with the intent to permanently deprive the person of the property.’ [Citation.]” (*People v. Jackson* (2016) 1 Cal.5th 269, 343.)

Here, appellants contend that insufficient evidence supports the force or fear element. (WAOB 21-26; TAOB 24.) Use of force or fear is the “central element of the crime of robbery.” (*People v. Smith* (2009) 177 Cal.App.4th 1478, 1492, internal quotation marks omitted; Pen. Code, § 211.)

“The fear mentioned in Section 211 may be either: [¶] 1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or, [¶] 2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.” (§ 212.)

“To establish a robbery was committed by means of fear, the prosecution ‘must present evidence “. . . that the victim was *in fact afraid*, and that such fear allowed the crime to be accomplished.’” (*People v. Morehead* (2011) 191 Cal.App.4th 765, 772 [], italics added (*Morehead*). Thus, the fear element is subjective in nature. (*People v. Bordelon* (2008) 162 Cal.App.4th 1311, 1319 [] (*Bordelon*). However, the victim need not explicitly testify that he or she was afraid of injury where there is evidence from which it can be inferred that the victim was in fact afraid of injury. (*Ibid.*) “The fear is sufficient if it facilitated the defendant’s taking of the property. Thus, any intimidation, even without threats, may be sufficient.” ([*People v.*] *Mullins* [(2018)] 19 Cal.App.5th [594,] 604, citing *Morehead*, at pp. 774-775.) However, given the language of section 212, the intimidation must not only produce fear, but the fear must be of the infliction of injury.

(*People v. Montalvo* (2019) 36 Cal.App.5th 597, 612, emphasis in original.)

“[T]he ‘force’ required for robbery is not necessarily synonymous with a physical corporeal assault.” (*People v. Wright* (1996) 52 Cal.App.4th 203, 210 [].) However, “[t]he law does require that the perpetrator exert some quantum of force in excess of that ‘necessary to accomplish the mere seizing of the property.’” (*People v. Anderson* (2011) 51 Cal.4th 989, 995 [].) “[T]he force need not be great” (*People v. Joseph* (2019) 33 Cal.App.5th 943, 951.) “An accepted articulation of the rule is that “[a]ll the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim’s resistance”” (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259 [] (*Burns*); accord, *Mullins, supra*, 19 Cal.App.5th at p. 604 [“the degree of force need only be sufficient to overcome the victim’s resistance”].)

(*Montalvo, supra*, 36 Cal.App.5th at p. 618.)

Here, there was sufficient evidence of force. *People v. Gonzalez* (2021) 59 Cal.App.5th 643, 645, is instructive. In *Gonzalez*, the defendant snatched necklaces from three victims and was convicted of three counts of robbery. In one instance, Gonzalez “grabbed a gold necklace from [the victim]’s neck. The necklace broke and the man ran off with it”; in another, the victim was left “with ‘a little bump,’ ‘a red spot on [his] neck.’” (*Ibid.*) The Court of Appeal held this was enough force to qualify as robbery. (*Id.* at p. 650.) The court explained that “‘force’ ” “in the context of robbery is commonly understood.” (*Ibid.*, citing Com. to CALCRIM No. 1600 (2020 ed.) p. 1132.) “Gonzalez’s actions satisfy this standard of a commonly understood level of force. Owners of gold necklaces do not remove them by yanking

them off the neck and breaking them. No one does that in an ordinary setting. It ruins the necklace. When another person yanks your necklace from your neck, the act is forceful. This fact is commonly understood.” (*Gonzalez* at p. 650; see also *People v. Roberts* (1976) 57 Cal.App.3d 782, 787 [“evidence that the purse was grabbed with such force that the handle broke supports” a robbery conviction].)

In this case, evidence of the abrasion to Afaf’s arm and the trauma to her head revealed force was used. First, the abrasion on Afaf’s left arm suggested that her purse was ripped from her arm. The forensic pathologist’s testimony that the act of snatching Afaf’s purse could have left the abrasion on her left forearm (6 RT 1145, 1182)—the same arm Afaf was last seen holding the purse (5 RT 730)—is sufficient to establish the use of force necessary for the robbery. As in *Gonzalez*, here, the injury to Afaf’s arm directly supports the inference that the purse was forcibly yanked from her, overcoming her resistance. The placement of the injury on the very arm she held the purse refutes appellants’ claim that her abrasion occurred merely because she was elderly. (WAOB 24; TAOB 24.) While the forensic pathologist agreed that elderly individuals bruise easily (6 RT 1147), the jury could reasonably infer that the injury was nonetheless tied to the violent act of removing the purse.

Second, the injury to Afaf’s head also revealed force was used. Witness Tamara M. described entering a restroom stall and, shortly after, hearing a gagging noise, multiple “pshhh” sounds, and a loud thud. (4 RT 551-554, 561, 617, 642-645; 10 RT

1973-1974, 1976.) These sounds indicate the struggle that took place during the robbery, with the “thud” likely being the moment Afaf fell to the ground, causing the injuries that led to her death. Significantly, every eyewitness testified that the restroom floor was dry and free of debris at the time. (3 RT 440-441; 4 RT 574-575; 5 RT 806-807.) This supports the inference that Afaf’s fall was caused not by slipping but by the force used in the robbery. Additionally, the forensic pathologist’s findings indicate that Afaf’s severe injuries—including a skull fracture—are consistent with significant physical force, which could have resulted from a forceful snatching of her purse or from a push, either of which could have caused her accelerated fall. (6 RT 1152-1153, 1163-1164, 1167-1168.) The contusion on the back of Afaf’s head and the bruising behind her ear further suggest that she experienced a violent confrontation, ultimately contributing to her death from blunt force trauma. (6 RT 1141-1142.) The auditory and physical evidence of a violent struggle supports the conclusion that force was used.

Further, the significant size difference between appellants and Afaf supports the element of force. (See *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709 [relative sizes of the defendant and the victim may tend to establish force].) Afaf was 5 feet 4 inches tall and weighed 164 pounds (6 RT 1143), while Williams was 6 feet 2 inches and weighed 320 pounds (3 CT 651), and Townsel was also 5 feet 4 inches but weighed 297 pounds (3 CT 625). The jury could reasonably conclude that appellants, both considerably larger than Afaf, used their physical advantage to

overpower her during the purse-snatching. Given Afaf's small stature and vulnerability due to her age, the force needed to remove her purse would not need to be substantial to overcome her resistance.

Similarly, sufficient evidence supports a finding of fear. The surveillance footage and witness testimony suggest that appellants' behavior was intimidating, particularly for an 84-year-old woman like Afaf. Other witnesses in the restroom testified to feeling intimidated by appellants. Specifically, Dawn W. testified that Williams and Townsel were acting suspiciously, standing outside her stall, and made her feel afraid. (5 RT 774-775, 778, 782, 843.) Tamara M. described Townsel as a large, intimidating figure who appeared to be standing guard. (4 RT 542-544, 546-548, 551, 571.) This testimony, coupled with the age and frailty of the victim, supports the conclusion that appellants used intimidation to induce fear in Afaf, making her unable to resist the robbery.

