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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re K.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.B.,

Defendant and Appellant.

A134568

(Alameda County
Super. Ct. No. SJ11179971)

K.B. (appellant), born in August 1998, appeals from the juvenile court’s jurisdictional and dispositional orders sustaining a finding of attempted grand theft from a person (Pen. Code, §§ 664/487, subd. (c)), declaring him to be a ward of the court, and placing him on probation. He contends the orders must be reversed because there was insufficient evidence that he appreciated the wrongfulness of his conduct. We reject the contention and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

An original wardship petition was filed November 22, 2011, alleging appellant committed an attempted robbery (Pen. Code, §§ 664, 211) and a felony criminal threat (Pen. Code, § 422). At a contesting jurisdictional hearing, Miritza Parra testified that on November 18, 2011, she was working outside a Safeway store in Union City, ringing a bell and asking for donations on behalf of the Salvation Army. She had reported to

Safeway at 10 or 10:30 a.m. that day. She stood by one of the doors to the Safeway store and had with her a red kettle in which the donations were placed. About three hours after she reported for work, she saw appellant and another individual walk by and stand by another door to the Safeway store. At about 2 p.m., Parra took a lunch break, leaving the red kettle inside the Safeway store. When she returned from lunch, she saw appellant trying to sell some jewelry while standing in “[her] spot,” i.e., the door by which she was previously standing while collecting donations. Parra therefore placed herself on the other side of the same door by which appellant was standing. At some point, after not being able to sell any of his jewelry, appellant asked Parra to move. Parra responded she could not because that was the spot “where they put [her].” As Parra began to ring her bell, appellant started asking her questions, including where she worked, who her bosses were, and where her office was. Parra responded to some of the questions and appellant asked additional questions, including whether she was paid well and where she had obtained her red Salvation Army jacket.

As appellant asked “question after question,” Parra asked him to leave her alone so she could do her job, but he continued to ask more questions. At that point, Parra used her cell phone to call the Salvation Army office to report that she was being bothered. As she spoke to a secretary at the office, appellant “got . . . very, very, very close” to Parra and tried to grab the red kettle. Parra said, “Stop,” but appellant said, “give it to me.” Parra “started getting nervous” so the Salvation Army secretary “couldn’t hear and understand what [Parra] was saying anymore.” As appellant laughed and pulled the red kettle, Parra put her foot on an iron stand from which the kettle was hanging. Appellant said, “if you don’t give it to me, I have something,” then put his hand under his sweater, in the “waistband area,” indicating he had something under his sweater. He said he “would kill [Parra]” if she did not give him the kettle. Parra could not tell whether appellant had a weapon. She was scared “because of the way he looked and the way he talked to [her].” Appellant then walked away to another door, where another person was standing. Appellant said something to the other person, and the two left the area. Parra went inside the store and was standing in a corner, crying, when a girl came up to her and

asked her what was wrong. Then the Salvation Army secretary arrived, took the kettle, and said, “ ‘let’s go.’ ” As Parra and the secretary began to leave, they were approached by a police officer who interviewed Parra about the incident. As Parra spoke to the officer, she saw appellant and two other individuals walk by, and pointed appellant out to the officer.

Union City police officer Jeffrey Willson testified that he and his training officer went to Safeway on November 18, 2011, in response to a report of an armed robbery that occurred in front of the store. When he arrived, he spoke to Parra, who was “very distraught . . . , crying and very emotional.” As he was finishing his interview with Parra, his training officer saw two individuals walking through the Safeway store parking lot, along with a third individual who was trying to catch up with them. Parra identified the third individual as the person who was involved in the incident. In court, Willson identified appellant as the person who was at the scene. Willson and his partner immediately confronted the three individuals and detained them. They eventually arrested appellant and released the two other individuals after determining they had not been involved in the incident. Appellant had “a bunch of . . . bead necklaces or things along that line that the victim said that they were outside selling while she was working.”

Appellant’s mother testified that appellant lives with her and that she raised him “to know the difference between right and wrong.” She agreed that he “always at least seemed . . . to understand what [she] mean[t] when [she was] telling him what’s right to do and what’s wrong.” The prosecutor asked, “he knows . . . that robbing somebody, for example, taking their personal stuff without permission, would be wrong, correct?” Appellant’s mother responded, “He knows better than to take anything from anybody, you know. . . . That’s not even his nature. He’s more giving.”

The two individuals who were with appellant on the day of the incident testified for the defense. A.T. testified he was “a close friend with [K.B.’s] family.” On November 18, 2011, he was with appellant at appellant’s house. Appellant’s brother was at Safeway selling beads. At some point, appellant’s brother came home, and the three of them left the house together to go to the BART. station. As they walked through the

Safeway parking lot, police officers ran out of the Safeway store, pulled their guns out, and told them to get down on the ground. The officers had to tell them “three, four times, ‘cause we didn’t know that they were talking to us, and finally, we just got down.” A.T. testified he never saw appellant approach anyone in a Salvation Army uniform or attempt to take a donation kettle.

