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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

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

A145032

(San Francisco County  
Super. Ct. No. JW156068)

This is an appeal from the dispositional order entered in juvenile delinquency proceedings involving minor J.T. after the juvenile court found that he committed second degree robbery. Minor challenges the sufficiency of the evidence supporting the juvenile court’s finding, as well as the court’s subsequent order that he stay away from the Potrero Hill Housing Development. Having reviewed the legal record, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On March 20, 2015, a juvenile wardship petition was filed pursuant to Welfare and Institutions Code section 602, alleging that minor committed the offense of second degree robbery (hereinafter, petition).<sup>1</sup> A contested jurisdictional hearing was held on April 17, 2015, at which the following evidence was disclosed.

<sup>1</sup> Unless otherwise stated, all statutory citations herein are to the Welfare and Institutions Code.

On March 18, 2015, at around 3:30 p.m., the victim, O.D., age 15, and his sister, A.M., age 10, were at a bus stop by the corner of Mansell and Hamilton Streets in San Francisco. O.D., who was wearing a black North Face vest and a black and white backpack, noticed a male and female about six feet away engaged in an argument. The male, who appeared to be Samoan, was about six feet, four inches tall and 180 pounds. He was wearing a black True Religion beanie cap, a Nike shirt with a white logo, black jeans, and a silver chain necklace with photographs attached. When this male, later identified as minor, noticed O.D. watching the argument, he turned toward him and demanded, “What the fuck are you looking at?” When O.D. replied, “look, nothing. Sorry,” minor said in an angry voice, “Nah, bra, give me all your shit.” Minor then ordered O.D. to hand over his wallet and phone.

O.D., scared and worried about his younger sister, tried to run, but minor grabbed his shoulder, holding on to O.D.’s backpack. O.D. was able to slide out of his backpack straps and move away, until minor then grabbed his vest. O.D. slid out of his vest, which was unzipped, and ran to catch up with his sister, A.M., who had already fled. The siblings ran toward a nearby elementary school, where they happened to see their aunt, there to pick up their cousin. They jumped into their aunt’s vehicle, where O.D. used his phone to call the police as they drove in the direction of the incident.

O.D. told the police dispatcher that someone had tried to rob them at the corner of Mansell and Hamilton, and had tried to steal his phone. When they reached the intersection where the incident occurred, both siblings recognized a male now standing at the bus stop opposite the intersection as the robber. A.M., in particular, noticed this male was again arguing with his female companion. While still on the phone with the dispatcher, O.D. reported that the perpetrator was wearing a black jacket and was now also wearing a North Face vest like the one O.D. had been wearing. They kept the male in their sight for about five or six minutes as he headed toward McLaren Park, where they briefly lost sight of him as his aunt parked the vehicle to wait for police. The officers arrived about fifteen minutes after O.D.’s 911 call, and O.D. told them his attacker had

been wearing a True Religion black beanie, Nike shirt, and black jeans, but no jacket or bag.

Around the same time that O.D. and A.M. were talking to the police, an anonymous passerby reported to police that two people were fighting and had boarded a bus headed toward McLaren Park. Following this report, another officer pulled over the bus at around 4:08 p.m. to search for a person matching the description circulated by the dispatcher of a “Samoan male over six feet wearing a black T-shirt, black vest and black True Religion beanie.” Minor, a bus passenger wearing a black and white T-shirt, long-sleeved shirt, black North Face vest, black True Religion beanie, and several chain necklaces, was the only person matching this description.

Minutes later, police officers drove O.D. and A.M. to a field identification, where they each separately identified minor as the perpetrator of the robbery. In particular, in addition to the black beanie, O.D. recognized minor’s chain necklace with photographs from the incident, a fact he reported to police. He also told police that, although he was not entirely certain, he believed minor had neither a bag nor jacket at the time of the incident. Later, at trial, both O.D. and A.M. recognized minor from a photograph taken at the time of his arrest as the perpetrator of the crime. In this photograph, minor was wearing a black beanie, black shirt, and North Face vest and jacket. O.D. acknowledged, however, that he did not recall minor wearing a jacket during their confrontation.