The element of fear is also supported by the significant size and age difference between appellants and Afaf, combined with their suspicious and menacing behavior in an enclosed space. (See *People v. Brew* (1991) 2 Cal.App.4th 99, 104 [The defendant's "considerably larger size" can support the jury's finding of fear even where "there is no evidence that [the defendant] either assaulted [the victim] or verbally threatened her, or that he used a weapon."].) "The fear is sufficient if it facilitated the defendant's taking of the property. Thus, any intimidation, even without threats, may be sufficient." (*Mullins, supra*, 19

Cal.App.5th at p. 604.) Thus, there was sufficient evidence of fear.

Based on the foregoing, the felony-murder and robbery convictions, as well as the true findings on the robbery-murder special circumstance, should be upheld as there was more than sufficient evidence of force and fear.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY VERDICT ON ROBBERY AND THE ROBBERY-MURDER SPECIAL CIRCUMSTANCE AS TO TOWNSEL

Townsel asserts that the evidence is constitutionally insufficient to support her conviction for robbery based on either an aiding and abetting theory of culpability or a conspiracy to commit a robbery, requiring reversal of counts 1 and 2 as well as the robbery-murder special circumstance. (TAOB 25, 28-30 [Arg. II].)

The prosecution presented ample evidence from which a reasonable jury could conclude that Townsel participated in a robbery, either by aiding and abetting Williams or by conspiring with her to commit the offense. The evidence established that Townsel shared a common criminal purpose with Williams, as demonstrated by their coordinated actions during the charged incident and their history of committing crimes together. The jury's findings are supported by substantial evidence of her knowledge, intent, and involvement in the robbery, consistent with the legal standards of aiding and abetting and conspiracy. Accordingly, her conviction should be affirmed.

A. Townsel aided and abetted Williams in a robbery

The standard for reviewing sufficiency of the evidence claims discussed in the previous argument also applies to this claim. (See *Morales, supra*, 10 Cal.5th at p. 88.) As outlined above, “[r]obbery 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.) “All persons concerned in the commission of a crime, . . . whether they directly commit the act constituting the offense, or aid and abet in its commission, . . . are principals in any crime so committed.” (Pen. Code, § 31; see *People v. Cooper* (1991) 53 Cal.3d 1158, 1168 [aiders and abettors are punished as principles “to deter them from aiding or encouraging the commission of offenses”].) “[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense[;] (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime. [Citation.]” (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) “Thus, proof of aider and abettor liability requires proof in three distinct areas: (a) the direct perpetrator’s actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor’s mens rea—knowledge of the direct perpetrator’s unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor’s actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime. [Citation.]” (*People v. Perez* (2005) 35 Cal.4th 1219, 1225.)

“The “act” required for aiding and abetting liability need not be a substantial factor in the offense.’ ” (*People v. Franzen* (2012) 210 Cal.App.4th 1193, 1216.) “Whether a person has aided and abetted in the commission of a crime ordinarily is a question of fact.’ ” (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1054; see *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1147-1148.) Mental state is often proved circumstantially. (*People v. Thomas* (2011) 52 Cal.4th 336, 355.) Factors relevant to prove aiding and abetting include “presence at the scene of the crime, companionship, and conduct before and after the offense.” (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409; accord, *In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

Here, the evidence clearly established that Townsel aided and abetted the robbery, based on both her prior conduct with Williams and the specific circumstances of the charged crime. As the jury was instructed, to prove that Townsel aided and abetted the robbery, the People had to establish that: (1) the perpetrator committed the crime; (2) the defendant knew that the perpetrator intended to commit the crime; (3) before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; and (4) the defendant’s words or conduct did in fact aid and abet the perpetrator’s commission of the crime. (2 CT 512; 11 RT 2291-2292.)

Initially, for reasons discussed in Argument I., *ante*, substantial evidence supported appellants’ convictions for robbery. Further, contrary to Townsel’s claim otherwise (TOAB 28), there was substantial evidence from which a rational jury

could find that Townsel intended to aid Williams in the commission of the robbery. Townsel's actions before and during the robbery demonstrate her awareness of the robbery and intent to assist Williams. From the outset, appellants exhibited concerted behavior aimed at targeting vulnerable victims, and surveillance footage and witness testimony provide compelling evidence that Williams and Townsel acted in concert to rob Afaf. The footage showed that after wandering around the casino for several hours, Williams and Townsel were on their way out when they spotted Afaf, an 84-year old woman with a large purse, entering the restroom. (5 RT 538, 907-909; 7 RT 1209; 9 RT 1799-1800, 1815-1817; 10 RT 1997-2001, 2017-2020, 2048-2050, 2052-2053; People's Exh. 1A.) Appellants immediately altered their course of action and looked at each other while Townsel rubbed her stomach; then they diverted their path of travel to follow Afaf into the restroom. (5 RT 907-909; 10 RT 2048-2050, 2052-2053; People's Exh. 1A.) As the prosecutor argued at trial (11 RT 2317-2318), Townsel's deliberate act of rubbing her stomach, followed by her and Williams immediately trailing Afaf into the restroom, supports an inference that Townsel's gesture served as a nonverbal cue—akin to signaling readiness for a “feast”—that is, to commence the robbery. This behavior is strong circumstantial evidence that they had a shared criminal intent to rob Afaf.

Assuming *arguendo* that Townsel initially intended only to aid in stealing Afaf's purse, her intent quickly shifted to aiding the robbery when she witnessed the violence unfold and yet

continued her role in concealing the crime by standing guard. Surveillance footage showed Townsel entering the restroom at 7:28:47 (10 RT 2054-2055, 2073; People’s Exh. 1A), later followed by Tamara at 7:30:33 (4 RT 538-539, 541, 569; 10 RT 2054; People’s Exh. 1A). Tamara testified that within 30 seconds of entering a stall, she heard the distinct “pshhh” sounds, gagging, and a thud (4 RT 551-554, 561, 617, 642-645; 10 RT 1973-1974, 1976), which were unmistakable signs of violence. Meanwhile, surveillance footage confirmed that Townsel did not leave the restroom until 7:32:10 (5 RT 909-910; 10 RT 2056-2057, 2072, 2074; People’s Exh. 1A), meaning Townsel had to have been present during the violent events. The close timing of these actions supports the inference that Williams and Townsel were acting in concert, not merely by chance.

The jury could reasonably infer that Townsel’s presence during the violent attack and her decision to remain, despite ample opportunity to withdraw, indicated her intent to further the use of force or fear necessary to complete the robbery. Indeed, after having witnessed the violent attack or participating in it, Townsel stood guard and blocked the restroom door while Williams presumably completed the taking of Afaf’s purse. (5 RT 909-910; 10 RT 2056-2057; People’s Exh. 1A.) This demonstrates that Townsel aided and abetted the robbery by preventing others from entering and interrupting Williams’s conduct. Such actions show a division of labor—a classic indicator of conspiracy and aiding and abetting—where one defendant acted as the direct perpetrator and the other as a facilitator. When questioned by a

housekeeper trying to enter, Townsel aggressively blocked her way and asked something like, “Do you work here?” (3 RT 396-398, 400-403, 410, 422-423; 10 RT 1969, 1986, 2057.) The jury could infer that this was part of her effort to delay others from discovering the robbery and alert Williams to hurry up. Subsequently, Townsel shouted, “Are you done in there?” (2 RT 439-440; 5 RT 764), as a signal for Williams to complete the job and embark on their escape, further demonstrating their coordinated plan to execute the crime and evade capture. The quick succession of events and Townsel’s continued involvement indicate that the two were working together with a shared intent to commit robbery, reinforced by Townsel’s actions to secure the crime scene and assist in their getaway.

