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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.B.,

Defendant and Appellant.

E061067

(Super.Ct.No. J252204)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin,
Judge. Affirmed.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
Arlene A. Sevidal and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff
and Respondent.

A juvenile court found true allegations that defendant and appellant E.B. (minor) committed the offenses of possession of a controlled substance for sale (Health & Saf. Code, § 11378, count 1) and possession of metal knuckles (Pen. Code, § 21810, count 2).¹ The court declared him a ward of the court and placed him on probation, in the custody of his parents. On appeal, minor contends that: (1) the court erred in ruling that he was not entitled to *Miranda*² advisements before the police officer asked him whether he had anything illegal on him; and (2) there was insufficient evidence to support the court's conclusion that he possessed the methamphetamine for sale. We affirm.

FACTUAL BACKGROUND

On November 24, 2013, at approximately 9:52 p.m., Officer Nathan Newsom observed minor riding a bicycle without a headlight. The officer activated his overhead lights and siren and used his spotlight to illuminate minor. Minor continued to ride his bicycle for approximately 30 yards before coming to an abrupt stop near a tall, wrought iron fence. He jumped off his bicycle and pulled out what appeared to be a small, silver firearm from his waistband. Officer Newsom commanded minor several times to show him his hands. However, minor placed his hand over the top of the fence and dropped the silver object in the bushes. Minor then “went to the prone position at [Newsom’s] command.” At that point, Officer Newsom handcuffed him. Before attempting to

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

perform a pat down search, Officer Newsom asked minor if he had anything illegal on him. Minor told him he had marijuana and “crystal,” which Officer Newsom understood to mean methamphetamine. Officer Newsom searched minor’s right front pocket and found a baggie of marijuana and another baggie, which contained four smaller plastic baggies. It appeared to Officer Newsom that each of the smaller baggies contained the same amount of a substance. He performed a field test on the substance, and it tested positive for methamphetamine.

Officer Newsom then performed an area check for the metallic object that he saw minor drop over the fence. In the exact area where minor had dropped the object, Officer Newsom found a set of metal knuckles.

At the jurisdiction hearing (the hearing), Officer Newsom opined that the four baggies of methamphetamine minor had in his pocket were possessed for sale. He based his opinion on the totality of the circumstances, including that the methamphetamine was in four different packages, and they appeared to contain the same amounts; furthermore, minor did not appear to be under the influence of methamphetamine, and he had metal knuckles with him. Officer Newsom testified that the small baggies used to package the methamphetamine were the type commonly used in selling methamphetamine. He explained that methamphetamine was typically sold in what was referred to as a “dime bag,” which was approximately \$10 worth. However, the exact amount could vary, since sellers on the street “eyeball” it, rather than use calibrated scales to measure the amounts. Officer Newsom also testified that people who sell methamphetamine commonly possessed weapons to defend themselves and their product.

On cross examination, Officer Newsom testified that methamphetamine is not always sold in the same amount. It depends on what the customer desires, or what the seller has in his possession or prefers to sell. He also reiterated that sellers tend to keep the drugs packaged up separately for sales.

The criminalist who tested the substances recovered from minor's pocket testified that the baggies contained methamphetamine and had a total gross weight of 0.93 grams, including the packaging. Of the four baggies, she analyzed the contents of two of them. The net weight (only the substance) of the contents of one of those baggies was 0.18 grams. The net weight of the substance in the other was 0.12 grams.

ANALYSIS

I. The Trial Court Properly Concluded That Minor Was Not Entitled to *Miranda*

Advisements

Minor argues that his admission to Officer Newsom that he had methamphetamine in his pocket was obtained in violation of his rights under *Miranda* and was therefore inadmissible at the hearing. We disagree. Furthermore, the admission of minor's statement was harmless error.

A. Procedural Background

At the hearing on April 22, 2014, Officer Newsom testified that he asked minor if he had anything illegal on him. When the prosecutor asked Officer Newsom what minor's response was, minor's counsel objected, based on *Miranda*. The court asked minor's counsel if she wanted to inquire, and she said yes. Both counsel questioned Officer Newsom, and a discussion ensued about whether minor was free to leave and if

Miranda applied. Minor’s counsel asked Officer Newsom if minor was free to leave when he asked him if he had anything illegal, and Officer Newsom said no. The prosecutor asked Officer Newsom whether he told minor he was not free to leave, and Officer Newsom said no. The prosecutor also asked whether Officer Newsom knew if minor had anything else on him that might harm him (Officer Newsom). Officer Newsom replied, “No. I didn’t know. That’s why I asked him.”