Also at trial, O.D. testified that the North Face vest he was wearing at the time of the incident was an extra-large size, but fit like a medium. O.D. was then cross-examined with People’s Exhibit 1A, the vest minor was wearing when arrested. At first, O.D. recognized the vest as his own; however, he changed his mind after picking the item up, explaining that the vest appeared smaller than his and smelled like a “drug.” O.D. then agreed with defense counsel that, based on past photographs of him wearing his vest, the exterior label on the vest in evidence appeared whiter and the interior label appeared a few inches higher than his. In addition, O.D. failed to recognize the black T-shirt in evidence with the word, “Dunkaholic,” next to the Nike label.

Following the April 17, 2015 contested jurisdictional hearing, the juvenile court found true the allegation that minor committed second degree robbery. A dispositional hearing was then held on May 1, 2015, after which the juvenile court declared minor a ward of the court, and committed him to the care of the probation department for out-of-home placement. Minor promptly appealed.

## **DISCUSSION**

Minor raises the following issues on appeal. First, minor challenges the sufficiency of the evidence supporting the juvenile court's finding that he committed second degree robbery on two grounds – to wit, the lack of substantial evidence that he was the perpetrator of the crime or that he asported with the victim's property. Second, minor challenges as an abuse of discretion the juvenile court's dispositional order that he stay away from the Potrero Hill Housing Development, where his mother and siblings live. We address each issue in turn below.

### **I. Sufficiency of the Evidence that Minor Committed Second Degree Robbery.**

The legal standard governing minor's first challenge is well-established. “On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence — that is, evidence that is reasonable, credible, and of solid value — from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] ‘Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. “ ‘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 a reversal of the judgment.’ ” [Citations.]’ [Citation.] ‘ “Circumstantial evidence

may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt.” ’ ’ ” (*People v. Stanley* (1995) 10 Cal.4th 764, 792-793.)

Further, the reviewing court may not reweigh evidence or evaluate the credibility of the witnesses on appeal. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “We may not reverse a conviction for insufficiency of the evidence unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.) This rule likewise applies in juvenile criminal matters. (E.g., *In re James B.* (2003) 109 Cal.App.4th 862, 872.)

Returning to the case at hand, we conclude there was sufficient evidence to support the juvenile court’s finding that minor committed second degree robbery because, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found true the essential elements of robbery beyond a reasonable doubt.

“ ‘Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.’ ([Pen. Code.] § 211.) To be convicted of robbery, the perpetrator must intend to deprive the victim of the property permanently.” (*People v. Huggins* (2006) 38 Cal.4th 175, 214.) Taking or depriving a victim of property, in turn, has two aspects:

(1) achieving possession of the property, known as “caption,” and (2) carrying the property away, or “asportation.” (*People v. Gomez* (2008) 43 Cal.4th 249, 255.)

Here, with respect to minor’s initial challenge to his identification as the robber, we accept his point that the testimony of the victim, O.D., was vague or uncertain in some relevant regards. For example, O.D. was unsure or inconsistent with respect to whether minor wore a jacket or carried a bag during the crime, and to whether the North Face vest worn by minor when arrested was in fact O.D.’s vest. At the same time, however, there was other substantial evidence in the record supporting the court’s finding that minor committed robbery, including the facts that: (1) at both the field identification procedure and trial, O.D. and A.M. positively identified minor, a distinctive 180-pound, six-plus-foot tall Samoan male, as the person who demanded “all your shit,” before forcibly removing O.D.’s vest and backpack at the bus stop, ; (2) both O.D. and A.M.

consistently stated in police reports and at trial that the robber wore a black True Religion beanie, dark blue or black jeans, a Nike T-shirt, black North Face vest and distinctive silver chain or necklace with photographs attached, all items worn by minor at the time of his arrest; and (3) a third, unidentified eyewitness corroborated A.M.'s statement to police that minor was arguing with a female companion at a bus stop before heading to McLaren Park, where he was arrested.

