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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JORDAN T., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
JORDAN T.,
Defendant and Appellant.

A144082
(San Francisco County
Super. Ct. No. JW136411)

Jordan T. appeals from the juvenile court’s jurisdictional findings in a Welfare and Institutions section 602 wardship proceeding. He argues we must vacate the court’s findings that he committed false imprisonment and robbery in a street incident in San Francisco, either as beyond the court’s jurisdiction, a violation of his constitutional rights, and/or not supported by sufficient evidence. We disagree and affirm the court’s findings.

Jordan T. also asserts, and the People concede, that we should remand the matter for the juvenile court to determine his maximum term of confinement, considering any credits for time served. We agree and will remand for that purpose.

BACKGROUND

I.

The Petition Allegations Prior to the Jurisdictional Hearing

In September 2014, the San Francisco District Attorney filed a wardship petition that, as later amended three times, alleged Jordan T. and others committed attempted

robbery of a laptop and backpack (§§ 212.5, subd. (c), 664);¹ robbery of a cell phone (§§ 211, 212.5, subd. (c)); and kidnapping for the purpose of robbery (§ 209, subd. (b)(1)) during a September 21, 2014 street incident.

II.

The Jurisdictional Hearing

A contested jurisdictional hearing regarding Jordan T. and two others allegedly involved in the incident commenced on October 31, 2014.² We summarize only the evidence necessary to resolve this appeal.

A. The Prosecution's Evidence

Patrick Nevels testified at the hearing, during some of which he reviewed security video from businesses showing aspects of the subject incident. He said that at about 8:50 p.m. on September 21, 2014, he was walking down Market Street in San Francisco carrying a backpack and listening to music on earbuds. He felt something behind his right ear and tried to swipe it away, looked behind him and noticed a male standing there holding what looked like a gun with two other males. One of them grabbed his backpack and would not let him walk. One told him to give them his cell phone. Nevels resisted this command, but someone took Nevels' phone from his pocket. In the courtroom, Nevels could only identify one of the males, who was not Jordan T.

Then, Nevels testified, all of the males asked him for things. Two said, "[T]ake his backpack," but Nevels could not recall what the third said. Nevels wanted to leave, but could not because "at a certain point someone was holding on to my backpack and wouldn't let me go," and because he "felt they had a gun on me." Although he did not recall it, he saw from a video that the group stopped briefly and the males "surrounded me."

Nevels testified that two of the males wanted his backpack and someone unzipped it. Nevels did not want it taken because it contained a \$2,000 laptop computer. He tried

¹ All statutory references are to the Penal Code unless otherwise indicated.

² Another alleged copetrator, Joshua W., was not tried with the other three, apparently after his counsel raised a question about his mental competency.

to keep the backpack and no one took anything out of it. As “one person was holding on” to the backpack and two people followed “5 to 10 feet away,” Nevels refused to give it up and kept walking.

Nevels then offered to take the males to an ATM and give them \$200 in cash instead of his backpack. “Each” of the three males “seemed to like the idea,” but they “didn’t agree on how much money.” The person holding on to Nevels’ backpack asked for \$300, “and at least . . . one of the two people following behind . . . actually said \$500.”

Nevels continued to walk up Market Street, not only to get to an ATM, but to try to stay as safe as possible. Walking seemed best, especially because on Market Street “[t]here’s a police car driving past there every 30 seconds, so if I can stay moving and not stay in one place, I thought it would be safest.” It was his decision to keep walking and to go to the ATM.

As they walked, the male holding Nevels’ backpack and what appeared to be a gun to Nevels’ head “started saying things like, do you want to die? And do you want it in the mouth?” The male tried to “pistol whip or . . . hit” Nevels with the gun. Nevels noticed this did not hurt and realized the gun was a plastic fake. Nevels then tried to or did run into the street, “sort of” dragging with him the male holding on to his backpack. “Pretty immediately,” a police car turned on its lights, pulled over, and the three males were arrested.

