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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re MANUEL R., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL R.,

Defendant and Appellant.

A139877

(Solano County  
Super. Ct. No. J40872)

The juvenile court sustained allegations made in a Welfare and Institutions Code<sup>1</sup> section 602, subdivision (a) petition that Manuel R. committed two counts of robbery. On appeal, Manuel maintains that the court erred when it denied a motion to suppress identification evidence, arguing that his detention by police was not supported by reasonable suspicion. He also argues that the court's findings were not supported by sufficient evidence because the identifications, both at a show-up after Manuel was detained and in court, were tainted by unnecessarily suggestive procedures used at the show-up.

We find no merit in Manuel's arguments and affirm.

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<sup>1</sup> Unless otherwise indicated, further statutory citations are to the Welfare and Institutions Code.

## **BACKGROUND**

### ***I. Procedural Background***

On July 15, 2013, the People filed a juvenile wardship petition pursuant to section 602, subdivision (a), alleging that Manuel had committed two counts of second degree robbery (Pen. Code, § 211).<sup>2</sup> Manuel denied both counts.

The people moved to join the case of J.S., an alleged co-responsible in the offenses. The court granted the joinder motion.<sup>3</sup>

On August 14, 2013, a joint jurisdictional hearing and hearing to suppress evidence, pursuant to section 700.1, commenced. The court denied the suppression motion on August 19, 2013. On August 28, 2013, the court sustained both counts of the petition.

The court adjudged Manuel a ward of the court on September 12, 2013. At a disposition hearing on September 19, 2013, the court ordered Manuel placed in a suitable foster home or institution. Manuel had already been screened and accepted in the Rites of Passage program and the court found that to be an appropriate placement.

Manuel timely filed a notice of appeal on September 25, 2013.

### ***II. Factual Background***

On July 14, 2013, at about 2:48 p.m.,<sup>4</sup> minor Andrew C. was walking with friends R.Z., A.C., and another friend near the Parkway Gardens housing complex in Fairfield, California. As they passed Parkway Gardens, Andrew and R.Z. noticed two African-American men standing across the street. R.Z. observed that one was darker than the other and they appeared to be scouting the area. Andrew and his friends then crossed

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<sup>2</sup> Manuel had previously been declared a ward of the court, following a section 602 petition, on September 22, 2011. The court's jurisdiction was successfully terminated on June 20, 2013.

<sup>3</sup> We do not find an order of the court granting joinder in the record, but the reporter's transcript indicates that the two minors were jointly tried.

<sup>4</sup> Other testimony establishes 2:48 p.m. as the time that the incident and a description of the suspects was broadcast to police officers. Accordingly, the events preceding that broadcast must have taken place earlier.

over Airbase Parkway via a pedestrian bridge. Andrew became separated from the others as they explored a creek area beneath the bridge. When Andrew was at the fence of the bridge, the two men he had noticed earlier approached.

One of the men had a gun and hit Andrew across an eyebrow with it, breaking his eyeglasses. The men took a cell phone and lighter from him. R.Z. saw Andrew pressed against a chain-link fence and one of the two men going through Andrew's pockets. Andrew's friends were approaching and the man with the gun pointed it at them. The two men yelled, telling them to empty their pockets. R.Z. saw the gun in the hands of the darker of the two men and saw that Andrew had blood running into his eye and down his cheek. R.Z. handed over his cell phone to the unarmed, lighter-skinned man.

After the robbery, the two men ran toward the pedestrian bridge gate at Airbase Parkway. R.Z. saw the two run across Airbase Parkway and proceed south on a trail.

At trial, Andrew described his assailants as young African-Americans, between five feet five inches and six feet two inches in height. R.Z. estimated their ages to be between 17 and 19.

Andrew and R.Z. testified that the man with the gun had short hair—Andrew described it as a “buzz cut.” Andrew said he was wearing a black shirt or hoodie and loose-fitting “dark blue jeans.” R.Z. said the armed man was clean-shaven on the cheeks, but had a goatee and was wearing a black shirt, describing the clothes as “[s]omewhat bagg[y].”

