

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

S.J.,

Defendant and Appellant.

A139952

**(Solano County
Super. Ct. No. J41500)**

On September 11, 2013, the Solano County District Attorney filed an amended juvenile wardship petition alleging, in Count 2, that S.J. (Minor) had committed an attempted second degree robbery of J.S., a felony violation of Penal Code sections 211 and 664, on August 5, 2013. At the contested jurisdictional hearing on September 13, 2013, the juvenile court sustained the allegation that Minor had committed an attempted second degree robbery.

At the dispositional hearing, held on September 27, 2013, the juvenile court continued Minor’s wardship and probation in his parents’ home. Minor was ordered to serve 84 days in juvenile hall with credit for 54 days previously served. The sustained offense, attempted second degree robbery was deemed a felony. On October 7, 2013, Minor filed a timely notice of appeal.

On August 5, 2013, at approximately 4:20 p.m., J.S. was walking home from the Raley's shopping center. He felt someone punch or push his lower left back one time, causing him to feel alarmed and scared. J.S. then felt someone place two or possibly three fingers in his left-side rear hip pocket where he kept his wallet, containing his money and identification. J.S. felt this person touch his wallet but not hold or remove it. The incident happened very quickly; the person reached into J.S.'s pocket for only one to two seconds.

Upon feeling this person's fingers in his pocket, J.S. turned to his left and tried to grab the person's arm. At this point, the person's fingers were no longer in his pocket, and there was no physical struggle. As he turned around, J.S. saw the person, a young man, smile or grin at him. The young man backed up and then ran away from J.S. Before the young man ran away, J.S. saw his face and his clothing, but nothing else. The young man did not threaten J.S., demand that he give him his wallet, or say anything.

After the young man ran away, J.S. called 911. He described the incident and the young man's attire to the dispatcher. When he called 911, J.S. was upset, but he believed he gave an accurate description to the dispatcher because the incident was fresh in his mind.

Vallejo Police Officer Jerome Bautista was dispatched to respond to the scene. Officer Bautista recalled that the dispatcher provided the victim's description of the perpetrator: a Black male juvenile, 5'10", 140 pounds, wearing a multi-colored knit cap, a beige long-sleeved shirt tied around his neck, a light blue shirt and jeans. After receiving this description from dispatch, Officer Bautista immediately conducted an area check, but he did not locate an individual matching this description at that time.

About 15 to 20 minutes after the reported robbery, Officer Bautista contacted J.S. at his home and asked him questions about the incident. J.S. gave Bautista the same description of the perpetrator's physical appearance and clothing that he had given to dispatch, including that the young man was wearing jeans and had a beige long-sleeved shirt tied around his neck. J.S. told Bautista the young man had not threatened him, demanded anything, or taken anything from his person.

At approximately 8:00 p.m., three and one-half hours after the reported attempted robbery, Officer Bautista observed a young man, later identified as Minor, walking through the Raley's shopping center parking lot with two companions. Officer Bautista noticed Minor, because he was wearing clothing similar to the perpetrator's described attire. Minor was wearing a knit cap and had a long-sleeved shirt tied around his neck; his shirt was light blue and not beige as described by J.S., and Minor was not wearing jeans. Minor was also wearing a dark blue shirt that had not been described by J.S. Bautista acknowledged that there were "several ways that the clothing [Minor] was wearing did not match the description" given to him by dispatch and J.S., and that this is "not always the case."

Officer Bautista detained Minor, as he believed that he may have been involved in the attempted robbery. When Bautista approached Minor, he did not attempt to flee, but was compliant and cooperative and answered the officer's questions. Other officers remained with Minor, while Bautista left to bring J.S. to the shopping center for an identification.

J.S. recalled that Officer Bautista asked him whether he would ride with him to "look at a suspect that they had detained." He agreed and Bautista drove him to the Raley's shopping center. During the 30-second drive, Bautista did not say anything to J.S., except "we have him at the parking lot where you shop." Officer Bautista stopped the police car in the shopping center parking lot. J.S. observed that other police cars and officers were present in the lot, but he could not recall how many. Using his police radio, Officer Bautista requested that other officers have "this person stand up." Bautista stated that prior to the identification, he advised J.S. "that the person that I was going to show him may or may not be involved in the crime. He [was] not obligated to identify anybody. It's just as important to free the innocent as it is to identify the guilty." According to J.S., all Bautista told him prior to the identification "was to look at the person that was going to stand up."

Officer Bautista turned the car around so that J.S. could look out the side window at the person sitting on the ground. J.S. saw Minor sitting on the curb with his hands

handcuffed behind his back. Minor was the only person shown to J.S. J.S. was seated in the patrol car, 50 to 60 feet away from Minor. By this time, at around 8:15 to 8:30 on an August evening, it was dusk outside. J.S. got a “good look” at Minor and identified him as the person who had attempted to take his wallet earlier that day. J.S. recognized him by his clothing, his hat, and his face. After this identification, Officer Bautista arrested Minor.

At the jurisdictional hearing, J.S. described the perpetrator of the attempted robbery as wearing beige or khaki-type pants, a dark polo shirt, a long-sleeved blue shirt knotted around his neck and a “fairly heavy knitted cap that was darkish beige with two different colored stripes of color around.” Also at that hearing, J.S. identified Minor as the person who had attempted to take his wallet.

The juvenile court held the evidence was sufficient to establish that the perpetrator committed an attempted second degree robbery rather than attempted theft. By pushing J.S. before he put his fingers in J.S.’s rear pocket, the perpetrator applied more than the quantum of force necessary to accomplish the mere seizing of the property. The court also held the evidence was sufficient to establish that Minor was the perpetrator of this crime. The court expressly found J.S. a credible witness, particularly in his unequivocal identification of Minor at the jurisdictional hearing and at the showup in the parking lot “some four hours” after the crime occurred. The court declined to find that the single-person showup identification was unduly suggestive, in violation of Minor’s due process rights.

Appointed counsel has submitted a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, certifying that she has been unable to identify any issues for appellate review. Counsel has also submitted a declaration affirming that she has advised appellant of his right to file a supplemental brief raising any points which he wishes to call to the court’s attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

We find no arguable issues and therefore affirm.

DISCUSSION

We may reverse the juvenile court's dispositional order only upon a showing the court abused its discretion. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

“ “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” ’ [Citation.]” (*Id.* at p. 1330.)

The evidence was sufficient to convict Minor of attempted second degree robbery. (See *People v. Vizcarra* (1980) 110 Cal.App.3d 858, 861, 862-863 [attempted robbery requires proof of specific intent to commit robbery and unequivocal overt act toward its commission, but element of force or fear against intended victim unnecessary].)

The single-person showup identification procedure was not unduly suggestive or unfair. (*People v. Johnson* (1989) 210 Cal.App.3d 316, 322-323.) While there were discrepancies in the description of Minor, they were insufficient to render J.S.'s identification of Minor inaccurate. (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 387 [victim's description of attacker was accurate despite being wrong as to type of pants he was wearing].)

We have conducted an independent review of the entire record for potential error and find none. (*People v. Kelly, supra*, 40 Cal.4th at p. 119.) We therefore affirm the judgment.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.