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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J, A. et al., Persons Coming Under the
Juvenile Court Law.

B241725
(Los Angeles County
Super. Ct. Nos. PJ42841 1& PJ49022)

THE PEOPLE,

Plaintiff and Respondent,

v.

J. A. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, Mark R. Frazin, Temporary Judge. Reversed in part; modified in part; and affirmed in part.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant J.A.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant M.R.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Mark E. Weber, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Two minors, J.A. and M.R., appeal from May 17, 2012 adjudication and disposition orders. The juvenile court found the minors committed second degree robbery. (Pen. Code, § 211.) The juvenile court further found J.A. committed the felony for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1)(A).) J.A. was placed in camp community placement for a period not to exceed 10 years and 8 months. M.R. was placed home on probation, but the juvenile court set a maximum period of physical confinement. We modify the orders in part as to both M.R. and J.A. We affirm in all other respects.

II. THE EVIDENCE

A. The Prosecution Case

Kenneth G. and his girlfriend, Nataly P., were walking down a street on their way to catch a bus when Jasmine C. approached them. Jasmine asked whether Kenneth and Nataly had seen money on the ground. They said they had not. As they continued walking, four Latino males, including J.A. and M.R., approached them. Kenneth and Nataly did not know the boys. J.A. stood in front of Kenneth and Nataly. The three other Latinos surrounded Kenneth and Nataly from behind. J.A. repeatedly asked whether Kenneth and Nataly had taken a friend's money. J.A. said someone said Kenneth had taken it. M.R. said, "Do you have my \$80 that belong to my home girl?" Kenneth and Nataly repeatedly denied they had the money. Kenneth and Nataly were told to show the four youths their wallets. Nataly testified she showed the four young men her wallet because she was "mostly" scared. Kenneth was afraid he might be harmed. Nataly had \$10 in her wallet. She did not give it to the assailants and they did not take it from her. One young Latino, who is not a party to this appeal, was wearing a hat with a "P" on it.

The unidentified youth said the name of a local gang. The youth with the hat said, “You’re going to get blasted.”

M.R. walked towards Kenneth with a clenched fist. Kenneth and Nataly were afraid. They walked away. When Kenneth looked back, he saw four males and three females following them. Nataly saw six boys and two girls. The one wearing the hat yelled out, “I know you have the money.” J.A. walked up to Kenneth and said, “Look, you have the money” Kenneth said, “No, I don’t have your money.” Kenneth spoke to J.A. Kenneth said he had only \$30. He said, “Just leave us alone and I’ll give you the money.” J.A. said: “Okay. That’s fine.” Kenneth began handing J.A. the money. But, Nataly took it from Kenneth’s hand. She said: “No, this isn’t their money. This is our money. Don’t give it to them.” J.A. shoved Nataly from behind, causing her to drop her cellular telephone. Nataly handed the money back to Kenneth and he took the money from her hand. Kenneth began handing the money to J.A. Suddenly, J.A. snatched it from Kenneth’s hand. J.A. said, “This should be good enough.” As this occurred, M.R. was standing in front of Kenneth. M.R.’s fist was clenched, as if he was going to attack. After J.A. snatched the money from Kenneth’s hand, the group took off. Kenneth and Nataly flagged down a passing police officer. At trial, Kenneth and Nataly each denied they had picked up any money from the ground.

Officer Katherine O’Brien testified concerning the gang allegation. She had been working in gang enforcement for just under two years. Officer O’Brien had received training on gang culture and awareness in the police academy. She had worked side-by-side with tenured gang officers in a specialized unit dealing with gang violence for nine months. Officer O’Brien had worked with other gang units on task forces. She had taken several courses and attended conferences on gang culture and violence. These included a four-day gang awareness course given by the sheriff’s department and a five-day gang conference. As a member of the gang detail, Officer O’Brien dealt with gang members on a daily basis. She was familiar with the gang local to the area in which the present incident occurred. Officer O’Brien had been assigned to monitor that gang for the nearly two years that she had worked the gang detail. She regularly spoke with: members of the

gang; members of rival gangs; and community members. She worked with officers who had previously been assigned to cover the local gang. Officer O'Brien had spoken with 15 members of J.A.'s gang, which numbered 30 to 40 members. Officer O'Brien testified: J.A. was a gang member; he lived in the gang neighborhood; J.A. had identified himself as a gang member in the past; he had gang tattoos; and J.A. had a gang moniker. Officer O'Brien testified that M.R. was an associate of the gang. In response to a hypothetical question tracking the facts of the present case, Officer O'Brien testified the robbery was committed for the benefit of the gang.

B. The Defense Case

Jasmine testified she was walking to the market when \$85 in cash fell out of her back pocket. When she realized she had dropped the money, she went back to look for it. She saw the money on the ground. She saw Kenneth and Nataly walking hand and hand. They both reached down to pick up Jasmine's money, which was lying on the sidewalk. Kenneth picked up the money and put it in his pocket. Jasmine approached them and asked for her money. Kenneth and Nataly laughed at her. They denied they had Jasmine's money. Kenneth said, "There's a couple ones thrown in back over there."