Appellant’s brother, M.G., testified he was selling beads at the Safeway store on November 18, 2011. He noticed “a Salvation Army lady there” but did not have a conversation with her and did not approach her. When he was done selling jewelry, he went home, where he saw appellant and A.T. and invited them to go to the BART station with him. The three of them were walking through the Safeway parking lot, which “you have to walk through . . . to get to . . . BART” when three police officers pulled out their guns and told them to get on the ground. They complied after realizing the officers were talking to them.

The juvenile court moved to amend the petition on count 1 from alleged attempted robbery to attempted grand theft from a person (Pen. Code, §§ 664, 487, subd. (c)). The court found the attempted grand theft true beyond a reasonable doubt. The court declined to make a finding as to the criminal threat allegation. At a dispositional hearing, the court set the attempted grand theft as a felony. The court declared appellant a ward of the court and placed him on probation with designated conditions including drug and search terms. The court also removed appellant from his mother’s custody pursuant to Welfare and Institutions Code section 726, subdivision (a)(3), and referred the matter to the Family Preservation Unit for eventual reunification. The court ordered victim restitution in the amount of \$128 and imposed a separate restitution fine of \$100. At a February 1, 2012, placement hearing, the court released appellant back into his mother’s custody under the supervision of the Family Preservation Unit.

DISCUSSION

Appellant contends the jurisdictional and dispositional orders must be reversed because there was insufficient evidence that he appreciated the wrongfulness of his conduct. We disagree.

There is a presumption that a minor under the age of 14 is incapable of committing a crime. (Pen. Code, § 26 [“All persons are capable of committing crimes except those belonging to the following classes: [¶] One—Children 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].) “To defeat this presumption, the prosecution must prove by clear and convincing evidence that at the time the minor committed the charged act he or she knew of its wrongfulness.” (*In re James B.* (2003) 109 Cal.App.4th 862, 872.) “In determining whether the minor knows of the wrongfulness of his conduct, the court must often rely on circumstantial evidence such as the minor’s age, experience, and understanding, as well as the circumstances of the offense, including its method of commission and concealment. [Citations.]” (*Ibid.*)

“On appeal, we must review the whole record in the light most favorable to the judgment and affirm the trial court’s findings that the minor understood the wrongfulness of his conduct if they are supported by ‘substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.]’ [Citations.] The trier of fact, not the appellate court, must be convinced of the minor’s guilt, and if the circumstances and reasonable inferences justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citations.] This standard of review applies with equal force to claims that the evidence does not support the determination that a minor understood the wrongfulness of his conduct. [Citation.]” (*In re James B., supra*, 109 Cal.App.4th at p. 872.)

Here, substantial evidence supports the juvenile court’s implied finding that appellant understood the wrongfulness of his conduct. In November 2011, when the incident occurred, appellant was less than nine months shy of his 14th birthday. “Generally, the older a child gets and the closer he approaches the age of 14, the more likely it is that he appreciates the wrongfulness of his acts. [Citations.]” (*In re James B., supra*, 109 Cal.App.3d at pp. 872-873.) Appellant asserts he lacked the knowledge and

experience to know his acts were wrong because he had not attended public school since first or second grade,¹ had “quite a bit of unsupervised time to sell beads,” and was being raised by a mother who, according to the police report, said she believed the laws did not apply to her and appellant because they were indigenous people with “diplomatic immunity.” However, as noted, appellant’s mother testified that she had taught appellant “to know the difference between right and wrong,” and that he “knows better than to take anything from anybody.” It was reasonable for the court to rely on this testimony in finding that appellant understood that trying to take a donation kettle that did not belong to him was wrong.

Appellant asserts he lacked the sophistication to know that his acts were wrong because he was laughing as he pulled the donation kettle, which shows he was “joking,” and because he calmly walked away from the scene instead of fleeing, then returned to the scene shortly thereafter. The victim’s testimony, however, established that appellant persisted in interrogating the victim after she asked him to leave her alone. He “got . . . very, very, very close” to the victim and pulled at the donation kettle even though she resisted both physically and verbally. He then tried to scare the victim into giving him the kettle by simulating a concealed weapon and saying he was going to “kill” her. These were the acts of someone who understood that what he was doing was wrong, not of someone who was simply “joking.” Further, appellant’s casual departure from the scene and his subsequent return to the parking lot did not show a failure to understand that his actions were wrong; rather, they suggested a disregard for the consequences and a mistaken belief that he would not be apprehended. In light of appellant’s age, experience, knowledge, and the circumstances of the offense, the court could reasonably determine that appellant understood the wrongfulness of his conduct. Accordingly, there was sufficient evidence supporting an implied finding that the prosecution had overcome the presumption under Penal Code section 26 with clear and convincing evidence.

¹ The record shows appellant was being homeschooled by his mother.

DISPOSITION

The orders are affirmed.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.