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

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

THE PEOPLE,

Plaintiff and Appellant,

v.

JOSHUA S.,

Defendant and Respondent.

F063638

(Super. Ct. No. 09CEJ601213-2)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Brian M. Arax,
Judge.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Clara M.
Levers, Deputy Attorneys General, for Plaintiff and Appellant.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and
Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Kane, J.

INTRODUCTION

Joshua S. was charged on July 1, 2011, in a petition filed pursuant to Welfare and Institutions Code section 602, with felony receipt of a stolen vehicle (Pen. Code, § 496d, subd. (a)). Joshua filed a suppression motion pursuant to Welfare and Institutions Code section 700.1. At the conclusion of an evidentiary hearing on August 18, 2011, the juvenile court granted Joshua's motion and suppressed all of the People's evidence. The prosecutor announced it could no longer proceed and the court dismissed the petition. We conclude the juvenile court erred in granting Joshua's suppression motion and dismissing the allegations against him.

FACTS AND PROCEEDINGS

Officer Steven Gonzales of the Fresno Police Department had 18 years of experience as a law enforcement officer. As a member of the Northwest District Crime Suppression Team, Gonzales investigated suspects for probation and parole violations, drug houses, gang houses, and violent crimes. At the start of each week, Gonzales checked the daily crime bulletin for active cases. In late May or early June of 2011, Gonzales saw a bulletin that Sean Humphreys, a parolee, was wanted in connection with an assault. The crime report noted that the assault possibly involved a minor.

Gonzales had information that Joshua's mother and Humphreys were staying in a trailer at an address on Feland, north of McKinley in Fresno. Gonzales contacted the victim, who was allegedly assaulted feloniously in violation of Penal Code section 245. Officer Depew was the primary investigating officer of the assault. The victim of the assault told Gonzales that Joshua had pushed him and knocked him to the ground. Gonzales's most recent conversation with the assault victim was between four and six days earlier. Gonzales talked to the assault victim over 20 times by phone.

On June 29, 2011, Gonzales and his partner, Officer Peerson, went to the North Feland address at 8:55 p.m. in search of Humphreys. Both officers were in uniform and

were driving a marked patrol car. It was dusk. The sun was setting or had just set. Gonzales looked around and knocked on the door of the trailer. No one answered the knock.

Gonzales noticed a white Dodge pickup truck parked on the property. There were no other vehicles around. Gonzales had last been to the Feland address four or five days earlier and had not seen the truck there before. Gonzales contacted a dispatcher and “ran the plate.” The truck did not belong to Humphreys. Gonzales read the vehicle identification number (VIN) from the dashboard and confirmed that the truck, plates and VIN all matched. It had been reported stolen by the owner. The truck doors were locked.

Gonzales moved the patrol car to a dark area nearby and waited about 30 minutes to see if anyone would retrieve the truck. Gonzales saw Joshua approaching on a bicycle. When Joshua rode up, it was already dark. He had no light on his bicycle. The officer approached Joshua and asked him his name. Gonzales recognized the name as one connected with the assault investigation.

Gonzales told Joshua that he was looking for Humphreys, Joshua was mentioned in a police report written about the assault, and he was going to detain Joshua. Gonzales called Depew from his cell phone to determine if Joshua “was arrestable” on the assault case. Gonzales knew Depew was off duty and did not know if Depew was at home or if he was on his way to do contract work. Gonzales handcuffed Joshua and placed him in the back seat of his patrol car. This was departmental practice for officer and suspect safety. Because Gonzales was aware Joshua had knocked the assault victim to the ground, he was also concerned that Joshua could do the same thing to him.

Gonzales did a quick search of Joshua and asked Joshua if he had anything on him that could hurt Gonzales. Gonzales did not want Joshua to take any weapon into the patrol car. For officer safety, it is policy that anyone who is sitting in the back seat of a patrol car is searched and handcuffed. Gonzales patted Joshua down. From the exterior

of the right pants pocket, Gonzales felt what he thought was a set of keys, though Gonzales was not positive of this.