The court considered the totality of the circumstances in determining whether *Miranda* warnings were needed. The court recounted that Officer Newsom pulled minor over on his bicycle after seeing him throw what appeared to be a weapon over a fence. The court noted that there was no formal arrest in this case, even though Officer Newsom did state that minor was handcuffed and was not free to leave. The court further noted that the detention was very brief, there was only one officer, there was no evidence to indicate that he was holding a weapon at the time he questioned minor, and there was no evidence concerning the tone of voice used by him. The court concluded that *Miranda* warnings were not required in this case since there was only a brief detention after a traffic stop. The court also noted that minor did not yield when the officer activated his lights and siren. The court found that minor was not in custody for purposes of *Miranda*.

B. *Standard of Review*

On appeal, “[w]e apply a deferential substantial evidence standard to the trial court’s factual findings, but independently determine whether the interrogation was custodial. [Citation.]” (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403 (*Pilster*).

C. *Minor Was Not in Custody*

“It is settled that the safeguards prescribed by *Miranda* become applicable as soon as a suspect’s freedom of action is curtailed to a ‘degree associated with formal arrest.’ [Citation.]” (*Berkemer v. McCarty* (1984) 468 U.S. 420, 440 (*Berkemer*)). “Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal arrest? [Citations.] The totality of the circumstances surrounding an incident must be considered as a whole. [Citation.]” (*Pilster, supra*, 138 Cal.App.4th at p. 1403, fn. omitted.) Objective indicia of custody for *Miranda* purposes include: “(1) whether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.” (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1753.)

In *Berkemer*, the United States Supreme Court concluded that an officer’s roadside questioning of a motorist detained pursuant to a routine traffic stop did not constitute custodial interrogation for *Miranda* purposes. (*Berkemer, supra*, 468 U.S. at pp. 435-440.) The Court noted that the “detention of a motorist pursuant to a traffic stop is presumptively temporary and brief.” (*Id.* at p. 437.) The court then contrasted a stationhouse interrogation, “which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.” (*Id.* at pp. 437-438.)

Here, minor has failed to demonstrate that he was subjected to restraints comparable to those associated with a formal arrest. When Officer Newsom questioned

minor, he had not been formally arrested. The length of the questioning was very brief, as noted by the court. The record indicates minor was essentially only asked one question. The question was asked at the scene, not a police station. This public atmosphere, in which passersby could view the interaction, was “substantially less ‘police dominated’ than that surrounding the kinds of interrogation at issue in *Miranda* itself, . . .” (*Berkemer, supra*, 468 U.S. at pp. 438-439.) Officer Newsom was the only officer questioning minor, and the question was nonaccusatory and investigative. The officer simply asked minor if he had anything illegal on him. Moreover, Officer Newsom testified that he had observed minor drop what appeared to be a weapon over the fence. The officer explained that he asked minor if he had anything illegal on him because he did not know whether minor had anything else that could harm Officer Newsom.

Although Officer Newsom told the court that minor was not free to leave, his intention was not communicated to minor. He never told minor that he was under arrest or that he was not free to leave. “A policeman’s unarticulated plan has no bearing on the question whether a suspect was ‘in custody’ at a particular time; the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” (*Berkemer, supra*, 468 U.S. at pp. 442, fn. omitted.)

We acknowledge minor’s assertion that he was completely physically restrained, since he was face down in the prone position, and the officer handcuffed him and stood over him. However, “[a] valid stop is not transformed into an arrest merely because law enforcement agents momentarily restrict a person’s freedom of movement. They may impose such a restriction to maintain the status quo while making an initial inquiry,

provided the force displayed is not excessive under the circumstances.” (*U.S. v. Patterson* (9th Cir. 1981) 648 F.2d 625, 633.) Here, Officer Newsom had observed minor with what appeared to be a weapon, minor did not initially obey his commands, and there was only one officer on the scene. Under these circumstances, it was reasonable for Officer Newsom to handcuff minor before investigating.

We conclude that minor was not in custody for *Miranda* purposes. Thus, the court properly admitted his statement.

