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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

R.G.,

Defendant and Appellant.

A141202

(Contra Costa County
Super. Ct. No. J1400005)

R.G. appeals from jurisdictional and dispositional orders after the juvenile court sustained allegations of second degree robbery, committed him to an out-of-home placement and imposed probation conditions. R.G. contends the evidence that identified him as one of the robbers was insufficient to support the jurisdictional order. In addition, he asserts that probation conditions prohibiting his use and possession of alcohol, drugs and weapons are unconstitutionally vague. We modify the dispositional order to include a scienter requirement for the challenged conditions of probation. In all other respects we affirm the juvenile court’s orders.

BACKGROUND

Roger Chung arranged to buy marijuana from juvenile T.S. Around 1:30 a.m. on January 2, 2014, Chung and Nicholas Hall walked to the vicinity of a church parking lot

and trailhead on Lucina Way in Antioch to make the purchase as prearranged. It was dark, but a full moon and a streetlight provided some light.

As Chung and Hall approached, Chung saw first T.S. and then two others. One of the others was standing about five or 10 feet away from T.S., and the second was standing 20 to 25 feet away from him in the dark. Chung exchanged greetings with T.S. and Hall introduced himself as “the guy wanting to buy.”

Then, a gunman appeared from behind, approached Hall, pointed the gun first at Hall and then Chung, and said “[g]ive me everything you got.” Chung testified the gun looked like a .45 semiautomatic. T.S. and the other accomplice, later identified as J.H., took Chung’s and Hall’s belongings from their pockets, and the gunman ordered them to turn around and walk away. Chung and Hall walked back to Chung’s house, where a friend called 911. Chung identified R.G. as one of the men standing near T.S. when they approached, but he did not remember which of the two he was.

Hall’s version of the robbery diverged in some respects from Chung’s. He testified that when he arrived at the arranged location for the marijuana purchase he saw two men fairly close together, one on the sidewalk in a red and black jacket and the other sitting on a fence in a grey sweatshirt and jeans. Chung greeted T.S., who was wearing the red and black jacket, and they proceeded with their transaction until a third man emerged from the bushes with a gun. The gunman wore a white t-shirt and had something like a bandana over his face and a jacket around his head. As he pointed the gun back and forth at Hall and Chung, T.S. ordered the two to empty their pockets. The gunman chimed in with “Do you want to get popped? Empty out your pockets.”

Back at Chung’s house, Hall sat next to Chung while Chung spoke to the 911 operator. Chung said the gunman wore a white T-shirt and had a blue bandana over his face. He described the other two robbers as a mixed race Black/Asian man with long curly hair wearing a red jacket and a black male with dreadlocks wearing a gray sweater. Chung actually told the 911 operator the black male was wearing a green sweater, but at the jurisdictional hearing he said he had misspoken. He also testified that he had mistakenly described one of the assailants as black with dreadlocks, but “that’s what I

was told,” that the man was wearing a hoodie, and that it was dark. Hall did not correct Chung during the 911 call. Chung told the 911 operator that the robbers had taken their phones, his cigarettes, and Hall’s wallet and money.

Police arrived at Chung’s house within 20 minutes of the robbery and said they had detained some potential suspects fitting the descriptions given to the 911 operator. Officers separately advised Hall and Chung that the detainees might or might not be their assailants. Chung was admonished that “[i]t is just as important to release innocent people of any suspicion as it is to identify the responsables.” Chung indicated he understood. Hall was told not to make an identification if he was not “100 percent sure”

The two were driven in separate patrol cars to the field show-up, where they were shown four suspects one at a time. Chung recognized three of the four men. He knew T.S. from high school and identified R.G. and J.H. based on their clothing. He identified all three in court, but he could not remember which of the two men he had identified by their clothing at the lineup was the gunman.

Hall also identified the three men at the show-up and in court. He recognized R.G. as the man with the gun by his height and “probably the color of his hair. Because he really didn’t seem like he had light hair, almost dark.” He was “about 90 percent sure” about his identification, even though he had not seen R.G.’s face during the robbery. Police found Chung’s phone and cigarettes in T.S.’s pockets and Hall’s phone and SIM card in J.H.’s. A replica semi-automatic handgun was found in the bushes near where the suspects were initially detained. When officers showed it to Chung and told him it was found on the suspects, he said it looked like the weapon used during the robbery. In court, however, Chung testified he had assumed the replica gun was used in the robbery because it was the only one found. Hall told the officers that the replica gun they showed him did not look like the weapon used in the robbery.

The sole defense witness was Sheila Lacambra, an investigator with the public defender’s office. Lacambra spoke with Chung and Hall a week after the robbery. Chung told her there was a fourth man on the scene at the time of the robbery, that R.G.

and T.S. went through his pockets, that the gun “was so close to his face it was almost touching his nose,” and that the gunman told him to “[g]ive me everything you got, or I’ll shoot your eyes out.” Hall told Lacambra that there were no street lights by the trail where the robbery took place, so it was hard to see. Lacambra did not record her interviews.

