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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B244527  
(Los Angeles County  
Super. Ct. No. MJ20681)

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMANTHA G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Akemi Arakaki, Judge. Affirmed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and Shira B. Seigle, Deputy Attorneys General, for Plaintiff and Respondent.

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The juvenile court sustained a petition under Welfare and Institutions Code section 602, finding true that minor Samantha G. committed the crimes of petty theft and conspiracy to commit petty theft. The court declared the offenses to be misdemeanors and placed Samantha on probation for six months. Samantha appeals from the adjudication/disposition order.

Samantha contends there is insufficient evidence establishing she appreciated the wrongfulness of her conduct within the meaning of *In re Gladys R.* (1970) 1 Cal.3d 855. Samantha was 12 years old at the time of the charged conduct. Children under 14 years of age are deemed incapable of committing crimes unless there is “clear proof that at the time of committing the act charged against them, they knew its wrongfulness.” (Pen. Code, § 26.) Samantha also contends there is insufficient evidence supporting the juvenile court’s finding she committed conspiracy to commit petty theft. We disagree with Samantha’s contentions and affirm.

### **BACKGROUND**

On June 13, 2011, a petition was filed under Welfare and Institutions Code section 602, alleging that on October 15, 2010, 12-year-old Samantha committed petty theft in violation of Penal Code section 484, subdivision (a). On August 4, 2011, the juvenile court placed Samantha on probation under a program of supervision pursuant to Welfare and Institutions Code section 654. On May 3, 2012, in accordance with her probation officer’s recommendation, the court revoked Samantha’s probation and ordered her detained from her parents. On May 8, 2012, Samantha was released to her mother.

On August 15, 2012, the day of the contested adjudication/disposition hearing, an amended petition was filed under Welfare and Institutions Code section 602, alleging that on October 15, 2010, Samantha committed misdemeanor petty theft (count 1), felony conspiracy to commit burglary (count 2; Pen Code, §§ 182, subd. (a)(1) & 459), felony conspiracy to commit petty theft (count 3), and felony second degree commercial burglary (count 4).

At the adjudication hearing, Katherine Guimet testified. On October 15, 2010, the date of the charged offenses, Guimet was working as a manager at a store called Claire’s

in Palmdale. At about 6:20 p.m., Samantha and three other girls entered the store and walked directly to the back. It did not appear to Guimet that the girls were shopping. Guimet observed the girls through the store mirrors and saw them huddled together and whispering to each other. Then the girls began taking necklaces off of display towers, removing tags affixed to the necklaces, and placing the necklaces in their backpacks. Guimet saw Samantha remove tags from necklaces and place necklaces in a backpack she was carrying. The other girls gave Samantha the tags they had removed from the necklaces. According to Guimet, Samantha “threw” the tags under a display tower. Guimet “made contact” with the girls and all four girls “ran out of the store.”

Guimet contacted store security. Samantha and the other three girls were detained. According to Guimet, when security personnel brought the four girls back to Claire’s, Samantha was the only girl who was not crying. Guimet asked the girls to sit on the floor and empty their backpacks. The other three girls complied but Samantha tried to “shove” the “stuff” she was holding under a basket. Ultimately, Guimet found that each girl, including Samantha, was carrying two necklaces stolen from Claire’s, and one of the girls was wearing an additional stolen necklace around her neck.

Deputy Andrew Campbell from the Los Angeles County Sheriff’s Department also testified at the adjudication hearing. On October 15, 2010, he responded to Claire’s to investigate the shoplifting incident. Samantha was one of the suspects being detained at the store. Before speaking with Samantha, Deputy Campbell and his partner gave Samantha *Miranda*<sup>1</sup> warnings and the *Gladys R.* admonition.<sup>2</sup>

People’s Exhibit 1, admitted into evidence over defense objection at the adjudication hearing and included in the record on appeal, consists of four *Gladys R.* admonition forms. As stated at the top of the form, “The Gladys R. Admonition is to be used for all arrestees under 14 years of age at the time of crime.” The form lists a series of questions for the arrestee to answer regarding her understanding of “right” and

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

<sup>2</sup> *In re Gladys R.*, *supra*, 1 Cal.3d 855.