Asked if the “entire incident” occurred for “maybe over the course of a minute or two at the very most,” Nevels said, “That sounds accurate.” The prosecutor represented to the court at one point that the video evidence she was showing Nevels covered approximately two minutes, from 8:56 to 8:58.

Officer Michael Ross of the San Francisco Police Department also testified. He said that at the time of the incident, he saw from inside his police car a person trying to get away from someone, later identified as Joshua W., holding on to his backpack. Joshua W. released the backpack and walked over to two other individuals waiting at

Turk and Mason. Nevels, waving his arms, called out to Ross, “[H]ey, that guy just robbed me,” pointing at Joshua W.

Ross parked his police car. As Joshua W. and the two others started to walk away, Ross told them to stop. As Ross got out of his car, Nevels told him, “ ‘These guys just stole my phone,’ ” and pointed at Joshua W., saying, “[T]his guy has a gun.” Ross detained the three, one of whom was Jordan T., and arrested them after he found an empty BB gun in Joshua W.’s left sock.

Evidence indicated a fourth male who was later arrested told police he had taken Nevels’ phone away from the scene of the incident and sold it to a third party for \$70. There was also evidence that immediately after the incident, a police sergeant, Stansbury, showed Nevels photographs of the three suspects, including Jordan T. Nevels said they depicted the males “who were in close proximity to him,” approximately an arm’s-length distance away, when he was discussing the ATM and when his cell phone was stolen. At the hearing, Nevels could not identify Jordan T. as one of the three robbers, but recognized him as one of the arrestees.

B. The Court’s Rulings After the Prosecution’s Presentation of Evidence

After the prosecution presented its evidence, Jordan T. moved for an acquittal on the kidnapping charge. The court stated that the evidence might establish that Jordan T. falsely imprisoned Nevels, but was insufficient to establish kidnapping. It granted the motion as to the kidnapping charge and recessed for lunch. At the beginning of the afternoon session, the prosecution moved to amend its petition to allege Jordan T. had falsely imprisoned Nevels. Jordan T. argued the court did not have jurisdiction to allow this after having acquitted him of kidnapping. The court granted the prosecution’s motion and then heard Jordan T.’s evidence.

C. Jordan T.’s Testimony

Jordan T. testified that on the day of the incident he met three friends at a downtown mall, where they played video games. They did not discuss robbing anyone, stealing or anything about a gun.

Later, Jordan T. and his friends went out for fast food. At Market and Sixth Streets, two of his friends got into an altercation with a stranger. Jordan T. was some distance away and went closer to get a better look. He realized the stranger, Nevels, was a “square” and tried to pull him away from Joshua W. to remove him from the situation. He did not see Joshua W. point a BB gun at Nevels’ head, see anyone take Nevels’ cell phone, or hear or participate in any negotiation with Nevels.

D. The Court’s Rulings

The court dismissed the attempted robbery allegations against Jordan T., sustained the cell phone robbery and false imprisonment allegations against him, and continued the matter for disposition.

III.

Subsequent Events

On November 12, 2014, the prosecution filed a fourth amended petition, changing the kidnapping charge under section 209 to a felony false imprisonment charge under section 236. In a January 13, 2015 dispositional order, the court ordered Jordan T. placed out of the home. Jordan T. timely appealed from this order and the court’s November 2014 “true findings after trial.”³

DISCUSSION

I.

The Juvenile Court Did Not Err in Considering the False Imprisonment Allegation.

Jordan T. argues the juvenile court went beyond its jurisdiction and violated his constitutional right against double jeopardy, and denied him due process, by allowing the prosecution to amend its petition to allege that he falsely imprisoned Nevels after the court had granted Jordan T.’s motion for acquittal on the kidnapping charge. We disagree.

³ We previously dismissed Jordan T.’s prior appeal from these findings because they are reviewable only as part of an appeal from a dispositional order. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138.) In any event, the court’s January 13, 2015 “Order of Probation” states that “[o]n 1-13-15, you were declared a ward of the Court.” This indicates the court did not formally assert jurisdiction until then.