Further, Townsel’s actions immediately after the robbery are telling. Following the crime, Townsel and Williams fled the scene together, with Townsel skipping and waving her arms in a display of celebration. (5 RT 897-898; People’s Exh. 1A.) This coordinated departure suggests that Townsel was not surprised by the crime but had instead planned to aid in the escape. While presence at the scene alone does not make someone an aider and abettor, Townsel’s presence, combined with her actions in actively assisting Williams, makes her criminally liable as an aider and abettor. (See *Mullins, supra*, 19 Cal.App.5th at p. 606 [even though the defendant “was not the person who provided force” to accomplish the robbery, “he was there to intimidate the victims . . . and thereby deprive them of their property”]; *People v. Lara* (2017) 9 Cal.App.5th 296, 322 [presence at the scene,

companionship, and flight can support a finding the defendant aided and abetted a crime].)

Williams's and Townsel's shared past conduct also provides strong evidence of their common plan to commit crimes together. This pattern of behavior establishes the likelihood that they were acting with a common intent on the day of Afaf's robbery and murder. Townsel argues that her prior criminal conduct with Williams only involved thefts, and therefore, she was unaware that the current offense would escalate to a robbery. (TOAB 28.) However, this argument overlooks the critical fact that Townsel and Williams's history of committing crimes together involved a pattern of escalating risk and reliance on each other's roles in these joint ventures. While their past offenses may not have involved force or threats, the nature of their criminal partnership reveals that Townsel was aware of the potential for the current offense to escalate into a more serious crime, including robbery.

The evidence showed that Williams and Townsel had previously taken advantage of vulnerable victims for their own financial gain. The jury learned that just one month before the charged crime, Townsel and Williams stole an adult dancer's earnings after the dancer hired them to keep her safe. (7 RT 1239-1240, 1243, 1246.) That same month, the pair continued their criminal partnership when they executed a plan to steal diamond earrings. (7 RT 1298-1306, 1308-1309, 1312.) In their prior offenses, Townsel and Williams worked in close coordination, with Townsel serving as a lookout or otherwise facilitating the commission of the crimes, and the duo's criminal

conduct had escalated over time from theft to more sophisticated and coordinated efforts. Townsel’s presence during the charged incident follows this established pattern, where one person distracts or intimidates while the other commits the crime. This pattern of increasing risk indicates that Townsel was aware of the possibility that force or intimidation might be used in their future crimes, including the charged robbery. Indeed, their prior offenses show that they were willing to take progressively greater risks to achieve their criminal objectives. Given their established partnership and their growing boldness in committing crimes, it is reasonable to conclude that Townsel knew that this offense might escalate to robbery and was prepared to aid Williams in that endeavor.

Additionally, the evidence of Williams and Townsel gambling and roaming together for hours before committing the robbery strongly suggests they were working together in search of a target. This background supports the conclusion that they had an implicit agreement to commit crimes, as demonstrated by their prior conduct. In short, their actions during the August 31 incident were consistent with their joint criminal enterprise. (See *People v. Chhoun* (2021) 11 Cal.5th 1, 27 [“ “We have long recognized “that if a person acts similarly in similar situations, he probably harbors the same intent in each instance”. . . . [T]he inference to be drawn is that, in light of the first event, the actor, at the time of the second event, must have had the intent attributed to him by the prosecution.” ” ”].)

From this evidence, a jury could reasonably find that Townsel and Williams acted in concert with one another throughout their encounter with Afaf and, as part of their joint operation, Townsel assisted Williams in the robbery by engaging in every step of the encounter with Afaf, the intended victim of the robbery. (*In re Juan G.*, *supra*, 112 Cal.App.4th at p. 5 [evidence was sufficient to support aiding and abetting robbery conviction, where defendant approached victim together with perpetrator]; *People v. Campbell* (1994) 25 Cal.App.4th 402, 409 [“Together [the defendant and the perpetrator] approached [the victims], stopping closely in front of them. Their concerted action reasonably implies a common purpose”].)

Townsel argues the evidence does not show that she aided and abetted a robbery rather than a theft. (TAOB 28-29.) However, the jury was entitled to infer Townsel’s intent from circumstantial evidence. (*Thomas*, *supra*, 52 Cal.4th at p. 355.) “Whether defendant aided and abetted the crime is a question of fact, and on appeal all conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment.” (*People v. Mitchell* (1986) 183 Cal.App.3d 325, 329.) Significantly, an aider and abettor need not be aware of the crime or criminal intent beforehand—it can be instantaneous and spur of the moment knowledge. (*Frandsen*, *supra*, 33 Cal.App.5th at p. 1148; see *People v. Nguyen* (1993) 21 Cal.App.4th 518, 532.) Similarly, the intent to aid in the criminal acts may be formed while the crime itself is underway. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1039.) “[F]actors for determining aiding and abetting of a

robbery include presence at the scene of the crime, companionship, and conduct before and after the crime, including flight.” (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294; see *People v. Battle* (2011) 198 Cal.App.4th 50, 84.) Here, there was ample evidence that Townsel “knew of the perpetrator’s unlawful purpose, and intended to and did aid, facilitate, promote, encourage, or instigate the commission of the crime.” (*Frandsen, supra*, 33 Cal.App.5th at p. 1148.) In other words, Townsel was a participant, not a bystander. (See *People v. Luna* (1956) 140 Cal.App.2d 662, 664 [drawing that distinction].)

Collectively, the evidence in the record also constituted substantial evidence from which a jury could find that Townsel knew of Williams’s unlawful purpose and intended to commit, or encourage the commission of, the robbery. In particular, a jury could find Townsel harbored the requisite mental state and intent necessary to sustain the conviction based on the evidence that Townsel joined Williams in initiating the contact with Afaf, acted in concert with Williams, stood close by during the robbery, failed to intervene or seek assistance as the crime was ongoing, acted as a lookout, and left the crime scene with Williams. (See *People v. Hill* (1998) 17 Cal.4th 800, 850-852 [defendant harbored mental state to support aiding and abetting robbery conviction because there was substantial evidence that he stood with the perpetrator, approached the victim with the perpetrator, and surrounded the vehicle in which the victim was seated—evidence that “suggest[ed] a preconceived plan of attack”].)

B. Townsel conspired to commit a robbery with Williams

The same evidence that supports Townsel’s liability as an aider and abettor also establishes that she conspired to commit the robbery, as her prior criminal conduct with Williams, along with her actions during the charged crime, reveal a shared plan and mutual intent to engage in the unlawful act.