Gonzales asked Joshua what he had in his pocket. Joshua replied that he had a set of keys. Based on his experience, Gonzales considered the set of keys to be a potential weapon. Gonzales explained there are key rings sold at stores that can actually be used like a weapon or have a sharp edge. Other key sets can slip into a person's fingers and can be used like brass knuckles, although Gonzales conceded that he did not feel this type of key ring on Joshua during the patdown.

Gonzales asked Joshua what the keys were for. Joshua replied that the keys were to the truck. For officer safety, Gonzales removed the keys from Joshua's pocket. Gonzales pushed a button on the key fob and activated the lights to the stolen truck and unlocked it.

Gonzales then advised Joshua pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Joshua waived his rights and agreed to talk to Gonzales. Joshua told Gonzales that a green card in the truck's glove box was a receipt for his purchase of the truck. Gonzales retrieved the green card, but in Gonzales's opinion it did not appear to be a bill of sale. It was a green form on a five-by-seven card that one would mail to the manufacturer's distributors of vehicles to track owners. It was not a form from the Department of Motor Vehicles.

Officer Depew contacted Gonzales 15 to 20 minutes after Gonzales called him and notified Gonzales that Joshua was "not arrestable" for his involvement in the assault pursuant to Penal Code section 245. Depew told Gonzales that Joshua could be arrested for misdemeanor battery or assault pursuant to Penal Code sections 240 and 242. Gonzales decided not to pursue the assault allegations. Gonzales did determine, however, that he had probable cause to arrest Joshua for vehicle theft. Gonzales had

already tested the keys on the truck, questioned Joshua, and checked the documentation in the glove box.

The trial court initially noted the encounter between Gonzales and Joshua began as a consensual one and that Joshua was cooperative with Gonzales. The court stated that Gonzales knew about Humphreys, the assault investigation, and Joshua's name and had reasonable suspicion that a crime had occurred and for a temporary detention. The court found no issue with Gonzales's credibility and found him to be a credible witness. The court believed Gonzales's account that the victim had talked to him and asked on several occasions if Joshua would be arrested.

The court found that Gonzales could handcuff Joshua for officer safety and for Joshua's safety based on departmental policy and Gonzales's experience. The court found Joshua was placed in the patrol car for "an unknown period of time" and the detention appeared to be prolonged. The court further found that handcuffing, combined with a prolonged detention, constituted an arrest. The court noted that although Joshua was potentially involved in a violent crime, there was no indication in the prior incident that he had used a weapon.

The court stated there was no evidence Joshua was evading or difficult to find. If Joshua presented a risk based on the assault, the court found it odd that the investigating officer had not yet arrested him in the prior two or three weeks. The court explained that a consensual encounter became a detention and once he was handcuffed and placed in the patrol car, Joshua was under arrest. The court found Gonzales had reasonable suspicion to detain Joshua, but not probable cause to arrest him.

The court stated that Gonzales's actions were a prolonged detention that was tantamount to an arrest. The court emphasized Gonzales did not believe he had probable cause to arrest Joshua for felony assault based on the police report and all of the other factors that he knew. The court believed that Depew did not believe there was probable

cause to arrest Joshua for misdemeanor battery or assault. The court elaborated that it could not say on an objectively verifiable standard that there was probable cause to arrest Joshua for the prior incident. Speculating about the prior assault, the court stated that it did not know the underlying facts, whether Joshua feared imminent bodily harm so as to justify self-defense, or whether Joshua was defending a third person or property.

The court concluded that it could not find probable cause for Gonzales to place Joshua in handcuffs in the back of a patrol car while he called another officer to figure out if there was probable cause to arrest Joshua. The court rejected alternative arguments by the prosecutor that Gonzales had probable cause to arrest Joshua for misdemeanor battery or an infraction for failing to have headlights on his bicycle. The court did not find Gonzales's conduct "objectively reasonable."