Andrew testified that the unarmed man was wearing a beanie and “had kind of an orange tint on the bottom half of his hair like it was bleached.” R.Z. said that the man's hair was longer than that of the armed man and he “had something on the back of his neck where the hair was bleached,” but he did not believe there was any tint to the blond, bleached hair. When asked if he knew a name of the hairstyle of the “orange patch,” R.Z. said, “I would assume like a duck bill or something. It looks like a duck bill.”<sup>5</sup> When asked what part of the hair was tinted orange, Andrew answered, “The bottom. Like

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<sup>5</sup> R.Z. had seen a few people wearing a duck bill hairstyle when he was in high school, with coloring from blond to brown to orange.

across the bottom and the back of his neck.” A.C. said that the unarmed man had a beanie and “orange hair, like a tail.”

Andrew said the unarmed man was wearing a long-sleeved, zip-up hoodie and he thought the jeans were light blue and baggy. R.Z. said that the clothes were “somewhat baggy,” but remembered the shirt as being a T-shirt. R.Z. did not recall any tattoos.<sup>6</sup> R.Z. believed the man was of mixed race.

After the robbery, the group went to the first house that appeared occupied and asked for, and received, help. The police responded to a call and R.Z. spoke with Officer Gene Carter while Andrew spoke with Officer Joseph Perry. Based on his conversation with R.Z., Carter broadcast a description of the assailants to other officers in the area. About 30 to 40 minutes after the broadcast, it was reported that suspects had been detained.

Officer Brett Morris was one of the officers responding to the broadcast description. The description he received was of two 17- or 18-year-old African-American males. One was armed with a handgun and was of thin to average build, wearing a black T-shirt and darker black jeans. The other was wearing a dark beanie, a black T-shirt, and light-colored blue jeans, with an orange-colored patch in his hair on the back of his head. The suspects were described as possibly inside Parkway Gardens.

Morris and another officer located three men at the north side of the Parkway Gardens complex, about one-half to three-quarters of a mile from the site of the robbery. The three were African-American and appeared to be in their late teens or early twenties. The officers noted that one of the three “had an orange patch on the back of his head” and was wearing dark clothing. One of the other two was also wearing dark clothing. At 3:10 p.m., the suspects were detained, in handcuffs, while the investigation continued. In court, Morris identified Manuel and J.S. as two of the three men who were detained. Manuel was the person with the orange patch in his hair.

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<sup>6</sup> Manuel has tattoos on both forearms. Shown photographs of these tattoos, R.Z. stated that he had never seen them.

Carter transported R.Z. to Parkway Gardens for a show-up identification. Carter told R.Z. that he was under no obligation to identify anyone and that simply because someone was in handcuffs did not mean that the person was involved. R.Z. remained in the patrol car as the suspects, one at a time, were shown to him, initially from 200 to 300 feet away, and then moving closer. R.Z. identified Manuel as one of the individuals involved, but was not certain about J.S.<sup>7</sup>

Perry transported Andrew to Parkway Gardens in a separate car for the show-up. Andrew identified Manuel as involved in the robbery, but he was only “60 percent sure” that J.S. was involved.

After the show-up identifications, the police arrested Manuel and J.S.

In court, Andrew was only able to identify Manuel as being involved in the robbery, though the identification was as the armed assailant. He said he could not identify either Manuel or J.S. as the unarmed assailant because neither one, at the hearing, had an orange patch. R.Z., however, identified both Manuel and J.S. as the people who robbed him. He identified J.S. as the armed assailant and Manuel as the unarmed assailant. A.C. also identified both Manuel and J.S. in court.

At the hearing, the defense called Jeffrey Alvarez, a barber in Fairfield. Alvarez explained that a duck bill is a hairstyle “like a tail in the back. Some kids get it all the way across the neck, and some just like it in the middle.” The hair is most often dyed or bleached. He gives someone a duck bill about twice a week and stated that it is not uncommon for him to see juveniles with duck bills. However, Alvarez had no knowledge of people at Parkway Gardens having duck bills.

