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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

A141442

(Alameda County  
Super. Ct. No. SJ14022385)

**I.**

**INTRODUCTION**

On February 3, 2014, a petition was filed under Welfare and Institutions Code section 602<sup>1</sup> in the Alameda County Superior Court alleging that the 16-year-old minor, J.G. (appellant), had robbed another juvenile of personal property, an iPhone 5. (Pen. Code, § 211.) The petition also alleged appellant had attempted to prevent and dissuade the victim from making a report to a peace officer. (Pen. Code, § 136.1, subd. (b)(1).)<sup>2</sup> Following a contested hearing, the court sustained the petition. At the disposition hearing

<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Additional counts that appellant robbed another individual (Pen. Code, § 211); that he personally used a firearm during the commission of the offense (*id.* at § 12022.53, subd. (b)), and that he brought a firearm on school grounds (*id.* at § 626.9), were eventually dismissed by the court.

on March 25, 2014, the court adjudged appellant a ward of the court and placed him under the care of the probation officer to be placed “in a suitable foster home or private institution or group home/county facility.”

On appeal, appellant contends the juvenile court erred when it denied his motion to dismiss the petition after the close of the prosecution’s case under section 701.1. As we explain, because sufficient evidence supports the court’s denial of the section 701.1 motion, we shall affirm.

## II.

### FACTS AND PROCEDURAL HISTORY

At the outset, we stress that our evidentiary summary is limited to the evidence that was before the juvenile court at the time it ruled on the motion under section 701.1. (See *In re Anthony J.* (2004) 117 Cal.App.4th 718, 727-728 (*Anthony J.*) [when a § 701.1 motion is made at the close of the prosecution’s case, as occurred here, the sufficiency of the evidence is tested as it stood at that point].) Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687, 697), the evidence presented during the prosecution’s case-in-chief established as follows:

The prosecution’s chief witness was the robbery victim, who was a high school freshman at the time of the crime. When the victim got out of school on January 30, 2014, he went to a nearby gas station with his friends. After they made their purchases, appellant and another juvenile, who was later identified as R.C., were walking in front of the victim and his friends. They kept turning around and looking at the victim.

Appellant eventually asked the victim if he had a phone, and he said no. Then appellant came around, put the victim in a “headlock” and said, “Rob, his phone.” The victim had his hands over his pockets to prevent appellant and R.C. from taking his phone, but “[appellant] said he was going to shoot me if I didn’t let him take my phone, so I moved my hands and let [R.C.] take it.” R.C. pulled the victim’s iPhone out of his pocket. Appellant then told the victim that if he and his friends called the police, they would shoot them. The threat scared the victim because he did not want to get shot over a phone. The victim said the whole incident happened quickly, within a few seconds.

The victim recognized R.C. as the person appellant called “Rob” because they both previously attended the same middle school and they both were currently enrolled in the 10th grade at the same high school. The victim testified he had never actually spoken with R.C., but he recognized R.C. from attending school together and “[m]y friends were friends with him . . . .” The victim did not know appellant and had never seen him before this incident.

The victim walked to his former middle school and called the police on his friend’s phone. Hayward Police Officer Wilson testified he interviewed the victim immediately after the incident. The victim identified one of the robbers by name, as a fellow student named “Rob or Robert,” and gave the officer a physical description of both assailants. Officer Wilson called Officer Najera, a six-year veteran of the Hayward Police Department who was assigned to the high school as a school resource officer, and conveyed the information the victim had given him. Officer Wilson then received a text message on his cell phone that contained a photo of R.C., which he showed to the victim. The victim identified R.C. as one of the persons who robbed him. The officer only showed the victim one picture. Officer Wilson then sent Officer Najera a text saying “that’s the guy.”

The victim went to assistant principal Dave Seymour’s office the day after the incident and said the person who robbed him was on campus that day. Based on what Officer Najera told him the day before, Mr. Seymour pulled up appellant’s photograph and asked the victim if that was the person the victim was talking about, and the victim said yes. He explained he pulled up appellant’s photograph because appellant was frequently seen with R.C. The victim was “[a]bout like 90” percent certain the person depicted in the photograph was the other robber. The victim was not entirely certain because, during the robbery, appellant wore a red Polo baseball cap whereas he was not wearing a hat in the photograph.

