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

In re CHRISTOPHER J., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER J.,

Defendant and Appellant.

F066715

(Super. Ct. No. JL004387)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Judge.

Karriem Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J., and Franson, J.

The court adjudged appellant, Christopher J., a ward of the court (Welf. & Inst. Code, § 602) after he admitted allegations in one petition charging him with attempted robbery (Pen. Code, §§ 664/211) and the court found true allegations in a second petition charging him with robbery (Pen. Code, § 211).

On appeal, Christopher contends: 1) at the jurisdictional hearing on the second petition the court erred in admitting hearsay statements of the person who interpreted for the victim; and 2) two of his conditions of probation are constitutionally vague. We will find merit to Christopher's second contention, modify the probation conditions at issue, and affirm the judgment as modified.

FACTS

Introduction

On August 4, 2012, as Christopher rode his bicycle past a woman sitting outside a bar, he reached out and attempted to grab a cell phone out of her hand. However, he was unable to gain control of the phone and rode away.

On August 7, 2012, the district attorney filed a petition charging Christopher with attempted robbery.

On August 9, 2012, Christopher admitted the attempted robbery charge in the petition.

On August 23, 2012, the court granted Christopher deferred entry of judgment (DEJ).

On September 22, 2012, Christopher was arrested after he was identified by the victim of a robbery as one of several juveniles who participated in the robbery.

On September 25, 2012, the district attorney filed a petition charging Christopher with robbery.

On January 8, 2013, the court terminated Christopher's DEJ with respect to the August 7, 2012, petition. It also adjudged him a ward of the court and committed him to the Bear Creek Academy for a maximum period of 365 days.¹

The Jurisdictional Hearing on the Second Petition

On December 18, 2012, the court held a jurisdictional hearing on the September 25, 2012, petition. At the hearing, M.M. testified through a Spanish interpreter that on September 22, 2012, as he was walking by a van at a park in Merced, he was attacked by four Black male juveniles. Two of the juveniles kicked him above the elbow, on the upper arm, and on the side and took a pack of cigarettes and four lottery tickets from him. The two other juveniles acted as lookouts. The four juveniles then ran away and left M.M. lying on the ground.

After calling the police on a cell phone he borrowed from a man at the park, M.M. accompanied a police officer to look for the suspects. When he was shown a suspect, M.M. told the officer "that was him."

The man who lent M.M. the cell phone also interpreted for him. In his testimony, M.M. referred to the man as "the fellow" and "that friend," but did not refer to him by name. M.M. also testified that he hardly knew the man because "they come from all different places."

Merced Police Officer Ramon Ruiz testified he was the primary officer dispatched to respond to M.M.'s call. Officer Ruiz had M.M. in his patrol car when he heard Officer Joseph Perez say he had a suspect detained. Prior to having M.M. view the suspect, Officer Ruiz gave M.M. the in-field show-up admonishment. When M.M. saw the

¹ Both petitions were prosecuted under Merced County Superior Court case No. JL004387.

suspect, he pointed at him and said, “That’s one.” Ruiz asked M.M. how certain he was of his identification and M.M. replied that he was 100 percent positive.²

Manuel Prado interpreted for Ruiz when he spoke with M.M. However, Ruiz spoke Spanish fairly well and was able to understand some of what M.M. said on his own, including when M.M. identified Christopher as one of the juveniles who robbed him and when M.M. said he was 100 percent certain. M.M. also stated that Christopher was one of the people who punched him on the side and who tried to steal his property. As to this latter information, Officer Ruiz understood a little bit from his own knowledge of Spanish and a little bit from Prado’s translation of M.M.’s statements. M.M. also told Ruiz that during the robbery Christopher had been wearing a gray shirt. When detained, Christopher was wearing a white tank top and had a gray shirt draped around his shoulders.

During cross-examination, Officer Ruiz testified he was able to communicate perfectly well with Prado in English and that, based on his knowledge of Spanish and English, he felt Prado could help him interpret. Ruiz also testified that his parents are both fluent in Spanish and that he learned Spanish from his family and through his job.

Officer Joseph Perez testified that at approximately 4:00 p.m., within a few minutes of being dispatched to the park regarding the robbery, he detained Christopher about two blocks away from there. Christopher was breathing heavily and sweating as if he had been running and he had a gray T-shirt draped over his shoulders.³

² The robbery and in-field show-up occurred during daylight hours.