An uncharged conspiracy may serve as a prosecutorial theory to hold a coconspirator criminally liable for crimes committed in furtherance of the conspiracy. (*People v. Valdez* (2012) 55 Cal.4th 82, 150; *People v. Salcedo* (1994) 30 Cal.App.4th 209, 215.) A conspiracy exists when “the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act ‘by one or more of the parties to such agreement’ in furtherance of the conspiracy.” (*People v. Morante* (1999) 20 Cal.4th 403, 416.) The trier of fact may infer intent “by drawing reasonable inferences from the evidence.” (*People v. Thompson* (2016) 1 Cal.5th 1043, 1111.) Specifically, “[e]vidence is sufficient to prove a conspiracy to commit a crime “if it *supports an inference* that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy *may be inferred* from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy.” [Citation.] “The agreement in a conspiracy may be shown by . . . conduct of the defendants in

mutually carrying out an activity which constitutes a crime.”
[Citation.]” (*Ibid.*)

Consistent with these principles, the court instructed the jury:

To prove that a defendant was a member of a conspiracy in this case, the People must prove that:

1. The defendant intended to agree and did agree with the other defendant to commit robbery, elder abuse, or theft;
2. At the time of the agreement, a defendant and the other alleged member of the conspiracy intended that one or more of them would commit robbery, elder abuse, or theft;
3. One of the defendants, or both of them, committed at least one of the following overt acts to accomplish robbery, elder abuse or theft:
 - A. Followed [Afaf] into the women’s restroom.
 - B. Took property from [Afaf].
 - C. Stood as a look-out to prevent detection or interruption

AND

4. At least one of these overt acts was committed in California.

(2 CT 513; 11 RT 2292-2293.)

Here, the evidence overwhelmingly demonstrated that Townsel and Williams shared a plan to commit robbery. Williams and Townsel entered the restroom together and almost immediately committed a violent act by forcefully taking Afaf’s

purse, which indicated that robbery was not an unforeseeable consequence, but rather part of their plan from the beginning. The speed of events—with the robbery occurring shortly after entering the restroom—strongly supports the inference that force or fear was always intended as a means of taking the purse. Townsel’s role as lookout demonstrates that she was not surprised by the escalation to violence, but rather expected it and acted to aid it. While the jury was instructed that a conspiracy requires an agreement to rob, commit theft, or abuse an elder (2 CT 513; 11 RT 2292-2293), the evidence supports the conclusion that Williams and Townsel conspired to rob Afaf, not merely steal her belongings. The use of force was an integral part of their plan, as evidenced by the rapid succession of events and their coordinated actions. But even if the initial plan contemplated a mere theft, Townsel quickly ratified the subsequent violent attack by standing guard outside the restroom after witnessing the attack.

Further, as previously discussed, their history of committing crimes together shows that this was not a mere coincidence or spontaneous action on Townsel’s part. Rather, their established criminal partnership supports the conclusion that they jointly conspired to engage in criminal activity, including the charged robbery. Townsel’s involvement on the day of the incident, such as her searching for a victim, entering the restroom with Williams, witnessing the violent attack, acting as a lookout, and fleeing with Williams (5 RT 897-898, 907-910; 10 RT 2048-2050,

2052-2053, 2056-2057, 2066-2067; People's Exh. 1A), constitutes clear overt acts in furtherance of the conspiracy.

Moreover, the circumstances of the charged crime itself—following the elderly victim into the restroom, quickly and violently taking her property, and acting in concert to avoid detection—strongly suggest a mutual understanding and agreement to commit robbery. The overt acts required to prove a conspiracy were clearly established: Appellants followed Afaf into the restroom after Townsel rubbed her belly—a gesture signaling the initiation of the robbery. Once inside, Williams promptly and forcibly took Afaf's property while Townsel remained in the restroom. Then, Townsel stood as a lookout to prevent interruption or detection. (5 RT 907-909; 10 RT 2048-2050, 2052-2053, 2066-2067; People's Exh. 1A.)

Given the evidence of their shared intent, Townsel's participation in the execution of the robbery was not accidental. She knew Williams' intent, actively participated in the crime, and had the common goal of benefiting from the stolen property. For these reasons, there was evidence supporting an inference that Townsel and Williams tacitly came to a mutual understanding to rob Afaf, while appellants' conduct, relationship, interests, and activities before and during the robbery permitted the jury to infer the existence of the conspiracy. (See *People v. Penunuri* (2018) 5 Cal.5th 126, 145.)

III. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY’S FINDING THAT TOWNSEL ACTED WITH RECKLESS INDIFFERENCE TO HUMAN LIFE UNDER THE FELONY-MURDER RULE

Townsel also asserts that even if her robbery conviction is affirmed, there is insufficient evidence to uphold her murder conviction and special circumstance finding because there is insufficient evidence that she acted with reckless indifference to human life. (TAOB 31, 35-38 [Arg. III.]) Viewing the evidence in the light most favorable to the judgment, there was substantial evidence to support the jury’s finding that Townsel acted with reckless indifference to human life.

As discussed, in determining whether substantial evidence supports a conviction, this court determines whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Flinner* (2020) 10 Cal.5th 686, 748; *People v. Murphy* (2022) 80 Cal.App.5th 713, 725.) A “ ‘reversal for insufficient evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support’ ” the jury’s verdict.’ ” (*Murphy*, at p. 725.)

Felony murder is a murder that “is committed in the perpetration of, or attempt to perpetrate” one of enumerated felonies, including robbery. (§ 189, subd. (a).) “A participant in the perpetration or attempted perpetration of [such] a felony . . . in which a death occurs is liable for murder only if” the prosecution also proves one of the following: “[t]he person was the actual killer,” “[t]he person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced,

solicited, requested, or assisted the actual killer in the commission of murder in the first degree,” or “[t]he person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2.” (§ 189, subd. (e).) At trial, the prosecutor proceeded on a theory that Townsel was guilty of murder because she was a major participant in a felony (robbery) who acted with reckless indifference to human life. (11 RT 2343-2347.) On appeal, Townsel challenges only the finding that she acted with reckless indifference to human life—not that she was a major participant in the underlying robbery. (TAOB 31.)

Reckless indifference encompasses a willingness to assist another in killing to achieve a particular goal, even if the victim’s death was not specifically intended. (See *People v. Clark* (2016) 63 Cal.4th 522, 617 [reckless indifference to human life “encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions”].) “This definition encompasses both subjective and objective elements. The subjective element is the defendant’s conscious disregard of risks known to him or her. But recklessness is not determined merely by reference to a defendant’s subjective feeling that he or she is engaging in risky activities. Rather, recklessness is also determined by an objective standard, namely what ‘a law-abiding person would observe in the actor’s situation.’” (*Ibid.*)

Among the relevant factors to be considered in determining whether a defendant acted with reckless indifference to human life are: knowledge of weapons, and use and number of weapons; physical presence at the crime and opportunities to restrain the crime and/or aid the victim; duration of the felony; the defendant's knowledge of a cohort's likelihood of killing; and the defendant's efforts to minimize the risks of the violence during the felony. (*Clark, supra*, 63 Cal.4th at pp. 618-623 [adopting these factors as initially set forth in *People v. Banks* (2015) 61 Cal.4th 788].) “[Not] one of these considerations is necessary, nor is any one of them necessarily sufficient.” [Citation.]” (*Clark, supra*, at p. 618.)

The totality of the evidence demonstrates that Townsel acted with reckless indifference to human life. First, there was no firearm or weapon involved in the commission of the crime, which weighs in favor of finding Townsel did not act with reckless indifference. (*Clark, supra*, 63 Cal.4th at p. 618; *In re Scoggins* (2020) 9 Cal.5th 667, 677.)

