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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re JAYSON G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JAYSON G.,

Defendant and Appellant.

A132465

(San Mateo County
Super. Ct. No. 78018

(Contra Costa County
Super. Ct. No. J11-0865)

(San Francisco City & County Super.
Ct. No. JW11-6072)

Jayson G. was declared a ward under Welfare and Institutions Code section 602 based on his having been involved in forcibly taking a cell phone from a municipal bus passenger in San Francisco and his having provided a false statement to the police. He raises several issues on appeal due to (1) insufficiency of the evidence; (2) the court's order that he "take all prescribed medications"; (3) miscalculation of the maximum custody time; (4) insufficient number of custody credits; and (5) a clerical error in the clerk's minutes, reflecting an incorrect statutory reference to the false statement offense. The Attorney General agrees with the last three points. We modify the judgment accordingly and remand for a recalculation of custody credits. We otherwise affirm the jurisdictional and dispositional orders.

STATEMENT OF THE CASE

On June 9, 2008, minor Jayson G. was declared a ward in San Mateo County after he admitted two felony counts of second degree burglary (Pen. Code, § 460, subd. (b)) and one misdemeanor count of battery (§ 242).¹ He was ordered to serve 60 days in juvenile hall. On November 3, 2008, Jayson admitted one misdemeanor count of vandalism (§ 594, subd. (b)(2)) and one felony count of possession of a shuriken (former § 12020, subd. (a)) and was again ordered to serve 60 days in juvenile hall. On July 30, 2009, Jayson admitted a felony attempted second degree robbery (§§ 212.5, 664). He was ordered to serve 90 days in juvenile hall but 50 days of the sentence were stayed and subsequently vacated.

On February 9, 2011 a wardship petition was filed in San Francisco County alleging first degree robbery (§ 212.5, subd. (a)), assault (§ 245), false imprisonment (§ 236), and making false statements to a police officer (§ 148.9, subd. (a)). On April 29, 2011, the court found after a contested hearing that Jayson had committed a felony first degree robbery (§§ 212.5, subd. (a)) and had misrepresented his age to a San Francisco police officer (§ 148.9, subd. (a)), a misdemeanor. The other charges were not sustained.

Because Jayson's mother lived outside of San Francisco County and he was already a ward of the San Mateo County Juvenile Probation Department, the court transferred the case to San Mateo County for disposition. It was subsequently learned that Jayson's mother had relocated to Contra Costa County, so the San Mateo court transferred the case to that county for disposition. The court first awarded Jayson 270 days of custody credit: 182 days in San Mateo County and 88 days in San Francisco County.

On June 22, 2011, a disposition hearing was held in Contra Costa County. Jayson was declared a ward of the court with no termination date and committed to the Youthful Offender Treatment Program (YOTP). The maximum custody time was set at 10 years

¹ Unless otherwise specified, statutory references are to the Penal Code.

or until Jayson reaches age 21, whichever occurs first. He received 137 days of actual custody credit.

STATEMENT OF THE FACTS

The incident that brings Jayson before us occurred on a San Francisco municipal bus on January 25, 2011. Jaiwoong Choi was traveling home at approximately 10:00 p.m. when six to eight people, including one or more females, boarded the bus and one of them began to spray graffiti. Some of them entered through the front door and some through the rear. As Choi prepared to leave the bus, a large male hit him on his left temple/eye area, causing his glasses to break and fall off and causing Choi to fall backwards. Two to four people reached toward him and took his \$800 Samsung Galaxy cellular phone from his left hand.

Dazed after being hit, Choi could not identify the person who took the phone. He did not recognize Jayson as one of the group. He did, however, identify a female codefendant, K.S., as having been on the bus, although he could not say what role, if any, she played in the robbery. The cell phone was never recovered.

On February 7, 2011, Jayson was approached by police at a Burger King restaurant because two of the officers believed he resembled one of the youths seen on a surveillance video of the robbery. Jayson was hiding a large bottle of vodka with the cap unsealed under his sweatshirt. He also gave the officer a false birthdate, pretending to be eighteen.² He admitted being on the bus at the time of the incident but said, “I wish I wasn’t [there]—I wish I didn’t know those guys.”