Jasmine called J.A. and told him what had happened. She asked him to help her get her money back. J.A. and M.R. arrived to help. They were accompanied by individuals Jasmine did not know. Jasmine told J.A. and M.R. which direction the couple had gone in. Jasmine watched as J.A. and M.R. caught up to Kenneth and Nataly. Jasmine did not see anything happen between them. J.A. and M.R. returned. J.A. asked Jasmine, "Are you sure that they got your money?" Jasmine said: "Yes, I'm positive. I seen them reach for it." J.A. and M.R., accompanied by Jasmine, caught up with Kenneth and Nataly a second time. Two other boys were with them, but Jasmine was the only girl in the group. J.A. told Kenneth and Nataly, "[M]y friend told me that she saw you guys pick her money up." Kenneth said: "Oh, I'm sorry. My bad." He reached into his pocket and took out Jasmine's money. It was folded just the way she had folded it

when she placed it in her pocket. He held the money out. Nataly snatched it from Kenneth's hand. She said, "I'm going to call the cops." Jasmine responded: "Well, go ahead. Call the cops. I didn't do nothing. It's my money." Nataly became angry and threw the money on the ground. Jasmine and her companions picked up the money. Kenneth and Nataly walked away.

M.R.'s mother, Sonia S., testified she had contacted the detective in charge of her son's case. Sonia wanted to give him Jasmine's name. Sonia believed Jasmine was a potential witness. In addition, Sonia wanted to give the detective Jasmine's mother's name for the same purpose. But the detective was uninterested and would not take the names. He told Sonia, "You are not understanding the situation." Sonia further testified her son was enrolled in school and planned to play football in college. Sonia denied M.R. had any tattoos. They did not live in the neighborhood where the incident occurred, but her son went to school there.

C. Rebuttal

In rebuttal, Kenneth and Nataly both denied they had picked up any money from the ground. They denied any of the four Latinos said, "My friend said she saw you take her money." Kenneth denied ever saying: "Sorry. My bad." Kenneth also denied seeing Nataly talking to Jasmine. And he did not see Nataly throw any money on the ground.

III. DISCUSSION

A. Claim-Of-Right Defense

The minors argue the juvenile court erred as a matter of law when it rejected their claim of right defense to robbery. (See *People v. Tufunga* (1999) 21 Cal.4th 935, 938, 950 [a claim-of-right defense can negate the requisite felonious intent of robbery]; *People*

v. Butler (1967) 65 Cal.2d 569, 573, disapproved on a related point in *People v. Tufunga, supra*, 21 Cal.4th at pp. 939, 956 [same].) This argument is frivolous. The juvenile court, as trier of fact, weighed the evidence, including Jasmine C.'s credibility. The juvenile court could reasonably find the minors did not act with the intent to reclaim Jasmine's property. (See *People v. Demetrulias* (2006) 39 Cal.4th 1, 24 [claim-of-right defense turned on whether trier of fact believed defendant]; *People v. Tufunga, supra*, 21 Cal.4th at p. 944.) The trial court specifically articulated that it did not find Jasmine credible. There was no misapplication of the law.

B. Gang Enhancement

J.A. challenges the sufficiency of the evidence to support the gang enhancement under section 186.22, subdivision (b)(1)(A). He asserts the hypothetical posed to Officer O'Brien improperly assumed two facts as to which there was insufficient evidence. Those two facts were that M.R. was a gang associate and that Edgar Gonzalez was a fellow gang member who participated in the robbery. The minor forfeited this argument by failing to object to the hypothetical in the trial court. (Evid. Code, § 353, subd. (a); *People v. Boyette* (2002) 29 Cal.4th 381, 450.) Even if the issue were properly before us, we would not find any prejudicial error or abuse of discretion. It was for the trier of fact to determine whether to credit Officer O'Brien's opinion. Moreover, as our Supreme Court has explained, "[The trier of fact] must [also] determine whether the facts stated in the hypothetical questions are the actual facts, and the significance of any difference between the actual facts and the facts stated in the questions." (*People v. Xue Vang* (2011) 52 Cal.4th 1038, 1050; see also CALJIC No. 2.82; CALCRIM No. 332; *People v. Boyette, supra*, 29 Cal.4th at p. 452.) The juvenile court was qualified to make that determination.