A. Proceedings Below

After the prosecution presented its evidence, Jordan T. moved pursuant to section 1118⁴ for acquittal on the kidnapping charge against him, and co-defendants made section 1118 motions as well. Jordan T.'s counsel argued that Nevels chose to walk down the street and could not legally kidnap himself. The court asked if false imprisonment was a necessarily lesser included offense of kidnapping. The prosecutor and Jordan T.'s counsel agreed this was the case.

After counsel submitted, the juvenile court stated regarding Jordan T.'s motion, “[T]here’s no [section] 209 here. There’s no asportation. You can’t kidnap yourself. In a lesser included offense, there would be enough evidence to go to the trier of fact on a felony false imprisonment” After being told that felony false imprisonment was covered by section 236, the court continued, “236 in the Penal Code, but certainly not 209 in the Penal Code. So I grant as to the 209. The victim was the one was trying to get away. If anything, he was trying to restrain him. [¶] In any event, that’s the ruling on the 1118.1.” The court then recessed the proceedings for lunch.

When the hearing commenced that afternoon, the prosecutor sought to amend its petition to add a false imprisonment charge. Jordan T.'s and other minors' counsel argued the court could not allow this because it had already acquitted on the greater kidnapping charge, thereby acquitting on the lesser included false imprisonment charge as well. As one counsel put it, “[i]t’s been done.” The court responded, “[T]he only question that I would see in my mind that would prevent them from doing this now would be double jeopardy. So I don’t know if double jeopardy applies under these circumstances. [¶] Since I don’t know the answer, it seems to me that the right thing to do is if this is just a legal question, it doesn’t seem in the interest of justice, that if this is merely a matter of timing, that someone were guilty of an offense, that they would be

⁴ The court and parties sometimes referred to this motion as brought pursuant to section 1118.1, which applies to jury trials, and sometimes as brought pursuant to section 1118, which applies to bench trials. We refer to the motion as having been made pursuant to section 1118, which is the section that applies here. The court’s duties under either provision are the same for the purposes of this case.

held accountable for exactly what the proof showed. [¶] . . . So, I’d overrule the objections . . .” The court ordered the prosecutor to prepare a new petition and proceeded to hear Jordan T.’s evidence.

B. The Law Regarding False Imprisonment

False imprisonment is the “unlawful violation of the personal liberty of another.” (§ 236.) “ ‘Any exercise of express or implied force which compels another person to remain where he does not wish to remain, or to go where he does not wish to go, is false imprisonment.’ ” (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1360.) It is a lesser included offense of kidnapping. (See, e.g., *People v. Delacerda* (2015) 236 Cal.App.4th 282, 289.)

Felony false imprisonment requires that “ ‘[a] person intentionally and unlawfully restrained, confined, or detained another person, compelling him or her to stay or go somewhere’ ”; the other person “ ‘did not consent to the restraint, confinement, or detention’ ”; and “ ‘[t]he restraint, confinement or detention was accomplished by violence or menace.’ ” (*People v. Newman* (2015) 238 Cal.App.4th 103, 109–110; § 237, subd. (a).) “ ‘ “Menace” is defined as “ ‘ “a threat of harm express or implied by word or act.” ’ ” ’ ” (*People v. Wardell* (2008) 162 Cal.App.4th 1484, 1490.) “Violence” is defined as “where the force used is greater than that reasonably necessary to effect the restraint.” (*People v. Dominguez, supra*, 180 Cal.App.4th at p. 1357.)

C. The Court Did Not Violate Jordan T.’s Due Process Rights.

First, Jordan T. argues that the juvenile court violated his due process right to notice of the specific charges against him when it allowed the prosecution to pursue its felony false imprisonment allegations. This argument lacks merit.

“ ‘Due process of law requires that an accused be advised of the charges against him so that he has a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial.’ ” (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1201, overruled on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216; see *In re Robert G.* (1982) 31 Cal.3d 437, 442 [recognizing juvenile’s due process right to adequate notice to permit intelligent preparation of defense].)