At some point, the victim’s friend K., who also was an eyewitness to the robbery, was brought into Mr. Seymour’s office. K. was only shown photographs of appellant and R.C., who K. identified as the persons who had taken the victim’s iPhone. K. testified

that although he was more sure of R.C.'s identification, he looked at appellant's photograph "closely. . . . And then like, yeah, that looks like him. That looks most definitely like the guy because he had the same hair, the same features, the same everything." The court admitted into evidence the color photographs of appellant and R.C. from Mr. Seymour's computer. Based on their in-court observations, both the victim and K. testified they were 100 percent certain the two people who robbed the victim were appellant and R.C.

At the conclusion of the prosecution's case-in-chief, defense counsel made a motion to dismiss "based on the People's presentation of the evidence so far." Defense counsel argued the evidence did not prove beyond a reasonable doubt that appellant was one of the persons who committed the robbery. The court denied the motion to dismiss without comment.

After the defense presented its evidence and counsel presented closing arguments, the trial court found the robbery and dissuading a witness allegations true beyond a reasonable doubt. This appeal followed.

### III.

#### DISCUSSION

##### **A. Substantial Evidence Supports Denial of the Motion to Dismiss the Petition**

On appeal, appellant contends the juvenile court erred in denying his section 701.1 motion. He claims that at the time the prosecution rested, the evidence was insufficient to show that he participated in the crimes for which he was ultimately convicted. He argues that "[a]t the close of the prosecution's case, the juvenile court lacked a factual basis on which to place [appellant] at the scene or any factual justification for showing the witnesses the single photo of [appellant]."

Section 701.1 authorizes the juvenile court, upon the minor's motion, to dismiss a wardship petition "after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602." (§ 701.1.) Section 701.1 "is substantially similar to Penal Code section 1118 governing motions to acquit in criminal trials. . . .

[¶] Thus, the requirement in a criminal case that on a motion for acquittal the trial court is required ‘to weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the defendant is “proved beyond a reasonable doubt before [the defendant] is required to put on a defense” ’ applies equally well to motions to dismiss brought in juvenile proceedings. [Citation.]” (*Anthony J.*, *supra*, 117 Cal.App.4th at p. 727, fn. omitted.; *In re Andre G.* (1989) 210 Cal.App.3d 62 66 (*Andre G.*).

We review the juvenile court’s ruling on a section 701.1 motion under the substantial evidence standard. (*Andre G.*, *supra*, 210 Cal.App.3d at p. 65.) Thus, “[t]his court must review the [record as it existed at the time of the motion] in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the [petition true] beyond a reasonable doubt. We must presume in support of the [ruling] the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]” (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) We “ ‘may not set aside the [juvenile] court’s denial of the motion on the ground of the insufficiency of the evidence unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reached by the court below.’ [Citations.]” (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.)

The evidence presented during the prosecution’s case-in-chief was sufficient to establish appellant was an active participant when the victim was robbed of his iPhone. At the time the court considered appellant’s motion to dismiss, the prosecution had presented two witnesses—the victim and K., the eyewitness. Both of these witnesses gave positive in-court and out-of-court identifications of appellant as the person who: (1) grabbed the victim in a headlock to prevent him from resisting, (2) directed R.C. to remove the victim’s iPhone from his pocket, and (3) threatened to shoot them if they reported the robbery to the police.

Appellant argues the circumstances surrounding his identification as one of the robbers were unduly suggestive and therefore unreliable. He claims showing the victim

and K. a single photograph of appellant early in the investigative process was “unfairly suggestive” and “[t]his tainted identification then carried through to [the victim] and [K.]’s in-court identification of [appellant] at trial in the prosecution’s case-in-chief.” He compares the absolute certainty of the victim’s photo identification of R.C., who he knew from school, to the more “equivocal” identification the victim made from appellant’s photo. He claims “no reasonable fact-finder could have determined that [appellant] was involved in this incident.” None of these assertions empower us to overturn the juvenile court’s finding.

Here, the arguments made by appellant do not meet the demanding standards for rejecting a witness’s identification testimony. “A single witness’s uncorroborated testimony, unless physically impossible or inherently improbable, is sufficient to sustain a conviction. [Citation.]” (*People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.) An identification need not be free from doubt to have evidentiary value. (See, e.g., *People v. Midkiff* (1968) 262 Cal.App.2d 734, 740 [“identification of the defendant need not be positive”]; *People v. Robarge* (1952) 111 Cal.App.2d 87, 98 [“fact that a witness may to some extent qualify his testimony as to identification, goes to the weight of such testimony and is addressed to the sound discretion of the triers of fact”].) Ultimately, “[t]he question of identification of the perpetrator of a crime is one for determination by the trier of fact and unless the evidence of identity is so weak as to constitute no evidence at all this court cannot set aside the decision of the trial court.” (*People v. Kittrelle* (1951) 102 Cal.App.2d 149, 154; accord, *People v. Shaheen* (1953) 120 Cal.App.2d 629, 637.)