The police took him to Ingleside station, where he was questioned further and gave a more complete account of his version of the events. In a recorded interview he

² In his reply brief Jayson claims he did not give a false statement of his age or birthdate, referring to the transcript of his statement taken at the Ingleside police station. According to police testimony, however, the false statement was made outside the Burger King restaurant before he was taken to the station. That statement was not recorded or transcribed. Therefore, the statement quoted in Jayson’s reply brief is irrelevant. Moreover, he conceded the allegation. We therefore accept the court’s true finding that he lied.

said he was riding the bus with two female companions and observed the robbery but had “nothing to do with that.” He claimed he had seen the man who assaulted Choi “around” prior to the incident, and called him a “tagger” who went by the name “Chedda,” but claimed he did not know him prior to the incident. The bus surveillance videos (without audio) and the audio recording of Jayson’s police interview were admitted in evidence. Their contents will be laid out in more detail in our discussion of the issues.

DISCUSSION

Sufficiency of the evidence

Jayson claims there was insufficient evidence to support a finding of guilt beyond a reasonable doubt on the robbery count. We review the 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—from which a “reasonable trier of fact could have found the prosecution sustained its burden of proving the defendant guilty beyond a reasonable doubt.” (*In re Robert V.* (1982) 132 Cal.App.3d 815, 820; see also, *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) We must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence, whether direct or circumstantial. (*In re James G.* (1985) 165 Cal.App.3d 462, 469.)

The finding of guilt was based largely on video surveillance tapes from several cameras on the municipal bus. The videos show Jayson approach Choi after he was attacked and grab at the victim’s left arm or shoulder, while another youth (apparently Chedda) also reached toward Choi. He claims the videos show only that he “touched” Choi’s left arm and that they are consistent with his denial of wrongdoing during the police interview. He portrays himself as an innocent passenger on the bus at the time of the Choi incident.

Jayson further argues that even if the evidence was sufficient to prove he was involved in taking Choi’s cell phone, it could have lawfully resulted in nothing more than a theft finding, as there was no evidence he had intent to steal when Chedda struck Choi. (*People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Webster* (1991) 54 Cal.3d 411,

443; *People v. Morris* (1988) 46 Cal.3d 1, 19.) Reminding us that every crime requires a joint operation of act and intent (*People v. Seaton* (2001) 26 Cal.4th 598, 644), he contends the evidence showed at most a theft without the element of force by Jayson, and no intent to steal formed at the time Chedda struck Choi.

Because Choi could not identify Jayson as having been involved in the robbery, and because no other witnesses to the offense testified, much depends on the video surveillance tapes. We have reviewed the DVD of those tapes and find the Attorney General's description substantially accurate. Putting together the videos with Jayson's statement to the police and other testimony it is possible to reconstruct the following events:

At a bus stop approximately six or seven male youths, including Chedda (a youthful looking male with a pony tail, wearing a light grey T-shirt), along with the minor's co-responsible, 16-year-old K.S., entered the bus through the rear door. The first male sat on the ledge below the rear window, Chedda stood near the rear door, K.S. stood holding onto a pole near Choi, and the rest of the group sat in various seats.

A young woman in a checkered coat (Stephanie) got on through the front door. Jayson followed her. He was followed by another young woman wearing a grey, hooded sweatshirt (Marilyn). Jayson wore a black Giants sweatshirt with the hood down. Jayson and the two young women immediately walked to the rear of the bus.

K.S. and Stephanie appeared to know each other; they engaged in an animated conversation as they both held onto the pole. In the meantime, Jayson had settled into one of the front-facing seats across from Chedda. Chedda stood immediately in front of the rear door, facing toward the back of the bus.

Jayson got up, moved toward the back of the bus, and then returned to his seat. He did not sit back down, but perched with one foot on the seat and faced to the rear.

Choi, who was seated near the rear of the bus with his cell phone in his right hand, pulled the stop signal. Choi stood up and started toward the rear door. Chedda punched Choi in the upper face without warning. Jayson, now with his hood up, immediately rushed Choi, practically side-by-side with Chedda. Chedda attempted to push Choi away

from the rear door. Choi fell or moved backwards, crouched over with his face down, trying to protect his face with his arms.

