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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

C.J.,

Defendant and Appellant.

F069628

(Super. Ct. No. JW131983-00)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

Kristen Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Amanda D. Cary and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J., and Peña, J.

Fourteen-year-old C.J. was found to have taken money from a schoolmate's pocket. On appeal, C.J. contends (1) insufficient evidence supported the juvenile court's finding that he had the specific intent to deprive the schoolmate of the money he took and (2) the juvenile court violated his constitutional rights by punishing him for exercising his right to an adjudication. We affirm.

### **PROCEDURAL SUMMARY**

On January 29, 2014, the Kern County District Attorney filed a juvenile wardship petition under Welfare and Institutions Code section 602 alleging C.J. committed one felony count of taking property from the person of another (Pen. Code, § 487, subd. (c);<sup>1</sup> count 1) and one misdemeanor count of sexual battery (§ 243.4, subd. (e)(1); count 2). The juvenile court found count 1 true and count 2 not true. The juvenile court adjudged him a ward of the court (Welf. & Inst. Code, § 602), determined the offense to be a felony, and imposed 10 days in juvenile hall and probation.

### **FACTS**

The schoolmate testified that on January 15, 2014, she was sitting in the back of class doing her work during third period when C.J.'s friend came and sat directly behind her. Then C.J. came and sat next to his friend. She felt someone reach into her jacket pocket. She turned around and looked at C.J. She checked her pocket and her \$15 were gone. She told C.J. to give the money back, but he said he did not have it. She continued asking him all period for her money, and he continued to deny that he had it. She did not talk to him after that. They left when the bell rang. Later, the schoolmate went to the school district police department to make a report.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

The schoolmate testified she had given C.J. lunch money in the past, but she had never given him permission to take her money. He had never taken money from her pocket before, but he had taken money from her purse a couple of times. She had not reported it. Once, he told her she could have her money back after he got something from the snack bar, but he never gave her the money.

When the schoolmate spoke to the officer, she also told him that about two days before C.J. took her money, he touched her vaginal area during third period class. C.J. was sitting on her right side and she was in the middle of a conversation with someone else when C.J. reached over and touched her. She felt very uncomfortable, so she got up and stood by the door until the bell rang.

On cross-examination, the schoolmate testified that at some point after taking the \$15, C.J. gave her back \$5, but he never gave back the \$10 and he never told her he was going to give it back. She said she once considered C.J. her friend, although she did not hang out with him after class or during lunchtime. She had never taken his cell phone, his backpack, or his pencil.

Officer Peña, a police officer at the school district police department, testified that he contacted the schoolmate at her home. He then contacted C.J. at school. C.J. initially denied taking the money, but when Officer Peña told him what the schoolmate had said, he admitted reaching into her pocket and taking the \$15. He said he did not have her permission to take the money, but he was just playing. He said he gave back the \$5 and left the \$10 on her desk under a paper. In the past, he had taken money from her and he thought it was okay, but she had told him to stop taking her money.

C.J. admitted to Officer Peña that he had touched the schoolmate's vagina in class on January 14, 2014, without her permission. He asked her if he could "motor boat her," meaning have sex, because she was good looking and "his hormones just took

over.” He said he had touched her in the past without her permission and he thought it was okay.

On cross-examination, Officer Peña testified that the schoolmate told him C.J. said he would give her money back after he bought something at the snack bar.

### ***Defense Evidence***

C.J.’s friend testified that the schoolmate gave C.J. money for lunch on January 15, 2014. C.J. gave back the money by putting it on her book. The three of them were together at lunchtime. C.J.’s friend saw the schoolmate take money out of her pocket, buy something for C.J. at the snack bar, and bring the food back to him.

C.J.’s friend said he considered the schoolmate a friend in the past. He had seen her take C.J.’s cell phone two or three times during third period class. She would put the cell phone in her bra or her crotch until the end of class. He had also seen her take C.J.’s pencil and use it during class.

C.J. testified on his own behalf. He said that in the past he considered the schoolmate a friend. She had taken his cell phone two or three times and had given it back at the end of class. He did not report it to anyone because they were just playing around. She would put the cell phone in her bra or crotch and dare him to retrieve it. That was how he accidentally touched her vagina: she put his cell phone between her legs, then refused to give it back, so he retrieved it. On previous days, she had put it in her bra and in her back pocket and he had tried to retrieve it. She had also taken his pencil a few times and put it in her bra. She had taken his backpack and thrown it to her friend, and C.J. had gotten it back at the end of the class.