The court found the patdown search invalid because the underlying detention was not valid. The court observed that once the patdown search occurred, Gonzales only found keys, not a weapon. Gonzales already knew the truck was stolen. The court found no justification for a patdown search of Joshua based on Gonzales's investigation of the stolen truck. The court found the questioning about the keys to be inappropriate and further concluded that all of the evidence gathered, including Joshua's statements and the document in the glove box, was fruit of the poisonous tree and ordered the suppression of all of the evidence. The court ordered the dismissal of the case.

ANALYSIS

Introduction

The People contend there was probable cause to arrest Joshua, the detention was supported by probable cause and was not unduly prolonged, the use of handcuffs was proper, and the patdown search was lawful. The People further argue that the juvenile court erred in suppressing all of Joshua's statements.

We find that the juvenile court erred in its analysis of Joshua's detention. Gonzales had probable cause to arrest and/or to detain Joshua prior to Joshua being handcuffed and placed in the patrol car. Even if Gonzales did not have probable cause to arrest Joshua, he had reasonable suspicion to believe that criminal activity was or had been afoot and could detain Joshua to further investigate both the assault case and the theft of the truck.

General Principles

In ruling on a motion to suppress, the trial court finds the historical facts, selects the law, and applies it to determine if the law, as applied, has been violated. We review the trial court's resolution of the factual inquiry under the deferential standard of substantial evidence. The ruling by the trial court is a mixed question of law and fact subject to independent review. On appeal, we do not consider the correctness of the court's reasons for its decision, only the correctness of the ruling itself. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.) We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362 (*Glaser*); *People v. Garry* (2007) 156 Cal.App.4th 1100, 1106.) We then exercise our independent judgment to determine whether on the facts as so found, the search or seizure was reasonable under the Fourth Amendment. (*Glaser, supra*, 11 Cal.4th at p. 362.)

Appellate courts review the objective reasonableness of the facts known to the officer, not the officer's legal opinion about those facts. (*People v. Limon* (1993) 17 Cal.App.4th 524, 539 (*Limon*)). The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that very ambiguity and establish whether the activity is legal or illegal. (*In re H.M.* (2008) 167 Cal.App.4th 136, 145 (*H.M.*)).

We note that although the trial court made many legal findings, its primary factual finding was that Officer Gonzales was a credible witness who testified truthfully. We also note that the trial court focused improperly on the investigating officer's subjective beliefs about whether he had probable cause to arrest Joshua for the earlier assault rather than evaluating the objective facts adduced at the suppression hearing.

Probable Cause to Arrest Juvenile

Probable cause for arrest exists when the facts known to the arresting officer would lead a person of ordinary care and prudence to believe and entertain an honest and strong suspicion that the suspect is guilty of a crime. (*Limon, supra*, 17 Cal.App.4th at p. 537.) The touchstone of reasonableness under the Fourth Amendment is not certainty, but a sufficient probability. (*Maryland v. Garrison* (1987) 480 U.S. 79, 87.)

California courts distinguish police informers, who may be implicated in criminal activity, from victims and chance witnesses of crimes who volunteer information. As a general proposition, private citizens who are witnesses to or victims of criminal conduct should be considered reliable, absent some circumstance that would cast doubt on their information. Information from a crime victim or chance witness alone can establish probable cause if the information is sufficiently specific to cause a reasonable person to believe a crime was committed and the named suspect was the perpetrator. (*Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 575-576; *People v. Ramey* (1976) 16 Cal.3d 263, 269.)

The subjective intentions or motives of peace officers do not invalidate actions that were objectively justifiable under the Fourth Amendment. Subjective intentions play no role in probable cause analysis under the Fourth Amendment. An action is reasonable under the Fourth Amendment regardless of the individual officer's state of mind, as long as the circumstances justify the action when viewed objectively. (*People v. Nottoli* (2011) 199 Cal.App.4th 531, 557-558.)