As Jordan T. acknowledges, the prosecution generally has the right to amend a juvenile petition to add an offense which is “ ‘ “necessarily included” ’ in the offense actually charged.” (*In re A.L.* (2015) 233 Cal.App.4th 496, 500.) Nonetheless, he contends that “the instant case presents the unusual situation where the prosecution’s original kidnapping theory actually stood *in conflict* with the theory of false imprisonment . . . [because to prove kidnapping] the prosecution needed to prove that the perpetrators moved the victim up Market Street against his will,” but to prove false imprisonment “the prosecution needed to demonstrate that the victim was prevented from progressing up Market Street.” He contends this is distinct from “the more ordinary situation where . . . perpetrators tie up a victim and place him in [an] automobile, preparatory to driving away, so that the false imprisonment is part of the kidnapping,” and is exempt from the general rule allowing prosecution of lesser included offenses without additional notice.

Jordan T. does not provide any relevant legal authority for his proposition.⁵ More importantly, he premises his argument on a nonexistent contradiction, for two reasons. First, the prosecution presented evidence, via Nevels’ testimony, from which it could reasonably be inferred that one of the perpetrators held what appeared to be a gun to Nevels’ head and grabbed Nevels’ backpack, not only to ultimately take it from him, but in order to restrain his freedom of movement. This evidence was consistent with the legal theories that the perpetrators intended to “kidnap” him, e.g., forcibly take him somewhere else, such as a more secluded area, or “falsely imprison” him, e.g., restrain him in order to rob him. Nor was the restraint of Nevels “too brief to constitute an ‘appreciable’ period” as Jordan T. contends, which we will soon discuss further.

Second, false imprisonment is not, as Jordan T. posits, limited to preventing a victim from moving at all. As the People point out, a prosecutor may prove false

⁵ Jordan T. cites only a discussion in *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280–1281, regarding a trial court’s discretion to allow a party to add inconsistent facts to its pleading after a court grants summary judgment in a civil lawsuit. This has little, if anything, to do with the circumstances before us because the prosecution did not seek to add any new facts.

imprisonment by showing that defendant unlawfully “ ‘compel[ed] [the victim] to stay or go somewhere.’ ” (See, e.g., *People v. Newman*, *supra*, 238 Cal.App.4th at p. 109, quoting CALJIC No. 9.60 instruction on the elements of false imprisonment.) In other words, “ ‘the essential element of false imprisonment is restraint of the person. Any exercise of express or implied force which compels another person to remain where he does not wish to remain, or to go where he does not wish to go, is false imprisonment.’ ” (*People v. Dominguez*, *supra*, 180 Cal.App.4th at p. 1360.) Regardless of how long the perpetrators “stopped” Nevels,” his testimony indicated they restrained his free movement for a considerably longer period of time, as we will also soon discuss.

D. The Court Retained Jurisdiction to Consider Felony False Imprisonment.

Next, Jordan T. argues that the court acted beyond its jurisdiction in allowing the prosecution to amend its petition because “a trial judge who grants a section 1118 motion for acquittal as to a particular count . . . cannot subsequently change his mind to allow conviction on a lesser included offense.” This is true enough, but disregards the most significant aspect of the court’s ruling: it expressly maintained jurisdiction over a false imprisonment offense in the event that the prosecution elected to proceed on that theory.

Section 1118 provides in relevant part, “In a case tried by the court without a jury . . . the court on motion of the defendant . . . shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading after the evidence of the prosecution has been closed if the court, upon weighing the evidence then before it, finds the defendant not guilty of such offense or offenses.” A trial court that grants a section 1118 motion regarding a particular count is deemed to grant an acquittal of the crime charged and all lesser included offenses. (*People v. Garcia* (1985) 166 Cal.App.3d 1056 (*Garcia*); *People v. McElroy* (1989) 208 Cal.App.3d 1415, disapproved in part on other grounds in *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3.)