Jayson reached out his right hand toward Choi's left shoulder and grabbed at Choi's shirt or one of the straps on his backpack, possibly trying to pull Choi down. By this time, K.S. had also joined in, grabbing Choi's backpack from behind, while Chedda reached out and touched or pushed down on Choi's neck. The group effectively had surrounded Choi and one of them wrestled the cell phone from him.

After the attack, Jayson approached the rear door together with Chedda. Chedda then turned and walked toward the front door, leaving Jayson, K.S., and Stephanie on the rear door steps. Then K.S., followed by Jayson (with his hood up), also walked to the front of the bus.

Jayson sat in a seat near the front of the bus and conversed with K.S. At the next stop, Jayson stood up and waited for Stephanie. Stephanie followed Chedda off the bus and Jayson followed her. K.S. returned to the back of the bus, where she, Marilyn, and several of the other male youths exited through the rear door.

Jayson claims the tapes show he was merely a passenger on the bus at the time of the Choi robbery or at most that he committed an impulsive theft after Chedda punched Choi. True, the court found insufficient evidence of a prior conspiracy to rob Choi. But the tapes show Jayson actively participated in forcibly dispossessing Choi of his cell phone immediately after Chedda hit him.

The San Francisco court found Jayson deprived Choi of his property "by force and fear." The evidence allowed an inference that Jayson, K.S., and Chedda acted in concert. Jayson, K.S., and Chedda all got on the bus at the same stop. When Chedda punched Choi, Jayson immediately rushed to help. By viewing individual frames, it is possible to see that Jayson grabbed at Choi's left shoulder area. The three active robbers, along with others who had entered the bus at the same time, also left the bus at the same stop.

Jayson points out that Choi failed to identify him at the jurisdictional hearing as being on the bus or involved in the crime. That is not dispositive. (See, e.g., *People v. Hawkins* (1968) 268 Cal.App.2d 99, 103-104.) Jayson himself admitted being on the bus

at the time, and the juvenile court could see from the videos that he was involved in the struggle with Choi. Choi testified that he tried to hold onto the cell phone but it was wrested from his grip. In such circumstances the crime is robbery, not simply theft. (See, e.g., *People v. Burns* (2009) 172 Cal.App.4th 1251, 1257.) The videos show Jayson was involved in the application of force against Choi, and it may be inferred he had the intent to steal Choi's property at the time.

Jayson also relies on his own exculpatory statements to the police, but the recording contains numerous instances of self-contradiction and reluctant admission. For instance, at one point Jayson said he was "with a whole bunch of taggers." Yet, he also insisted he was only there with "Stephanie and Marilyn" and did not "know the other people" or "anything about them." He was vague about how he knew Stephanie and about her last name. He initially denied knowing Chedda, then admitted he had "seen him around," knew he was a "tagger," and knew his moniker. At first he was evasive about whether he had seen Chedda punch Choi, then admitted he had seen the punch. He initially denied touching Choi but eventually admitted he "probably" touched him without realizing it. He even gave inconsistent answers about where he lived.

Given the foregoing recitation of the surveillance tapes' content, as well as Choi's testimony and Jayson's unconvincing denials, the court could reasonably conclude that Jayson struggled with Choi to obtain possession of the phone. The evidence was sufficient to support the true finding on count one.

Medication Condition of Probation

Jayson contends the court violated due process and his right to privacy, as well as imposing an unreasonable and overbroad condition of probation, when it ordered him to take "all prescribed medications." We begin by noting the court's oral order, which controls over the written order (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385), was actually "to take all prescribed medication *if you have any prescriptions.*" (Italics added.) By its terms the probation condition would seem to apply only to medications prescribed at the time of disposition.