“wrong” conduct. Questions on the form include, “Give me an example of something that is right to do,” and “Give me an example of something that is wrong to do.” The form also lists questions about “the specific crime being investigated,” including, “Do you know that it’s wrong to (specific crime being investigated)?” The specific crime being investigated is not identified on any of the forms.

All four forms included in People’s Exhibit 1 are filled out, but none of the forms identifies the particular suspect who answered the questions. Based on the forms, each of the four suspects gave an example of right and wrong conduct, and each answered she knew it was wrong to engage in the criminal conduct being investigated. Deputy Campbell testified Samantha was given the *Gladys R.* admonition, but he could not recall which particular form contained Samantha’s answers. The file number at the top of each of the four forms in People’s Exhibit 1 corresponds to the October 15, 2010 shoplifting incident at Claire’s.

After receiving *Miranda* warnings and the *Gladys R.* admonition, Samantha agreed to speak with Deputy Campbell and his partner. According to Deputy Campbell, Samantha told the officers “she went into the store and stole the necklaces.”

On defense motion to dismiss at the close of the People’s evidence, the juvenile court dismissed count 2 for conspiracy to commit burglary and count 4 for second degree commercial burglary based on insufficiency of the evidence.

Samantha testified in her defense. She denied that she and the other girls were “huddled together” when they were in the store. She also denied that she put any store merchandise in a backpack or left the store with any merchandise. She admitted that the other girls handed her tags from the necklaces they took and she placed the tags “under the thing [the display tower].” She also admitted that one of her friends left the store with “a lot of necklaces.”

Samantha denied that security personnel brought the girls back to the store. According to Samantha, the girls walked back past the store, Guimet called them in, and they complied. Samantha also denied she tried to hide store merchandise when Guimet asked the girls to empty their backpacks. According to Samantha, “My friend, she tried

ditching one of the necklaces so they were looking for all the necklaces to match them up with the tags and they said where is this one, so I picked it up and I gave it to her [Guimet].”

On cross-examination, Samantha admitted she helped her friend steal by taking the tags and hiding them, after her friend told her, “I want that necklace.” Samantha testified she knew her friend was stealing and she knew it was wrong. On the day of the incident, when the deputies asked her if she admitted to stealing, she said “yes,” because she had been helping her friend steal.

Samantha testified she did not recall the deputies asking her about the difference between right and wrong. The prosecutor showed her People’s Exhibit 1, the four *Gladys R.* admonition forms, and she testified she did not recall answering the questions listed on the forms.

After hearing argument from the parties regarding the *Gladys R.* issue and the sufficiency of the evidence supporting counts 1 and 3, the juvenile court sustained the petition, finding true that Samantha committed the crimes of petty theft (count 1) and conspiracy to commit petty theft (count 3). The court declared the offenses to be misdemeanors. At the disposition hearing held the same day, the court ordered Samantha placed on probation for six months.

## **DISCUSSION**

### ***Gladys R.* Requirements**

Samantha contends there is insufficient evidence establishing she appreciated the wrongfulness of her conduct within the meaning of *In re Gladys R.*, *supra*, 1 Cal.3d 855 to support the juvenile court’s true findings on counts 1 and 3. In deciding this issue, “We review the whole record most favorably to the judgment to determine whether there is substantial evidence--that is, evidence that is reasonable, credible, and of solid value--from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.” (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.)

Where a petition alleges a minor under 14 years of age has committed a crime to comply with Penal Code section 26, the prosecution must prove by clear and convincing

evidence that the minor understood the wrongfulness of her conduct when she committed the charged act. (*In re Manuel L.* (1994) 7 Cal.4th 229, 232-234, 239; *In re Gladys R.*, *supra*, 1 Cal.3d at pp. 858, 862-867.) “In determining whether the minor knows of the wrongfulness of [her] conduct, the court must often rely on circumstantial evidence [citation] including the minor’s age, experience and understanding, as well as the circumstances of the offense including its method of commission and concealment [citation].” (*In re Jerry M.*, *supra*, 59 Cal.App.4th at p. 298.) The issue of the minor’s appreciation of the wrongfulness of her conduct may be tried together with the issue of whether the minor committed the charged act. In deciding whether the minor understood the wrongfulness of her conduct, the juvenile court may consider evidence presented to prove commission of the charged act. (*In re Cindy E.* (1978) 83 Cal.App.3d 393, 400-401.)