## **DISCUSSION**

### **I. The Show-Up Identifications**

Manuel maintains that evidence of the show-up identifications was admitted in error because the detention of Manuel, during which the show-up occurred, was not

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<sup>7</sup> R.Z. testified that he told Carter that he was “75 to 80 percent sure” that J.S. was one of the two involved.

supported by reasonable suspicion that he was involved in criminal activity. Accordingly, he argues, his detention violated his rights under the Fourth Amendment and evidence resulting from that detention—the show-up identification—must be suppressed. We disagree.

### **A. Legal Standard**

“In reviewing the trial court’s ruling on the suppression motion, we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness.” (*People v. Hughes* (2002) 27 Cal.4th 287, 327 (*Hughes*)). “[I]n reviewing the trial court’s suppression ruling, we consider only the evidence that was presented to the trial court at the time it ruled.” (*In re Arturo D.* (2002) 27 Cal.4th 60, 77, fn. 18.)

Contacts of individuals with the police fall into three categories for the purposes of Fourth Amendment analysis: (1) consensual encounters, which result in no restraint on an individual’s liberty; (2) detentions, which are “ ‘ ‘strictly limited in duration, scope and purpose, and which may be undertaken by the police ‘if there is an articulable suspicion that a person has committed or is about to commit a crime’ ” ’ ”; and (3) “ ‘ ‘seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests and restraints on an individual’s liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have probable cause to arrest the individual for a crime.’ ” ’ ” (*Hughes, supra*, 27 Cal.4th at pp. 327-328.)

A detention is permitted “if the [police] officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” (*United States v. Sokolow* (1989) 490 U.S. 1, 7.) Reasonable suspicion must be based on more than an “ ‘inchoate and unparticularized suspicion or ‘hunch.’ ” ’ ” (*Ibid.*) “The concept of reasonable suspicion, like probable cause, is not ‘readily, or even usefully, reduced to a neat set of legal rules.’ . . . In evaluating the

validity of a [detention], we must consider ‘the totality of the circumstances—the whole picture.’ ” (*Id.* at pp. 7-8.)

“[I]t is important to recall that a trained law enforcement agent may be ‘able to perceive and articulate meaning in given conduct which would be wholly innocent to the untrained observer.’ [Citation.] Among the circumstances that can give rise to reasonable suspicion are the agent’s knowledge of the methods used in recent criminal activity and the characteristics of persons engaged in such illegal practices. Law enforcement officers may rely on the ‘characteristics of the area,’ and the behavior of a suspect who appears to be evading police contact. [Citation.] ‘In all situations the officer is entitled to assess the facts in light of his experience.’ ” (*United States v. Mendenhall* (1980) 446 U.S. 544, 563-564.)

### ***B. The Juvenile Court’s Ruling on the Suppression Motion***

When the court denied the suppression motion, it reviewed the facts it considered relevant and explained the reasoning supporting its decision: “And we know that on this particular circumstance, that the Fairfield Police Department was notified at 2:48 p.m. of the occurrence of an armed robbery by a suspect who was believed to have a gun.

“There was a general description given of two black male adults between the ages of 17 and 18; one armed with a handgun; thin build; dark clothing; black T-shirt.

“And then something that is very distinctive, something that was standing out on one of the individuals, a distinctive different color of hair that was noticed by the victims and put out as part of a broadcast.

“. . . [W]e know that these particular minors were detained at 3:10 p.m., 22 minutes after the call. They were detained . . . between half a mile to three quarters of a mile away, but when observed, they were observed together.

“[Manuel] had the distinctive type of hair style that was described by the victims. He doesn’t have it here in court. His hair has been cut. But he, that day, had the distinctive hair style, and it was reasonable for the officers to temporarily detain these gentlemen while the victims could be brought to the scene in an effort to identify them.

“At the point in time they were detained, it was not a prolonged detention by any stretch of the imagination, because as noted, [J.S.’s] name appears in the CAD [(computer assisted dispatch)] logs 12 minutes later, so the time between the initial detention and the time at which they are identified by name is some 12 minutes.

“The two individuals who were brought to the scene were two of the victims. Those victims were brought separately. They were given admonishments. They were given an opportunity to view the individuals from a distance.

