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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

E055221

(Super.Ct.No. RIJ1101038)

OPINION

APPEAL from the Superior Court of Riverside County. Samuel Diaz, Jr., Judge.

Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Anthony Da
Silva, Deputy Attorneys General, for Plaintiff and Respondent.

A petition pursuant to Welfare and Institutions Code¹ section 602, was filed against the minor, J.M., after he robbed a boy of his wallet and cell phone. The minor confronted J.E., the victim, as J.E. walked home past a park where the minor and two companions were hanging out. The minor pulled a knife and held it against the victim's back, demanding the cell phone and wallet. The victim ran home to tell his father, and later the victim's father tracked the stolen cell, using GPS, to a residence where the minor and his companions were located and police were called. The victim identified the minor in an infield showup. Following a court trial, the court sustained the petition, declaring the minor to be a ward of the court, and placed the minor on probation. The minor appeals.

On appeal, the minor argues that (1) the infield showup was unduly suggestive, violating his due process rights, and (2) there is insufficient evidence to support the true finding that the minor personally used a knife in the commission of the crime. We affirm.

BACKGROUND

J.E. was walking home from a friend's house at approximately 4:00 p.m. on June 15, 2011. As he passed a park,² he saw three people sitting on a bench: one had "puffy" hair, while the other two had shaved or bald heads. The minor was one of those three

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² J.E.'s father testified that the park is just one block from their residence.

people.

The minor approached J.E., pulled a sharp object out of his pocket and put it behind his back. J.E. was unsure what the object was, but it had a blade, and it was something sharp, like scissors or a knife. The minor asked where J.E. was going, and after J.E. responded, defendant asked if the cell phone sticking out of J.E.'s pocket was J.E.'s phone. After J.E. responded in the affirmative, the minor struck J.E. in the ear with his right hand, while holding the weapon in his left hand. J.E. fell to the ground. The minor demanded J.E.'s cell phone and wallet, which J.E. yielded. Then J.E. struck the minor in the face and ran home where he told his father what had occurred.

J.E. and his father went immediately back to the park to see if they could find the people who robbed J.E. At the park, they saw the same three individuals that J.E. had encountered earlier, including the minor, sitting at a picnic table, drinking alcohol. J.E.'s father called out and the three individuals turned to look at him, and then took off running out of the south end of the park, dropping a back pack as they ran. J.E.'s father was unable to catch up to them, but he did get the backpack (or duffle bag, as the witness occasionally referred to it) left behind by the fleeing parties. Near the bag was J.E.'s wallet, and inside the bag were a half pair of scissors, and several beer bottles. J.E.'s identification and coins were missing from the wallet. J.E.'s father called the police and turned the backpack over to the authorities. Written on the back of the backpack was the

name, “Morlan.”³

A short time later, J.E.’s father tracked J.E.’s cell phone using a GPS program. J.E.’s uncle accompanied J.E. and his father as they tracked the cell phone to an address, and discovered the minor and the others in the driveway of a residence. J.E.’s father contacted the police and reported this development after stopping at the end of the street. An officer responding to the dispatch stopped an individual riding a scooter and brought this individual to J.E.’s location for identification purposes. However, this individual had tattoos and was not one of the suspects.

In the meantime, J.E., with his father and uncle, went to the residence indicated by GPS as the location of the cell phone and confronted the individuals in the driveway. Two of them, including the minor, ran off. J.E.’s father detained one of the individuals until police arrived.

Another officer, parked around the corner from the location where the suspects had been seen, saw the minor running in the direction of the police car. This officer detained the minor and transported him to the location of the residence where the suspects had been sighted in the driveway. An infield showup (or lineup) was conducted, and J.E. immediately identified the minor as the person who had taken his wallet and struck him. Police also searched the area to where the suspects had been tracked; they

³ Morlan was one of the individuals with whom the minor had gone to the park to drink beer. He was detained by J.E.’s father in the driveway of the residence where J.E.’s cell phone had been tracked by GPS. Morlan is a friend of the minor’s.

found a pocket knife hidden in a planter, and the battery cover of a cell phone, identified by J.E. and his father as part of J.E.'s phone, was found in the trash.

A petition was filed pursuant to section 602 alleging that the minor had committed an act of robbery (Pen. Code, § 211) which would be a crime if committed by an adult. It was further alleged that in the commission of the act, the minor had personally used a deadly weapon, a knife, within the meaning of Penal Code section 12022, subdivision (b)(1). Following a court trial, the juvenile court found the allegations to be true and sustained the petition. The minor was given credit for 47 days served in juvenile hall and released to his parents' custody under the terms and conditions of probation. The minor then appealed.

DISCUSSION

1. The Infield Showup Identification Procedure Was Not Unduly Suggestive.

The minor argues that the trial court erred by admitting evidence of J.E.'s identification of the minor because the infield showup was impermissibly suggestive. We disagree.