Based on this collection of evidence, the juvenile court, sitting as trier of fact, could have reasonably found beyond a reasonable doubt that minor was the person who demanded and then grabbed O.D.'s property at the corner of Mansell and Hamilton Streets, before crossing the street to another bus stop and traveling to McLaren Park. While there may be some inconsistencies or uncertainties in the testimony regarding what minor was wearing or carrying, none is so profound as to wholly undermine the witnesses' credibility. (*People v. Panah* (2005) 35 Cal.4th 395, 489 ["uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable"].)<sup>2</sup> As such, the juvenile court's finding must stand. As explained above, "Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. "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 a reversal of the judgment." ' ' (*People v. Rodriguez*

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<sup>2</sup> Minor challenges the victims' identifications of him as the robber, arguing strenuously with respect to the general unreliability of eyewitness identifications, particularly where, as here, the identifications are made by young victims shortly after the crime while still under stress and fear. However, even assuming the existence of one or more factors affecting the victims' perception or memory, the law is quite clear that we must defer to the findings made by the trier of fact absent unusual circumstances given its superior access to the witnesses and evidence. (*People v. Miranda* (2011) 199 Cal.App.4th 1403, 1414 [a witness's demeanor is rarely reflected in the appellate record].)

(1999) 20 Cal.4th 1, 11; see also *People v. Johnson* (1980) 26 Cal.3d 557, 576 [“ ‘The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. [Citation omitted.] The appellate court must determine whether a reasonable trier of fact could have found the prosecution sustained its burden of proving the defendant guilty beyond a reasonable doubt’ ”].)

Moreover, we reach the same conclusion with respect to minor’s challenge to the sufficiency of the evidence supporting the “asportation” element of his offense. Indeed, to meet this element, the prosecution needed only to demonstrate that the robber made the “slightest movement” (*People v. Gomez, supra*, 43 Cal.4th at p. 255) to carry away the victim’s property. And here, there was credible evidence that minor made such slight movement when feloniously taking another’s property – to wit, O.D.’s and A.M.’s testimony and statements to police that minor demanded O.D.’s belongings (“give me all your shit”) before grabbing him and forcibly removing his black North Face vest and backpack (at which point, he and A.M. escaped). The siblings never found these items. However, they both later identified minor wearing what appeared to be a black North Face vest, an item they had not seen him wearing during the robbery, in photographs taken upon his arrest. Given the reasonable inferences arising from this evidence when viewed in a light most favorable to the juvenile court’s judgment, no further showing by the prosecution was required. As stated above, the testimony of a single witness that is “reasonable, credible and of solid value” may suffice to establish guilt. (*People v. Williams* (2015) 61 Cal.4th 1244, 1281. See also *People v. Hill* (1998) 17 Cal.4th 800, 852-853 [upon viewing the facts in a light most favorable to the judgment below, the court found “substantial evidence from which the jury could have concluded beyond a reasonable doubt that when [the] robber took possession of her purse, he moved it a slight distance from inside the car to his possession”]; see *id.* [“even where the only movement was the victim placing money into a paper bag, courts have found sufficient asportation to justify a conviction for robbery”]; *People v. Pham* (1993) 15 Cal.App.4th 61, 67 [“ ‘Asportation . . . may be fulfilled by wrongfully . . . removing property from the . . .

control of the owner, . . . even though the property may be retained by the thief but a moment' ”].) Accordingly, the juvenile court’s finding of second degree robbery stands.

