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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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

C080379

THE PEOPLE,

(Super. Ct. No. JV137406)

Plaintiff and Respondent,

v.

EZRA C.,

Defendant and Appellant.

In this juvenile delinquency proceeding, the minor, Ezra C., was charged with violating various penal statutes based on his allegedly unlawful receipt and possession of credit and ATM cards belonging to others, as well as other offenses. At the jurisdictional hearing, the minor's aunt, Amrea Poston, testified that in August 2014, she contacted Elk Grove Police Detective Jason Jimenez because she wanted to turn in some credit cards found at her house. When the prosecutor asked where she found the cards, Poston said

she did not find them; her sister handed them to her. The prosecutor then questioned Poston about Detective Jimenez's visit to her house. Poston testified that Detective Jimenez asked if he could go into the minor's room, and she agreed. Initially, she was not in the room with the detective, but then she was. The prosecutor asked Poston, "When you were talking with Detective Jimenez didn't you in fact tell him that you located those credit cards in his [i.e., the minor's] dresser drawer?" Poston responded, "Um, I don't remember saying that. I believe I said they were found in his dresser drawer." The prosecutor followed up with, "Okay. So you don't recall telling him that you found 'em there?" and Poston replied, "No. That was so long ago."

On cross-examination, the minor's attorney elicited Poston's testimony that while she gave the credit cards to Detective Jimenez that afternoon, she was not the one who found them.

Following her testimony, Poston was excused, but the court noted that she was remaining in the courtroom.

Detective Jimenez subsequently testified about his visit to Poston's house. He testified that when he first arrived at the house, Poston handed him a small stack of credit cards, and then, a little later, he took a statement from her. The prosecutor asked, "And when you were speaking with Miss Poston did she tell you where she located those cards?" Detective Jimenez replied, "Yes, ma'am," and the minor's attorney interjected with a hearsay objection. The prosecutor asserted that the question was "for impeachment," and the minor's attorney pointed out that Poston was "not subject to recall." The court overruled the objection, and the prosecutor followed up with, "And what did Miss Poston tell you in regards to where those cards were located?" After the court overruled another hearsay objection by the minor's attorney, Detective Jimenez responded, "She had located them in [the minor's] bedroom."

As his first (and only) witness, the minor's attorney called Poston back to the stand. The court noted that Poston had "been sitting in the courtroom for all of the

testimony” and that while the People “would typically object” to Poston being recalled as a witness, the prosecutor had agreed to allow Poston to be recalled “if . . . the testimony was limited to explaining the prior inconsistent statements,” to which the minor’s attorney had agreed. Thereafter, Poston testified that she did not find the credit cards, her sister-in-law did, and she (Poston) was not present when they were found. On cross-examination, she testified that she was “not sure exactly what [she] told [Detective Jimenez] that day” about who found the cards.

In closing argument, the minor’s attorney argued that if Poston did not find the cards, then there was no proof the minor possessed them because “[w]e don’t know where [they] came from.”

In sustaining all of the counts in the petition, the juvenile court found there was “proof beyond a reasonable doubt that the cards were in [the minor’s] dresser drawer and in his night stand.” The court specifically “f[ou]nd[] credible the former statements that were closer in time to the actual event rather than the subsequent statements.”

On appeal, the minor contends the juvenile court erred in allowing Detective Jimenez to testify over a hearsay objection about Poston’s statement to the detective that she found the credit cards in the minor’s bedroom. The minor is wrong.

The governing law is clear: “Unless the interests of justice otherwise require, extrinsic evidence of a statement made by a witness that is inconsistent with any part of his testimony at the hearing shall be excluded unless: [¶] (a) The witness was so examined while testifying as to give him an opportunity to explain or to deny the statement; or [¶] (b) The witness has not been excused from giving further testimony in the action.” (Evid. Code, § 770.)

Here, Poston testified she did not find the credit cards. Accordingly, evidence that Poston made a statement to Detective Jimenez that she *did* find the credit cards was admissible, so long as she “was so examined while testifying as to give h[er] an

opportunity to explain or to deny the statement” *or* she “ha[d] not been excused from giving further testimony in the action.”

We need not decide whether the second condition can be deemed satisfied here where: (1) Poston remained in the courtroom for the entire hearing; and (2) the minor was actually allowed to recall her to the witness stand even though she had been previously excused, because regardless of the resolution of that issue, the first condition plainly *was* satisfied. As the minor admits, it has been held that “the ‘realistic opportunity’ which must be afforded the witness to explain or deny the statements under section 770 requires reference to *more than one* of the following, 1) the people involved in the conversation, 2) its time and place, or 3) the specific statements that were made during it.” (*People v. Garcia* (1990) 224 Cal.App.3d 297, 304.) The minor contends the *Garcia* criteria were not satisfied here, but they were. As we have noted, the prosecutor specifically asked Poston, “When you were talking with Detective Jimenez didn’t you in fact tell him that you located those credit cards in his [i.e., the minor’s] dresser drawer?” By asking this question, the prosecutor referred to “the people involved in the conversation” -- namely, Poston and Detective Jimenez -- *and* to “the specific statements that were made during it” -- namely, Poston’s statement to the detective that she located the credit cards in the minor’s dresser drawer. Without a doubt, the prosecutor’s question gave Poston a realistic opportunity to explain or deny her alleged statement to Detective Jimenez that she found the cards, and she used that opportunity to say that she did not recall telling him that and instead believed she told him the cards “were found in [the minor’s] dresser drawer,” without saying who found them there. Under these circumstances, the juvenile court did not err in allowing Detective Jimenez to testify that Poston told him she found the cards in the minor’s bedroom.

DISPOSITION

The judgment is affirmed.

/s/  
Robie, J.

We concur:

/s/  
Hull, Acting P. J.

/s/  
Butz, J.