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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

L.T.,

Defendant and Appellant.

E055784

(Super.Ct.No. J241498)

OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza,
Judge. Reversed.

Michael P. Goldstein, 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, James D. Dutton, and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

The minor, L.T., aged 14, was detained after a neighbor discovered him committing lewd acts on a six-year-old girl who lived in the same apartment complex. A wardship petition (Welf. & Inst. Code, § 602, subd. (a)) alleging one count of lewd acts (Pen. Code, § 288, subd. (a)) and one count of sexual battery (Pen. Code, § 243.4, subd. (a)) was filed. At the detention hearing, the minor admitted one count pursuant to a plea agreement, after counsel waived reading of the petition and advisement of rights. At disposition, the minor was declared a ward of the court, and was placed in a suitable foster care placement facility. The minor appealed.

On appeal, the minor asserts (a) his admission of the petition was invalid due the court's failure to advise him of his constitutional rights; (b) there is insufficient evidence to support the court's findings that removal of custody was in the minor's welfare; and (c) the trial court impermissibly delegated the choice of placement to the probation officer. The People agree that the judgment should be vacated because the record fails to show the minor intelligently waived his constitutional rights before admitting the allegation. We reverse.

BACKGROUND

On November 2, 2011, the 14-year-old minor followed a six-year-old girl into the laundry room of the apartment complex where they both lived. He turned off the lights

and exposed his penis, instructing the younger child to touch and rub it with her hand. He pulled her pants down and rubbed his penis against her buttocks, attempting to insert it into her butt. In the parking lot of the apartment complex, after they left the laundry room, the minor again told the victim to rub his penis and put it into her mouth. A neighbor observed this activity and made the minor stop.

On November 4, 2011, a wardship petition was filed pursuant to Welfare and Institutions Code section 602, subdivision (a), containing two counts alleging acts which would be a crime if committed by an adult. Count 1 alleged the minor had committed a lewd and lascivious act on a child (Pen. Code, § 288, subd. (a)), and count 2 alleged the commission of sexual battery. (Pen. Code, § 243.4, subd. (a).)

On November 7, 2011, the court conducted a detention hearing. At the hearing, counsel was appointed for the minor. Counsel waived reading of the petition and advisal of rights. Counsel also informed the court that the People had conveyed an offer by which count 2 would be dismissed in return for the minor's admission of count 1.¹

The court asked the minor if he had time to speak to his attorney and ask her any questions he might have, whether anyone had threatened him or forced him to make an admission, and whether anyone had made any promises in return for his admission. The minor indicated he had spoken to his attorney and asked her any questions he might have,

¹ The agreement as relayed by counsel indicated that count 2 would be "D & D'd," which is shorthand for "dismissed and discussed." No written form memorializing the plea agreement (otherwise known as a *Tahl* form) and informing the minor of the rights being waived was signed or submitted or included in the record.

and denied that anyone had threatened or forced him to admit the petition, or offered inducements.

The court then inquired about the factual basis for the plea, to which the People responded that the police reports in file would provide a factual basis. Thereafter, the minor admitted that he committed the crime of a lewd act upon a child in violation of Penal Code section 288, subdivision (a), as a felony. The court asked minor's counsel if she joined in the admission to which counsel responded that she did. The court then found that the minor had knowingly and intelligently waived his right to a hearing on the issues presented as well as the consequences of his admission.² The court further found that the minor understood the conduct alleged in the petition, that his admission was made freely and voluntarily, and that there was a factual basis for the admission. The court deemed the offense to be a felony with a maximum detention time of eight years.

After numerous continuances, the disposition hearing was held on January 23, 2012. The minor presented the testimony of his father and a family friend in support of his request for home placement or placement with the family friend. The court concluded that the minor presented a high risk of reoffending, declared the minor a ward of the

² The minutes of the hearing indicate that the court informed the minor of constitutional rights to confrontation and self-incrimination, the nature of the offense, and possible consequences of admission, as well as his right to compel the attendance of witnesses. However, in a case such as this, where there is a conflict between the clerk's minutes and the oral proceedings which cannot be harmonized, the part of the record that is entitled to greater credence will prevail. (*People v. Smith* (1983) 33 Cal.3d 596, 599; *People v. Thompson* (2009) 180 Cal.App.4th 974, 978.)

court, placed him in the custody of the probation officer pending placement in a suitable foster placement facility which would offer more structure and counseling. The court adopted terms 1 through 27 of the disposition report, which sets out the terms and conditions of probation and placement.

On February 27, 2012, the minor appealed.

