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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

T.A.,

Defendant and Appellant.

C067550

(Super. Ct. No.  
PDL20080044)

Following a contested jurisdiction hearing, the juvenile court found that minor T.A. came within the provisions of Welfare and Institutions Code section 602 in that he committed two counts of burglary and illegally possessed marijuana. (Pen. Code, § 459; Health & Saf. Code, § 11357, subd. (c).)

On appeal, the minor contends the juvenile court erred and denied him due process when it permitted the prosecution to amend the petition and add the possession of marijuana count at

the jurisdiction hearing. The People appropriately concede the issue. Accordingly, we shall reverse and dismiss the possession of marijuana finding and otherwise affirm.

### FACTS AND PROCEEDINGS

The minor in this case has a history of wardship petitions going back to 2008. On February 3, 2011, a seventh wardship petition was filed, alleging three counts of burglary, arising out of January 2011 incidents of property stolen from a car and building at Oak Ridge High School and from a residence. When the minor was contacted by sheriff's deputies several weeks later, he admitted to taking some, but not all, of the stolen property. He also had one of the stolen items and 43.1 grams of marijuana in his possession. The minor was transported to juvenile hall. During the intake process, another 1.2 grams of marijuana were found in the minor's pocket.

The minor was arraigned on the petition on February 4, 2011. The jurisdiction hearing was held on February 22, 2011. At the hearing, the prosecutor moved to dismiss the residential burglary count and stated she "anticipate[d]" adding a misdemeanor count of possession of marijuana "at the end of the hearing" "to conform with proof." Defense counsel objected, stating, "We have not been given any notice before this morning that the People would be seeking that count. We have not prepared any defenses as it relates to the possession of marijuana. So I would object to [sic] on basis of lack of notice." The juvenile court permitted the amendment because the

allegation had been "born out by the previously tendered discovery issues," since the marijuana possession information was contained in the police report.

After a contested hearing, the juvenile court sustained the two remaining burglary allegations and the marijuana possession allegation. At the subsequent disposition hearing, the juvenile court continued the minor as a ward and ordered he be placed in the Challenge Program for 205 days.

### DISCUSSION

The parties agree that the juvenile court erred in permitting the amendment of the petition over the minor's objection.

Section 678 of the Welfare and Institutions Code allows for the amendment of accusatory pleadings in juvenile proceedings. However, due process principles still apply. "[D]ue process requires that a minor, like an adult, have adequate notice of the charge so that he may intelligently prepare his defense. [Citation.]' [Citation.] Compliance with this requirement has been held by the Supreme Court to mandate that the minor 'be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.' [Citation.]" (*In re Robert G.* (1982) 31 Cal.3d 437, 442.) "[A] wardship petition . . . may not be sustained upon findings that the minor has committed an offense or

offenses other than one specifically alleged in the petition or necessarily included within an alleged offense, unless the minor consents to a finding on the substituted charge. (*Id.* at p. 445.)

Here, as the People acknowledge, the prosecution did not seek to amend the accusatory pleading until the jurisdiction hearing. Even then, the prosecutor did not move to amend the petition prior to the hearing, but rather, stated she "anticipate[d]" adding the allegation of possession of marijuana at the conclusion of the hearing "to conform with proof." Either way, however, the timing of the amendment did not provide adequate notice of the need to defend against the additional allegation. (*In re Johnny R.* (1995) 33 Cal.App.4th 1579, 1584.) Moreover, the original petition alleged the minor had committed several burglaries. The allegation that he possessed marijuana is an entirely unrelated offense, alleged to have occurred several weeks later when the minor was arrested for the burglaries reference to which appeared only in the discovery. Thus, the petition alleging the burglaries did not give the minor notice to defend against a possession of marijuana allegation and must, therefore, be reversed.

## DISPOSITION

The juvenile court's finding the minor unlawfully possessed marijuana as alleged in count IV of the amended petition is reversed and the allegation is dismissed. As modified, the judgment is affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ DUARTE \_\_\_\_\_, J.