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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re VANESSA M., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

VANESSA M.,

Defendant and Appellant.

A134045

(City and County of San Francisco  
Super. Ct. No. JW11-6205)

Defendant Vanessa M., a minor 13 years of age, appeals from a judgment of the juvenile court finding her guilty of robbery and assault. Her court-appointed counsel has filed a brief raising no legal issues and asking this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

**PROCEEDINGS BELOW**

On September 19, 2011, the San Francisco District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) charging defendant with robbery (Pen. Code, § 211/212.5 )<sup>1</sup> (count 1), assault by means of force likely to produce great bodily injury (§ 245.2) (count 2), and conspiracy to commit robbery (§ 182, subd. (a)(1))

<sup>1</sup> All subsequent statutory references are to the Penal Code.

(count 3). After a contested jurisdictional hearing, the court sustained the first two counts but found that the third count, alleging conspiracy to commit robbery, was not true.

At a contested dispositional hearing on December 6, 2011, the court declared defendant a ward of the court and ordered her to out-of-home placement at the San Francisco Boys & Girls Home.

Timely notice of this appeal was filed on December 14, 2011.

### **FACTS**

On September 11, 2011, while waiting at the Forest Hill Muni Station for the 52 bus, 17-year-old Sierra S. was approached by three girls, one of which she identified in court as defendant. The three appeared to be with another girl and a slightly older boy. She had never previously seen any of these people. Though originally seated far away from Sierra, the girls came over and sat close to Sierra, on either side of her. The girls asked if she had any money, and told her to take them to McDonald's. Though she said she had no money, the girls persisted. When the bus arrived and she got on it, the girls followed. Sierra sat in the back to get away from them, but one girl sat beside her. When Sierra moved to the front of the bus, all three girls moved to surrounding seats and again asked her for money and said they wanted her to give them the purse-like bag she was carrying.

When Sierra loudly asked the girls why they were harassing her, one said, "If you get me in trouble with the bus driver, I swear to God I'm going to kill you." When Sierra asked to be left alone, the girls mocked her, saying "horrible things." After one girl said she was "going to get my brother to rape you," and another told her the girl who made this threat "just got out of juvey for cutting a bitch's head off," Sierra became very frightened.

After huddling in conversation, the three girls pulled the cord to stop the bus. When the vehicle stopped and one girl alighted, Sierra thought they would all leave. But one of the two other girls grabbed her by the hair, and all of them dragged her off the bus, threw her to the ground, and began kicking and punching her in an attempt to obtain her purse and cell phone. During this time Sierra was terrified, screaming for help, and

clutching her purse and phone. After about a minute, Sierra released her purse and phone, which the girls grabbed. After one girl kicked her once more, the three fled with the purse and cell phone.

After Sierra returned to the bus, the driver asked if she wanted to call an ambulance or the police. She said no, rode the bus for about five more minutes, got off and then walked home and called the police.

At the jurisdictional hearing, defendant relied on the statutory presumption that a minor under the age of 14 is incapable of committing a crime. As Penal Code section 26 declares, “All persons are capable of committing crimes except . . . [c]hildren under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.” Accordingly, a minor’s appreciation of the wrongfulness of an act cannot be inferred from the mere commission of the act itself; as that would frustrate the purpose of the statute. (*In re Manuel L.* (1994) 7 Cal.4th 229, 239.)

Because Vanessa never claimed she did not participate in the alleged offenses, the jurisdictional hearing focused almost entirely on whether the prosecution could provide “clear proof” she knew the wrongfulness of the charged acts at the time she committed them.

At the commencement of the hearing, defendant filed two in limine motions. The first was a motion to exclude as evidence statements Vanessa made to the probation officer, in which she apparently acknowledged her awareness of the wrongfulness of her acts or made statements from which such awareness could reasonably be inferred. Before she made the statements, a probation officer gave Vanessa a document entitled “Specific warning to be given youngsters regarding interrogation by a probation officer,” which contained the conventional warnings mandated by *Miranda v. Arizona* (1966) 384 U.S. 436. To the question “Do you understand the rights I have explained to you?” Vanessa marked the box stating “Yes.” However, to the next question—“Having these rights in mind, do you wish to talk to me now?”—Vanessa marked “No.”

After hearings the arguments of counsel on the admissibility of Vanessa's statements to the probation officer, the court granted her motion and excluded the statements.<sup>2</sup>

In her second in limine motion, which sought an order declaring Vanessa "incapable under Penal Code § 26," defendant acknowledged a court could consider evidence of prior criminal conduct by a minor under 14 where the requisite knowledge of wrongfulness was shown in determining his or her capacity in similar subsequent acts (*In re Clyde H.* (1979) 92 Cal.App.3d 338, 344), and may therefore take judicial notice of previously sustained petitions for the purpose of determining whether a minor knew the wrongfulness of the current acts. (*In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1160; *In re Martin L.* (1986) 187 Cal.App.3d 534, 539.)

Defendant's counsel argued that Vanessa's "only prior sustained petition is for violating Penal Code § 484 [defining "Theft"], shoplifting from Macy's," and "the fact that Vanessa M. knew it was wrong to steal from Macy's does not necessarily prove that Vanessa M. knew of the wrongfulness of her acts on the bus on September 11, 2011." The court denied this motion.

Accordingly, at the jurisdictional hearing the district attorney offered in evidence, and the court received, a certified copy of the jurisdictional finding in a previous case in which, represented by the same public defender that represented her in this case, Vanessa admitted a violation of section 484, subdivision (a) (i.e., theft), on July 21, 2011, and her attorney "stipulated pursuant to Penal Code section 26 that the minor understood the wrongfulness of committing violation of section 484 sub[division] (a)." The district attorney agreed with the public defender, and stipulated, that the public defender

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<sup>2</sup> The court reasoned as follows: "I think that the burden is on the district attorney to prove the PC 26 issue. It's a very fundamental part of proceeding with the underlying case, and I think that reading those cases, [referring to *In re Manuel L.*, *supra*, 7 Cal.4th 229 and *In re Richard T.* (1985) 175 Cal.App.3d 248, overruled on other grounds in *In re Manuel L.*], that *Manuel [L.]* really did not change the burden of proof. And given the fact that *Richard T.* is the closest we have right now and the fundamental nature of interrogating the minor on an issue that can clearly be used against her, that it is certainly [the] better practice if not due process requirement that *Miranda* be observed."

stipulated to capacity in the earlier case only with respect to the petty theft charged in that case.

At the close of the jurisdictional hearing the trial court found “on the PC 26 that Vanessa in fact did understand what was wrong in her behavior, and I think that that is pretty evident by her statements, by the fact that she fled, and by the behavior she engaged in.”

The court went on to find that the allegations of robbery and assault in the petition were true beyond a reasonable doubt, but also found that the alleged conspiracy to commit robbery was not true, stating that “[c]andidly it looks a lot more like a pack mentality behavior to me.”

### **DISCUSSION**

The record supports the trial court’s finding of clear proof that at the time of committing the charged offenses defendant knew said acts were wrongful.

No material evidence was received by the court that was legally inadmissible and objected to nor was any admissible evidence impermissibly excluded over objection.

The judgment is supported by substantial evidence.

Defendant was at all times represented by able counsel who protected her rights and interests.

The disposition is authorized by law.

Our independent review having revealed no arguable issues that require further briefing, the judgment sustaining the robbery and assault counts of the petition and the disposition are affirmed.

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Kline, P.J.

We concur:

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Haerle, J.

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Lambden, J.