The Due Process Clause of the Fifth and Fourteenth Amendments forbids a lineup that is unnecessarily suggestive and conducive to irreparable mistaken identification. (*People v. Chojnacky* (1973) 8 Cal.3d 759, 764, citing *Stovall v. Denno* (1967) 388 U.S. 293, 301-302 [87 S.Ct. 1967, 18 L.Ed.2d 1199].) However, a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it. (*Stovall*, at p. 302.)

The admission of evidence of a showup without more does not violate due process. (*Manson v. Brathwaite* (1977) 432 U.S. 98, 106 [97 S.Ct. 2243, 53 L.Ed.2d 140], quoting *Neil v. Biggers* (1972) 409 U.S. 188, 198 [93 S.Ct. 375, 34 L.Ed.2d 401].) The issue of constitutional reliability of such a procedure depends on (1) whether the identification procedure was unduly suggestive and unnecessary; and if so, (2) whether the identification itself was nevertheless reliable under the totality of the circumstances. (*Manson*, at pp. 104-107, 109-114; *People v. Cunningham* (2001) 25 Cal.4th 926, 989.) The defendant bears the burden of showing an unreliable identification procedure. (*Cunningham*, at p. 989; see also *People v. Ochoa* (1998) 19 Cal.4th 353, 412.)

When a defendant asserts pretrial identification was unnecessarily suggestive, he must show it gave rise to a very substantial likelihood of irreparable misidentification. (*People v. Savala* (1981) 116 Cal.App.3d 41, 49.) In making this determination, several factors are pertinent: the opportunity of the witness to view the defendant at the time of the crime; the witness's degree of attention; the accuracy of the witness's prior description of the defendant; the level of uncertainty demonstrated by the witness at the confrontation; and the length of time between the crime and the confrontation. (*People v. West* (1984) 154 Cal.App.3d 100, 104, citing *Savala*, at p. 49.) The trial court's finding that the challenged pretrial identification procedure was proper is binding on us if supported by substantial evidence. (*Savala*, at p. 49.)

The minor asserts the showup procedure was unduly suggestive because he was shown to the victim in a way that made him stand out, citing *People v. Yeoman* (2003) 31

Cal.4th 93, 124. In *Yeoman*, the defendant's claim that the identification procedures involved in the photographic lineup were unduly suggestive was rejected because different photographs of the defendant appeared in each lineup and the lineups were separated in time by a month. Thus, the use or position of the defendant's photograph was not unnecessarily suggestive. (*Id.* at pp. 124-125.) Photographic lineups are not analogous to an infield showup because they can be displayed to a witness multiple times and the images can be presented in ways that suggest the defendant's photograph is the photograph of the perpetrator.

We agree that presenting the minor, alone, to the victim for possible identification results in the minor "standing out." That does not compel the conclusion that the identification procedure was unduly suggestive. A single person showup is not inherently unfair. (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 386.) In fact, infield identifications in close proximity in time and place to the scene of the crime are favored in the law. (*In re Richard W.* (1979) 91 Cal.App.3d 960, 970.)

In *In re Carlos M., supra*, the minor argued that the victim's identification was tainted because it was the product of an unnecessarily suggestive "one-person show-up" at the hospital. The reviewing court rejected this claim because the record was devoid of any indication that the police told the victim anything to suggest the people she would be viewing were in fact her attackers, and the mere presence of handcuffs on a detained suspect was not so unduly suggestive as to taint the identification. (*In re Carlos M., supra*, 220 Cal.App.3d at p. 386.) The court pointed out that shortly before identifying

the defendant and his companion, the victim had positively identified one suspect, but had made no identification of his companion. (*Ibid.*) The reviewing court also stated that single person showups for purposes of infield identifications are encouraged because the element of suggestiveness inherent in the procedure is offset by the reliability of an identification made while the events are fresh in the witness's mind, and because the interests of both the accused and law enforcement are best served by an immediate determination as to whether the correct person has been apprehended. (*Id.* at p. 387.)

The minor also points to the fact that J.E.'s identification occurred in the midst of an eventful period where J.E. had been backed by his father and uncle to chase and later track down the person who stole the cell phone as showing suggestiveness. However, the minor acknowledges that J.E. spontaneously identified the minor before the minor exited the patrol car. The identification was so spontaneous that the officer had to caution J.E. that there were procedures to follow. The officer admonished J.E. that that he "should not conclude or guess that the person detained is the person who committed the crime," and that he was "not obligated to identify anyone, it's just as important to free innocent persons from suspicion as it is to identify guilty parties, . . ." The officer took pains to avoid a misidentification, supporting the court's finding that the identification was reliable.

There are other factors showing the identification was reliable and not inherently suggestive. J.E. had ample opportunity to observe the persons who robbed him, gave an accurate description of the individuals, and was positive in his identification.

