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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Jorge B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE B.,

Defendant and Appellant.

A142380

(Contra Costa County
Super. Ct. No. J14-00541)

Jorge B. appeals from the juvenile court’s jurisdiction findings and order declaring him a ward of the court. Jorge contends that the juvenile court erred by admitting his statements to police without a valid waiver of *Miranda*¹ rights; dismissing a charge of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),² but finding he had committed the lesser related offense of brandishing a weapon (§ 417, subd. (a)(1)); and, with respect to the same property, finding that he had committed both grand theft (§ 487, subd. (c)) and receiving stolen property (§ 496, subd. (a)). In the alternative, Jorge maintains that his grand theft and receiving stolen property offenses should be reduced to misdemeanors under Proposition 47. We agree that the jurisdictional findings must be

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

² Undesignated statutory references are to the Penal Code.

reversed with respect to brandishing and receiving stolen property. Accordingly, we remand for a new disposition hearing.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Contra Costa County District Attorney filed a Welfare and Institutions Code section 602 petition, which charged Jorge with grand theft (§ 487, subd. (c); count one), assault with a deadly weapon (§ 245, subd. (a)(1); counts two and three), and (3) receiving stolen property (§ 496, subd. (a); count four).

Erika Garell testified at the contested jurisdictional hearing that, on May 9, 2014, around 10:30 a.m., she was walking on Olympic Boulevard in Walnut Creek. She was talking on her cell phone and carrying a Louis Vuitton purse. She felt a bump, and a man behind her grabbed the purse and ran. She screamed and saw another man run after the thief into an alley. She could not identify either man.

Sergio Fernandez was making deliveries in the area at the time of the theft. Around 10:30 a.m., he saw two “tall and kind of Latino” men looking at a woman walking by, and then he saw one of the men take the woman’s purse. Both men ran down an alley towards a parking lot. Fernandez gave chase and grabbed the thief. Fernandez tried to retrieve the purse and was struggling with the thief when a white truck drove into the alley. The driver of the truck got out with a metal bat and started yelling, “Let him go.” Fernandez was about one meter away from the driver, when the driver swung the bat at him. Fernandez pulled the thief between himself and the driver. Fernandez was never hit, but he believed the thief was hit with the next swing of the bat. Fernandez eventually let go of the purse and threw it towards the driver. The two men grabbed the purse and drove away in the truck. Fernandez did not recognize Jorge as the man who had swung the bat.

At the time of the theft, Brad Barroso was sitting in his car on Olympic Boulevard. He heard a woman scream and saw someone run into an alley. Within one to two minutes, Barroso jogged around the corner to see what was happening. He saw a Hispanic man in a delivery uniform running back towards him. A white truck was in the back corner of the alley, with someone getting into the passenger side and somebody

getting out of the driver's side with a bat. That person held the bat over his shoulder and yelled at Barroso, "Come here, bitch." Barroso gestured at him and the man with the bat entered the truck and drove away. Barroso could not be certain, but believed three people may have been in the truck. He could not identify the driver who had been 50 yards away, but Barroso described the driver to police as a short Hispanic male, 160–170 pounds, with black hair. Jorge's appearance was similar.

John Pregoner also witnessed the events in the alley. He saw a man with a bat yelling at two pursuers to back off and get away. Both the man with the bat and the man with the purse were standing near a late-model white truck. Another man was in the backseat. Pregoner noted the truck's license plate number, which he later gave to police. He identified Jorge as the man with the bat.

On May 14, 2014, police officers tracked the white truck to a house in Pittsburg. Jorge was observed by police coming out of the house and putting a baseball bat in the truck. He later drove off and was seen waving the bat out the truck window. The officers stopped the truck and detained Jorge.

Officer Mike McLaughlin testified that he asked Jorge, who was detained but unrestrained, about May 9 "when [he was] in Walnut Creek." Over a *Miranda* objection, McLaughlin further testified that Jorge admitted hitting somebody with a bat as he tried to break up a fight. Jorge claimed he had been in Walnut Creek by himself, did not know the people in the fight, had given a ride to the other man in the fight, and later dropped him off out of the area.

Jorge was arrested and brought to the Walnut Creek police station. A baseball bat was found in the truck. Detective William Jeha interviewed Jorge at the station. After finding that Jorge had knowingly waived his *Miranda* rights, the court admitted a video and transcript of the interview. During that interview, Jorge at first maintained that he only helped a man he did not know who was "about to get jumped." Jorge eventually admitted that he helped a man get away who had stolen a purse. Jorge also said he hit a man who was trying to prevent the thief from getting away. Jorge identified the thief.