“They asked to have those individuals brought closer to them. They were brought to a distance that was much closer, and at that point in time, two separate victims identified [Manuel] as being involved in this instance, and one of them clearly identified [J.S.] as being involved in the incident,<sup>[8]</sup> so at that point in time, the police officers had probable cause to arrest the two minors; and, therefore, the 700.1 motion is denied.”

### ***C. Reasonable Suspicion Supported the Detention of Manuel***

With the exception of the hairstyle of one of the suspects, the description provided to officers in the field here is quite vague, boiling down to African-American youths with a thin to average build in dark clothing. “A vague description does not, standing alone, provide reasonable grounds to detain all persons falling within that description.” (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 381-382 (*Carlos M.*)) Perry testified that on any given day, there are many people at Parkway Gardens that fit the general description provided. Had the detention of Manuel been based simply on his matching the general description, we would agree that the detention was not based on reasonable suspicion.

However, Manuel’s detention was based on more than the general description. As did the trial court, we agree that the duck bill hairstyle was distinctive. Moreover, Manuel was present within three-quarters of a mile of the location of the robbery and within 30 minutes of the report of the crime. Manuel was also in the presence of another person who fit the general description. These facts, considered together, amply justified

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<sup>8</sup> On this point, the court was wrong. Neither Andrew nor R.Z. “clearly identified” J.S. Andrew’s degree of certainty was expressed as 60 percent, and R.Z.’s as 75 to 80 percent. However, the identification of J.S. is not at issue in this appeal.

Manuel's detention. (See *Carlos M.*, *supra*, 220 Cal.App.3d at p. 382 [“However, the more particularized descriptions here (including age, hair and eye color, and hair length of the sixth suspect) [citation], together with the *additional* circumstances known to the officer (i.e., appellant's presence within one-half mile of the crime site, within one hour of the crime report, and his being in the presence of another man who closely resembled a described suspect) amply justified the detention of appellant”].)

Manuel seeks to avoid this conclusion with an argument that the duck bill hairstyle is not distinctive. He argues that “three witnesses established that the hairstyle worn by appellant is popular . . . among young people in the area.”<sup>9</sup> This overstates the evidence. R.Z. stated that he had seen a “few” people with a duck bill in his high school. Alvarez testified that he performs two duck bill hair stylings a week in Fairfield, but provided no information concerning the percentage of such hair stylings among young people or whether such stylings were popular among people of Manuel's ethnicity. In particular, Alvarez had no knowledge of clientele coming from Parkway Gardens or the popularity of duck bills among residents there. There was no evidence that duck bills were popular among youths at the Parkway Gardens complex or that any other African-American youth in the area at the time had a duck bill. Moreover, the description given to the police was not of a generic duck bill hair styling, but of an orange-colored patch of hair. Even if duck bills are popular, that says nothing about whether partial orange coloring of the hair is popular.

Manuel also argues that the totality of the circumstances do not support a finding of reasonable suspicion, stressing factors that he believes weigh against such a finding: (1) neither he nor his companions attempted to avoid police contact; (2) neither he nor his companions demonstrated signs of recent exertion; (3) neither he nor his companions

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<sup>9</sup> One of the three witnesses to whom Manuel refers is Terrell B., Manuel's brother. Terrell testified that he sees duck bills at Parkway Gardens “all the time” and two photographs of duck bills that he took at Parkway Gardens were introduced into evidence. However, this testimony was presented *after* the court had made its suppression ruling. Because we consider only evidence presented to the trial court at the time it ruled, we do not consider Terrell's testimony or the photographs.

were in possession of any stolen property or firearm; (4) some items of clothing were inconsistent with the description provided to the police; (5) he is lighter-skinned than J.S. and appears to be Latino or mixed race; (6) he has distinctive tattoos on his forearms that were not included in the description broadcast by police; (7) J.S.'s gold chain and bright green shoes were not reported by the witnesses; (8) he and J.S. were significantly shorter than the robbery suspects; (9) an unknown number of unidentified people were seen running from a marked police car inside Parkway Gardens shortly before he and J.S. were detained; and (10) officers ceased seeking suspects upon seeing his duck bill. We briefly consider each of these factors and conclude that none are significant.