However, the second *Clark* factor—Townsel's physical presence at the crime scene, coupled with her active participation—does support a finding of reckless indifference. (*In re Loza* (2017) 10 Cal.App.5th 38, 53 [“we find particularly significant in concluding that petitioner acted with reckless indifference his physical presence at the scene and his failure to make any attempt to prevent the shootings or to assist the victims.”].) Townsel was in the restroom with Afaf and Williams during the crucial moments when the robbery took place. (5 RT

786-788, 790-792, 816, 818-819, 826-827, 907-910; 10 RT 2048-2050, 2052-2055; People's Exh. 1A.) Tamara's testimony that she heard gagging sounds, "pshhh" noises, and a thud 30 seconds after entering the stall (4 RT 551-554. 561, 617, 642-645; 10 RT 1973-1974, 1976), along with video surveillance showing Townsel inside the restroom at that time (5 RT 909-910; 10 RT 2053, 2056-2057; People's Exh. 1A), establish that Townsel observed the violent act. After witnessing Williams's violence, Townsel ratified it and continued to participate in the robbery. Indeed, Townsel not only failed to intervene when the robbery turned violent but also took on the role of lookout, moving to stand near the restroom entrance to prevent interruption and to ensure that Williams could complete the robbery without interference. (3 RT 396-398, 400-403, 410, 422-423; 5 RT 909-910; 10 RT 2056-2057; People's Exh. 1A.) Townsel remained in the vicinity for approximately 42 seconds after casino patron Dawn exited the restroom, during which time she could have taken steps to prevent the crime or help the victim. (5 RT 793, 843, 909-910; 10 RT 2056-2057; People's Exh. 1A.) Instead, Townsel left the restroom, looked back toward the scene, and then stood outside, blocking the entry of a housekeeper who was trying to enter. (People's Exh. 1A.) This deliberate action demonstrates Townsel's conscious decision to allow the crime to unfold without taking any steps to aid Afaf. (*Clark, supra*, 63 Cal.4th at p. 619; *Loza, supra*, 10 Cal.App.5th at pp. 53-54.)

As to the third *Clark* factor, the crime's duration supports a finding of reckless indifference to human life. While the robbery

lasted only a minute and a half (People’s Exh. 1A), Townsel’s involvement during this time was critical, and the crime did not end when the assault on Afaf concluded. Townsel did not simply fail to provide aid, but instead she actively prevented others from doing so by blocking the restroom door. Importantly, the criminal act continued until appellants reached a place of temporary safety, as robbery is not confined to the act of taking property but remains ongoing until the perpetrators escape potential capture. (*People v. Debose* (2014) 59 Cal.4th 177, 205.) Thus, the duration of the crime extended beyond the immediate assault, reinforcing Townsel’s culpability. Further, the brief duration does not negate Townsel’s liability; in fact, her actions during that short period contributed directly to the successful commission of the robbery and the injury that ultimately led to Afaf’s death. While the robbery was quick, it was carefully coordinated, and Townsel had several opportunities to intervene or de-escalate the situation but chose not to do so. Even as the crime unfolded, Townsel chose not to withdraw, aligning herself with the violent conduct of Williams. Accordingly, her decision to continue participating after the assault began—despite the clear risk of serious injury or death—underscores her reckless indifference to Afaf’s life.

Admittedly, the evidence regarding Townsel’s prior knowledge of Williams’s propensity for dangerous behavior—the fourth *Clark* factor—is not as compelling as other factors in this case. Unlike situations where a defendant had a clear awareness of a cohort’s violent tendencies or criminal history involving lethal conduct, there is no direct evidence that Townsel knew

Williams was likely to engage in behavior that could result in serious bodily harm or death. However, given the swift nature of the assault, it is reasonable to infer that violence was part of appellants' original intent. Indeed, there is no indication that when appellants targeted Afaf and followed her into the restroom, they believed she would willingly hand over her purse. Even if Townsel merely thought she and Williams were going to commit a theft, she knew the crime had escalated to violence once inside the restroom. By the time the crime turned violent, Townsel made a renewed decision to participate, supporting a finding of reckless indifference.

Finally, Townsel made no effort to minimize the risk of violence during the robbery. As previously discussed, the violent sounds described by Tamara—including the “pshhh” noises, gagging, and loud thud—occurred while Townsel was still in the restroom. Given that these sounds would have unmistakably indicated that Afaf was being violently assaulted, the jury could reasonably infer that Townsel was aware of the ongoing attack and chose not to intervene. Instead, she facilitated the crime by serving as a lookout and blocking the housekeeper from entering the restroom. Such actions ensured that no one could interrupt the robbery or assist Afaf. After the robbery, Townsel did not express concern or attempt to help the victim as Tamara and housekeeper Carmen did. (3 RT 405-406, 413-414, 429-430; 4 RT 555-558, 561, 573-574; 10 RT 1970, 1974, 1986, 2058-2059; *People v. Douglas* (2020) 56 Cal.App.5th 1, 10 [defendant “displayed no interest in moderating violence or in aiding his bloody and

suffering victim”].) Rather, her behavior after the crime further demonstrates a lack of concern for the violence inflicted on Afaf, of which Townsel was fully aware. Townsel celebrated—skipping and waving her arms as she and Williams fled the scene. (5 RT 897-898; People’s Exh. 1A.) This behavior reflects a complete disregard for Afaf’s life and safety. (*Clark, supra*, 63 Cal.4th at p. 619 [a defendant’s actions after the shooting may also bear on the defendant’s mental state].)

In addition to the *Clark* factors discussed, Townsel’s knowledge of the risks inherent in the robbery cannot be overlooked. Reckless indifference does not require any particular factor; instead, the focus is on whether Townsel was aware of the risk of lethal force. (*Clark, supra*, 63 Cal.4th at p. 618; *Scoggins, supra*, 9 Cal.5th at p. 676 [“reckless indifference to human life is ‘implicit in knowingly engaging in criminal activities known to carry a grave risk of death.’ ”].) Here, the robbery targeted an 84-year-old woman whose vulnerability was clear, and the aggressive nature of the purse-snatching raised an inherent risk of serious harm. Townsel was aware that her actions, in concert with Williams, could easily result in the victim’s injury due to her age and frailty, suggesting a “grave risk of death” inherent in the plan. (*Scoggins, supra*, 9 Cal.5th at p. 676.) Afaf entered the casino holding a large designer purse (3 RT 316, 321-325, 372-373; 10 RT 2048; People’s Exh. 1A) —a clear signal to Townsel and Williams that she would be carrying cash. The decision to follow Afaf into a secluded restroom—a space without surveillance—further demonstrates Townsel’s awareness of the

dangerous circumstances of the crime. (Cf. *Clark, supra*, 63 Cal.4th at p. 621 [discussing how committing a crime in a public area reduces the risk of lethality].) The prosecutor highlighted this point in his closing argument, noting the deliberate nonverbal communication between Townsel and Williams, which included the “belly rub” gesture signaling the initiation of the robbery. (11 RT 2317-2318.) These acts indicate a shared understanding between the two that they were preying upon a defenseless victim, and the circumstances of the crime reveal that Townsel had knowledge of a “grave risk of death,” even if she did not specifically desire death to occur. (*Clark, supra*, 63 Cal.4th at p. 617.) In sum, the evidence supports the jury’s finding that Townsel acted with reckless indifference to human life during the robbery. Her felony murder conviction is therefore supported by substantial evidence.

