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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

ISRAEL C.,

Defendant and Appellant.

F063558

(Super. Ct. No. JJD065011)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L.
Boccone, Judge.

Robert P. Whitlock, under appointment by the Court of Appeal, for Defendant and
Appellant.

* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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Israel C., a minor, appeals from an order sustaining a Welfare and Institutions Code section 602 petition. He contends the evidence of robbery and gun use was insufficient to sustain the adjudication. We affirm the order.

FACTS AND PROCEDURAL HISTORY

On July 15, 2011, minor and his friend, Lloyd P., were walking along a sidewalk in Visalia. Uriel M. was walking in the opposite direction. Lloyd and Uriel passed each other. Minor, walking slightly behind Lloyd, bumped into Uriel as he passed. Uriel turned to see minor facing him, saying something Uriel did not hear since Uriel's iPod was playing through earphones. As Uriel removed the earphones to hear what minor was saying, minor lifted his shirt to display a revolver tucked into the front of his pants. Uriel said to minor, "[I]f you are going to show me the gun, use it." Minor dropped his shirt and put up his fists in a fighting pose. Uriel raised his fists in response, apparently dropping his iPod to the grass in order to do so. Minor swung at Uriel, hitting him in the temple. At that point, Lloyd struck Uriel "in the back of the head," causing him to fall to his hands and knees. As Uriel rose, someone struck him again and he fell back to his hands and knees. He was "dazed." Minor and Lloyd continued to hit him until a man came from across the street to break up the fight. Minor picked up Uriel's iPod; he and Lloyd fled.

The Welfare and Institutions Code section 602 petition alleged minor committed second degree robbery, Penal Code section 211, a felony. It alleged minor personally used a handgun in the commission of the offense. (Pen. Code, § 12022.53, subd. (b).) After a contested jurisdictional hearing, the court found the petition true. At the dispositional hearing, minor was continued as a ward of the court, terms and conditions

of probation were imposed, and minor was ordered to serve 240 to 365 days in the Youth Correctional Center Unit.

DISCUSSION

Minor first contends the evidence was insufficient to establish beyond a reasonable doubt that he had the intent to steal from Uriel before or during the application of force to the victim. Minor contends “the ‘taking’ of [Uriel’s] property occurred after the fight, and when appellant retrieved [the property] from the ground.”

The evidence fully supports the trial court’s conclusion that minor and Lloyd acted pursuant to a preconceived plan to take Uriel’s iPod. The fact that Lloyd circled behind Uriel while minor distracted Uriel by displaying a gun was strong evidence of a preconceived plan. Because there was no evidence of any preexisting animus between the victim and the assailants, and the assault in fact resulted in the theft of the victim’s property, we agree with the trial court that “the only ... reasonable conclusion ... is that this was a robbery that was planned” by the assailants. In addition, whether Uriel placed the iPod on the ground in order to assume a defensive position, as minor claims, or the iPod went to the ground as Uriel fell, the net result is that Uriel was initially dispossessed of the iPod because of the force of the blows or because of fear he was about to be assaulted. Either is sufficient under the statutory requirement that the taking be “accomplished by means of force or fear.” (Pen. Code, § 211.) Finally, even if minor’s intent to steal was not formed before the initial display of the gun or before he struck the first blow to Uriel’s head, the taking was actually completed while the victim was still incapacitated from the beating and during the continued intimidation produced by display of the gun. Thus, the evidence clearly established minor “‘harbored the felonious intent [to steal] either prior to or during the commission of the acts’” (*People v. Green* (1980) 27 Cal.3d 1, 54, fn. 44) of force and intimidation. Substantial evidence supported the court’s jurisdictional finding that minor committed robbery.

Minor also contends the evidence is insufficient to support the gun use enhancement. Minor contends the evidence did not show that he “used” the gun to accomplish the robbery. In addition, he contends the evidence did not sufficiently establish that the item stuck in his belt was actually a “firearm” within the meaning of Penal Code section 12022.53, subdivision (b). Neither contention has merit.

As to the first point, minor erroneously asserts: “The mere act of lifting his shirt and displaying what appeared to be a handgun does not lead to the conclusion that appellant[] ‘used’ it as required by Penal Code section 12022.53, subdivision (b). [Uriel] did not part with his property as the product of any fear of harm by use of the alleged gun.” In the present case, minor’s gun was not merely visible while he otherwise went about the commission of the crime, as was the case for the rifle strapped across the defendant’s back in *People v. Hays* (1983) 147 Cal.App.3d 534, 544, or for the shotgun the defendant had placed on a shelf before he began his interaction with a store clerk in *Alvarado v. Superior Court* (2007) 146 Cal.App.4th 993, 996-999. Instead, minor deliberately displayed the gun to his victim. When “there is no evidence to suggest any purpose other than intimidating the victim (or others) so as to successfully complete the underlying offense, the jury is entitled to find a facilitative use rather than an incidental or inadvertent exposure” of the gun to the victim. (*People v. Granado* (1996) 49 Cal.App.4th 317, 325; see also *People v. Bryant* (2011) 191 Cal.App.4th 1457, 1472; *People v. Wardell* (2008) 162 Cal.App.4th 1484, 1492-1493.) While minor apparently was unsuccessful in using the gun to initially intimidate his victim, he did, at the very least, actively draw Uriel’s attention to the gun to distract him while minor’s accomplice moved behind the victim to gain a position of advantage for the ensuing fight. Such display of a gun would (and, in this case, apparently did) facilitate commission of the crime. Such “facilitative use” (*People v. Granado, supra*, 49 Cal.App.4th at p. 325) was sufficient under Penal Code section 12022.53, subdivision (b).

As to minor's second point, the victim testified the item stuck in defendant's belt looked like a gun, the victim responded as if it were a gun ("if you are going to show me the gun, use it"), minor did not deny the item was a gun when the victim described it as such, and minor displayed the item as one would display a real gun. These facts constitute ample circumstantial evidence to permit the finder of fact to conclude the item was, in fact, a firearm. (*People v. Monjaras* (2008) 164 Cal.App.4th 1432, 1437-1438 & fn. 1.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.