C. Maximum Term Of Confinement

The juvenile court placed M.R. home on probation with a maximum confinement time of five years. M.R. argues the juvenile court order setting a maximum term of confinement should be stricken. M.R. correctly asserts that because he was placed home on probation, the maximum term of confinement order has no legal effect. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 574; 10 Witkin, Summary of California Law (2012 supp.) Parent & Child, § 944, pp. 563-564.) Moreover, under Welfare and Institutions Code section 726, subdivision (c), the order was unauthorized. Welfare and Institutions Code section 726, subdivision (c) provides: “*If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship . . . , 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 offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.*” (Italics added.) Here, the minor was placed home on probation and not removed from the physical custody of his parents or guardian. Thus, the order setting a maximum term of confinement was unauthorized and must be stricken. (Welf. & Inst. Code, § 726, subd. (c); see *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

D. Conditions of Probation

The juvenile court ordered as a condition of M.R.’s probation, “You are not to remain in any building, vehicle, or in the presence of any person where you know one or more dangerous or deadly weapons or firearms or ammunition exist.” M.R. asserts “dangerous or deadly weapons or firearms” is unconstitutionally overbroad and vague because many objects can be used as deadly weapons. We disagree. The terms “dangerous or deadly weapon or firearm” are well defined in the law; the condition is sufficiently precise for the minor to understand what conduct is prohibited. (*In re R.P.* (2009) 176 Cal.App.4th 562, 565-568; see *People v. Rodriquez* (1975) 50 Cal.App.3d

389, 398-399 [“deadly weapon” is not unconstitutionally vague]; 10 Witkin, Summary of California Law, *supra*, Parent & Child, § 939, p. 557; 27A Cal.Jur.3d (2011) Delinquent and Dependent Children, § 405, pp. 535-537.)

M.R. further asserts the probation condition is overbroad in that dangerous or deadly weapons or firearms or ammunition may exist in a large number of establishments including a: police station (which he has frequented in the past); courthouse (where he was adjudicated); bank; museum; city hall; or any establishment that sells weapons including Walmart, Dick’s Sporting Goods or Pro Bass Shops. The Attorney General concedes that the probation condition is overbroad in this respect. The Attorney General argues that the probation condition be modified to specify, “[The minor] shall not have any dangerous or deadly weapon, firearm, or ammunition in his possession, and shall not remain in any building or vehicle where he knows any person *unlawfully* possesses such a weapon or ammunition, nor remain in the presence of any person whom he knows to *unlawfully* possess such a weapon or ammunition.” (See *In re Sheena K.* (2007) 40 Cal.4th 875, 892 [modification necessary to render condition constitutional]; accord, *People v. Moses* (2011) 199 Cal.App.4th 374, 377.) We agree and shall so order.

E. Predisposition Credit

J.A. received predisposition credits of 709 days. We asked the parties to brief the question whether the juvenile court miscalculated J.A.’s predisposition credit. A minor is entitled to credit against maximum confinement time for all days of actual predisposition confinement. (*In re Eric J.* (1979) 25 Cal.3d 522, 533-536; *In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1231-1232; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.)

When, as here, the juvenile court elects to aggregate the maximum period of confinement based on multiple petitions, the predisposition credits attributable to those petitions must be aggregated as well. (*In re Eric J.*, *supra*, 25 Cal.3d at pp. 533-536; *In re Stephon L.*, *supra*, 181 Cal.App.4th at p. 1232; *In re Emilio C.*, *supra*, 116 Cal.App.4th at pp. 1067-1068.) The juvenile court has a nondelegable duty to calculate the number of days

earned. (*In re Lorenzo L.* (2008) 163 Cal.App.4th 1076, 1079; *In re Emilio C., supra*, 116 Cal.App.4th at p. 1067.) J.A. should have received a predisposition credit of **708** days on three aggregated petitions. Pursuant to a petition filed on September 8, 2010, J.A. was, on September 24, 2010, ordered to camp community placement. He received at that time a predisposition credit of 373 days. The 373 days would have included September 24, 2010. J.A. was placed home on probation pursuant to a May 29, 2011 order. J.A. was arrested on February 16, 2012, and on February 21, 2012, was released to his mother. J.A. was again arrested on February 26, 2012. The present petition was filed on February 28, 2012. The disposition order was entered on May 17, 2012. Hence, in addition to the 373 days' credit awarded on September 24, 2010, J.A. was confined for 247 days from September 25, 2010, to May 29, 2011, for 6 days from February 16, 2012 to February 21, 2012, and for 82 days from February 26, 2012, to May 17, 2012, a total of 708 days. The May 17, 2012 order as to J.A. must be modified to reflect 708 days of predisposition credit.

IV. DISPOSITION

The order setting a maximum term of confinement for M.R. is reversed. The term of M.R.'s probation that the minor not remain in any building and so forth is modified to provide as follows: “[The minor] shall not have any dangerous or deadly weapon, firearm, or ammunition in his possession, and shall not remain in any building or vehicle where he knows any person unlawfully possesses such a weapon or ammunition, nor remain in the presence of any person whom he knows to unlawfully possess such a weapon or ammunition.” The May 17, 2012 disposition order as to J.A. is modified to

reflect 708 days of predisposition credit. In all other respects, the adjudication and disposition orders are affirmed.

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TURNER, P.J.

We concur:

MOSK, J.

KRIEGLER, J.