However, a court may carve out an exception for a lesser included offense when granting a section 1118 motion, in which case the prosecution may proceed on that theory. (*People v. Powell* (2010) 181 Cal.App.4th 304.) As the People point out, that is

precisely what the juvenile court did here. After confirming that false imprisonment was a lesser included offense of kidnapping and the subject of section 236, the court stated, “236 in the Penal Code, but certainly not 209 in the Penal Code. So I grant *as to the 209.*” (Italics added.) Thus, it maintained jurisdiction over the lesser included offense in case the prosecution elected to proceed on that theory, which it did that afternoon.⁶

Jordan T. argues this case is similar to the circumstances discussed in *Garcia*, *supra*, 166 Cal.App.3d 1056. There, the trial court granted the defendant’s section 1118 motion for acquittal regarding a forcible rape count and, after discussing some other matters, recessed for lunch. (*Garcia*, at pp. 1066–1067.) When the hearing resumed that afternoon, the prosecutor asked the court to clarify that its acquittal of the charged offense did not mean the defendant was acquitted of the necessarily included offense of attempted rape. (*Id.* at p. 1067.) The court agreed and the jury found defendant guilty of attempted rape. (*Ibid.*) The appellate court reversed because “[o]nce a judgment has been rendered in a criminal action the trial judge is without power or authority to change or modify or correct the judgment except for purely clerical errors. This is true even though a judge may have forgotten or overlooked some significant factor.” (*Ibid.*)

Garcia’s circumstances are inapposite. The juvenile court here did not forget or overlook the lesser included false imprisonment offense when it ruled. To the contrary, it expressly indicated its acquittal ruling did not extend to this offense. The lower court in *Garcia* made no such exception. The *Garcia* court acknowledged this failure was determinative in stating that its conclusion “does not mean that the court was without power to limit its judgment solely to the greater offense leaving the question of defendant’s guilt or innocence of the lesser included offense to be determined in due course during the trial. Since counsel did not request separate consideration of lesser included offenses and since the court did not, on its own motion, indicate an intent to

⁶ Given that the prosecution made its request to amend its petition as soon as the hearing recommenced that afternoon, we have no need to, and do not, opine on whether the court’s reservation of jurisdiction would have allowed it to permit the prosecution to amend its petition later in the proceedings.

limit its ruling solely to the greater offense, we must conclude that the judgment rendered encompasses all offenses.” (*Garcia, supra*, 166 Cal.App.3d at p. 1069.) Here, by contrast, the court specifically limited its ruling to the greater offense (§ 209) and excluded the lesser (§ 236).

For these reasons, Jordan T.’s argument that the court did not have jurisdiction to consider the false imprisonment allegations fails in light of the court’s express exception of a felony false imprisonment offense from its acquittal ruling.

E. The Court Did Not Violate Jordan T.’s Right Against Double Jeopardy.

We also reject Jordan T.’s argument that the juvenile court violated his constitutional right against double jeopardy.

As Jordan T. points out, “[t]he double jeopardy and due process clauses [of the United States and California Constitutions] prevent the state from . . . retrying final verdicts of guilt or innocence (including lesser included and greater inclusive offenses)” (*People v. Melton* (1988) 44 Cal.3d 713, 756, fn. 17.) According to Jordan T., the court violated his right against double jeopardy because (1) it allowed the prosecution to proceed on a false imprisonment theory after acquitting him, thereby improperly allowing a retrial after a final verdict of acquittal, and (2) “the juvenile court could not carve out the purported lesser included offense . . . from the greater offense of kidnapping, because under the facts and original theory of the case, the lesser offense was not included in the greater.”

As we have already discussed, both of these theories are incorrect. Moreover, the *Garcia* court has noted that “[t]he double jeopardy rule acts as a bar to subsequent prosecution, i.e., the filing and pressing of a new action. [Citation.] The rule has no application where there is one prosecution involving multiple offenses.” (*Garcia, supra*, 166 Cal.App.3d at p. 1067.) Jordan T.’s double jeopardy argument also lacks merit.

II.

There Is Substantial Evidence That Jordan T. Falsely Imprisoned Nevels.