*Avoidance of police contact.* As we have noted, the fact that a subject seeks to evade police or otherwise avoid police contact is a factor that may support the reasonable suspicion necessary to detain the subject. The converse, of course, is that lack of such conduct is a factor that, in weighing the totality of the circumstances, weighs against finding reasonable suspicion. However, lack of avoidance behavior is not so strong a factor as the demonstration of such behavior. A subject of police interest may believe for any number of reasons that he can survive police scrutiny without probable cause for arrest being found, or may simply make the strategic decision that an encounter with police is less risky than evasion. That a subject chooses not to avoid the police is a factor to be considered, but in itself has little probative value.

*Absence of signs of exertion.* The robbery occurred no more than three-quarters of a mile from the location where Manuel was detained. Morris estimated that Manuel and J.S. could have covered that distance in five or six minutes. Morris testified, "I wouldn't be shocked or surprised that the three young men that we stopped were not breathing heavily or anything like that because it had been 15 minutes from the time—at least 15 minutes, 20, actually, from the time they were seen running." Given the time period, it was not significant that Morris observed no indicia of recent exertion.

*No possession of a firearm or stolen property.* No gun or stolen property was found when Manuel and J.S. were arrested. However, "the reasonableness of a search [or seizure] must be determined based on the circumstances *known to the officer* when the

search [or seizure] is conducted.” (*In re Jaime P.* (2006) 40 Cal.4th 128, 139.) When the police detained Manuel and J.S. they did not know whether they possessed a gun or stolen property. Only with a pat-down search for weapons after detention (*Terry v. Ohio* (1968) 392 U.S. 1, 30-31), or a full search incident to arrest, could the police make some determination concerning their possessions. Because the items they possessed were outside the knowledge of the police at the time they were detained, this is not a relevant circumstance.

*Inconsistent items of clothing.* The description that Morris received was of two 17- or 18-year-old African-American males. One was armed with a handgun and was of thin to average build, wearing a black T-shirt and darker black jeans. The other was wearing a dark beanie, a black T-shirt, and light-colored blue jeans, with an orange-colored patch in his hair on the back of his head. Manuel argues that when he was detained he was not wearing a beanie or light-colored blue jeans and that J.S.’s jeans were faded and ash gray around the knees and middle section.

Manuel relies on the testimony of Les Durfee, an investigator for the public defender’s office, for the color of the jeans he was wearing when detained. Durfee described the jeans as “[g]rayish blue,” having “kind of a slate look.” Whether or not this color description is significantly at variance with “light-colored blue jeans,” as Manuel argues, Durfee’s testimony was taken *after* the court ruled on the section 700.1 suppression motion. Accordingly, we do not consider Durfee’s testimony.

Perry stated that when J.S. was detained, he was wearing “black jeans with the middle of the legs being faded or bleached” to an “ash/gray color.” He added, “The outside was black; the middle was gray.” Perry was not asked how large the middle gray area was and his description is consistent with jeans that are, for the most part, black, and consistent with the description provided to the police.

As for the beanie, such an item of clothing could be easily secreted or discarded before Manuel’s encounter with the police, so there was no reason for the police to regard its absence as significant.

*That Manuel is lighter-skinned than J.S.* Morris testified that the description provided was of two “black” males. He identified both Manuel and J.S. as “black.” It is true, as Manuel points out, that R.Z. testified that Manuel appears to be of mixed race, but R.Z. also stated that Manuel “does look like he has some black in him” and said he would describe Manuel as “dark-skinned.” There was no evidence offered showing it would be unreasonable for the police to regard Manuel as “black.”