## **II. Validity of the Juvenile Court’s Stay-Away Order.**

Finally, minor relies upon the California Supreme Court case of *People v. Lent* (1975) 15 Cal.3d 481 to challenge the juvenile court order that he stay away from the Potrero Hill Housing Development (“stay-away order”), where his mother and siblings resided. Specifically, the challenged order, as well as the juvenile court’s underlying rationale, is as follows:

“[Y]ou are also to stay away from the Potrero Hill Housing Development and the Sunnydale Housing Development. [¶] . . . [¶]

“Since [minor] hasn’t been residing with [his mother and siblings], he’s been living with his guardian, his grandfather, until further order of the Court, they should come to the grandfather’s location to visit him. [¶] At this point, based upon the totality of the circumstances and some of [minor’s] life experiences, I am going to have that order made in full force and effect.”

Under California law, where the juvenile court places a minor on probation following the minor’s commission of a crime, it “may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (§ 730, subd. (b).) “ ‘Because of its rehabilitative function, the juvenile court has broad discretion when formulating conditions of probation. “A condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.” [Citation.] “In planning the conditions of appellant’s supervision, the juvenile court must consider not only the circumstances of the crime but also the minor’s entire social history. [Citations.]’ [Citation.]’ [Citations.] ‘Even conditions which infringe on constitutional rights may not be invalid if tailored specifically to meet the needs of the juvenile [citation].’ [Citations.] But every juvenile probation condition must be made to fit the circumstances and the minor.” (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.)

In addition, a probation condition that imposes limitations on a person's constitutional right "must closely tailor those limitations to the purpose of the condition to avoid being invalidated as constitutionally overbroad." (*In re Sheena K.* (2007) 40 Cal.4th 875, 890; see also *In re R.V.* (2009) 171 Cal.App.4th 239, 246 [juvenile probation condition will be upheld unless it " '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality' "]; *People v. Lent, supra*, 15 Cal.3d at p. 486 ["Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality"].)

Having reviewed the relevant record in this case, we conclude the juvenile court's stay-away order was appropriate and well within constitutional boundaries. The evidence reflected that minor was shot in the foot while "hanging in Potrero Hill" in December 2014 (at which time his cousin was shot multiple times in the back), and that minor was known to associate with a street gang called the "Zoo Block/Potrero Hill Gang" (although he denies it). Previous probation reports for minor state that he had witnessed a substantial amount of violence on the streets and had experienced nightmares since his shooting. These reports also indicate minor had previously been ordered to stay away from the Potrero Hill Housing Development. Minor's own grandfather/guardian expressed grave concerns about minor's friendships and associations and his belief that they contribute to minor's delinquent behavior. Likewise, the current probation report noted that minor had committed past crimes (including robbery and assault) when in the presence of a "group of other males," and had continued to associate with gang members after completing his previous probationary term. In fact, the probation report recommended that minor be prohibited from staying with his mother in Potrero Hill due to his "association with gang members."

Under these circumstances, the juvenile court had a valid basis for restricting minor from this housing development as a means to protect his physical and emotional

well-being and to elevate his chances at successful rehabilitation and reformation. (See *In re Luis F.* (2009) 177 Cal.App.4th 176, 189 [a juvenile court may impose and require “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced”]; *In re Vincent G.* (2008) 162 Cal.App.4th 238, 248 [affirming a probation condition, as modified, that prohibited minor from “be[ing] at areas that you know, or that the probation officer informs you, are frequented by gang members”].) In addition, the court’s order was sufficiently tailored to prevent any overreaching, with the court clarifying for the record: “If and when [minor] comes back [and] our placement unit upon further investigation feels it’s in [minor’s] best interests to be able to go there and visit his family, as opposed to them travelling a little bit still within the City and County of San Francisco to meet him at the grandfather’s, the Court can revisit [the stay-away order].” (See *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1331 [minor’s probation condition restricting him from associating with probationers was not overbroad where minor had previously been in trouble for fighting an alleged gang member, and the restriction was thus “sufficiently related to the goals of (1) promoting his rehabilitation and reformation, and (2) protecting the public”].) Based on the entire record in this case, including the information regarding minor’s past experiences and actions, we find no abuse of discretion with the juvenile court’s order.

**DISPOSITION**

The juvenile court's May 2015 dispositional order is affirmed.

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Siggins, J.