IV. APPELLANTS FORFEITED THEIR CHALLENGE TO CALCRIM NO. 830; IN ANY EVENT, THE INSTRUCTION WAS PROPERLY GIVEN TO SUPPORT THEIR CONVICTION FOR ELDER ABUSE, AND ANY ERROR WAS HARMLESS

Appellants contend that the wording of CALCRIM No. 830—the instruction on the charge of elder abuse in count 3—allowed the jury to convict them of elder abuse under a legally invalid theory in violation of their Sixth and Fourteenth Amendment rights. (WAOB 26-31 [Arg. II.]; TAOB 39-46 [Arg. IV.].) Specifically, appellants argue that the evidence failed to support the theory that they *caused* the victim’s death, but the language of CALCRIM No. 830 may have misled the jury to believe it could establish guilt upon finding that they merely *permitted* the victim to suffer. (WAOB 29-30; TAOB 39, 43-46.) Appellants claim this

alternative theory is legally invalid, as the prohibition against willfully permitting suffering requires a legal duty arising out of a special relationship, which did not exist between appellants and Afaf. (WAOB 30-31; TAOB 39, 43-46.)

Appellants forfeited this claim by failing to object. Further, appellants' argument misconstrues both the instruction and the People's theory at trial. The People did not rely on a theory that appellants merely permitted harm to occur. Instead, the prosecutor argued—based on overwhelming evidence—that Williams and Townsel actively caused harm to Afaf through direct assaultive conduct. In any event, any instructional error was harmless.

A. Appellants' failure to object to the instruction forfeits their challenge on appeal

Preliminarily, appellants have forfeited this claim by not objecting to the trial court's instruction and not requesting modification or amplification. "As a general rule, failure to object to an instruction forfeits the issue on appeal." (*People v. Campbell* (2020) 51 Cal.App.5th 463, 499; see § 1259; *People v. Bolin* (1998) 18 Cal.4th 297, 326 [forfeiture found where defense counsel agreed to giving of instruction and raised no objection].) An exception to the rule of forfeiture arises where the instruction affected the substantial rights of the defendant. (*Campbell, supra*, 51 Cal.App.5th at p. 499; § 1259.)

Here, the record shows that Williams's and Townsel's defense counsel approved of CALCRIM No. 830 as written and made no objections to the instruction despite being afforded multiple opportunities to do so. Williams and Townsel filed

requests for jury instructions, which included CALCRIM No. 830. (2 CT 404, 406-407.) Neither Williams nor Townsel ever filed subsequent motions requesting modification or removal of the word “permitted” from CALCRIM No. 830.

The trial court and parties discussed jury instructions. (11 RT 2204-2272.) As to CALCRIM No. 830, the trial court specifically asked defense counsel if they had any objection to that instruction. (11 RT 2266.) Each counsel responded, “No objection.” (11 RT 2266.) The court subsequently addressed the jury instruction on the section 368, subd. (b)(3)(b) enhancement to the elder abuse charge. (11 RT 2266-2267.) Again, each counsel had “no objection.” (11 RT 2267.) At the end of the jury instruction discussion, the court asked counsel if they wished to discuss “[a]ny other instructions or arguments that we haven’t previously gone over[.]” (11 RT 2271.) Each counsel responded, “No.” (4 RT 2272.)

The court instructed the jury with CALCRIM No. 830 as follows:

The defendants are charged in Count 3 with elder abuse likely to produce great bodily harm or death in violation of Penal Code section 368(b)(1).

To prove that a defendant is guilty of this crime, the People must prove that:

1. The defendant willfully inflicted unjustifiable physical pain or mental suffering on Afaf [];
2. The defendant inflicted suffering on Afaf [] or caused or permitted Afaf [] to suffer, be injured, or be endangered under circumstances or conditions likely to produce great bodily harm or death;

3. Afaf [] was an elder;

AND

4. When the defendant acted, she knew or reasonably should have known that Afaf [] was an elder.

Someone commits an act willfully when he or she does it willingly or on purpose.

Great bodily harm means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

An elder is someone who is at least 65 years old.

Unjustifiable physical pain or mental suffering is pain or suffering that is not reasonably necessary or is excessive under the circumstances.

An elder does not need to actually suffer great bodily harm, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed the offense.

Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.

(2 CT 526; 11 RT 2304-2306.)

During closing arguments, the prosecutor referenced elements of the section 368 charge from CALCRIM No. 830 more than once. (11 RT 2342, 2350.) At no point did appellants' counsel object. (11 RT 2343, 2350.)

In light of the above, appellants' counsel had ample opportunity to request modification and object to the elder abuse jury instruction. Their failure to object forfeits the claim of instructional error on appeal. (See *People v. Vera* (1997) 15

Cal.4th 269, 275–276 [as a general rule, appellate court will not consider claims of error that could have been—but were not—raised in the trial court].) Moreover, the section 1259 exception to the rule of forfeiture does not apply, because the instruction was a correct statement of law and did not affect appellants’ substantial rights, as described below.

B. The elder abuse instruction was properly given in this case

Even if this argument were properly before this court, there was no instructional error. On appeal, the court reviews the wording of a challenged jury instruction *de novo* to assess whether the instruction accurately states the law. (*People v. Pettigrew* (2021) 62 Cal.App.5th 477, 497.) The reviewing court “must first ascertain what the relevant law provides, and then determine what meaning the instruction given conveys. The test is whether there is a reasonable likelihood that the jury understood the instruction in a manner that violated the defendant’s rights.” (*People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305, internal citations omitted.) In making this determination, the challenged instruction must be viewed “in the context of the instructions as a whole and the trial record.” (*People v. Mitchell* (2019) 7 Cal.5th 561, 579.) Moreover, “[i]nstructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation.” (*People v. Spaccia* (2017) 12 Cal.App.5th 1278, 1287.)

Appellants invoke *People v. Heitzman* (1994) 9 Cal.4th 189, 209-214, which held that in order to convict a defendant of elder

abuse under section 368 based on failure to prevent abuse, the defendant must have had either care and custody of the victim or the duty to control the perpetrator's conduct. (WAOB 26, 30-31; TAOB 41-43.) Specifically, appellants claim they were improperly convicted of elder abuse under section 368, subdivision (b)(1), protesting they had no legal duty in this case. They claim the jury was improperly instructed on the crime of elder abuse based on inactive conduct. (WAOB 26, 31; TAOB 39, 41-44.) There was no instructional error. The instructions as a whole, as well as the prosecutor's closing argument, made clear that the case centered on appellants' active participation in the crime, not any passive failure to act. The inclusion of "permitted" in CALCRIM No. 830 was therefore inconsequential because the jury's focus was appropriately on appellants' role in causing Afaf's fatal injuries.

As mentioned above, the jury was instructed on elder abuse with CALCRIM No. 830. (11 RT 2304-2306.) This instruction provided that the jury could find Williams and Townsel guilty of elder abuse if they willfully caused or permitted an elder to suffer unjustifiable physical pain or suffering under circumstances likely to produce great bodily harm or death. (11 RT 2304-2306.) While the instruction included the alternative term "permitted," the focus of the case and the evidence presented were entirely on appellants' active role in causing harm.

Immediately before the instructions on the charged crimes were given—including the instruction on CALCRIM No. 830—the jury was instructed on aiding and abetting with CALCRIM Nos.