Jordan T. also contends there was insufficient evidence for the juvenile court to sustain the allegations that he falsely imprisoned Nevels. We disagree. Substantial

“had a gun on me, or I felt they had a gun on me.” While Nevels continued walking, he nonetheless remained restrained; for example, although he could see police cars driving past “every 30 seconds,” he did not walk away from Joshua. He was able to walk down Market Street to the extent that he could “stay moving and not stay in one place,” but he did not feel it was safe to try to escape until after Joshua W. “pistol whipped” him and Nevels realized the gun was fake. Thus, he was restrained by a combination of menace and violence.⁸

A. Substantial Evidence Indicates Jordan T. at Least Aided and Abetted in Nevels’ False Imprisonment.

Jordan T. contends there is no evidence that he aided and abetted in any false imprisonment. We disagree.

“[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*People v. Beeman* (1984) 35 Cal.3d 547, 561.)

Jordan T. argues that, since there was no evidence of a plan to falsely imprison Nevels, there is no evidence that Jordan T. had knowledge of any false imprisonment or that he deliberately acted to aid such a purpose. Nevels’ testimony, as well as Jordan T.’s and Ross’s, indicate otherwise. Together, they establish that Jordan T. himself grabbed Nevels’ backpack.⁹ Jordan T. was in close proximity to Nevels when Nevels’ phone was

⁸ Jordan T. asserts that false imprisonment requires the victim “must either know that he is being restrained or suffer some harm from the restraint,” based on a civil tort case, *Scofield v. Critical Air Medicine, Inc.* (1996) 45 Cal.App.4th 990, 1005–1006. One or the other of these may be necessary to establish civil liability (*ibid.*), but Jordan T. does not establish, nor are we aware, that either is essential to establish felony false imprisonment. In any event, the testimony by Nevels that we cite here is substantial evidence that he was well aware that he was being restrained.

⁹ Jordan T. claimed he grabbed Nevels’ backpack to remove him from the situation, but the juvenile court’s ruling indicates it did not believe him. We do not interfere with the court’s determination of Jordan T.’s credibility. (See, e.g., *Jennings*,

taken and when Joshua W. put a purported gun to Nevels' head, grabbed Nevels' backpack and hit Nevels with the purported gun. Jordan T. demanded things from Nevels, helped surround Nevels when the group stopped and participated in the "negotiations" for ATM money. Jordan T. also trailed close behind Joshua W. and Nevels as they walked and continued to congregate with Joshua W. after Nevels ran into the intersection. The juvenile court could reasonably infer from this evidence that Jordan T. had knowledge of a criminal purpose and acted to aid that purpose. (See, e.g., *People v. Dyer* (1963) 217 Cal.App.2d 176, 180 [aider-and-abettor liability attached because the defendant's "presence during the attack on [the victim] . . . lent support and encouragement to his companions and created a greater threat in the mind of the victim"].)

B. Substantial Evidence Indicates Nevels Was Sufficiently Restrained to Establish False Imprisonment.

Jordan T. next argues that his acquittal for kidnapping indicated that there was no evidence that he prevented Nevels from going where he wished to go and, therefore, demonstrates there is no evidence of false imprisonment. We disagree. As we have discussed, substantial evidence indicates that Jordan T. at the very least aided and abetted efforts to restrain Nevels from moving as he wished.

Kidnapping "requires a degree of asportation not found in the definition of false imprisonment. Indeed, false imprisonment can occur with *any* movement or *no* movement at all." (*People v. Reed* (2000) 78 Cal.App.4th 274, 284, fn. omitted.) Further, as we have discussed, false imprisonment can include an unlawful restraint of a person. (See *People v. Newman, supra*, 238 Cal.App.4th at pp. 109–110.)

As the People note, the restraint of Nevels is analogous to a case in which the appellate court found sufficient evidence of unlawful restraint when a teacher brought a student into a room, closed the door and covered it with mats, then attempted to coerce the student to come to him in order to sexually assault her, even though the victim was

supra, 50 Cal.4th at p. 638 ["We neither reweigh the evidence nor reevaluate the credibility of witnesses"].)