D. Any Error Was Harmless

Minor argues that the court’s admission of his response that he had methamphetamine was prejudicial error. He contends that his statement was admitted to prove his guilt and was “essentially the prosecution’s entire case.” Any error in admitting that statement was harmless beyond a reasonable doubt. (*People v. Peracchi* (2001) 86 Cal.App.4th 353, 363.) Officer Newsom retrieved the metal knuckles that minor had dropped over the fence and he was arrested for possessing metal knuckles. (§ 21810.) As such, Officer Newsom would have inevitably discovered the methamphetamine in minor’s pocket, pursuant to a lawful search incident to arrest. Furthermore, the evidence showed that the substance in the baggies tested positive for methamphetamine. Therefore, even if minor’s statement that he had methamphetamine on him should have been suppressed, any error in admitting it was harmless.

II. There Was Substantial Evidence to Support the Court's Finding That Minor Possessed the Methamphetamine For Sale

Minor argues there was insufficient evidence that he possessed the methamphetamine with the intent to sell. We disagree.

A. *Standard of Review*

“[I]n considering a claim of insufficiency of the evidence, appellant has a heavy burden in demonstrating that the evidence does not support the juvenile court findings. [Citation.] An appellate court must review the whole record in the light most favorable to the judgment in order to determine whether it discloses substantial evidence that a reasonable trier of fact could find the essential elements of the crime beyond a reasonable doubt.” (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136 (*Ricky T.*)) “We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence.” (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) In addition, “we must make all reasonable inferences that support the finding of the juvenile court.” (*Ibid.*) “If the circumstances reasonably justify the verdict, we will not reverse simply because the evidence might reasonably support a contrary finding. This standard applies to cases based on circumstantial evidence. [Citation] The testimony of just one witness is enough to sustain a conviction, so long as that testimony is not inherently incredible. [Citation.] The trier of fact determines the credibility of witnesses, weighs the evidence, and resolves factual conflicts. . . . On appeal, we must accept that part of the testimony which supports the judgment.” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

B. *The Evidence Was Sufficient*

“In cases involving possession of marijuana or [methamphetamine], experienced officers may give their opinion that the narcotics are held for purposes of sale based upon such matters as the quantity, packaging and normal use of an individual; on the basis of such testimony convictions of possession for purpose of sale have been upheld. [Citations.]” (*People v. Newman* (1971) 5 Cal.3d 48, 53, overruled on other grounds, as stated in *People v. Daniels* (1975) 14 Cal.3d 857, 862.) At the jurisdiction hearing, Officer Newsom gave his opinion, based upon his experience, training and judgment, that the methamphetamine “was possessed for sales” because of the packaging of the methamphetamine, because minor did not appear to be under the influence of methamphetamine, and because he was carrying metal knuckles. Officer Newsom specifically testified that a person who possessed methamphetamine for personal use would typically have a quantity of methamphetamine in a single package. However, a person who possessed methamphetamine for sale would typically have multiple packaging of the same or similar quantities. He testified that minor possessed methamphetamine packaged in four baggies, in what appeared to be the same amount. He stated that each baggie appeared to be what was referred to as a “dime bag,” which was worth approximately \$10. Furthermore, Officer Newsom testified that sellers commonly possessed weapons in order to defend themselves and their product, especially if they were in a rough neighborhood where people rob others for narcotics.

Minor claims that Officer Newsom based his opinion regarding the intent to sell on the “incorrect assumption that the bags contained similar amount[s] and each bag was

worth \$10.” Minor cites the criminalist’s analysis, which showed that the total gross weight of the four baggies was 0.93 grams, and that one baggie contained 0.12 grams and one contained 0.18 grams. He asserts that, “given that the total weight was .93 of a gram, the two bags [that were not weighed individually] contained .61 of a gram between them.” Minor concludes that, since Officer Newsom’s opinion was based on an incorrect assumption, it was not credible. However, we note Officer Newsom’s testimony that the amount of methamphetamine in a dime bag varied, since sellers on the street would “eyeball” the amounts, rather than use calibrated scales. Moreover, the total gross weight of 0.93 grams was the weight of all four baggies, *including the packaging*. Thus, the two baggies that were not weighed individually did not necessarily contain “.61 of a gram between them,” as minor claims.

Furthermore, Officer Newsom’s opinion that minor possessed the methamphetamine for sale was not solely based on the quantity of methamphetamine in each baggie, as minor claims. He based his opinion on the totality of the circumstances. The other factors Officer Newsom took into account were that the four baggies were packaged inside one larger baggie, the baggies were the type commonly used to sell methamphetamine in, minor was not under the influence of methamphetamine, and he was carrying a weapon.

Viewing the record in the light most favorable to the judgment, as we must, we conclude that there was sufficient evidence to support the court’s true finding that minor possessed methamphetamine for sale.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.