A search and extraction of data from Jorge's cell phone revealed a photo of a man in a baseball cap holding what appeared to be Garell's purse. The phone file indicated the image was created on May 9, 2014, at 11:08 a.m., with the entry made at 11:15 a.m. According to the forensic examiner, there were two possibilities as to how the image came to be on Jorge's phone: either Jorge took the photo, or someone else took it and sent it to his phone. A photo of Garell's driver's license was also found in a file on Jorge's phone, created on May 9, at 10:48 a.m. Because the "created" time and "capture" time matched, the forensic examiner opined that it was "definitely possible" that the photo was taken with Jorge's phone. Several outgoing messages on Jorge's phone had an attached thumbnail photograph of a Louis Vuitton purse on a tile floor. On May 9, at 10:42 a.m., a message was sent from Jorge's phone stating, "Bout to get I Louis V. bag." A later message stated, "Got it ah-ha."

The juvenile court sustained the grand theft and receiving stolen property allegations and one count of assault with a deadly weapon. Specifically, the juvenile court found Jorge aided and abetted the theft, and explained: "[H]e was the getaway driver. There is sufficient evidence of a conspiracy. The fruits of the theft end up with [Jorge], and plus . . . there is some evidence that it wasn't by happenstance, and the statement by [Jorge] is not believable." As to count two, the court dismissed the original assault charge and found Jorge had committed the lesser offense of misdemeanor brandishing a weapon.

At disposition on June 27, 2014, the court adjudged Jorge a ward of the court, removed him from his parents' custody, and committed him to the Orin Allen Youth Reformation Facility. The court declined to reduce the three felony offenses to misdemeanors under section 17, subdivision (b), and set Jorge's maximum period of confinement at five years, four months, and 15 days. Jorge filed a timely notice of appeal.

II. DISCUSSION

Jorge contends that the juvenile court erred by: (1) admitting his statements to police without a valid waiver of *Miranda* rights; (2) dismissing an assault with a deadly

weapon charge, but finding he committed the lesser related offense of brandishing a weapon;; and (3) finding he committed the offenses of both receiving and taking the same property. In the alternative, Jorge maintains that his grand theft and receiving stolen property offenses should be reduced to misdemeanors under Proposition 47. Jorge's second and third arguments have merit.

A. *Admission of Confession*

Jorge contends that his admissions should not have been received in evidence because he did not knowingly and intelligently waive his *Miranda* rights prior to police questioning. “[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. . . . Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.” (*Miranda, supra*, 384 U.S. at pp. 444–445.)

“On appeal, we review independently the trial court’s legal determinations of whether a defendant’s statements were voluntary [citation], whether his *Miranda* waivers were knowingly, intelligently, and voluntarily made [citation], and whether his later actions constituted an invocation of his right to silence [citation]. We evaluate the trial court’s factual findings regarding the circumstances surrounding the defendant’s statements and waivers, and ‘ “accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence.” ’ ” (*People v. Rundle* (2008) 43 Cal.4th 76, 115, disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421 & fn. 22.) While we must make an independent determination from our review of the record, “we, like the United States Supreme Court, may ‘give great weight to the considered conclusions’ of a lower court that has

previously reviewed the same evidence.” (*People v. Jennings* (1988) 46 Cal.3d 963, 979.)

1. *Background*

The transcript of Jorge’s interview shows:

“Jeha: OK, I got to read you your rights. OK? You have the right to remain silent. Do you understand that right?

“Jorge: It’s cool. Like I don’t gotta talk?

“Jeha: Ok so I’m gonna read it to you and if you have any questions, we’ll go over this, OK? So listen to what I’m saying, OK? You have the right to remain silent. Do you understand that?

“Jorge: (shakes head)

“Jeha: You don’t understand that? Ok, so that means you don’t have to talk basically, ok?

“Jorge: (nods)

“Jeha: Anything you say may be used against you in court. Do you understand that?

“Jorge: (Nods) Yeah.

“Jeha: Ok, good. You have the right to talk to an attorney before you answer questions and the right to have an attorney present with you during questioning. Do you understand that?

“Jorge: What’s an attorney?

“Jeha: An attorney is a lawyer.

“Jorge: I don’t got a lawyer.

“Jeha: Ok. But you understand the question, right?

“Jorge: (shakes head)

“Jeha: You have the right to talk to an attorney before you answer questions and the right to have that attorney present with you during questioning. Ok, so basically it says your right is to have an attorney, OK? While we are talking to you, if you wish. That is your right if you think it may help.