400 and 401 (11 RT 2291-2292), and on conspiracy with CALCRIM No. 416 (11 RT 2292-2294). These instructions further guided the jury to focus on appellants' active participation in the crime. Under CALCRIM No. 401, the jury was required to find that Townsel knowingly aided, facilitated, or encouraged Williams' commission of the crime. (11 RT 2291-2292.) This instruction made clear that the jury was being asked to evaluate appellant's active involvement in the charged crimes that caused Afaf's death, rather than any theory of passive permission. Similarly, under CALCRIM No. 416, the jury had to find that both appellants agreed to commit the crime and took steps towards its completion. (11 RT 2292-2294.) This instruction further directed the jury to focus on appellants' active participation in the crime.

Importantly, in addition to elder abuse, the jury also convicted Williams and Townsel of first degree murder and robbery (11 RT 2469-2472; 2 CT 353, 442-445, 447-456), reinforcing that the jury found appellants' actions directly caused Afaf's death. Taken together, the instructions, in conjunction with the evidence presented at trial and the jury's verdicts, ensured that the jury considered only appellants' affirmative conduct in causing harm to Afaf.

Unlike the failure-to-act theory of elder abuse discussed in *Heitzman*, the abuse in this case involved direct and deliberate assaultive conduct. Williams and Townsel conspired to rob 84-year-old Afaf, targeting her because of her vulnerability. Williams physically assaulted Afaf by snatching her purse,

causing her to fall and strike her head, which resulted in her fatal injuries. (5 RT 907-909; 6 RT 1141-1142, 1152-1153, 1182; 10 RT 2048-2050, 2052-2053; People’s Exh. 1A.) Townsel, though not the one who delivered the fatal blow, played an active role in ensuring that the assault took place by acting as a lookout and preventing others from intervening. It is beyond dispute that appellants’ actions directly caused Afaf to suffer unjustifiable pain and suffering.

Further, the People’s theory of the case focused on appellants’ direct role in causing Afaf’s injuries, not any failure to prevent harm. The prosecutor’s closing argument, which recounted the evidence in detail, made clear that the case against Williams and Townsel was based on their direct, intentional actions that led to the robbery and the fatal assault on Afaf. The prosecutor stated, “we are talking about the actual injuries and the causation for those injuries[.]” (11 RT 2434.) The prosecutor focused solely on causation, maintaining that guilt could be found whether appellants directly caused Afaf’s injuries by willfully inflicting pain upon her person or proximately caused Afaf’s injuries from the act of taking the purse. (11 RT 2342-2350.) The prosecutor never suggested the jury could convict appellants if it found that they merely *permitted* Afaf to suffer. (11 RT 2313-2351; 2427-2450.) To the contrary, the prosecutor explicitly stated, “with elder abuse. . . Afaf was over 70 years old and it *caused* her death. . . .This is what we’ve been talking about from day one, and these are the elements.” (11 RT 2342, emphasis added.) The prosecutor addressed the defense’s proposed

hypothetical that Afaf could have left her purse by the sink and appellants “just [got] lucky and [found] the purse,” arguing that such an explanation was not plausible. (11 RT 2446.) In light of the totality of the evidence, the prosecutor stated that the only reasonable interpretation of what happened is that “they intended to rob her. The purse remained on her arm. That caused her death.” (11 RT 2449-2450.)

The prosecutor emphasized that appellants “intentionally targeted an elderly citizen” and that it was foreseeable that their actions could lead to severe injury or death. (11 RT 2342-2343.) The prosecutor argued that Williams physically attacked Afaf and stole her purse, while Townsel acted as a lookout and co-conspirator, coordinated with Williams through non-verbal cues, and directly assisted in the crime. For example, the prosecutor argued: Williams “committed the fatal act” and caused Afaf’s death by taking her purse and causing her to fall (11 RT 2342-2343); Townsel played a critical role in facilitating the robbery, pointing to the evidence that she blocked the entrance to the restroom and acted as a lookout while Williams assaulted Afaf (11 RT 2345-2350); and the elder abuse charge applied because appellants inflicted physical pain and suffering on a vulnerable, elderly woman, causing her death (11 RT 2314, 2442). In sum, the prosecutor clearly conveyed that the theory of the case was based on the active roles both appellants played in causing Afaf’s injuries, not on any failure to prevent harm.

Appellants argue that “taken together, the instructions on felony murder, causation and elder abuse improperly allowed the

jury to convict [them] of elder abuse based on the act of theft in combination with her conduct in permitting [Afaf] to fall and sustain a life-threatening injury without coming to her aid.” (WAOB 26, 31; TAOB 39, 43-44.) Appellants refer to the prosecutor’s statement, “it does not matter whether. . . they intentionally shoved her, hit her, punched her, or whether they simply just took the purse and she had an unprotected fall on the back of her head,” to argue that the prosecutor relied on the instructions to convey that it did not matter whether appellant’s taking of the purse occurred separately from the fall. (WAOB 31; 11 RT 2343.) However, when read in the context of the People’s entire closing argument, it is clear that the prosecutor meant guilt did not require a finding that appellants intentionally harmed Afaf’s person—it would be enough to find that the act of taking Afaf’s purse proximately *caused* Afaf to fall. (11 RT 2343.)

Finally, appellants’ claim that the prosecutor told the jury it could find appellants guilty of elder abuse merely for *permitting* Assad to fall is unfounded. (WAOB 31; TAOB 43-44.) The statement appellants reference, when accurately quoted, reads “they caused or permitted under circumstances likely to produce great bodily injury or death.” (11 RT 2350.) At no point did the prosecutor suggest that the jury could convict appellants based on a finding that Afaf fell entirely on her own, nor does the record indicate that the prosecutor attempted to introduce a new alternative theory by the mere use of the word “permitted.” Rather, context makes clear that the prosecutor was simply

quoting the language from the standard jury instructions, which were approved by the defense.

Therefore, “the context of the instructions as a whole and the trial record” make clear that the jury could not have understood the instruction to allow conviction for elder abuse under a legally impermissible theory. (*Mitchell, supra*, 7 Cal.5th at p. 579.) Because CALCRIM No. 830 was a correct statement of law and did not affect appellant’s substantial rights, this court should reject appellants’ claim of instructional error.

C. Any error was harmless

Assuming, for the sake of argument, that the instruction on elder abuse should have omitted the reference to “permitting” the elder to suffer, the error was harmless. Appellants contend the error is of constitutional dimension, such that prejudice must be evaluated under the “beyond a reasonable doubt” standard of *Chapman v. California* (1967) 386 U.S. 18, 24. (WAOB 29; TAOB 44.) But “ ‘not every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation.’ ” (*People v. Letner & Tobin* (2010) 50 Cal.4th 99, 182.)

Misdirection of the jury, including incorrect, ambiguous, or conflicting instructions that do not amount to federal constitutional error, are reviewed for prejudice under the “reasonable probability” standard of *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Beltran* (2013) 56 Cal.4th 935.) The error here was not prejudicial under either standard.

“Closing arguments to the jury can be a relevant consideration in the prejudice equation,” so that is a good place to

start the analysis. (*People v. Maurer* (1995) 32 Cal.App.4th 1121, 1130.) For example, prejudice may result where a prosecutor exploits an instructional ambiguity to argue an invalid legal theory. (E.g., *People v. Hayes* (2009) 171 Cal.App.4th 549, 557.)

