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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TYLER C., a Person Coming Under
the Juvenile Court Law.

B256230
(Los Angeles County
Super. Ct. No. NJ26748)

THE PEOPLE,

Plaintiff and Respondent,

v.

TYLER C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, John H.
Ing, Judge. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Tyler C. appeals from the order continuing wardship (Welf. & Inst. Code, § 602) by reason of his having committed the felonies of carrying a loaded, unregistered handgun (Pen. Code, § 25850, subd. (a)) and possessing a firearm capable of being concealed on the person (Pen. Code, § 29610). After terminating a previous order allowing Tyler C. to remain at home on probation, the juvenile court placed him in a long term camp community placement program. We affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *The Prosecution's Case.*

On March 31, 2014, Los Angeles County Deputy Sheriff Covarrubias was assigned to the "Compton Station Patrol." At approximately 4:00 p.m. that afternoon, he received a call directing him to the vicinity of 1028 South Grandy Avenue in the City of Compton. When Covarrubias, who had been a deputy sheriff for seven years, arrived at the location, he observed "several male Blacks loitering in front." Included among those individuals was the minor, Tyler C.

Covarrubias and his partner, who were in full uniform and driving a marked car, parked the vehicle just west of the apartment buildings, got out of their car, stood next to it and faced the group. As they did so, Tyler C., who had been walking back and forth between apartments, came out to the sidewalk. He was wearing a "purple shirt" with a "tribal type of design [on] it." Tyler C. lifted up his shirt and Covarrubias, who was approximately 100 feet from him at the time, saw "what appeared to be the handle of a handgun protruding from [Tyler C.'s] waistband area."

Shortly thereafter, several sheriff's units responded to the "loitering call" and as they headed down the street toward the group, "the male Black individuals who were all at the location . . . fled into [an] apartment."

Covarrubias, his partner and several other deputies approached the apartment and contacted a woman who lived there, Michelle Stevens. Stevens allowed the deputies to enter the Apartment No. 2 at 1028 Grandy Street, and as the deputies looked around, they

saw “all the individuals . . . [they had seen] loitering in front of the location,” including Tyler C. The men were sitting on several couches spread around the living room.

Stevens’s daughter, 19-year-old Alexis Reed,¹ and Reed’s boyfriend, Malik Grissett, also lived in Apartment No. 2 at 1028 South Grandy Avenue.² Reed was at home and in her bedroom at approximately 4:00 p.m. on March 31, 2014 and heard a number of men run into the house. One young man, who was wearing a purple shirt and who Reed later identified as Tyler C., came into Reed’s bedroom and placed a gun under the bed. Reed was frightened when Tyler C. entered her room “because [she] kind of had a feeling that . . . something like [that] was going to happen.” She thought this because she believed the men were “gang members . . . and of course everybody [was] going to have weapons [and if] the police c[a]me, of course [the men were] going to want to hide [their] gun[s].”

Reed heard a police helicopter circling over the apartment, then heard police officers knock on the door. Several officers came into the apartment and told everyone who was “ ‘on probation or parole to [go] out[side].’ ” Tyler C. was still in Reed’s room when a police officer entered. Reed had told Tyler C. to take the gun out of the room, but when the officer entered, he told both Reed and Tyler C. to “get out.” Reed went into the living room with the others. There, she told her mother, Stevens, that the young man in the purple shirt, Tyler C., had hidden a gun under her bed.

After making contact with Reed, Covarrubias’s partner, Deputy Strong, conducted a search of the northwest bedroom.³ When he came out of the bedroom, Strong was carrying a black “Jiminez Arms handgun.” The weapon appeared to be the handgun

¹ Reed admitted having been “arrested for stealing something from somewhere in 2009.”

² According to Reed, Grissett’s mother, his younger brother, Raheem, and his two younger sisters also lived at the apartment.

³ Both Stevens and Reed told the deputy they did not know any of the individuals who had entered their apartment.