“Jorge: *Can I?*”

“Jeha: You get that—that’s your right, OK? The only problem is—well, we’ll get past that. So you understand that, right?”

“Jorge: Mm-hmm³”

“Jeha: Ok. If you cannot afford an attorney and want an attorney to represent you, an attorney will be appointed before any questioning to represent you free of charge. Basically is that you don’t have to pay for it. It’s your right to have an attorney.

“Jorge: Uh-huh.

“Jeha: Ok? Ok, so I just read rights to you. Right?”

“Jorge: (Nods)

“Jeha: Do you understand those rights that I just read to you?”

“Jorge: (Nods)

“Jeha: OK. Now you do understand? Can you clearly state: ‘Yes, detective, I understand that.

“Jorge: (Nods) Alright. You want me to say it?”

“Jeha: Please.

“Jorge: Alright. Yes, detective, I understand that.

“Jeha: Ok, good. Ok, so you told the detective out there that you were in Walnut Creek on Friday—

“Jorge: Uh-huh.

“Jeha: Correct? And you were there and someone came into (unintelligible) in your car? And you protected him with a baseball bat that you had in your car, right? That’s what he says, so this is your opportunity to tell me exactly what happened.

“Jorge: I was driving around and this dude he was running and I just seen him about to get jumped, y’know, and I don’t like that and so [¶] . . . [¶] I just helped him.”
(Italics added.)

³ The video recording shows Jorge nodding his head during this portion of the advisement.

Jorge’s trial counsel raised a *Miranda* objection before the video and transcript were admitted. Specifically, he argued, “I don’t think it’s a knowing and voluntary waiver. I think it’s, in fact, quite clear that Jorge doesn’t understand what’s going on.” The juvenile court overruled the objection, explaining: “Doesn’t [Jeha] clarify [Jorge’s] right to an attorney and says it won’t even cost him? Isn’t that what Jorge is referring to when he says, ‘Can I?’ [¶] . . . [T]he way I saw it and read it, he’s asking, you know, if it’s possible. I mean, is that really right, and [Jeha] clarifies. . . . [¶] . . . [¶] . . . I do find that Detective Jeha did read him his *Miranda* rights and that Jorge did waive his rights. [Jeha] asked for an explicit understanding if he understood his rights and [Jorge] says, ‘Yes, I understand.’ ”

2. Analysis

Jorge does not contend that he unambiguously invoked the right to counsel and all questioning should have ceased after he asked, “Can I?” He argues, instead, that Jeha was under a duty to clarify when faced with this ambiguous question and a knowing and intelligent waiver was not obtained from Jorge without that clarification.

“To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary. (*People v. Williams* (2010) 49 Cal.4th 405, 425 (*Williams*); [citation].) [¶] Determining the validity of a *Miranda* rights waiver requires ‘an evaluation of the defendant’s state of mind’ (*id.*,] at p. 428) and ‘inquiry into all the circumstances surrounding the interrogation.’ (*Fare v. Michael C.* (1979) 442 U.S. 707, 725.) When a juvenile’s waiver is at issue, consideration must be given to factors such as ‘the juvenile’s age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.’ (*Ibid.* . . . ; [*People v. Lessie* (2010) 47 Cal.4th 1152,] 1169–1170)” (*People v. Nelson* (2012) 53 Cal.4th 367, 374–375.)

“ ‘[A]lthough there is a threshold presumption against finding a waiver of *Miranda* rights [citation], ultimately the question becomes whether the *Miranda* waiver was [voluntary,]

knowing[,] and intelligent under the totality of the circumstances surrounding the interrogation.’ ” (*Williams*, at p. 425.)

“[C]ourts must use ‘ “special care in scrutinizing the record” ’ to evaluate a claim that a juvenile’s custodial confession was not voluntarily given.” (*People v. Nelson*, *supra*, 53 Cal.4th at p. 379.) However, a juvenile suspect, just like an adult, may waive his *Miranda* rights implicitly by willingly answering questions after acknowledging that he understood his rights. (*Id.* at p. 375; *People v. Cruz* (2008) 44 Cal.4th 636, 667; *Berghuis v. Thompkins* (2010) 560 U.S. 370, 384.) Thus, “[w]here the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent. [¶] [T]he law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford.” (*Berghuis*, at pp. 384–385.)