In this case, however, any ambiguity suggesting the jury could convict appellants of elder abuse if they merely *permitted* Afaf to suffer, be injured, or endangered under circumstances or conditions likely to produce great bodily harm or death “was not exploited by the prosecutor in argument.” (*People v. Johnson* (1992) 3 Cal.4th 1183, 1251.) To the contrary, as discussed in the preceding section, the prosecutor’s closing argument further reinforced that the People’s case was based on appellants’ direct participation in the crime. (11 RT 2342-2343, 2442, 2449-2450.)

In other words, the prosecutor’s argument resolved any ambiguity regarding CALCRIM No. 830 in appellant’s *favor*. “Nothing . . . precludes a . . . court from assuming that counsel’s arguments clarified an ambiguous jury charge. This assumption is particularly apt when it is the *prosecutor’s* argument that resolves an ambiguity in favor of the *defendant*.” (*People v. Mills* (2012) 55 Cal.4th 663, 680, quoting *Middleton v. McNeil* (2004) 541 U.S. 433, 438; see also *People v. Nelson* (2016) 1 Cal.5th 513, 545 [assuming instructions were ambiguous as to required elements, “both the prosecutor and defense counsel emphasized in argument the correct interpretation of the instructions on this point. . . . Thus, nothing in the parties’ arguments suggested that the jury need not find all the elements of the crimes to have been proven beyond a reasonable doubt”]; *People v. Hajek & Vo* (2014)

58 Cal.4th 1144, 1220-1221 [“The prosecutor’s closing argument . . . clarif[ied] any potential ambiguity in the instruction. [Defendant] points to nothing in the record that would indicate any confusion by the jury on this point”]; *Letner & Tobin, supra*, 50 Cal.4th at p. 182 [ambiguous instructions regarding requisite intent were harmless where instructions did not bar jury from making the necessary finding and “the prosecutor presented a correct and complete statement of the law in her arguments following the trial court’s instructions”]; *People v. Hughes* (2002) 27 Cal.4th 287, 341 [instructional ambiguity not prejudicial when “[v]iewing together the instructions, counsel’s legally correct arguments, and the evidence presented to the jury for its consideration”]; *People v. Beeler* (1995) 9 Cal.4th 953, 984 [where defendant claimed that instructions allowed jury to find special circumstance true without finding requisite specific intent, “the prosecutor’s closing argument foreclosed any realistic possibility of the jury not believing they had to find intent to kill for the special circumstance”]; *People v. Lee* (1987) 43 Cal.3d 666, 677-679 [conflicting instructions that could be read to eliminate legal requirement for guilt were harmless beyond a reasonable doubt in light of entire instructional charge and arguments of counsel]; *People v. Phea* (2018) 29 Cal.App.5th 583, 614, fn. 23 [“We may also consider the argument of counsel in determining the effect on a jury of purported confusion or ambiguity in jury instructions. We note the prosecutor said nothing that would cause the jury to convict of the charged offenses based solely on

the propensity evidence or to convict him of the charged offenses based on the preponderance of the evidence standard”).)

Apart from the prosecutor’s clear discussion of the applicable law, the surveillance footage, witness testimony, and forensic evidence demonstrated that Williams snatched the purse from Afaf’s arm, causing her to fall and sustain fatal injuries, while Townsel acted as a lookout. (5 RT 907-909; 6 RT 1141-1142, 1152-1153, 1182; 10 RT 2048-2050, 2052-2053; People’s Exh. 1A.)

Most significantly, the jury’s verdicts on the other charges confirm that any ambiguity in CALCRIM No. 830 was harmless. The jury convicted Williams and Townsel of both murder and robbery, which necessarily required findings that they caused Afaf’s death (CALCRIM Nos. 540A & 540B [Felony Murder: First Degree]; 2 CT 516-518) and intended to commit the robbery by means of force or fear (CALCRIM No. 1600 [Robbery]; 2 CT 528). These properly given instructions required the jury to resolve the question of causation and intent. Thus, even if the elder abuse instruction was ambiguous, the jury’s verdicts on the other counts shows that it determined Williams and Townsel caused Afaf to suffer fatal injuries as part of their direct participation in the robbery. (See *People v. Dieguez* (2001) 89 Cal.App.4th 266, 277 [erroneous instruction may be cured if essential material is covered by other correct instructions properly given].) This forecloses any possibility that the jury relied on the “permitting” theory to convict on the elder abuse charge.

In sum, considering the instructions as a whole, the prosecutor’s argument correctly clarifying CALCRIM No. 830,

and the evidence before the jury, this court should find that the purported instructional error “ ‘must have made no difference in reaching the verdict obtained.’ ” (*Maurer, supra*, 32 Cal.App.4th at p. 1131.)

V. THE PAROLE REVOCATION FINE SHOULD BE STRICKEN

Williams contends that the parole revocation fine imposed and suspended pursuant to section 1202.45 must be stricken. (WAOB 32-33 [Arg. III.]) Respondent agrees. This court should order that the parole revocation fine be stricken as to both appellants.

As to Williams and Townsel, the trial court imposed and suspended a \$300 parole revocation restitution fine under section 1202.45. (3 CT 619, 621, 686, 692; 12 RT 2528, 2533.) Section 1202.45, subdivision (a), provides, in pertinent part:

In every case where a person is convicted of a crime and his or her sentence includes a period of parole, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4.

A parole revocation fine may not be imposed for a term of LWOP, as the statute is expressly inapplicable where there is no possibility of parole. (*People v. McWhorter* (2009) 47 Cal.4th 318, 380 [parole revocation fine stricken when attached to determinate term stayed by section 654]; *People v. Battle, supra*, 198 Cal.App.4th at pp. 63, 70, 85 [sentence of indeterminate term of LWOP precluded imposition of parole revocation fine]; *People v. Carr* (2010) 190 Cal.App.4th 475, 482 & fn. 6; *People v.*

DeFrance (2008) 167 Cal.App.4th 486, 505 [parole revocation fine inapplicable to sentence of LWOP plus one-year enhancement]; *People v. Jenkins* (2006) 140 Cal.App.4th 805, 819; *People v. Oganessian* (1999) 70 Cal.App.4th 1178, 1183; compare *People v. Brasure* (2008) 42 Cal.4th 1037, 1075 [parole revocation fine not stricken when attached to unstayed determinate terms for other offenses].)

Respondent agrees with Williams that the fine should be stricken. Although Townsel did not raise this issue on appeal, the reasoning for striking the fine applies equally to Townsel. Courts have the authority to correct errors that are apparent on the record, even when not raised by both parties, in the interest of judicial economy and to ensure uniform and fair sentencing. (See *People v. Smith* (2001) 24 Cal.4th 849, 852 [an unauthorized sentence may be corrected at any time, whether or not there was an objection in the trial court].) Since both appellants received a sentence of LWOP, a parole revocation fine cannot be imposed in this case. Therefore, the fine should be stricken.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the parole revocation fine be stricken, and that the judgment be affirmed in all other respects.

Respectfully submitted,

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October 23, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT’S BRIEF uses a 13 point Century Schoolbook font and contains 14,116 words.

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October 23, 2024

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