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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re J.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

A135772

(Contra Costa County
Super. Ct. No. J1200603)

I. INTRODUCTION

After the juvenile court entered a dispositional order declaring appellant a ward of the court and placing him on 90 days of home supervision, appellant appealed. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), his counsel has asked this court to examine the record below and determine if there are any issues deserving of further briefing. We have done so, find none, and hence affirm both the trial court’s jurisdictional and dispositional orders.

II. FACTUAL AND PROCEDURAL BACKGROUND

Shortly before noon on April 9, 2012,¹ Officer Frank Perino of the San Pablo Police Department received a dispatch reporting “a residential burglary in progress at . . . 1739 14th Street” in that city. The dispatch reported that “three Hispanic males,” one

¹ Unless otherwise noted, all further dates mentioned are in 2012.

wearing a black sweater, had “kicked in the front door to that residence.” The persons were described in the dispatch as between the ages of 17 to 20.

When Officer Perino arrived at the designated location, he saw “a Hispanic male walk out of the front door, look towards my direction, and [then] he deliberately went back inside the residence.” After Officer Perino had notified his department of what he had seen, he ran to the rear of the residence and “saw that three Hispanic males were exiting out of a back residential window.” He then specifically identified appellant as one of the persons he had seen, and went on to say that, on the day and at the residence in question, appellant had been wearing “a black hooded sweater or sweatshirt, and a pair of blue jeans.” All three of the males seen ran away from the residence in question and “separated within the yards in that area.”

Officer Perino arranged for other officers to “set up a perimeter,” which they did, and two people were then caught and detained. For his part, Perino examined the front door of the residence, and noted that its bottom portion appeared to have been kicked in. He subsequently learned that the occupant of the house, one Felipe Rubio, had locked the house earlier that day, and had subsequently found it had been broken into and several belongings destroyed. Rubio testified that items later found by the police in a neighbor’s garage (a gold chain necklace and an iPhone) belonged to him and had been in his residence on 14th Street. Rubio also testified that he did not know appellant.

Another San Pablo police officer, Matthew Brown, was one of those who set up the perimeter around the burglarized property. He saw appellant and another suspect jump over the fence of the property in question and onto the 1700 block of Rumrill Avenue. Brown drew his gun, pointed it at both the suspects and told them to “get on the ground.” One of the suspects crawled underneath a nearby car but the other, who turned out to be appellant, “jumped back over the fence.” Appellant was later caught by another officer and taken into custody.

After appellant had been taken to the San Pablo Police Department’s station, Brown met with him and “read him his Miranda rights” off of a booking sheet kept in the department’s booking room. According to Brown’s testimony, he read appellant four

separate and distinct rights, i.e., (1) “the right to remain silent”; (2) “anything he said may be used against him in court”; (3) “the right to talk to an attorney if he wished, and that that attorney could be present with him during the questioning”; (4) “if he cannot afford an attorney, one will be appointed to him without any charge.” Per Officer Brown, appellant answered, separately as to each piece of this advice, that “yes” (or “yeah”), he understood each point.

At the conclusion of this advice, Brown and appellant “went into a conversation about what had occurred during the incident prior to him being arrested.” Per Brown, appellant appeared to understand him, and his answers were “responsive to [Brown’s] questions.” Appellant never indicated to Brown that “he did not understand” anything he was being asked.

Appellant’s version of events to Brown was “that he was driving and saw a door that had already been kicked in. He claimed that he trespassed inside the house because he saw speakers inside that interested him” and that the “house was abandoned.” But appellant also admitted to Brown that he ran out of the house when the officers arrived and fled “into a garage of a house next door.”

Appellant then “requested a lawyer,” so Officer Brown discontinued the interview.

On April 11, the Contra Costa District Attorney’s office filed a juvenile wardship petition regarding appellant, then age 16, pursuant to Welfare and Institutions Code section 602. It alleged that he had committed first degree residential burglary in violation of Penal Code sections 459 and 460, subdivision (a). The petition also alleged that appellant was eligible for deferred entry of judgment pursuant to Welfare and Institutions Code section 790, subdivision (a).

Hearings to determine appellant’s suitability for deferred entry of judgment were held on April 26 and May 3. At those hearings, the court received evidence that, in 2010, appellant had been placed on informal supervision by the Contra Costa Probation Department in connection with a misdemeanor battery occurring on a school campus. The report triggering this determination noted both (1) a gang association and (2) a request by appellant’s parents for services because, among other things, of gang

association and use of illegal drugs. As a part of the 2010 informal probation agreement, appellant was made subject to a search and seizure clause, ordered to complete anger management classes and to complete 25 hours of community service.

Appellant completed his informal probation in June 2011, i.e., 10 months before the offense involved in this case.

At the conclusion of the hearings regarding possible deferred entry of judgment, the trial court concluded that such was inappropriate, because “[f]irst degree residential burglary . . . is an extremely serious offense. It’s not kid stuff. It is not playing around” and it demonstrated “a serious disregard of other people’s privacy and their rights.”