The juvenile court, as the trier of fact, heard extensive evidence during the prosecution’s case-in-chief about the circumstances surrounding the victim and K.’s identifications of appellant as one of the robbers. The juvenile court drew rational inferences from the evidence that supported its implicit finding that the prosecution had presented substantial evidence during its case-in-chief that appellant was one of the persons who robbed and threatened the victim. We are not authorized to substitute our judgment for that of the juvenile court. In sum, there was sufficient evidence at the close

of the prosecution's case-in-chief to support the juvenile court's determination that appellant was not entitled to dismissal of the petition filed against him pursuant to section 701.1.

### **B. Trial Court's Remarks in Rendering Its Decision**

Appellant also argues that "[i]n light of the juvenile court's final commentary on the state of the evidence" after the close of the evidence when it sustained the petition against appellant, "it is readily apparent that the court should have granted the section 701.1 dismissal motion." By way of background, after the prosecution rested, incriminating evidence was submitted by the defense in the form of videos and photos taken from appellant's cell phone. This evidence was offered into evidence by the defense late in the proceedings purportedly to bolster appellant's alibi. As the juvenile court noted in its ultimate findings, not only did this defense evidence place appellant in the immediate vicinity just before the robbery, but it also showed appellant wearing a red hat and grey sweatshirt, which matched the description provided by the victim immediately after the robbery.

Given the totality of the evidence, the trial court found "that the allegations of the petition are true beyond a reasonable doubt." However, in so finding, the court remarked, "In listening to all of the evidence in the case, I must say that prior to the [cell phone] video . . . I would have had a reasonable doubt with regard to [appellant]."

Appellant argues that because the incriminating video evidence was "introduced long after the prosecution's case-in-chief and the motion to dismiss, the juvenile court's own assessment that it 'would have had to have reasonable doubt' at this point in the trial as to whether [appellant] was involved required dismissal then and requires setting aside the denial now." We disagree that this singular statement by the trial court made at the conclusion of all of the evidence, and while summarizing witness testimony presented by both the prosecution and defense, undermined, or was inconsistent with, the court's earlier ruling in connection with appellant's section 701.1 motion. At the point in time of ruling on that motion, the only evidence presented had been from K. and the victim. It is also clear that the motion to dismiss was made by appellant's counsel on the ground that

the prosecution had failed to meet its burden of producing evidence that the alleged crimes had been committed “beyond a reasonable doubt,” a contention the court found not convincing.

On the other hand, by the time of the court’s above-quoted remark *all of the evidence* had been presented, including testimony from 10 defense witnesses, four of whom were called by appellant’s counsel. This additional evidence attacked the reliability of the victim and K.’s identification testimony and included alibi witnesses as well. For example, in its concluding remarks the court specifically mentioned this defense evidence as including the testimony of assistant principal Seymour, who gave the court the impression that appellant was on his “radar,” as suggested by the fact that Seymour showed the victim and K. only the photo of appellant. The court found Seymour’s testimony had “a lot of problems.” It was not until late in the case, after the video was admitted that the doubt created by the defense evidence dissipated.

When sitting without a jury, the judge has “the right to announce the mental processes by which [the judge has] determined the credibility of the witnesses and by which [the judge has] arrived at his [or her] conclusions.” (*Smith v. Coleman* (1941) 46 Cal.App.2d 507, 514.) There is nothing in the court’s comments suggesting that having already considered and decided that the prosecution proved the factual elements of the offenses charged during its case-in-chief through the eyewitness testimony of the victim and K., the court was reconsidering its ruling or that the court now believed its earlier ruling was in error. For these reasons, we conclude that the trial court’s remark, which is embedded in a lengthy explanation of the court’s ruling on the petition after the close of evidence, does not diminish the fact that the court’s denial of appellant’s section 701.1 motion was fully supported by substantial evidence.

**IV.**  
**DISPOSITION**

The court’s orders are affirmed

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RUVOLO, P. J.

We concur:

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REARDON, J.

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STREETER, J.