Gonzales's assignment was to investigate probation and parole violators. In the course of his duties, he came upon a police report indicating that Humphreys had been involved in an assault. Joshua's name also appeared in the report as a participant in the crime. Gonzales also had direct contact with the victim of the assault, who told Gonzales, on multiple occasions, that Joshua had knocked him to the ground. The victim wanted to know when Joshua would be arrested.

We agree with the trial court that when Gonzales first encountered Joshua and asked him his name that this part of the encounter was consensual. (*Florida v. Bostick* (1991) 501 U.S. 429, 434.) When Gonzales learned Joshua's name, Gonzales remembered Joshua's name from the police report involving Humphreys. At this point, Gonzales knew that Joshua was a suspect in an assault investigation and Gonzales had specific information from the victim implicating Joshua in the prior assault. Gonzales had probable cause to arrest Joshua.

Gonzales, however, did not arrest Joshua. Instead, Gonzales called Depew to determine from the officer investigating the assault offense whether to arrest Joshua for the assault. In detaining Joshua, Gonzales did not violate Joshua's constitutional rights. Rather, Gonzales was diligently investigating a serious offense that had been reported as a felony. Gonzales was not relying on just a police report, but on information directly received from the victim in over 20 phone conversations.

When Gonzales found out from Depew that Joshua was no longer under investigation for felony assault, he also learned that Joshua committed at least a misdemeanor assault or battery.¹ Gonzales also saw Joshua riding his bicycle without

¹ An assault in violation of Penal Code section 240 is a misdemeanor offense (Pen. Code, § 241, subd. (a)). A battery in violation of Penal Code section 242 is also a misdemeanor offense (Pen. Code, § 243, subd. (a)). Both offenses are punishable by a fine and/or confinement in county jail for up to six months.

lights in violation of Vehicle Code section 21201, subdivision (d). The United States and California Supreme Courts have held that custodial arrests for offenses that have only fines attached to them do not violate the Fourth Amendment. (*Atwater v. Lago Vista* (2001) 532 U.S. 318; *People v. McKay* (2002) 27 Cal.4th 601; also see *People v. Gomez* (2004) 117 Cal.App.4th 531, 538-539.) Misdemeanor assault or battery can be punished by a fine and/or time in jail.

The trial court erred in finding no probable cause for Gonzales to arrest Joshua because the earlier incident was only a misdemeanor. The court also erred in speculating that Joshua may have been acting in self-defense or the defense of another because the test is not whether there is an innocent explanation for a suspect's conduct. The test for probable cause does not involve the officer's subjective belief as to on what charges the suspect could be arrested. The court's speculation on Joshua's potential innocence and Gonzales's beliefs about the law do not constitute an objective analysis upon which a reasonable person would have determined whether there was probable cause to arrest Joshua. The court improperly relied on Gonzales's subjective intent in detaining Joshua rather than objectively viewing whether Gonzales had probable cause to arrest Joshua. We conclude that Gonzales initially had probable cause to arrest Joshua for felony assault.

Even if Gonzales lost probable cause to arrest Joshua on the felony allegation after talking to Depew, Gonzales still had probable cause to arrest Joshua for misdemeanor assault and/or battery based on his past conversations with the victim and current conversation with Depew. Gonzales also could arrest Joshua based on his observations of Joshua riding his bicycle in the dark without lights.² We therefore reject the trial

² It follows that if Gonzales had probable cause to arrest Joshua, he could conduct a search incident to that arrest which would have yielded the keys and fob to the truck. (See *People v. Diaz* (2011) 51 Cal.4th 84, 93-95.)

court's conclusion that the evidence collected in relation to the truck theft investigation had to be excluded as fruit of the poisonous tree.

Reasonable Suspicion to Detain Juvenile

If we were to find that Gonzales did not have probable cause to arrest Joshua for felony assault, misdemeanor assault and/or battery, and riding his bicycle in violation of the Vehicle Code, we alternatively hold that: Gonzales had reasonable suspicion to detain Joshua, the detention was not unduly long, and it was not, as the trial court found, tantamount to an arrest.