*Manuel’s distinctive tattoos.* The description provided to the police had no information about tattoos. Manuel’s argument is that “fail[ure] to report seeing these obvious distinguishing characteristics” suggests that he was not involved in the robbery. While absence of a distinguishing feature from a description might have significance in some circumstances, no description is complete in every conceivable respect. Common sense will inform the police that victims’ descriptions provided in the excitement immediately following a crime may not be as full and complete as later, calmer reflection will allow. Moreover, the investigating officers had only a description and there is no evidence that they had knowledge of how the robbery was conducted, or whether the witnesses who provided the description had an opportunity to observe the tattoos on Manuel’s arms. Accordingly, there was no reason for the police to find significance in the fact that Manuel’s tattoos were missing from the description provided to the police.<sup>10</sup>

*J.S.’s gold chain and bright green shoes.* Manuel maintains that J.S. was wearing a gold chain and bright green shoes when he was detained. Like Manuel’s tattoos, these are simply features that were not included in the description provided to the police and are not particularly significant to the weighing of all the circumstances to determine whether reasonable suspicion supported Manuel’s detention. Also, evidence that J.S. was

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<sup>10</sup> We also note that Andrew described the unarmed assailant as wearing a long-sleeved hoodie, while R.Z. described him as wearing a T-shirt. These descriptions are not necessarily contradictory, because the assailant may have been wearing a T-shirt beneath an open hoodie, with Andrew’s attention more focused on the hoodie and R.Z.’s on the T-shirt. If Manuel R. had been wearing a long-sleeved hoodie during the robbery, then his tattoos would not have been visible to the victims.

wearing these items was presented *after* the court had made its ruling on the suppression motion, so we do not consider it.

*Manuel's and J.S.'s heights.* J.S. is five feet eight inches in height and Manuel is five feet nine inches. The description that Morris had contained no information concerning height.<sup>11</sup> Accordingly, the heights of the subjects would have no bearing on whether Morris had reasonable suspicion to detain Manuel and J.S.

*Unidentified subjects running inside Parkway Gardens.* Morris testified about an entry in the CAD report: "Some subjects went westbound to the end of the block." Morris explained that other officers had seen some unidentified people (number unspecified) running within Parkway Gardens. It was unknown whether this was a sighting of J.S. and Manuel before they were detained. That people were seen running is helpful to Manuel only if he and J.S. were not among them, but nothing in the record establishes whether they were or were not.<sup>12</sup>

*Officers ceased seeking suspects after seeing Manuel's duck bill.* Manuel does not explain how this fact weighs against a finding of reasonable suspicion. The question is whether the detention of Manuel was supported by reasonable suspicion, not whether, with additional investigation, the police might also have found other persons for whom reasonable suspicion would support detention.

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<sup>11</sup> Manuel disputes that height was omitted from the broadcast description of the suspects. Neither Morris nor Perry had a recollection of being provided with the suspects' heights. However, R.Z., who is six feet one or two inches tall, testified that he reported to Carter that both suspects were "about the same height as me or under." Carter testified that he broadcast R.Z.'s description. However, Carter did not state that he included every detail of R.Z.'s description and when Morris testified concerning the description with which he was provided, he was refreshing his memory from a CAD printout. Thus, we find the fact that Morris had no recollection of height being provided more significant than inferences that could, but need not, be drawn from other testimony.

<sup>12</sup> It appears that Morris was assuming that Manuel and J.S. were the people seen running when he stated that they were detained 15 to 20 minutes after "the time they were seen running."

The trial court considered the significant circumstances in determining that reasonable suspicion supported the detention of Manuel. Specific and articulable facts reasonably supported a suspicion that Manuel was a participant in the robbery.

## **II. Sufficiency of the Evidence**

Manuel maintains that there was insufficient evidence to support his conviction because the identifications of him as a perpetrator of the robbery were unreliable and tainted by an unduly suggestive show-up identification process.

### **A. Legal Standard**

“ ‘The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]’ ” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206, quoting *People v. Jones* (1990) 51 Cal.3d 294, 314.)

“Substantial evidence is defined as ‘evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.’ ” (*People v. Whalen* (2013) 56 Cal.4th 1, 55.)