³ After the prosecution rested, the prosecutor advised the court he had Prado available to testify in case he was needed to testify regarding his language skills in English and Spanish. However, after Prado went to the courthouse later that day he refused to talk to defense counsel. Defense counsel then told the court that he did not intend to call Prado because he did not know what Prado would say. The following day, the defense rested without presenting any evidence.

DISCUSSION

The Hearsay Issue

In *Correa v. Superior Court* (2002) 27 Cal.4th 444, 448 (*Correa*), the Supreme Court held that when an interpreter merely acts as a “language conduit,” the interpreter’s translation of a witness’s statement does not interpose a layer of hearsay. Christopher contends the court erred in admitting Officer Ruiz’s testimony regarding Prado’s translation of M.M.’s statements to him because this testimony was inadmissible hearsay and Prado did not act as a language conduit for M.M. We will reject this contention.

In *Correa, supra*, 27 Cal.4th 444, police officers testified at the defendant’s preliminary hearing regarding extrajudicial statements made by the victim and a witness who each spoke Spanish. The officers received these statements through contemporaneous translations provided by apparently unbiased bystanders during the investigation of the crimes. The persons who acted as translators also testified at the preliminary hearing, but only regarding their language skills and the circumstances of the translation. (*Id.* at p. 448.) In rejecting the defendant’s claim that participation of the translators added a level of hearsay to the original declarants’ statements, the *Correa* court stated, “[A] generally unbiased and adequately skilled translator simply serves as a ‘language conduit,’ so that the translated statement is considered to be the statement of the original declarant, and not that of the translator.” (*Ibid.*) The court used the “measured approach adopted by the Ninth Circuit Court of Appeals in [*United States*] v. *Nazemian* [(9th Cir. 1991)] 948 F.2d 522, 525-527 ... to ensure that only translated statements fairly attributable to a declarant will be admitted.” (*Correa, supra*, 27 Cal.4th at p. 457.) *Nazemian* delineated four factors to be taken into account “on a case-by-case basis” when deciding the issue: (1) “which party supplied the interpreter”; (2) whether “the interpreter had any motive to mislead or distort [the information]”; (3) “the interpreter’s qualifications and language skill”; and (4) “whether actions taken

subsequent to the conversation were consistent with the statements as translated.”

(*Nazemian, supra*, 948 F.2d at p. 527.)

The *Correa* court said that there may be cases in which the interpreter should be called to testify. The court cautioned that “‘where the particular facts of a case cast significant doubt upon the accuracy of a translated [statement], the translator or a witness who heard and understood the untranslated [statement] must be available for testimony and cross-examination at the ... hearing before the [statement] can be admitted.’”

(*Correa, supra*, 27 Cal.4th at p. 459.)

Here, Officer Ruiz testified he was able to understand M.M. without Prado’s help when M.M. identified Christopher as one of the males who robbed him and when M.M. stated he was 100 percent certain. Thus, this testimony, although hearsay, was admissible pursuant to Evidence Code section 1238 as a prior identification, irrespective of whether Prado acted as a language conduit for M.M.⁴

Further, in considering the four *Nazemian* factors with respect to the other statements Prado translated for Ruiz, we note the evidence is inconclusive as to who supplied Prado as an interpreter. Although Christopher contends M.M. provided Prado as an interpreter, this assertion is based on Prado being the person who lent M.M. a phone to call police and M.M.’s reference to Prado as a friend. However, M.M. testified he hardly knew Prado “because they come from all different places” and he did not even refer to

⁴ “Evidence Code section 1238 establishes an exception to the hearsay rule for a statement that identifies a party or other person as a participant in a crime or other occurrence, ‘if the statement would have been admissible if made by [the witness] while testifying ...’ The statute requires that the statement have been made when the crime was fresh in the witness’s memory, and that ‘the evidence of the statement is offered after the witness testifies that he [or she] made the identification and that it was a true reflection of his [or her] opinion at that time.’ [Citation.]” (*People v. Redd* (2010) 48 Cal.4th 691, 728, fn. omitted.) Christopher does not challenge the admissibility of M.M.’s identification pursuant to Evidence Code section 1238.

Prado by name. Additionally, there is no evidence in the record that M.M. actually offered Prado as an interpreter.

Nor is there any evidence that Prado had a motive to mislead the officers or distort M.M.'s statements. Christopher contends that because Prado was M.M.'s friend he was eager to help M.M. by informing him that one of the robbers had been caught and what he was wearing. However, as noted above, the record fails to establish that Prado was more than an acquaintance of M.M. In any case, even if Prado wanted to help M.M. because they were friends, this would not provide Prado with a motive to mislead the officers or distort M.M.'s statements because accusing the wrong person would not get M.M.'s property back or help him in any other way that Christopher has identified.

