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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

E059270

(Super.Ct.No. J249511)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A.

Buchholz, Judge. Affirmed.

Erica Gambale, 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, Melissa Mandel and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

Following a contested jurisdictional hearing, the juvenile court found true that defendant and appellant S.A. (minor) unlawfully drove or took a vehicle (Veh. Code, § 10851, subd. (a)) and committed a hit and run (Veh. Code, § 20002, subd. (a)). Minor was initially granted deferred entry of judgment. However, according to the parties, minor was subsequently declared a ward of the court and placed on probation.¹ On appeal, minor argues that the juvenile court committed prejudicial error and violated her due process rights when it admitted the unduly suggestive and unreliable in-field identification. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND

Lizeth Ibarra lived in Pomona and owned a white Honda Accord. On May 18, 2013, Ibarra reported her car as stolen, having last seen it at 1:00 a.m. that day. Later that same day, the police delivered Ibarra's stolen vehicle to her. The front bumper and right side were very damaged.

On May 18, 2013, at approximately 6:30 p.m., Maria Barron was driving in Rialto when Ibarra's white Honda Accord crashed into her vehicle. Barron clearly saw a female driver and a female front seat passenger prior to the collision. She was keeping an eye on the white Honda because of the manner in which it was being driven. Immediately

¹ There is no information in the record to show that minor was later placed on probation; however, this fact is undisputed and immaterial for the resolution of the issues on appeal.

following the collision, Barron noticed the female driver, the female passenger, and two male backseat passengers flee from the scene.

Approximately 20 minutes after the collision, police officers arrived and took Barron to a nearby location for an in-field identification. As Barron sat in the backseat of the patrol car about 15 to 20 feet away, she identified the driver as minor. She also identified the female passenger. At that time, her identification of the driver was her true opinion. Barron described the driver as chubby, light-skinned with straight black hair, wearing glasses and a white T-shirt, and the passenger as skinnier with curly brown hair. At trial, Barron stated that she had misidentified the driver because she was looking for a female wearing a white T-shirt, but pointed to the female wearing a gray T-shirt. She was certain that a female was driving the stolen vehicle, however. At trial, Barron also stated that she did not see the driver of the vehicle that crashed into her in the courtroom.

Rialto Police Officer Travon Ricks, who arrived shortly after the collision, testified to Barron's in-field identification of minor. Officer Ricks spoke to Barron at the scene and informed her that two females and two males had been apprehended nearby and that she needed to take a look at them for possible identification. Before the identification, Officer Ricks admonished Barron that she was about to see two detained females and that they may or may not have been involved in the crime, and Barron simply needed to tell him yes or no if they were involved. Officer Ricks then drove Barron to the location, which took approximately one minute. Barron identified minor as the driver of the stolen vehicle.

Officer Ricks acknowledged that he did not use his department issued in-field identification advisal card. He also acknowledged that he failed to advise Barron that he being a police officer and showing her a suspect should not influence her judgment; that Barron should study the subject carefully before making any comment; and that Barron was not obligated to identify anyone.

Rialto Police Officer Nicholas Parcher conducted an interview of minor. After minor waived her constitutional rights, minor admitted that she was driving the stolen vehicle at the time of the collision. She explained that she had stolen the white Honda in Pomona at around midnight on the day of the collision and then drove to Fontana where she picked up the other three occupants. She also stated that she ran from the scene of the accident because she did not want to be arrested for stealing the car.

Minor's mother testified on behalf of the defense. Minor's mother stated that minor weighed about 105 to 110 pounds and that she is approximately five feet two inches tall. Minor's mother described minor as "thin."

II

DISCUSSION

Minor contends that the juvenile court violated her due process rights when it erroneously admitted the unduly suggestive and unreliable in-field identification and, therefore, the true findings must be reversed.

We review de novo the trial court's ruling on the constitutionality of an identification procedure regarding whether, under the facts, a pretrial identification procedure was unduly suggestive, and uphold the factual findings by the trial court if

supported by substantial evidence. (*People v. Kennedy* (2005) 36 Cal.4th 595, 608-609, overruled on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 458-459; *People v. Contreras* (1993) 17 Cal.App.4th 813, 819.)

A defendant challenging an identification procedure bears the burden of establishing (1) that the procedure used is unduly suggestive and unnecessary, and (2) if so, that the identification by the witness is unreliable under the totality of the circumstances, taking into account such factors as the witness's opportunity to view the perpetrator at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the suspects, the level of certainty the witness demonstrated at the identification, and the time between the crime and the identification. (*People v. Ochoa* (1998) 19 Cal.4th 353, 412 (*Ochoa*)). “‘Only if the challenged identification procedure is unnecessarily suggestive is it necessary to determine the reliability of the resulting identification.’ [Citation.]” (*People v. Alexander* (2010) 49 Cal.4th 846, 902.) In other words, “‘[i]f we find that a challenged procedure is not impermissibly suggestive, our inquiry into the due process claim ends.’ [Citation.]” (*Ochoa, supra*, 19 Cal.4th at p. 412.)

Minor argues that the in-field identification was unduly suggestive because Officer Ricks failed to read his entire in-field admonishment card to Barron informing her that she was not obligated to identify anyone or that she should not be influenced by the fact that he was a police officer when making any comment. Minor further claims the in-field identification was suggestive because, while driving Barron to the location of the detained suspects in his marked patrol car, Officer Ricks told Barron the suspects had

been “‘caught,’” therefore suggesting Barron was likely influenced by the officer’s comment.