The juvenile court found beyond a reasonable doubt that R.G. committed second degree robbery against both Chung and Hall, but that the the third count, exhibiting an imitation firearm, was not proven. The court also found the robbery charges proven as to T.S. and J.H. The court commented that Chung’s testimony was “a little bit all over the place.” But, it observed, “I had the opportunity to watch him testify, and as the trier of fact, it’s very important to actually watch as a witness testifies so you can assess credibility. It’s not only what they say, it’s how they say it and the context in which it is said. [¶] There is nothing about Mr. Chung that I found incredible. He is simply a bit more scattered. And when you put his statements in time in relation to what was happening and the stresses or pressures he was under, quite frankly, it’s reasonable that a person who has had a gun pointed to—whether it’s the temple, the cheek, or right in the nose—either way, that’s a very frightening and stressful situation.” The court expressly found both victims “very credible” despite the inconsistencies in their testimony, which it found were understandable in light of the stress of the event.

The court ordered R.G. removed from his parents’ custody and committed him to a court-approved institution, with a recommendation for the Rite of Passage program. It determined R.G. was likely to be able to safely return home in one year and imposed probation conditions. This timely appeal followed.

DISCUSSION

Substantial Evidence Supports The Court’s Finding That R.G. Committed Robbery

R.G. contends the identification evidence was insufficient to prove he was one of the robbers. Specifically, he maintains the show-up procedures were “unduly suggestive” and thus resulted in unreliable victim identifications; that the identifications were

uncorroborated; and that “other evidence in the case tended to undermine any confidence that might otherwise have been placed” in them. His contentions are unpersuasive.

I. Legal Standards

“Our review of the minors’ substantial evidence claim is governed by the same standard applicable to adult criminal cases. [Citation.] ‘In reviewing the sufficiency of the evidence, we must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.]’ [Citation.] ‘ “[O]ur role on appeal is a limited one.” [Citation.] Under the substantial evidence rule, we must presume in support of the judgment the existence of every fact that the trier of fact could reasonably have deduced from the evidence. [Citation.] Thus, if the circumstances reasonably 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. [Citation.]’ ” (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.)

To entitle a reviewing court to set aside a jury’s finding of guilt based on insufficient identification evidence, that evidence “ ‘must be so weak as to constitute practically no evidence at all.’ ” (*People v. Mohamed* (2011) 201 Cal.App.4th 515, 521; *People v. Lindsay* (1964) 227 Cal.App.2d 482, 493 (*Lindsay*); *People v. Braun* (1939) 14 Cal.2d 1, 5.) “The strength or weakness of the identification, the incompatibility of and discrepancies in the testimony, if there were any, the uncertainty of recollection, and the qualification of identity and lack of positiveness in testimony are matters which go to the weight of the evidence and the credibility of the witnesses” and are therefore directed solely to the attention of the trier of fact. (*Lindsay, supra*, at pp.493–494.) And when, as in this case, “[t]he circumstances surrounding the identification and its weight are explored at length at trial, where eyewitness identification is believed by the trier of fact, that determination is binding on the reviewing court.” (*People v. Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497.)

Reviewed in light of these principles, the record amply supports the jurisdictional findings. R.G. argues the trial court should have discredited the victims' pretrial and in-court identifications because their testimony was influenced by an unduly suggestive show-up procedure in which the suspects were "displayed . . . in show-up fashion, handcuffed and under bright spotlights in such a way that they appeared to have been arrested."¹ Furthermore, he argues, the witnesses were under a great deal of stress during the brief encounter, the lighting was poor, the gunman's face was covered, and there were omissions, inconsistencies and uncertainties in their 911 call and subsequent identifications.

But these points were raised and vigorously explored at the dispositional hearing. The juvenile court found Chung and Hall were credible witnesses and that the inconsistencies in their testimony were understandable under the circumstances. " " "Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for 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 upon which a determination depends." ' ' ' (*People v. Lewis* (2001) 26 Cal.4th 334, 361.) This rule applies to eyewitness identification evidence. " " "The strength or weakness of the identification, the incompatibility of and discrepancies in the testimony, if there were any, the uncertainty of recollection, and the qualification of identity and lack of positiveness in testimony are matters which go to the weight of the evidence and the credibility of the witnesses, and are for the observation and consideration, and directed solely to the attention of the jury in the first instance.' " ' (*People v. Mohamed, supra*, 201 Cal.App.4th 515, 521–522 [neither victim saw robbers' entire faces; one was "80 percent sure" the suspect in lineup was one of the perpetrators; second victim was " " 'completely sure' " ' based on suspect's clothing].)