Covarrubias had seen in Tyler C.'s waistband. Covarrubias took possession of the gun and determined it was loaded. There was a live round in the chamber and nine live rounds in the magazine. After Reed identified Tyler C. as the individual who had put the gun under the bed, Covarrubias placed Tyler C. under arrest and transported him to the station.⁴ There, Covarrubias ran the gun through the "automated system," a system used by law enforcement officers "to track the registry of firearms." The system, however, showed no record of and gave no information about the gun or its serial number, indicating the weapon had never been registered in the state firearm database. When asked, Covarrubias indicated he did not know whether the handgun had ever been "preserved for fingerprinting" and did not believe the weapon had ever been checked for fingerprints.

b. *Defense Evidence.*

Tyler C. had been at his grandparents' home approximately two blocks away when, at approximately 4:00 p.m. on March 31, 2014, he decided to go "hang[] around" with his cousin, Kionte McCarter, inside an apartment. Although McCarter did not live at the apartment, he "[hung] out" there quite often. Tyler C., who had been wearing blue pants and a dark blue "Aero Apostle" shirt that afternoon, had been to the apartment twice before and had seen Reed there while he had been talking with Reed's boyfriend, Malik Grissett. Although Tyler C. knew Grissett, he had never been introduced to Reed and did not know her name. He was nevertheless surprised when she stated she had never seen him before. Tyler C. thought Reed might want him to be arrested because she was "trying to cover up for someone else."

While Tyler C. was sitting on a couch in the living room, a number of individuals ran into the apartment. Although Tyler C. did not know their names, he had seen them in the area "[o]n [the] street."

⁴ Although between six and eight men, the two tenants and some children were removed from the apartment, and several of the men were detained and questioned about the incident, Tyler C. was "one of the only members of [the] group [who] was arrested."

Tyler C. had been at the apartment for approximately 10 minutes when police officers arrived. Tyler C. had not been in possession of a weapon that day and he had not seen anyone else in possession of a weapon. In addition, Tyler C. had not gone back into any of the bedrooms at the apartment. He had “stayed in the [living room] the whole time” he was there. In total, Tyler C. had been inside the apartment for approximately 15 minutes.

Kionte McCarter was with Tyler C. on March 31, 2014. McCarter had picked up Tyler C. from his grandmother’s house, the two had gone to the store and then to the apartment of a friend of McCarter’s. McCarter had two friends who at times stayed at the apartment on South Grandy, Darnell and Frisk. When McCarter and Tyler C. arrived at the apartment house, there were a number of people outside. However, McCarter and Tyler C. went inside the apartment and sat down on the couch in the living room. Several individuals were also there, but McCarter stayed with Tyler C. the entire time they were in the apartment and neither one of them ever left the living room. In fact, everyone who was there stayed in the living room. No one wanted to walk through the house because the mother of one of the young men who lived there was “trippin” in the back.

Almost immediately after McCarter and Tyler C. had gone into the apartment, several other individuals arrived. Both McCarter and Tyler C. smoke “weed” and, as they were sitting on the couch, McCarter began to roll a cigarette. Just a couple of minutes later, three or four more people arrived. McCarter and Tyler C. had been in the apartment for approximately 10 minutes when McCarter heard police officers knock on the door.

The officers ordered everyone in the apartment to go outside. McCarter followed Tyler C. as he walked out, then saw Tyler C. being placed under arrest. McCarter was not taken into custody and did not know Tyler C. was suspected of having a gun until later, when his cousin told him. McCarter, however, had not seen a gun inside the apartment. He had not spoken with Tyler C. since Tyler C. had been arrested.

2. *Procedural History.*

Following the sustaining of a Welfare and Institutions Code section 602 petition filed on July 24, 2012, Tyler C., who was 14 years old at the time, was found to have committed the felony of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) during which he inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)). At the time, Tyler C. was on formal probation and as a result of the sustaining of the July 24, 2012 petition, he was ordered to remain on probation. However, at proceedings held on December 10, 2013, it was alleged Tyler C. had violated the terms of his probation. A hearing was to be held on the alleged violation in March 2014. The matter was then continued on the motion of Tyler C.'s counsel.