C.J. explained that on January 15, 2014, he took the \$15 from the schoolmate’s pocket. But he gave her back the \$5 and put the \$10 under her book. After class, the schoolmate took him to the snack bar to buy lunch for him. When he took the money

from her pocket, he did not think anyone would report it to the police because they were playing.

On cross-examination, C.J. testified that he put the money under the schoolmate's paper when she was out of the room and his friend told her about it when she came back. But C.J. admitted that when the schoolmate looked under the paper, the money was not there.

C.J. denied asking the schoolmate to have sex.

## **DISCUSSION**

### **I. Sufficiency of the Evidence**

C.J. contends insufficient evidence supported the finding that he had the specific intent to permanently deprive the schoolmate of her money when he took it. He explains that he was just playing around, the way he and the schoolmate usually did, and he had no intent to steal from her.

““To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.”” (*People v. Bolden* (2002) 29 Cal.4th 515, 553.) We must draw all reasonable inferences in support of the judgment. (*People v. Wader* (1993) 5 Cal.4th 610, 640.) “It is not our function to reweigh the evidence, reappraise the credibility of witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955; *People v. Young* (2005) 34 Cal.4th 1149, 1181.) We look for substantial evidence, and we may not reverse a conviction for insufficiency of the evidence unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Although we review the whole record, “[t]he uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable.” (*People v. Scott* (1978) 21 Cal.3d 284, 296; *People v. Panah* (2005) 35 Cal.4th 395, 489.) Furthermore, “[c]ircumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt.” [Citations.]’ [Citations.]” (*People v. Bradford* (1997) 15 Cal.4th 1229, 1329.) If the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the jury’s findings, our opinion that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*Ibid.*; *People v. Panah, supra*, 35 Cal.4th at p. 488.)

This same standard applies in determining the sufficiency of the evidence to support the true finding of a juvenile court. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

Section 487, subdivision (c) provides that a grand theft occurs “[w]hen the property is taken from the person of another.” “[T]heft requires the specific intent to permanently deprive the owner of its property. [Citations.]” (*People v. Shannon* (1998) 66 Cal.App.4th 649, 656.) The defendant must harbor the intent to steal at the time the owner is dispossessed of the property. (*In re Jesus O.* (2007) 40 Cal.4th 859, 867.) Intent is rarely susceptible of direct proof, but we may consider whether it can be inferred from facts and surrounding circumstances—that is, shown by circumstantial evidence. (See *People v. Cole* (1985) 165 Cal.App.3d 41, 48.)

Here, there was ample evidence that C.J. took the schoolmate’s money from her pocket with the intent of keeping at least some of it. There was evidence that C.J. returned the \$5 but not the \$10, that he had taken money from the schoolmate’s purse in the past and not returned it, and that she had told him to stop taking her money. Even though some evidence was in conflict, we defer to the juvenile court’s determinations of credibility. The evidence supporting the court’s finding was sufficient.

## II. Request to Reduce the Felony to a Misdemeanor

C.J. argues that the juvenile court, when it refused to reduce his felony to a misdemeanor, violated his Fourteenth Amendment due process rights by punishing him for not taking a plea offer and choosing instead to assert his right to a contested hearing.<sup>2</sup>

### A. *Facts*

In preparation for the disposition hearing in this case, the probation officer prepared a report, in which she noted that C.J.'s attendance and behavior at school were good but his grades were poor. He had no known criminal history. The probation officer recommended that the juvenile court find the offense a felony rather than a misdemeanor and that the court impose 30 days in Juvenile Hall, plus probation. The probation officer explained her rationale as follows:

“It is concerning to the undersigned [probation officer] that [C.J.’s] version of events, as reported to his mother and the arresting officer, are so vastly different. [C.J.] chose not to clarify any of the offense information during his interview with this [probation] officer, but the details presented in the law enforcement report depict very similar accounts of the circumstances as described by [the schoolmate] and [C.J.]. Due to the nature of the instant offense and [C.J.’s] failure to take responsibility, formal probation services are warranted and he should be adjudged a Ward of the Court. It is not felt a lengthy commitment program is appropriate at this time; however, as a consequence for his behavior, it is recommended [C.J.] serve 30 days in Juvenile Hall. The standard terms and conditions of probation will also be recommended. Should he fail to make appropriate changes in his behavior, additional time in custody may be recommended in the future. It should be noted, at the time of [C.J.’s] readiness hearing, the

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<sup>2</sup> Grand theft from the person is a “wobbler” punishable as either a misdemeanor or a felony. (§§ 487, subd. (c), 489, subd. (c).) Welfare and Institutions Code section 702 requires that the juvenile court declare the wobbler to be a misdemeanor or a felony. In this case, the juvenile court made the requisite declaration, stating the offense was a felony.

recommendation was 15 days [in] Juvenile Hall for the offer of Count 1 as a misdemeanor.”