This event was, the court concluded “the most recent significant event we have in [J.C.’s] life.” It also noted that appellant had been expelled from school earlier and placed in continuation school, and that there were substantial differences between what he had told a probation officer regarding the offense and what the record revealed on the same subject. It thus determined to deny deferred entry of judgment, and place appellant on probation.

A contested jurisdictional hearing was held on May 31. After hearing the testimony of the police officers and the other witnesses summarized above, the juvenile court found that appellant had committed residential burglary as alleged in count one of the wardship petition.

A dispositional hearing was held on June 14. After hearing argument from counsel, the court declared appellant to be a ward of the court and placed him on 90 days of home supervision.

A timely notice of appeal from both the jurisdictional and dispositional orders was filed on June 29.

III. DISCUSSION

As noted above, this is a *Wende* appeal, and no issues have thus been raised by appellant’s counsel or appellant personally for our review.

Our own perusal of the record reveals only one issue deserving of exploration and discussion, however, i.e., the *Miranda* warnings given to appellant by Officer Brown at

the San Ramon Police Department before the questioning of appellant and appellant's discussion with Brown of the events of April 9.

In his testimony at the jurisdictional hearing, Brown testified that his questioning of appellant was specifically preceded by four *Miranda*-type warnings, noted above, and that as to each, appellant responded "yes" or "yeah" or "something to that effect" as to each of the four.

Trial defense counsel was allowed to voir dire Officer Brown regarding the precise four questions he had asked appellant in the course of his *Miranda* warnings. But Officer Brown testified that, on the day in question, the *Miranda* warning inquiries came "off of a booking sheet which was from our booking room, so I don't know them verbatim." He did not have a copy of the booking sheet with him at the hearing. He did, however, have a "Miranda card" with him, but then noted that "they're worded slightly differently." In testifying as to the four questions he asked appellant when he was detained and then arrested, Brown referred to "my card, it's pretty similar to what I read to him."

Over the objection of defense counsel, the court allowed Brown to use the "Miranda card in your wallet, if it refreshes your recollection as to the correct answer to the question."

After Brown testified as to the four questions he had asked appellant, and appellant's affirmative answers, and also to the facts that appellant appeared to understand what Brown was asking and that his answers were responsive to Brown's questions, defense counsel was allowed to voir dire Brown. His questioning of Brown and later argument to the court was that Brown was, at the hearing, referring to his "Miranda card" whereas at the time and place of the April 9 arrest, he was reading from his "booking sheet." Counsel argued to the court that it was "not clear from the record that [J.C.] made a knowing and voluntary waiver of his rights if we don't know exactly what rights were read to him . . . there might have been a very critical word left out, such as an attorney being appointed to him if he can't afford one or, you know. [¶] One word can change the entire meaning of a right that may be given up. There's also no indication

from the record that my client knew his rights and was making—was voluntarily giving them up.”

The trial court disagreed with this argument, stating: “What matters is what was [J.C.] asked and what were his responses. . . . This is what [Officer Brown] says he asked him. This is the testimony of what he was asked. [¶] I have no reason to believe that anything else was asked. These are the questions that were asked, this is the substance—it does not matter to me if the booking sheet is the same thing as the card because I don’t know what the booking sheet says. I don’t know what the card says. [¶] The record is the officer looked at a card in his wallet and testified after he admonished him that—he refreshed his recollection as to the questions that he was—that [J.C.] was asked, and it was asked what did he ask next, what did he ask next, and what did he ask next, and this is the order of the questioning. [¶] So based on the record that I have, which I find to be credible, there was a knowing and voluntary waiver because he was asked these rights and these constitute the Miranda rights sufficient to overcome a Miranda objection. [¶] So at this time I’d overrule the objection based on this record.”

We agree with the trial court, and so do both our Supreme Court and the United States Supreme Court. Both have held, indeed several times, that a *Miranda* warning is not ineffective because of slight variations or inaccuracies in wording. Thus, in *People v. Samayoa* (1997) 15 Cal.4th 795, 830, our Supreme Court held: “As the United States Supreme Court has observed, the prophylactic *Miranda* warnings are ‘not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected’ ” (*Duckworth v. Eagan* (1989) 492 U.S. 195, 203), and the warnings therefore need not be given in the exact form described in that decision (*id.* at p. 201). Thus, a reviewing court need not examine a *Miranda* warning for accuracy as if construing a legal document, but rather simply must determine whether the warnings reasonably would convey to a suspect his or her rights as required by *Miranda*. (*Id.* at p. 203.)” (See also *California v. Prysock* (1981) 453 U.S. 355, 359-362; *People v. Wash* (1993) 6 Cal.4th 215, 236-237; *People v. Johnson* (2010) 183

Cal.App.4th 253, 292; see, generally, 5 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Criminal Trial, § 143.)

We have carefully examined the record of both the jurisdictional and dispositional hearings and find no issues deserving of further briefing.

IV. DISPOSITION

The court's jurisdictional and dispositional orders are both affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.