¹To be clear, R.G. does *not* claim the show-up procedure was so suggestive that the identification testimony should have been excluded from the jurisdictional hearing. His argument, rather, is that the evidence as a whole was insufficient to prove he was one of the robbers.

R.G. further argues that the absence of evidence corroborating the victim identifications “undermine[s] any possible confidence in the identification evidence.” He observes, for example, that the police did not find a gun, a blue bandana, or any stolen property in his possession when he was detained, that his connection to T.S. and J.H. was unestablished, and that nothing connected him to the replica gun recovered from the bushes. According to R.G. the evidence cannot be sufficient because the People were required to prove he was the gunman, there was a lack of evidence showing he had that role and exhibiting an imitation firearm charged solely against him was dismissed as unproven. But while Hall identified R.G. as the gunman and Chung could not, they both identified him as one of the perpetrators. There is no requirement that eyewitness identification be corroborated—even where, unlike here, the eyewitness does not confirm his or her identification in court. (*People v. Boyer* (2006) 38 Cal.4th 412, 480–481; *People v. Cuevas* (1995) 12 Cal.4th 252, 271–272.) R.G.’s appellate challenge to the reliability of the eyewitness identifications is, in essence, an attempt to reargue factual issues decided adversely to him at the trial level. As such, it must fail. We are satisfied that the evidence supports the juvenile court’s findings.

II. Probation Conditions

The juvenile court imposed the following probation conditions: “[you are] not to use or possess any illegal drugs, drug paraphernalia, alcohol and/or prescription drugs for which you do not have a current and valid prescription issued by a duly licensed physician” and “[you are] not to use or possess any weapons.” R.G. argues these conditions are unconstitutionally vague because they fail to include an express knowledge requirement and that the weapons condition is insufficiently precise. We agree these conditions must be modified to include a scienter requirement.

A probation condition is unconstitutionally vague if it is not “ ‘sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.’ ” [Citation.] A restriction failing this test does not give adequate notice—‘fair warning’—of the conduct proscribed. [Citations.]” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) “ ‘In deciding the

adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that “abstract legal commands must be applied in a specific context,” and that, although not admitting of “mathematical certainty,” the language used must have “ ‘reasonable specificity.’ ” [Citation.]” (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1144, italics omitted.) R.G.’s challenge to his probation conditions as facially vague presents a pure question of law appropriate for de novo review. (*In re Sheena K.* (2007) 40 Cal.4th 875, 888–889; *People v. Cromer* (2001) 24 Cal.4th 889, 894.)

R.G. argues the weapons condition is facially vague because it fails to adequately specify what prohibited objects are within its scope. Thus, he argues, the condition as written fails to provide adequate notice of what is forbidden. We disagree. “[C]onditions [of probation] need not be spelled out in great detail in court as long as the defendant knows what they are. . . .” (*In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1155.) The term “any weapons” is sufficiently clear to inform R.G. what objects he may not use or possess. He argues he could be charged with a probation violation for possessing such seemingly innocuous objects as a flashlight or baseball bat, but such items qualify as dangerous or deadly weapons only where the defendant *intends to use them* as such. (See *People v. Page* (2004) 123 Cal.App.4th 1466, 1471–1473 [pencil]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1107 [screwdriver]; *People v. Helms* (1966) 242 Cal.App.2d 476, 486–487 [pillow used in attempted smothering].) The juvenile court did not restrict the weapons condition to “dangerous” or “deadly” weapons, but the long-held principle that an otherwise innocuous object qualifies as a weapon if it is used with that intent should, as a matter of common sense, apply to R.G.’s weapons condition. Thus, for example, the “no weapons” admonition fairly informs R.G. that, while he may use a flashlight for illumination, he may not wield it as a bludgeon. (See, e.g., *People v. Page, supra*, 123 Cal.App.4th 1466.) That duality does not render the weapons condition unconstitutionally vague.

We agree, however, that the use and possession conditions must be modified to include a knowledge requirement. The appellate courts have held, albeit not uniformly, that probation conditions restricting a probationer’s presence, possession, or association

must include express scienter requirements to prevent the conditions from being unconstitutionally vague. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 912 [knowingly in presence of weapons]; *People v. Freitas* (2009) 179 Cal.App.4th 747, 751–752 [knowing possession of gun or ammunition]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 634 [knowing display of gang indicia]; but see *People v. Patel* (2011) 196 Cal.App.4th 956, 960 [implying scienter requirement].) We shall follow the majority practice and require modification of the probation conditions to prohibit R.G. from *knowingly* using or possessing weapons, illegal drugs, prescription drugs without a valid prescription, or alcohol.

DISPOSITION

The prohibitions against using or possessing weapons, drugs, prescription drugs without a valid prescription from a licensed physician, or alcohol are modified to provide that R.G. may not knowingly use or possess these items. In all other respects the judgment is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.

In re R.G., A141202