The Attorney General contends the issue has been forfeited by failure to object at the disposition hearing. We agree. “[F]ailure to object to a condition of probation does not necessarily avoid the normal rule of forfeiture on appeal simply because it involves a constitutional challenge on grounds of vagueness or overbreadth. ([*In re Sheena K.* (2007) 40 Cal.4th 875,] 886–887.) A challenge on such grounds is forfeited by failure to object unless the error is one that is ‘capable of correction without reference to the particular sentencing record developed in the trial court.’ (*Id.* at p. 887.) In the latter circumstance, such a claim may ‘present a pure question of law’ properly addressed on appeal, even if there was no objection below. (*Ibid.*)” (*In re Luis F.* (2009) 177 Cal.App.4th 176, 181.) In *Luis F.*, because resolution of the issue required a review of the sentencing record, we concluded the issue had been forfeited. (*Id.* at p. 182.) We nevertheless addressed it in the exercise of our discretion to do so. (*Id.* at p. 183.) We do not find the present case calls for the same exercise of discretion.

First, the phrasing of the condition as orally pronounced limited its scope to any prescriptions currently in effect at the time of disposition. The record strongly suggests that Jayson was not on any prescription medications at that time. His attorney represented that “the only medication he’s on [is] vitamins.” Although he had been on Trazadone at some earlier point in time for a sleep disorder and nightmares, it appears he was not under a prescription for such a drug at the time of the disposition hearing. Therefore, the probation condition had no meaningful effect and may have been included only to take effect if it were later discovered that Jayson, in fact, had a prescription for Trazadone or some other psychoactive medication at the time of disposition. In any case, the court’s order did not compel Jayson to take medications that might be prescribed in the future.

Moreover, Jayson had been evaluated by a mental health professional in 2008 as having a serious case of attention deficit hyperactivity disorder (ADHD), falling in the 96th percentile of “attention difficulties compared to other children of his age.” The ADHD interfered with his school performance and test-taking abilities. The 2008 mental health evaluation noted that “[a]dolescents who fall into [Jayson’s] rare classification

often tend to act out” Such individuals often tend to have impulsive, provocative, and resentful personality styles. Jayson himself was described as having “agitated and confrontational behavior.” The evaluator suggested that Jayson see a psychiatrist for possible treatment with medication, from which he would “likely benefit.” Therefore, if the court did require him to take medications for ADHD it would have been reasonably related to the kinds of crimes Jayson had been prone to commit and the current offense in particular. His crimes involved both impulsivity and aggression. Taking medication for ADHD could potentially have ameliorated the symptoms, thereby minimizing his impulsive acting out behavior—and thus his future criminality.

Indeed, in light of the underlying record, it appears that the condition of probation implicitly was limited to medication intended to treat ADHD and perhaps sleep disorder. The court did not articulate this properly in its order, but we believe it was so understood by the parties. We are confident that the condition of probation was not intended to apply to Jayson’s refusing some other medication prescribed for a malady unrelated to his acting out behavior.

Finally, the record is not entirely clear as to the exact status of Jayson’s ADHD or sleep disorder prescriptions at the time of disposition. On June 15, 2011, the date set for disposition, the court continued the hearing to June 17, asking the probation officer to then give “a brief oral update on minor’s current medication status.”³ There is no reporter’s transcript from June 17 and the minute order from that date does not record what, if anything, the probation officer reported.

³ The record does not contain a reporter’s transcript of this proceeding. The quoted remark is from the clerk’s minutes. It is not clear what discussion precipitated the court’s request for more information. Presumably, however, it derived from the probation officer’s recommendation that Jayson be ordered to “[t]ake all prescribed medications,” which appears to be a standardized recommendation on a form produced by the probation department. Although we apply the forfeiture rule in this case, we do not condone the probation department’s recommendation of such sweeping medication conditions as a routine matter. Medication conditions of probation must be more precise and narrowly tailored to address the individual’s medical issues that may have an impact on future criminality. (*In re Luis F.*, *supra*, 177 Cal.App.4th at pp. 188-189.)

At the continued hearing on June 22, however, Jayson's own attorney said, "He did in the past [] take[] Trazadone and does not currently have a prescription for that." What else may have been known by the court based on the June 17 probation officer's report is not contained in the record with which we have been provided. We will not presume from this record that there was no medical basis for the court's order, given that it went out of its way to acquire information related to Jayson's medication status before it imposed the medication condition.