DISCUSSION

1. Invalidity of the Minor's Admission

The minor contends that his admission of count 1 of the wardship petition was invalid because the juvenile court failed to advise him of his constitutional rights and the consequences of his admission. The People agree that the judgment should be vacated because the record fails to show the minor intelligently waived his constitutional rights before admitting the allegation. We agree.

Welfare and Institutions Code section 702.5 provides that in any hearing conducted to determine if the minor is a person described in Welfare and Institutions Code section 601 or 602, the minor has a privilege against self-incrimination and a right to confrontation by, and cross-examination of, witnesses. This statute is implemented by rule 5.534(k) of the California Rules of Court. Rule 5.778 of the California Rules of Court requires that the petition be read at the beginning of the jurisdiction hearing, and the court must explain the meaning and contents of the petition, the nature of the hearing, the procedures of the hearing, and possible consequences. (Cal. Rules of Court, rule 5.778(a).)

After giving the advisement required by California Rules of Court, rule 5.534, the court must advise those present that the minor has the rights to (a) a hearing on the petition, (b) the privilege against self-incrimination, (c) the right to confront and cross-examine witnesses, and (d) the right to secure the attendance of witnesses on the minor's behalf. (Cal. Rules of Court, rule 5.778(b).) The court must then inquire whether the minor intends to admit or deny the allegations; if the minor wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in California Rules of Court, rule 5.778(b). (Cal. Rules of Court, rule 5.778(c).)

An admission by a juvenile of the truth of a penal charge in a juvenile court proceeding is tantamount to a plea of guilty, so a minor must personally make the admission. (*In re Francis W.* (1974) 42 Cal.App.3d 892, 903.) Pursuant to the holding of *Boykin v. Alabama* (1969) 395 U.S. 238, 242 [89 S.Ct. 1709, 23 L.Ed.2d 274], there must be an affirmative showing that a guilty plea was made intelligently and voluntarily in order to be upheld; an intelligent and voluntary plea requires knowledge and relinquishment of the rights to a jury trial, to confront adverse witnesses, and against self-incrimination. (*Id.* at p. 243.) For a guilty plea in California to be constitutionally valid, an express advisement and waiver of the three *Boykin* rights must appear on the record. (*In re Tahl* (1969) 1 Cal.3d 122, 132-133.)

Juveniles have all the *Boykin-Tahl* rights that an adult has, except the right to a trial by jury. (*In re Ronald E.* (1977) 19 Cal.3d 315, 321 (*Ronald E.*); *In re Thomas G.* (1996) 44 Cal.App.4th 59, 65.) However, neither the California nor the federal Constitution requires the recitation of a formula by rote or the spelling out of every detail by the trial court. (*In re James H.* (1985) 165 Cal.App.3d 911, 916.) It does mean that the record must contain on its face direct evidence that the accused was aware, or made aware, of his right to confrontation, to a trial, and against self-incrimination. (*Ibid.*, quoting *In re Tahl, supra*, 1 Cal.3d at p. 312.)

The minor relies heavily on *In re Ronald E., supra*, 19 Cal.3d 315. *Ronald E.* was decided at a time when it was assumed that the failure to expressly advise the minor and to obtain express waivers of *Boykin-Tahl* rights was considered reversible per se. (*Id.* at pp. 320-321; *People v. Wright* (1987) 43 Cal.3d 487, 493-495.) The Supreme Court later clarified that a guilty plea is constitutional if the record affirmatively demonstrates that the plea was voluntary and intelligent based on the totality of the circumstances, and it specifically rejected a standard of review that requires reversal regardless of prejudice. (*People v. Howard* (1992) 1 Cal.4th 1132, 1178.)

Both an adult and a juvenile need to know what their constitutional rights are in order to decide whether to exercise or waive those rights. (*In re Joe A.* (1986) 183 Cal.App.3d 11, 19.) What is necessary is that the record shows the defendant (or minor) is aware of his constitutional rights and waives them. (*People v. Gloria* (1980) 108 Cal.App.3d 50, 53.) A plea is valid if the record shows that it is voluntary and intelligent

under the totality of the circumstances. (*In re Patricia T.* (2001) 91 Cal.App.4th 400, 404, citing *People v. Howard, supra*, 1 Cal.4th at p. 1175.)

Here, there is nothing in the record to show that the minor was aware of his *Boykin-Tahl* rights, and no express waiver of those rights. While we can excuse the lack of advisements where the totality of circumstances shows the defendant has been made aware of his rights and expressly waives them, it is another matter entirely where the record contains neither admonishment nor waiver.

Because we reserve the jurisdictional findings, we do not need to reach the remaining issues.

DISPOSITION

The judgment is reversed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.