Relying on *Davis v. United States* (1994) 512 U.S. 452, 461–462 (*Davis*), the People maintain Jorge’s question—“Can I?”—was ambiguous or equivocal and that Jeha was not required to clarify whether Jorge was invoking his right to counsel or stop questioning him. “[A]fter a knowing and voluntary waiver, interrogation may proceed ‘until and unless the suspect *clearly* requests an attorney.’ (*Davis*[, *supra*,] 512 U.S. [at p.] 461.) Indeed, officers may, but are *not required* to, seek clarification of ambiguous responses before continuing substantive interrogation. (*Id.* at p. 459.)” (*Williams*, *supra*, 49 Cal.4th at p. 427.) *Davis* clearly applies to a juvenile’s postwaiver invocation of rights (*People v. Nelson*, *supra*, 53 Cal.4th at p. 372); however, “[i]nvocation and waiver are entirely distinct inquiries, and the two must not be blurred by merging them together” (*Smith v. Illinois* (1984) 469 U.S. 91, 98, fn. omitted). The *Davis* “clear statement” rule only applies after obtaining an unambiguous and unequivocal waiver of *Miranda* rights. (*People v. Duff* (2014) 58 Cal.4th 527, 553 [“because [suspect’s] reference to a lawyer occurred at the beginning of questioning, the rules respecting pre-*Miranda* waiver invocations of the right to counsel apply”]; *United States v. Rodriguez* (9th Cir. 2008)

518 F.3d 1072, 1078–1079 (*Rodriguez*) [“*Davis* addresses only the scope of invocations of *Miranda* rights in a post-waiver context” (italics omitted)].)

The question before us is not whether Jorge invoked his right to counsel *after* having waived it, but whether he waived his *Miranda* rights in the first place. The Ninth Circuit Court of Appeals has held, and our Supreme Court has assumed, that when a suspect makes an equivocal or ambiguous reference to counsel *before* waiving his or her *Miranda* rights, an officer must clarify the suspect’s intentions before initiating substantive questioning. (*Rodriguez*, at p. 1080; *Duff*, at pp. 553–554.) Assuming the *Rodriguez* duty to clarify ambiguous prewaiver references to counsel remains (but see *Berghuis v. Thompkins*, *supra*, 560 U.S. at p. 407 (dis. opn. of Sotomayor, J.)), we conclude that Jeha satisfied his burden. Jeha did not ask any follow-up questions to clarify what Jorge meant by “Can I?,” nor did he ever ask Jorge explicitly whether he wanted to waive his *Miranda* rights and speak to police without an attorney present. Nonetheless, we agree it can be reasonably inferred from Jorge’s question, the context in which it was asked, and the inflection of his voice that Jorge was only questioning how he could afford an attorney. Although Jorge’s question made plain that he did not understand appointment, his question also reflects Jorge’s understanding that, as Jeha was explaining to him, he had a right to have counsel present. Jeha responded directly to Jorge’s concern, by explaining that an attorney would be appointed free of charge for Jorge, if he could not afford one. After Jeha did so, Jorge nodded, said “uh-huh,” asked no further questions about appointment, and moments later unambiguously said, “Yes, detective, I understand [my rights.]” Jorge then willingly answered questions about the events in question. Giving full *Miranda* warnings and thereafter obtaining a waiver of such rights is a “legitimate method” of clarifying ambiguities. (*People v. Johnson* (1993) 6 Cal.4th 1, 27.) Jeha sufficiently clarified Jorge’s ambiguous or equivocal response to the *Miranda* warning before proceeding.

Jorge did not have a juvenile record. He was, at the time of his interrogation, 17 years old and in the 11th grade. Jorge clearly indicated that he was listening to Jeha’s advisement and was comfortable asking questions. Under the totality of the

circumstances, Jorge's responses made clear he was willing to speak with Jeha without an attorney present. The trial court did not err in finding Jorge's waiver of *Miranda* rights was voluntary, knowing and intelligent.

B. *Lesser Related Offense of Brandishing*

Next, Jorge argues that the juvenile court denied his rights to due process in sustaining the offense of brandishing (§ 417, subd. (a)(1)) when it found the evidence insufficient to establish Jorge committed assault with a deadly weapon (§ 245, subd. (a)(1)) against Barroso. We agree.

At the jurisdiction hearing's conclusion, the juvenile court explained: "As to [c]ount [t]wo, the charge of assault with a deadly weapon [against Barroso], there is a problem with regard to the element of present ability to commit the assault. So the court does find [Jorge] not guilty of the greater offense of assault with a deadly weapon, but guilty of the lesser offense of brandishing . . . , a misdemeanor."