It is the appellant's burden to provide us with a record that demonstrates the error from which he seeks relief. (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1452; *People v. Fabricant* (1979) 91 Cal.App.3d 706, 710-711 & fn. 3.) Had Jayson's counsel objected to the probation condition it is likely we would have had a clearer record upon which to base our review. In the circumstances we see no reason to excuse the forfeiture.

Maximum Term of Confinement

Jayson next argues the maximum term of confinement was incorrectly calculated as ten years. The parties agree the maximum term of confinement was nine years, four months, calculated as follows: six years for robbery (San Francisco petition), two months for false statement to a police officer (San Francisco petition), eight months for attempted robbery (admitted in San Mateo July 30, 2009), eight months for possession of a shuriken (admitted in San Mateo November 3, 2008), four months for vandalism (admitted in San Mateo November 3, 2008), eight months each for two second-degree robberies (admitted in San Mateo June 9, 2008), and two months for battery (admitted in San Mateo June 9, 2008).

Jayson contends the matter should be remanded to the Contra Costa County juvenile court for imposition of a maximum term of confinement of nine years, four months "or less." A remand for exercise of such discretion is unnecessary. The court clearly showed its intention to aggregate the terms on the current and prior sustained petitions; only the detailed calculation was in error. We therefore order the Contra Costa County court to correct the maximum term of confinement to nine years, four months.

Predisposition custody credits

Jayson claims he was improperly denied custody credits for his previous custody in San Mateo County. Because the San Mateo County court had already awarded him 270 days of credit, and he spent 34 more days in custody prior to disposition, Jayson initially claimed he was entitled to a total of 304 days, not the 137 days actually awarded, which included only those days attributable to the San Francisco bus incident.

The Attorney General agrees in theory but disagrees with the actual calculation. Both parties agree that Jayson was entitled to custody credits aggregated from the San Mateo County and San Francisco County offenses. (*In re Stephon L* (2010) 181 Cal.App.4th 1227, 1229, 1232-1233; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1068.) However, he was entitled only to actual custody credits, not conduct credits. (*In re Ricky H.* (1981) 30 Cal.3d 176, 185-190.)

The Attorney General argues the case should be remanded for a recalculation of custody credits, and in his reply brief Jayson concurs. Remand is necessary because the Contra Costa County court failed to award Jayson any credits for custody on the prior sustained petitions, while the San Mateo County court improperly awarded him excess credits which included credits for “good behavior.” He was legally entitled to credit for all periods of actual secure custody attributable to both the prior San Mateo County sustained petitions and the current San Francisco County petition (but not for periods on electronic monitoring). (*In re Lorenzo L.* (2008) 163 Cal.App.4th 1076, 1079-1080; *In re Randy J.* (1994) 22 Cal.App.4th 1497, 1505-1507.) He was not entitled to good conduct credits previously awarded by the San Mateo County court. Upon remand, the Contra Costa County court shall recalculate predisposition credits accordingly.

Clerical Error

Jayson’s final claim is that the April 29, 2011, San Francisco County jurisdictional order incorrectly specifies the misdemeanor that he committed. That order states he was found to have engaged in conduct that would have constituted a violation of section “148(A)(1),” [*sic*] described as “resist[ing], delay[ing], or obstruct[ing],” etc. a peace officer. In fact, however, the petition alleged and the court found true a violation of section 148.9, subdivision (a), making a false statement to a peace officer.

The Attorney General agrees there was a clerical error. We therefore order the superior court of the City & County of San Francisco to prepare an amended jurisdictional order with the correct statutory reference.

DISPOSITION

The cause is remanded to the Contra Costa County Superior Court for a recalculation of custody credits in accordance with this opinion. That court shall also modify the dispositional order to reflect a maximum term of confinement of nine years, four months. The superior court of the City & County of San Francisco shall prepare an amended jurisdictional order indicating the minor violated Penal Code section 148.9, subdivision (a)(1), not Penal Code section 148(a)(1). It shall forward a copy of the amended order to the Contra Costa County Superior Court. In all other respects the jurisdictional and dispositional orders are affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.