A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231 (*Souza*)). Appellate courts review the objective reasonableness of the facts known to the officer, not the officer's legal opinion about those facts. (*Limon, supra*, 17 Cal.App.4th at p. 539.) The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that very ambiguity and establish whether the activity is legal or illegal. (*H.M., supra*, 167 Cal.App.4th at p. 145.)

Even where an officer lacks probable cause to arrest a suspect, the officer may temporarily detain a suspect when the officer reasonably believes a crime has occurred or criminal activity is afoot. The detention can last no longer than necessary to effectuate the purpose of the stop. The stopping, handcuffing, and detention of a suspect for a few minutes can constitute a legal investigative detention. (*People v. Celis* (2004) 33 Cal.4th 667, 674 (*Celis*)). Temporary detentions for questioning or investigation may be justified by circumstances falling short of probable cause. (*In re J.G.* (2010) 188 Cal.App.4th 1501, 1506.)

The Fourth Amendment permits an officer to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot” and that the person detained is engaged in that activity. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123 (*Wardlow*); *Souza, supra*, 9 Cal.4th at p. 230.) Courts look to the totality of circumstances of each case in determining whether the detaining officers had a particularized and objective basis for suspecting the detainee of criminal activity. (*Souza, supra*, 9 Cal.4th at p. 230; *Brown v. Texas* (1979) 443 U.S. 47, 52; *United States v. Arvizu* (2002) 534 U.S. 266, 273.) This approach allows officers to draw on their own training and experience in deciding whether criminal activity is afoot. (*United States v. Arvizu, supra*, at p. 273.)

An investigative detention must be temporary and last no longer than necessary for the purpose of the stop. (*Florida v. Royer* (1983) 460 U.S. 491, 500.) In assessing whether a detention is too long in duration, courts should consider whether the police were diligently pursuing a means of investigation that was likely to quickly confirm or dispel their suspicions. Courts should not engage in unrealistic second-guessing. A creative judge can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But the fact that protection of the public may, in the abstract, have been accomplished by less intrusive means does not render the search unreasonable. The question is not whether some other alternative was available, rather, it is whether the police acted unreasonably in failing to recognize or to pursue it. Courts consider whether the police were diligently pursuing their investigation. (*U.S. v. Sharpe* (1985) 470 U.S. 675, 686-687.)

In *People v. Bowen* (1987) 195 Cal.App.3d 269, 273-274, the appellate court held that handcuffing a suspect to a guardrail for 25 minutes while investigating officers radioed their dispatcher to request that the victim of the crime be transported to the site of the arrest, was not unduly prolonged. The police were diligently pursuing a means of

investigation that was likely to quickly confirm or dispel their suspicions. Also, the fact that the suspect was handcuffed while detained awaiting the victim's arrival did not mean that the suspect was under arrest. (*Ibid.*) The detention of a juvenile for 30 minutes while an officer waited for information from the dispatcher was not impermissibly lengthy where there was nothing to suggest that the officer had dallied. (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 382, fn. 4.)

The use of handcuffs on a detained individual does not necessarily convert the detention into a de facto arrest. (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1062.) The issue is whether the use of handcuffs exceeded what was reasonably necessary for a particular detention. (*Celis, supra*, 33 Cal.4th at pp. 674-675.)

As discussed above, Joshua's initial encounter with Gonzales was consensual. Gonzales remembered Joshua's name from the police bulletin and conversations with the victim. Gonzales called Depew to determine if Joshua was still a suspect in the felony assault case. Gonzales was actively pursuing an investigation to determine whether or not to arrest Joshua.

Gonzales did not want to be assaulted by Joshua. Gonzales knew Joshua had at least pushed the victim of the felony assault case to the ground. While waiting for a reply from Depew, Joshua was handcuffed, frisked, and held in the patrol car for no more than 15 or 20 minutes. Relying on his lengthy experience as a peace officer, Gonzales removed the keys from Joshua's pocket because either the keys, and/or the key ring, were potential weapons. Setting aside for the moment any questioning of Joshua, Gonzales could remove the keys from Joshua's pocket pursuant to a valid detention.³

³ Although Gonzales did not believe Joshua's key ring was a brass knuckle style key ring, Gonzales testified that key rings can have sharp edges and be used as weapons.