The People concede that the juvenile court erred because it found Jorge had committed an offense other than one specifically alleged in the petition or necessarily included therein. (See *In re Robert G.* (1982) 31 Cal.3d 437, 445 ["a wardship petition under section 602 may not be sustained upon findings that the minor has committed an offense or offenses other than one specifically alleged in the petition or necessarily included within an alleged offense, unless the minor consents to a finding on the substituted charge"].) "Under California law, a lesser offense is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser." (*People v. Birks* (1998) 19 Cal.4th 108, 117.) The crime of brandishing is not a lesser included offense of assault with a deadly weapon. (*People v. Steele* (2000) 83 Cal.App.4th 212, 218 ["[e]ven though most assaults with a firearm undoubtedly include conduct fitting into the definition of brandishing, it has long been held that brandishing is a lesser related offense,

rather than lesser included”]; §§ 245, subd. (a)(1), 417, subd. (a)(1);⁴ but see *People v. Wilson* (1967) 66 Cal.2d 749, 764 [implying, but not directly holding, that brandishing is a lesser included offense to assault with firearm].)

Furthermore, the Welfare and Institutions Code section 602 petition does not allege all of the brandishing offense elements actually found by the court. Count two alleged: “On or about May 9, 2014, . . . [Jorge] did willfully and unlawfully commit an assault with a bat, a deadly weapon, upon the person of Bradley Barroso.” At the time of the contested jurisdiction hearing, Jorge was on notice only of the need to defend the elements of an assault with a deadly weapon or any of its lesser included offenses. The juvenile court erred in finding Jorge had committed the lesser related offense of brandishing. Accordingly, we must reverse the true finding as to that offense.

C. *Taking and Receiving the Same Property*

Jorge also challenges the juvenile court’s true finding on count four—receiving stolen property (§ 496, subd. (a)). He contends the finding should be reversed because he was improperly found to have committed both the taking and receiving of the same property. The People concede that the juvenile court’s finding on count four must be reversed. We agree. (See *People v. Smith* (2007) 40 Cal.4th 483, 522 [“[c]ommon law has long established that ‘a person may not be convicted of [both] stealing and receiving the same property’ ”]; § 496, subd. (a) [“[a] principal in the actual theft of the property may be convicted pursuant to this section[, but] *no person may be convicted both pursuant to this section and of the theft of the same property*” (italics added).)

Accordingly, the true finding on count four must be reversed. (*People v. Ceja* (2010) 49 Cal.4th 1, 10.)

⁴ Section 245, subdivision (a)(1), provides: “Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be [guilty of a felony].” Section 417, subdivision (a)(1), provides: “Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a deadly weapon other than a firearm in any fight or quarrel is guilty of a misdemeanor”

D. *Reduction of Count One to a Misdemeanor Under Proposition 47*

On November 4, 2014, the voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which added, in relevant part, sections 490.2 and 1170.18.⁵ Jorge contends that denial of Proposition 47 relief to a minor would violate equal protection and we must reduce his grand theft and receiving stolen property offenses to misdemeanors pursuant to a retroactive application of Proposition 47.

⁵ Section 490.2, subdivision (a), provides: “Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor”

Section 1170.18 provides, in relevant part: “(a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under [Proposition 47] had [it] been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing [¶] (b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor . . . , unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following: [¶] (1) The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes. [¶] (2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. [¶] (c) As used throughout this Code, ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667. [¶] . . . [¶] (f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors. [¶] (g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.”

We need not consider the impact of Proposition 47 on count four because we have already concluded that the juvenile court’s finding on that count must be reversed. Jorge concedes, “Should count [one] be affirmed, [he] will move [the juvenile court] for a misdemeanor reduction pursuant to Proposition 47 on that count, along with a recalculation of his maximum confinement time.” Assuming arguendo that Proposition 47 applies to juveniles, we agree with the People that this is Jorge’s sole remedy. (See § 1170.18; *People v. Shabazz* (June 1, 2015, B255297) ___ Cal.App.4th ___; *People v. Noyan* (2014) 232 Cal.App.4th 657, 672; *People v. Yearwood* (2013) 213 Cal.App.4th 161, 167–168, 170–172 [construing a similar provision of the Three Strikes Reform Act to operate as the functional equivalent of a saving clause].)

III. DISPOSITION

The part of the juvenile court’s jurisdictional order sustaining counts one and three is affirmed, and that part of the order sustaining counts two and four is reversed. The disposition order is vacated and the matter is remanded to the juvenile court for a new disposition hearing.

BRUINIERS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.