With respect to Prado's language skills, Officer Ruiz did not experience any problems in communicating with Prado in English. Further, it was undisputed that Officer Ruiz understood Spanish fairly well and from his understanding of both languages he felt Prado could help him interpret for M.M. Nor was there any evidence presented that Prado made any errors in translating M.M.'s statements. Thus, the record supports the court's implicit finding that Prado had sufficient command of English and Spanish to adequately translate for Officer Ruiz.

Additionally, M.M.'s subsequent conduct was consistent with Prado's translation because M.M. apparently did not protest or say anything to indicate that the officers had the wrong person in custody and he testified that the day of the robbery he identified a suspect at an in-field show-up as one of the robbers. Further, Prado was available to testify but defense counsel chose not to call him. Accordingly, we conclude the court did not err when it admitted Officer Ruiz's testimony regarding any of the statements by M.M., including those the officer understood only with Prado's assistance in translating them.

Moreover, “[w]e review allegations of error under the ‘reasonable probability’ standard of *People v. Watson* (1956) 46 Cal.2d 818, 836. [Citation.]” (*People v. Harris* (2005) 37 Cal.4th 310, 336.) M.M. testified that when he was shown a suspect, he told the officer, “that’s him.” Further, Officer Ruiz testified he was able to understand M.M. without any assistance from Prado when M.M. identified Christopher as one of the robbers and when M.M. stated he was 100 percent certain of his identification. Additionally, within minutes of the robbery, Christopher was detained a short distance away, breathing hard as if he had been running and wearing a shirt draped around his shoulders that was the same color as one worn by one of the robbers. Christopher did not refute this evidence. Thus, we conclude it is not reasonably probable Christopher would have received a more favorable result even if the court had barred the prosecutor from introducing any of M.M.’s statements to Officer Ruiz that the officer did not understand without Prado’s assistance.

The Conditions of Probation

At Christopher’s disposition hearing, the court made the following order: “You are to have no contact with victim[] [T.S.] or be within a hundred yards of her residence as previously ordered. No contact with the victim [M.M.] or be within a hundred yards of his residence.” Christopher contends the court’s order as to each victim is constitutionally vague because it does not contain an express knowledge requirement. Respondent concedes as to the order issued with respect to M.M. However, respondent cites *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138-1139 (*Shaun R.*) to contend this court lacks jurisdiction to modify the court’s order with respect to victim T.S. because the court originally made that order when it granted Christopher DEJ on August 23, 2012, and he did not appeal from that order. Respondent is wrong.

An order granting DEJ is not appealable because it is not a judgment. (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308.) Thus, the judgment in the earlier petition

did not become final and appealable until January 8, 2013, when the court terminated Christopher's DEJ. Further, Christopher's appeal in both matters was filed on February 11, 2013, and thus timely as to both petitions.

Shaun R. is inapposite because it involved a juvenile's attempt in an appeal from a 2009 case to have the appellate court modify conditions of probation originally imposed as part of a judgment in a 2008 case for which the time to appeal had expired. (*Shaun R.*, *supra*, 188 Cal.App.4th at pp. 1137-1138.) The *Shaun R.* court held it did not have jurisdiction to modify the probation conditions from the 2008 case because the juvenile did not timely appeal from that judgment and, as a separate independent basis, because the juvenile's 2009 appeal did not specify the 2008 case. (*Id.* at pp. 1133-1134, 1137-1138.) Since neither of these two considerations is applicable here, we reject respondent's claim that this court is without jurisdiction to modify the condition involving victim T.S.

Further, we agree with Christopher that the addition of a knowledge requirement to each of the court's orders is appropriate (*In re Sheena K.* (2007) 40 Cal.4th 875, 880, 891-892; *People v. Lopez* (1998) 66 Cal.App.4th 615, 622-623, 631-634) and modify each of them accordingly.

DISPOSITION

The order involving victim T.S. is modified to read: "You are not to knowingly have any contact with victim [T.S.] or knowingly be within a hundred yards of her residence as previously ordered." Similarly, the order involving victim M.M. is modified to read, "You are not to knowingly have any contact with victim [M.M.] or to knowingly be within a hundred yards of his residence." As modified, the judgment is affirmed.