On April 2, 2014, when Tyler C. was 15 years of age and still on formal probation, a petition pertaining to the present matter was filed pursuant to Welfare and Institutions Code section 602. In count 1, the petition alleged that on March 31, 2014, Tyler C. committed the felony of carrying a loaded, unregistered handgun (Pen. Code, § 25850, subd. (a)). Count 2 alleged that on or about March 31, 2014, Tyler C. committed the felony of possession of a concealable firearm by a minor and, in count 3 it was alleged Tyler C. committed the misdemeanor of being a minor in possession of live ammunition (Pen. Code, § 29650).

Following his arrest for the offenses, Tyler C. was detained at juvenile hall. A hearing was held on the matter in the Compton Juvenile Court on April 22, 2014. After evidence of the offenses was presented by the prosecutor, defense counsel made a motion to dismiss the matter pursuant to Welfare and Institutions Code section 701.1, arguing there was insufficient evidence to support the alleged charges. The juvenile court denied the motion, indicating "there [was] sufficient evidence for the court to determine beyond a reasonable doubt . . . the allegations [were] true."

Following the presentation of evidence by the defense, during which Tyler C. testified on his own behalf, the juvenile court heard argument by the parties. After weighing the evidence and arguments, the juvenile court commented: "The case comes down to credibility of witnesses. I did find the prosecution's case to be credible. The

witnesses seemed to have appropriate information and were forthcoming, and had no motivation to fabricate anything.” The court continued: “With respect to the defense case, up until the point that Mr. McCarter talked about the fact that they were sitting there smoking marijuana I did credit his testimony; however, if he was sitting there and smoking marijuana, his perceptions were most likely off. And the fact that he testified that the minor was next to him at all times, that he saw the minor next to him or in front of him, and could account for his whereabouts all the time[] [became] a bit suspicious given the fact that they were there smoking marijuana.”

The juvenile court found beyond a reasonable doubt the petition was true. However, it determined it was only “going to sustain counts 1 and 2 [because] [c]ount 3 merge[d] into at least count 1 and possibly count 2.” In addition, the juvenile court noted “that if the petition [was] aggregated” pursuant to Penal Code section 654, it would be aggregated by one count only. Accordingly, the Compton Juvenile Court returned Tyler C. to his “home court” in Long Beach for disposition of the matter.

At proceedings held on April 30, 2014 in the Long Beach Juvenile Court, Tyler C.’s counsel indicated the matter was there “based on a violation of probation that [had been] filed with [that] court on December 9, 2013.” In addition, the juvenile court was to dispose of a matter filed April 2, 2014 in Compton. Following a hearing held on that matter, the Compton Juvenile Court had found beyond a reasonable doubt Tyler C. had carried a loaded, unregistered handgun and possessed a firearm capable of being concealed on a person.

With regard to the December 9, 2013 probation violation, the juvenile court granted a motion to dismiss the matter. As to the disposition of the present petition, which had been transferred from Compton, the juvenile court indicated it had read a probation report dated April 21, 2014, a “detention report with respect to the April 2nd petition,” an April 24, 2014 “letter from . . . Rever[e]nd Jack Wilson” and “a one-page handwritten . . . letter from [Tyler C.] addressed to the court.”

After listening to argument by the parties, the juvenile court ordered that Tyler C. remain a ward of the court pursuant to section 602 of the Welfare and Institutions Code.

The court terminated the “home on probation order made on December 17th of 2012[,]” removed custody of Tyler C. from his “parents and guardians” and “committed [him] to the care, custody and control of the probation officer for placement in the Camp Community Placement . . . [for] a nine month long term camp.” Tyler C. was ordered to “obey all instructions and orders of the camp staff and . . . not leave camp without permission.” He was also “not to associate with any known member of [the] Nutty Block Crip gang.” The juvenile court noted counts 1 and 2 were both wobblers, then declared them felonies. Finally, “in aggregating the detention time, the [juvenile] court fixe[d] the maximum confinement . . . at six years.” The juvenile court determined that was “four years on the July 24, 2012, [Penal Code section] 245 [subdivision] (a)(4); eight months on . . . a petition filed . . . May 7th, 2012; another eight months on [a second] petition filed [on] May 7th, 2012, and [eight] months on the April 2, 2014 petition.”