### **B. Substantial Evidence Supported the Identification of Manuel as a Perpetrator**

At trial, three witnesses—Andrew, R.Z., and A.C.—identified Manuel as one of the perpetrators of the robbery. We focus on R.Z.’s identification, because it was the strongest and not subject to attacks that can be made on Andrew’s and A.C.’s

identifications.<sup>13</sup> Manuel does not dispute that if we find R.Z.'s identification to be reliable, then his conviction is supported by substantial evidence. (See *People v. Boyer* (2006) 38 Cal.4th 412, 480 ["Identification of the defendant by a single eyewitness may be sufficient to prove the defendant's identity as the perpetrator of a crime"].)

Manuel argues that the suggestive nature of the procedure used during the show-up tainted the identification of Manuel that R.Z. made at the show-up and in court.

Before the show-up, Carter told R.Z. that he was under no obligation to identify anyone and that simply because someone was in handcuffs did not mean that the person was involved. R.Z. was taken to the show-up in a police car where he remained when he was shown the three detainees. Initially, the car that R.Z. was in was parked 200 to 300 feet from the detainees. Carter testified: "At one point we had the officers that were bringing the individuals out of the car to be identified. We had them walk closer to our location. And then we also kind of actually moved our cars up a little bit to get a closer look." The closest that R.Z. was to the detainees was 50 to 75 feet. R.Z. recognized the first person he was shown as the unarmed perpetrator, the one who took his phone. When asked what it was about that person that he recognized, R.Z. testified, "Well, at first they had to move him forward and me forward, and his face, the hair, just what really put it together." Recognition of the face was more important to R.Z. than recognition of the clothes.

After R.Z. made his identifications, the police told him that he "did a good job, did what [he] needed to do."

Manuel's argument, as it relates to R.Z. and Manuel, is: "The efforts to hide and distance [R.Z.] from the suspects undoubtedly suggested that officers subjectively believed that the detainees presented to [R.Z.] . . . were dangerous and that [R.Z.] . . .

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<sup>13</sup> At the show-up, Andrew identified Manuel as the unarmed perpetrator. However, at trial, Andrew identified him as the armed perpetrator. Although A.C. identified both Manuel and J.S. at trial, Perry testified that when he spoke with her after the robbery she stated that "she didn't get a good enough look to ID." A.C. denied saying this to Perry and testified that she did provide a description of the perpetrators to the police.

needed to be protected from them, casting a suspicion of guilt as to the detainees from the outset. Adding to the suggestive nature of the show-up, at a distance, one by one, the handcuffed detainees were removed from the back seat of . . . police cars, escorted and surrounded by uniformed police officers. [Citation.] . . . Finally, the officer statement to [R.Z.] after he identified [Manuel] and [J.S.] that he had done a ‘good job’ and that ‘[he] did what [he] needed to do’ tainted the subsequent in-court identification. [Citation.] This is not insignificant given that the original identification was weak a[n]d had been made under the suggestive circumstances described above. [¶] That the officers moved the witnesses closer in small increments when they were unable to identify the subjects also suggested that the officers telegraphed a message to the eyewitnesses that [Manuel] and [J.S.] were the perpetrators of the robbery. . . . In light of all of this, any admonition given to [R.Z.] . . . prior to the show-up would not have been sufficient to overcome the powerful, non-verbal messages sent by the procedure employed during the show-up.”

We fail to discern “powerful, non-verbal messages sent by the procedure employed during the show-up.” R.Z. knew that there were only two perpetrators, but that three people were being detained. Thus, R.Z. knew to a certainty that at least one of the people he would see was not involved in the robbery. Moreover, R.Z. was properly admonished prior to the show-up.

The incremental process of closing the distance between R.Z. and Manuel seems to us simply to be one of ensuring that R.Z. could sufficiently discern Manuel’s features in order to make a determination whether he could identify him as a perpetrator. If R.Z. had said, “I do not think detainee number one was involved,” but the police had then brought them closer together, such a process might well have signaled a police belief that Manuel was involved and that R.Z. should “rethink” his identification. However, there was no evidence that R.Z. did more than signal, in some fashion, that he couldn’t make a determination at the current distance and needed a closer view.