Gonzales knew the truck had been stolen. Joshua rode up to a trailer on a country style lot known to be a residence where Humphreys had resided. When Gonzales saw that the keys were to a vehicle, it was not unreasonable for him to try the key fob to see if it belonged to the stolen vehicle. Once the key fob to the truck worked, Gonzales had more than reasonable suspicion that criminal activity was afoot. Gonzales had probable cause to arrest Joshua for theft or receipt of stolen property.

The trial court found Gonzales's testimony credible. We find that officer safety justified Gonzales's actions and that they were reasonable pursuant to what constituted a lawful detention of the minor. We further find that Joshua's detention did not constitute a de facto arrest even though, as discussed above, Gonzales had probable cause to arrest Joshua. We finally review Gonzales's questioning of Joshua.

Questioning of Juvenile

Even when a first statement is taken in the absence of proper *Miranda* advisements and is incriminating, if the first statement was voluntary, a subsequent voluntary confession is not ordinarily tainted simply because it was procured after a *Miranda* violation. Absent actual coercion or other circumstances calculated to undermine a suspect's ability to exercise his or her free will, a *Miranda* violation, including an inculpatory statement, does not so taint the investigatory process that a subsequent voluntary and informed waiver is ineffective. The relevant inquiry is whether the statement was voluntarily made. (*People v. Scott* (2011) 52 Cal.4th 452, 477.)

A confession is involuntary if it is the result of coercive police activity. The test is whether the defendant's will was overborne. (*People v. McWhorter* (2009) 47 Cal.4th 318, 346-347 (*McWhorter*); *People v. Mays* (2009) 174 Cal.App.4th 156, 164.)

Gonzales's first question to Joshua was asking what he had in his pockets. This question was a preliminary question and the response was not inculpatory. Gonzales's second pre-*Miranda* question concerned the purpose of the keys. Although this also

appeared to be a preliminary question, we treat it as a pre-advisory statement. There was, however, no evidence in the record other than Joshua's detention that Joshua's will was overborne, he was being threatened, the statement was obtained by direct or implied promises, or his statement was in any way involuntary. (*McWhorter, supra*, 47 Cal.4th at p. 347.)

We agree with the People that the self-incrimination clause of the constitution is not implicated by the admission into evidence of the physical fruit of a voluntary statement. A *Miranda* violation, if any, occurs only with the admission of unwarned statements. (*United States v. Patane* (2004) 542 U.S. 630, 636-641.) The failure to give a defendant *Miranda* warnings does not require suppression of physical evidence obtained as a result of the defendant's unwarned but voluntary statements. (*People v. Davis* (2005) 36 Cal.4th 510, 552.) Thus, it was error for the juvenile court to exclude physical evidence of the key fob, as well as Joshua's post-*Miranda* statements and any documentation found in the truck's glove box.

We find that Joshua's statement that the keys went to the truck also should not have been excluded. Although statements made prior to *Miranda* advisements may be subject to exclusion, the suspect must be both in custody and under interrogation before statements given to investigators must be excluded. (*People v. Moore* (2011) 51 Cal.4th 386, 394-395.) We do not find that Joshua was yet in custody when Gonzales asked about the purpose of the keys. A defendant, for instance, who has been admitted to the jail section of the police station through locked doors and who would have needed assistance to leave the facility was not found to have been in custody. (*People v. Stansbury* (1995) 9 Cal.4th 824, 834-835.) The juvenile court erred in excluding Joshua's statement about the purpose of the keys.

DISPOSITION

The juvenile court's order granting Joshua's suppression motion is reversed as to all of the evidence. The juvenile court's order dismissing the allegations against Joshua is reversed, the petition is ordered reinstated, and the case is remanded for further proceedings.