“free” to walk to another part of the room and ultimately left through the room’s back door. (*People v. Arnold* (1992) 6 Cal.App.4th 18, 22–23, 31.) It does not matter that Nevels was able to walk down Market Street in some fashion as he chose what he believed was the safest of the undesirable options available to him. This, coupled with his testimony that he wanted to but could not leave the group that accosted him, is ample evidence that he was restrained. Even if Jordan T. held Nevels’ backpack only momentarily, there is substantial evidence that he aided and abetted Joshua W. who held on to it for an extended period of time and held a purported gun to Nevels’ head. In short, the evidence supports the trial court’s implied finding that Jordan T. aided and abetted in the unlawful restraint of Nevels so that he could not freely go where he wanted to go—away from his assailants and toward the police.

C. Substantial Evidence Indicates Nevels Was Restrained for an Appreciable Period of Time.

Jordan T. also argues that any impediment to Nevels’ movement was too fleeting to qualify as a legally cognizable “restraint” for the purposes of false imprisonment, based on a standard discussed in civil tort cases that the restraint must be for “ ‘ ‘ ‘an appreciable length of time.’ ” ’ ’ ’ (*Scofield v. Critical Air Medicine, Inc.*, *supra*, 45 Cal.App.4th at p. 1009.) This too is unpersuasive.

Jordan T. does not cite to any criminal case that refers to this “appreciable” period of time standard, and we have found only one that does so, in a tangential way. (*People v. Rios* (1986) 177 Cal.App.3d 445, 453 [citing Witkin’s Summary of California Law for the proposition that the tort “ ‘ requires direct restraint of the person for some appreciable length of time, however short, compelling him to stay or go somewhere against his will’ ”].) However, we are also aware that our Supreme Court has stated, albeit in a civil case, “[t]hat tort and the crime of felony false imprisonment are defined in the same way. [Citation.] We have explained that ‘ ‘the tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time’ ” ’ ’ (*Hagberg v. California Federal Bank FSB* (2004) 32 Cal.4th 350, 372–373, fn. omitted.) This is true “ ‘however short’ ” the period of time (*Molko v. Holy*

Spirit Assn. (1988) 46 Cal.3d 1092, 1123, superseded in part on other grounds as explained in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854, fn. 19), which “can be as brief as 15 minutes.” (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715.) Accordingly, we will assume for the purposes of this discussion that we must determine whether there is substantial evidence that Nevels was restrained for an appreciable period of time.

Our Supreme Court has not provided further guidance regarding the period of time required to establish false imprisonment. However, we find additional guidance in two other sources. First, the dictionary definition for the adjective “appreciable” is “capable of being perceived and recognized or of being weighed and appraised.” (Webster’s 3d New Internat. Dict. (2002) p. 105.)

Second, we have found in our own research a criminal case that, although it does not cite this “appreciable” standard, indicates a relatively short period of time may be sufficient to establish false imprisonment, as long as the restraint is “real.” In *People v. Fernandez* (1994) 26 Cal.App.4th 710, several males got out of a car and chased another male, caught him, pulled him to the ground, kicked and hit him repeatedly, and hit him in the head with a bike lock. (*Id.* at p. 713.) The appellate court concluded this restraint was “ ‘real’ ” because it occurred “long enough for [the victim] to suffer over 20 kicks.” (*Id.* at p. 718.)

Jordan T. premises his argument that Nevels was not restrained for an appreciable period of time on the contention that he was “stopped” for only a brief moment. However, as we have discussed, this is not the only relevant evidence of his restraint, which extended from the point when a purported gun was placed to Nevels’ head through the period during which one or more of the perpetrators held on to his backpack. Jordan T. cites *People v. Arnold* (1992) 6 Cal.App.4th 18 in support of his position, but that case is easily distinguished. It involved a man’s momentary grab of a woman’s buttocks before she successfully pulled away, as well as the court’s conclusion regarding the larger circumstances that “there was no showing . . . her submission was unwilling and compelled by defendant’s words, acts or authority.” (*Id.* at p. 29.) Here, on the other

hand, Nevels was restrained for about two minutes, long enough for Jordan T. and his companions to stop Nevels, take his cell phone, hold onto his backpack while negotiating a price for it, and threaten to shoot him. The extent of this activity, as in *Fernandez*, reflects that Nevels was restrained for an appreciable period of time.