The manner and procedures of the in-field identification of which minor complains were not unduly suggestive. This was a two-person lineup. And, even a “‘single person showup’” is not inherently unfair. (*Ochoa, supra*, 19 Cal.4th at p. 413.) Moreover, procedures where a suspect had been handcuffed or seated in a police vehicle during an in-field identification have been approved by courts. (*Stovall v. Denno* (1967) 388 U.S. 293, 294, 296 [defendant was handcuffed to one of five police officers during an identification] overruled on other grounds in *Griffith v. Kentucky* (1987) 479 U.S. 314 [taking defendant to hospital, where victim lay in bed, was not too suggestive]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 378, 386 [defendant was handcuffed when viewed by the victim and was shown immediately after the victim had positively identified another suspect]; *In re Richard W.* (1979) 91 Cal.App.3d 960, 969-970 [defendant sat handcuffed in the back of a police car, with officers standing around]; *People v. Craig* (1978) 86 Cal.App.3d 905, 914 [defendants were inside a police car and officers stood around the car]; *People v. Anthony* (1970) 7 Cal.App.3d 751, 759, 764 [officers drove defendant and his companion to the scene of the robbery in a marked police vehicle, handcuffed, and asked the witness “‘which was the one that came in’” and committed the robbery]; *People v. Gomez* (1976) 63 Cal.App.3d 328, 335-337 [defendant stood outside a patrol car, was handcuffed and accompanied by two officers]; *People v. Ballard* (1969) 1 Cal.App.3d 602, 605 [police told victim they had two suspects who “‘fit the description’” she had given them of the robbers].)

Prompt identification of a suspect close to the time and place of the offense serves a legitimate purpose in quickly ruling out innocent suspects and apprehending the guilty. (*People v. Martinez* (1989) 207 Cal.App.3d 1204, 1219.) Such identifications are likely to be more accurate than a more belated identification. (*Ibid.*) Here, an immediate identification would have allowed officers to pursue other suspects in the event that Barron exonerated minor. The identification made sense and was a necessary component of the police investigation. Barron had an opportunity to see the driver of the stolen vehicle that collided with her vehicle. The officer admonished Barron that the two detained females may or may not be involved in the crime. And, Barron, after looking at the two females, identified minor as the driver and testified that the identification was her true opinion at the time of the in-field identification.

“A procedure is unfair which suggests in advance of identification by the witness the identity of the person suspected by the police.’ [Citation.]” (*Ochoa, supra*, 19 Cal.4th at p. 413.) Whether an identification procedure is suggestive depends upon the procedure used, as well as the circumstances in which the identification takes place. In this case, there is no evidence that Officer Ricks at any time suggested to Barron that she was about to view the driver of the collision. On the contrary, Officer Ricks testified that he told Barron the detained females may or may not be involved in the crime. And, Barron, herself, admitted the officer told her that the persons detained “may or may not be the drivers of the vehicle.” Anyone asked to view a lineup would naturally assume the police have a suspect or a suspect has been “caught.” (See *People v. Avila* (2009) 46 Cal.4th 680, 699.) This circumstance does not render an identification procedure

suggestive. (*Ibid.*) There is nothing in the record to indicate Officer Ricks encouraged Barron to identify minor as the driver of the vehicle. Officer Ricks did not signal to Barron that she should identify minor as the driver of the vehicle. He put no pressure on Barron, nor did he use any intimidation to get her to identify anyone. The identification procedure was not unduly suggestive, and given the nature of the crime that had just been committed, was necessary under the circumstances to quickly apprehend suspects involved in the hit and run, and to possibly allow the detained individuals to go free if not identified.

Minor further argues Barron's identification was unreliable because Barron did not identify minor at trial, her description of the driver was mistaken, she was not confident when she identified minor at the time of the in-field identification, and she was under stress from the collision. However, in light of our conclusion the in-field identification was not impermissibly suggestive, we need not decide whether Barron's identification of minor was "nevertheless reliable under the totality of the circumstances." (*Ochoa, supra*, 19 Cal.4th at p. 412.) As we stated earlier, "[i]f we find that a challenged procedure is not impermissibly suggestive, our inquiry into the due process claim ends." [Citation.]" (*Ibid.*)

Notwithstanding the above, for argument purposes, even if we assume the juvenile court erred in admitting Barron's in-field identification of minor as the driver, such error was harmless. As the People aptly note, minor confessed to the crimes. She stated that she was driving the vehicle at the time of the collision. She also informed an officer that she had stolen the vehicle in Pomona at around midnight on the day of the collision and

then drove the car to Fontana and picked up the three occupants. She also explained that she fled from the scene of the collision because she did not want to be arrested for the stolen vehicle. Minor did not refute her statements to the police at the time of trial. Hence, any error in admitting Barron’s in-field identification of minor as the driver was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Craig* (1978) 86 Cal.App.3d 905, 914 [“A tainted pretrial identification makes an in-court identification inadmissible unless it can be shown the in-court identification had an origin independent of the pretrial identification. [Citation.]”]; *People v. Sandoval* (1977) 70 Cal.App.3d 73, 86 [error in admitting evidence of victim’s tainted in-court identification was harmless given the “ample untainted highly probative evidence linking defendant to the commission of the robbery”].)

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.