We also find nothing particularly suggestive in the fact that R.Z. remained in a police car during the show-up and remained at a distance (no closer than 50 to 75 feet) from the detainees. Police understand that victims are commonly reluctant to face a

potential perpetrator of a crime, especially at a time close to the occurrence of the crime. (See *People v. Mena* (2012) 54 Cal.4th 146, 150 [victim crouched low behind the front seat of a police car during the show-up as suspects were presented individually].)

That the detainees were handcuffed was also not unnecessarily suggestive. R.Z. already knew that the individuals he was to see had been detained by the police and had been told that the fact that someone was in handcuffs did not mean the person was involved in the robbery. “ ‘The use of handcuffs or other indicia of custody will not invalidate a show-up, at least where necessary for the prompt and orderly presentation of the suspect, consistent with protection of the officers and witnesses.’ ” (*United States v. Drake* (9th Cir. 2008) 543 F.3d 1080, 1089.) Here, one of the perpetrators had been reported as having a firearm and we must presume, because the detainees had not yet been arrested, that they had not been fully searched. Accordingly, handcuffing was consistent with the protection of the officers and witnesses.

Finally, nothing in the evidence supports Manuel’s assertion that R.Z.’s “original identification” was weak. R.Z. provided a positive identification of Manuel based not only on the duck bill hairstyle, but also his face. Police statements to R.Z. that he did a “good job” and did “what [he] needed to do” need not be interpreted as an indication to R.Z. that he had identified the perpetrators correctly. (See, e.g., *Hall v. Capello* (E.D.Mich., Aug. 29, 2013, No. 10-14165) 2013 WL 4604137, p. \*6 [remark that witness did a “good job” after a pretrial identification was not clearly intended as a statement that the witness had selected the “correct” suspect and did not taint the in-court identification].)

Even if we were to conclude that the show-up procedures were unnecessarily suggestive, the central question is “whether under the ‘totality of the circumstances’ the identification was reliable even though the confrontation procedure was suggestive.” (*Neil v. Biggers* (1972) 409 U.S. 188, 199.) *Biggers* specified factors that a court should consider when evaluating the reliability of an identification: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness’s degree of attention, (3) the accuracy of the witness’s prior description of the criminal, (4) the level of

certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. All of the *Biggers* factors support finding R.Z.'s identification at the show-up to be reliable, despite the alleged suggestiveness.

*Opportunity to view.* R.Z. saw the perpetrators of the robbery in daylight and was standing close enough to hand his phone to the person he later identified as Manuel. R.Z. also had sufficient time to observe the perpetrators, first observing them as they confronted Andrew, as he approached their location, as they subsequently pointed the gun at him and yelled at him to hand over his belongings, and as he handed over his phone.

*Degree of attention.* There is no direct evidence of R.Z.'s degree of attention, but we agree with the People that the record permits the inference that during the robbery, the perpetrators had R.Z.'s undivided attention. There was no evidence indicating that R.Z.'s perception was focused on something other than the features of the perpetrators (such as the firearm).

*Accuracy of R.Z.'s prior description.* Carter testified that Manuel's appearance at the show-up was consistent with the description given by R.Z. Most importantly, R.Z.'s account of Manuel's hairstyle was accurate.

*Certainty of the identification.* Unlike R.Z.'s identification of J.S., of which he was only 75 or 80 percent sure, R.Z. told Carter that he was "sure" that Manuel was involved in the robbery after seeing him at the show-up.

*Lapse of time.* Although we do not have a firm time at which the robberies took place, the show-up identification was conducted during the same afternoon that the robberies occurred.

We have no reason to doubt the reliability of R.Z.'s identification of Manuel at the show-up. R.Z. identified Manuel based not only on the hairstyle, but also with consideration of his face. R.Z. demonstrated that he was not being pressured into making identifications when he expressed a lack of certainty about J.S.'s involvement. Because R.Z.'s identification of Manuel at the show-up was reliable, there was no "taint" to R.Z.'s in-court identification and that identification was substantial evidence supporting R.Z.'s conviction.

**DISPOSITION**

The jurisdictional findings of the juvenile court are affirmed.

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STEWART, J.

We concur.

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KLINE, P.J.

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RICHMAN, J.