III.

There Is Substantial Evidence That Jordan T. Participated in the Cell Phone Robbery.

Jordan T. next argues that, while his companions may have stolen Nevels' cell phone, there is no substantial evidence that he participated in doing so. Therefore, the trial court erred in sustaining this allegation. We agree with the People that there is substantial evidence to support the court's ruling.

Jordan T. argues that the only evidence connecting him to the cell phone robbery is that Nevels, when shown photographs of the three suspects, including Jordan T., responded that these were the robbers. Jordan T. contends this is deficient because it shows only his physical proximity to the cell phone robbery, and because Nevels' identification was elicited in an improperly suggestive fashion. We need not address these issues because, as the People point out, there was other, substantial evidence to support the juvenile court's finding.

Specifically, Nevels testified that he turned around when he felt something by his head and saw three males standing behind him, and one of them then took hold of his backpack. This was around timestamp 8:56:49 in one of the videos. When asked to identify the people near Nevels at 8:57:15 in one of the videos, Jordan T. admitted that he was the person grabbing Nevels at that moment. Nevels described that exact moment—at 8:57:14 till 8:57:18—as the moment when someone demanded his phone, someone reached into his pocket, and “everyone” began asking for more things. Also, there was evidence that Jordan T. stayed with his companions throughout the incident, as he was among the three standing together when Nevels identified them to Officer Ross as having stolen his phone, which led to Jordan T.'s arrest.

Jordan T. also points out that he testified that he grabbed Nevels only in order to facilitate Nevels' escape, and that he did not know about the cell phone robbery. Clearly,

the trial court did not believe this testimony in light of its ruling. We shall not interfere with the court's determination that Jordan T.'s testimony lacked credibility, as "[w]e neither reweigh the evidence nor reevaluate the credibility of witnesses." (*Jennings*, *supra*, 50 Cal.4th at p. 638.)

In short, the juvenile court could have reasonably concluded from the evidence that Jordan T. knew his companions intended to, and did, rob Nevels of his cell phone. We reject Jordan T.'s substantial evidence argument.

IV.

The Case Must Be Remanded for Calculation of the Maximum Term of Confinement With Consideration of Any Credit for Time Served.

Finally, Jordan T. argues that the juvenile court erred because it did not calculate his maximum term of confinement with credit for time served in its jurisdictional order. He asks that we remand the case for the court to do so if we do not reverse on all grounds. The People agree that we should do so. The parties are correct.

Welfare and Institutions Code section 726, subdivision (d)(1) states in relevant part that when a juvenile court orders that a minor be removed from the physical custody of his parent pursuant to Section 602, "the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the . . . offenses which brought . . . the minor under the jurisdiction of the juvenile court." Our Supreme Court has determined that the court, when making this maximum term of confinement determination, must give a juvenile precommitment credit for days detained in juvenile hall pending resolution of charges brought pursuant to Welfare and Institutions section 602. (*In re Eric J.* (1979) 25 Cal.3d 522, 535–536, followed in *In re J.M.* (2009) 170 Cal.App.4th 1253, 1256.)¹⁰

The record indicates the juvenile court did not make this determination of the

¹⁰ These cases refer to the court's calculations pursuant to Welfare and Institutions Code section 726, subdivision (c), which was redesignated as subdivision (d) in 2012. (2012 Stats., ch. 176, § 3.)

maximum term of confinement or consider whether Jordan T. was entitled to any custody credits. We will remand for the court to make these determinations.

DISPOSITION

The juvenile court's order sustaining of the allegations that Jordan T. falsely imprisoned Nevels and participated in the robbery of Nevels' cell phone is affirmed. This matter is remanded to the juvenile court to determine Jordan T.'s maximum period of confinement, taking into account any custody credits to which he might be entitled.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

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