Substantial evidence presented at the adjudication hearing established Samantha understood the wrongfulness of the conduct charged in count 1 (petty theft)<sup>3</sup> and count 3 (conspiracy to commit petty theft)<sup>4</sup> of the amended petition at the time she engaged in the conduct. According to Guimet, the four girls huddled together in the back of the store and whispered to each other, “telling each other what to take off the tags [sic].” Then the girls all proceeded to take necklaces off of display towers, remove tags affixed to the necklaces, and stuff necklaces in their backpacks. Samantha hid the tags from the necklaces under a display tower. When Guimet contacted the girls, they all ran out of the

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<sup>3</sup> The elements of petty theft are: “(1) the defendant took possession of personal property owned by someone else; (2) the defendant did so without the owner’s consent; (3) when the defendant took the property, he or she intended to deprive the owner of it permanently; and (4) the defendant moved the property, even a small distance, and kept it for any period of time, however brief.” (*People v. Catley* (2007) 148 Cal.App.4th 500, 505.)

<sup>4</sup> “The elements of conspiracy are (1) an agreement; (2) specific intent; (3) two or more persons; (4) an unlawful object; and (5) an overt act.” (*People v. Marquez* (1994) 28 Cal.App.4th 1315, 1326.)

store. After the girls were detained and brought back to the store, Samantha continued to try to conceal store merchandise by pushing the items she was holding under a basket.

Samantha herself testified she knew while she was in the store that her friend was stealing necklaces and that it was wrong.<sup>5</sup> She decided to help her friend steal necklaces by hiding the tags from the necklaces under the display tower. Samantha also testified that, on the day of the incident, when the deputies asked her if she had stolen necklaces, she admitted to the crime because she knew that she had helped her friend steal.

The testimony at the adjudication hearing summarized above constitutes substantial evidence Samantha understood the wrongfulness of stealing and agreeing to help her friend steal. Accordingly, we need not address whether the *Gladys R.* admonition forms (People's Exhibit 1) constitute sufficient evidence to satisfy the *Gladys R.* requirements.

### **Conspiracy to Commit Petty Theft**

Samantha contends there is insufficient evidence establishing she committed conspiracy to commit petty theft as charged in count 3 of the amended petition. As set forth above, "The elements of conspiracy are (1) an agreement; (2) specific intent; (3) two or more persons; (4) an unlawful object; and (5) an overt act." (*People v. Marquez, supra*, 28 Cal.App.4th at p. 1326.) The elements of petty theft are: "(1) the defendant took possession of personal property owned by someone else; (2) the defendant did so without the owner's consent; (3) when the defendant took the property, he or she intended to deprive the owner of it permanently; and (4) the defendant moved the property, even a small distance, and kept it for any period of time, however brief."

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<sup>5</sup> In denying that she and the other girls were huddled together and whispering, Samantha testified: "We weren't talking about it. I know it was wrong, like we weren't out loud, you know." A reasonable inference from this testimony is Samantha did not talk to her friends about stealing the necklaces while she was in the store because she knew stealing necklaces was wrong and she did not want Guimet to hear her talking about the wrongful conduct.

(*People v. Catley, supra*, 148 Cal.App.4th at p. 505.) In deciding this issue, we apply the substantial evidence standard outlined above.

Guimet testified the four girls entered the store, walked directly to the back, and huddled together whispering about what merchandise to remove. Guimet saw Samantha not only place necklaces in her backpack but also hide the tags that she and the other girls had removed from numerous necklaces. When Guimet contacted the girls, Samantha ran out of the store with the other girls so that Guimet could not confront them about the theft. According to Guimet, two stolen necklaces were recovered from Samantha when security personnel brought her back to the store. Moreover, Samantha admitted in her testimony at the adjudication hearing that, after her friend said, “I want that necklace,” Samantha helped her friend steal multiple necklaces by hiding the tags under a display tower. The record contains substantial evidence Samantha and her friends made a plan to steal necklaces from Claire’s and they executed that plan and stole the necklaces.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.