On May 6, 2014, Tyler C. filed a timely notice of appeal from the juvenile court’s “[o]rder sustaining [c]ounts 1 and 2 of the petition dated 4/2/2014 rendered on 4/23/2014.”

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed August 14, 2014, the clerk of this court advised Tyler C. to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On September 5, 2014, Tyler C. filed a letter brief in which he argued there was a reasonable doubt he had committed the felonies of carrying a loaded, unregistered handgun and possessing a firearm capable of being concealed on the person. Tyler C. asserted, after he was transported to the Sheriff’s Station, one of the arresting deputies, Deputy Strong, lied when he indicated he had seen Tyler C. with a gun. Moreover, the gun found by the deputy was never checked for fingerprints. Tyler C. urged the weapon, which was discovered in the bedroom of a young woman and her boyfriend, most likely belonged to them, not to him and had the deputies checked the weapon for fingerprints that is what they would have concluded. In addition, Tyler C.

asserted another deputy who was present when he was taken into custody, Deputy Covarrubias, lied when he testified he saw Tyler C. lift his shirt and reveal a gun tucked into his waistband. Tyler C. indicated this was impossible because he never stood outside the apartment. When he and his cousin arrived at the apartment, they immediately went inside. Moreover, the deputy stated he saw the gun from approximately 100 feet away. Tyler C. indicated it is not possible to determine from that distance whether an object is a gun. According to Tyler C., another prosecution witness who lied was Alexis Reed. Reed changed her story in that she first testified she did not know any of the individuals who had come into the apartment, then stated some of them were her boyfriend's family members. With regard to the gun, Tyler C. indicated he believed Reed had "no problem blaming [him,] the stranger," rather than her boyfriend when she indicated who had placed the weapon under the bed. In short, Tyler C. asserted "the [p]olice arrested an innocent boy" and "the [judge] . . . found an innocent person guilty." He was arrested on the basis of lies and "the justice system failed [him]" as he is "innocent" of these crimes.

Tyler C.'s assertion the evidence fails to support the juvenile court's findings he committed the alleged crimes is without merit. "Under the federal Constitution's due process clause, there is sufficient evidence to support [a] defendant's conviction if, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) The same standard applies under . . . the California Constitution. [Citations.]" (*People v. Powell* (2011) 194 Cal.App.4th 1268, 1286.) "This test 'does not require a court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' (*Jackson v. Virginia, supra*, 443 U.S. at pp. 318-319.)" (*People v. Powell, supra*, at p. 1286.) In addition, "[i]f the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary

finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ [Citation.]” (*People v. Albillar* (2010) 51 Cal.4th 47, 60.)

Here, the testimony of Deputies Covarrubias and Strong, considered with that of Reed, support the juvenile court’s findings. It is entirely possible Covarrubias, an experienced deputy sheriff, saw a handgun in Tyler C.’s waistband when Tyler C. lifted his shirt while standing in front of the apartment building. Moreover, a reading of the record indicates Tyler C. had sufficient time to place the gun in the bedroom before the police entered the apartment. Although Covarrubias testimony, that he saw Tyler C. in the living room, does not at first appear to be consistent with Strong’s statement he found Tyler C. in Reed’s bedroom, given the number of individuals in the apartment, it is possible Covarrubias may not have seen Tyler C. in the living room immediately, but a short time later, when he and Reed came out of the bedroom. In any event, based on the prosecution’s evidence, it is reasonable to conclude Tyler C. was both in front of and inside the apartment and, during that time, had on his person a loaded gun which he then hid in the apartment’s bedroom. Moreover, given the circumstance that both Tyler C. and McCarter had been smoking marijuana during the incident, the juvenile court’s determination their testimony was suspect was not unjustified. Under the circumstances presented, the juvenile court’s findings Tyler C. was carrying a loaded handgun and possessed a firearm capable of being concealed are substantially supported by the evidence. (See *People v. Powell, supra*, 194 Cal.App.4th at p. 1287.)

REVIEW ON APPEAL

We have examined the entire record and are satisfied appointed appellate counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The order continuing wardship pursuant to Welfare and Institutions Code section 602 is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.