Additionally, prior to transporting the minor to J.E.'s location for the curbside showup, another individual was transported but J.E. did not identify that individual as one of his robbers. This indicates J.E.'s identification of the minor had not been tainted by the mere fact that the minor had been transported to J.E.'s location for a showup.

Additionally, the minor was found and detained after the cell phone stolen during the robbery had been tracked to his location, the backpack (or duffle bag), abandoned by the robbers near J.E.'s wallet in the park as the robbers fled, had the surname of the minor's friend written on it. Finally, there was little risk of misidentification where the minor testified and admitted being involved in a confrontation with J.E. in the park, although he claimed someone else robbed J.E.

Based on the totality of circumstances, the court correctly ruled on the admissibility of the testimony regarding the infield identification of the minor, and no constitutional violation occurred.

2. There Is Substantial Evidence to Support the Allegation that the Minor Personally Used a Knife.

The minor argues that the evidence is insufficient to support the true finding that he personally used a knife in the commission of the robbery, within the meaning of Penal Code section 12022, subdivision (b)(1). In support of his argument, the minor asserts that J.E.'s testimony was inconsistent, contradicted, and not corroborated by any physical evidence. We disagree.

The standard of proof in juvenile proceedings involving criminal acts is the same

as the standard in adult criminal trials. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) The law governing appellate review of claims challenging the sufficiency of evidence in the juvenile context is the same as that governing review of the sufficiency claims generally. (*In re Roderick P.* (1972) 7 Cal.3d 801, 801; *In re Z.A.* (2012) 207 Cal.App.4th 1401, 1424.) Under these standards, we review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In conducting a substantial evidence review, we are bound by certain rules: the juvenile court's determination of credibility shall not be disturbed on appeal because the function of an appellate court is not to reweigh the evidence and substitute its judgment for that of the juvenile court. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5-6.) Further, conflicts in the testimony which are subject to justifiable suspicion do not justify the reversal of a judgment because it is the exclusive province of the trial court judge or jury to determine the credibility of witnesses and the truth or falsity of the facts upon which a determination depends. (*In re E.L.B.* (1985) 172 Cal.App.3d 780, 788.) These standards are equally applicable where the sufficiency of the evidence to support a weapon use enhancement is challenged on appeal. (*People v. Wilson* (2008) 44 Cal.4th 758, 806.)

To find a section 12022, subdivision (b) allegation true, the fact finder must conclude that the defendant himself intentionally displayed an instrument capable of

inflicting great bodily injury or death in a menacing manner during the crime. (*In re Bartholomew D.* (2005) 131 Cal.App.4th 317, 322, citing *People v. Wims* (1995) 10 Cal.4th 293, 302.) Circumstantial evidence alone is sufficient to establish the deadly nature of the object. (*People v. Monjaras* (2008) 164 Cal.App.4th 1432, 1436.)

In *Monjaras*, the reviewing court upheld a finding on a gun-use allegation despite the fact the victim could not say if the weapon was real or a fake. The court observed that when a victim is faced with what appears to be a gun, displayed with an explicit or implicit threat to use it, few victims have the composure and opportunity to closely examine the object. (*People v. Monjaras, supra*, 164 Cal.App.4th at p. 1436.) Nevertheless, the court concluded while it is conceivable that the object was harmless, the jurors could draw an inference from the circumstances surrounding the robbery that the gun was not a toy. (*Id.* at p. 1437.) “Circumstantial evidence alone is sufficient to support a finding that an object used by a robber was a firearm.” (*Id.* at p. 1436.)

In the present case, the minor focuses on conflicts in J.E.’s testimony to make the case that there is insufficient evidence to support the finding that the minor used a knife. However, the trial court found that J.E.’s testimony was credible, while it found the minor’s testimony was not. The fact that there may have been conflicts in J.E.’s testimony does not warrant a reversal where the juvenile court, which was able to observe the demeanors of J.E., his father, and the minor, as they testified, made a determination that J.E.’s testimony was credible.

Circumstantial evidence supports the juvenile court’s finding. Just as

circumstantial evidence alone is sufficient to support a finding that the object used by a robber was a firearm, circumstantial evidence is sufficient to support a finding that a sharp object used by a robber was a deadly weapon or a knife. Here, J.E.'s testimony was corroborated by the fact that a half of a pair of scissors was found in the backpack of the minor's acknowledged companion, in the park near J.E.'s empty wallet. Further, a pocket knife was found hidden in a planter at the same address where the minor and his friends had been tracked, using the GPS in J.E.'s stolen cell phone.

Whether the minor actually used a half pair of scissors or a pocket knife in the commission of the robbery is of little consequence where the object was described as having a blade, and where there was an express or implied threat that it would be used as a stabbing weapon unless J.E. complied with the minor's demand for his cell phone and wallet. This circumstantial evidence constitutes substantial evidence that the minor used a deadly weapon, a knife, in the commission of the robbery.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.