At the disposition hearing, C.J.’s counsel addressed the court as follows:

“[T]oday I’m asking the Court to allow my client to serve ten days in Juvenile Hall. I’m also asking the Court if it would be possible to have the offense, the theft, reduced to a misdemeanor. I realize that this is a lot to ask. Um, some of my reasons are his behavior. He’s had some trouble in school. He tells me he’s trying to bring up his grades. He does have good attendance and good behavior.

“He was found to be a low risk to re-offend and he has no prior referrals. I would like to quickly note that in the report part of the recommendation was based on the sexual battery charge, and that was found not true; and it was not dismissed as part of the plea. And I would note for what it’s worth, that what he wrote on the 16th in the written statements at [the high school] was consistent with what we argued at trial.

“I would end with this, your Honor. With regard to this theft, there’s a reason it can be charged as a felony. Any time you take something off someone’s person, it can be dangerous. It can cause a dangerous or violent situation. I think the circumstances surrounding this theft would make it less likely that one of those situations would happen. The victim of this theft was a friend of his at the time. He was in class. He had some history with her. While I would say there’s always a possibility of danger that it would be much less likely in this situation. With that, I submit.”

The juvenile court responded:

“[C.J.’s counsel], if my memory serves me correctly—actually, I don’t have to rely on my memory. Your client had the opportunity to admit to this charge as a misdemeanor. It’s somewhat difficult to reject a plea bargain to go to trial and then say well now that I’ve lost, I’d like the benefit of the plea bargain. So the request to reduce the charge to a misdemeanor is denied. [¶] The available confinement time is three years, less six days[?] credit for time served. [¶] Count 1 is a felony rather than a misdemeanor; [C.J.] is adjudged a Ward of the Juvenile Court. [¶] He is placed on terms of probation not to exceed his 21st birthday. Custody of the minor is taken from his parents.”

## **B. Analysis**

“It is well settled that to punish a person for exercising a constitutional right is “a due process violation of the most basic sort.” [Citation.] The constitutional right to trial by jury in criminal prosecutions is fundamental to our system of justice [citations]; thus, [our Supreme Court has] stated that “only the most compelling reasons can justify any interference, however slight, with an accused’s prerogative to personally decide whether to stand trial or to waive his rights by pleading guilty.” [Citation.] “A court may not offer any inducement in return for a plea of guilty or nolo contendere. It may not treat a defendant more leniently because he foregoes his right to trial or more harshly because he exercises that right.” [Citation.]’ (*In re Lewallen* (1979) 23 Cal.3d 274, 278-279 [*Lewallen*].)” (*In re Edy D.* (2004) 120 Cal.App.4th 1199, 1202 (*Edy D.*).

But “[t]he mere fact ... that following trial defendant received a more severe sentence than he was offered during plea negotiations does not in itself support the inference that he was penalized for exercising his constitutional rights.” (*People v. Szeto* (1981) 29 Cal.3d 20, 35.) “[U]nder appropriate circumstances a defendant may receive a more severe sentence following trial than he would have received had he pleaded guilty; the trial itself may reveal more adverse information about him than was previously known.” (*Lewallen, supra*, 23 Cal.3d at p. 281.) “There must be some showing, properly before the appellate court, that the higher sentence was imposed as punishment for exercise of the right.” (*People v. Angus* (1980) 114 Cal.App.3d 973, 989-990.)

For example, in *Lewallen, supra*, 23 Cal.3d 274, the court determined that two statements made by the trial court demonstrated that it imposed a harsher sentence due to the petitioner’s exercise of his jury trial right. The trial court questioned defense counsel’s suggestion that informal probation was sufficient ““after a jury trial”” and stated that the defendant would not be ““penalized”” for exercising his jury trial right ““but on

the other hand he's not going to have the consideration he would have had if there was a plea.” (*Id.* at pp. 277, 280.)

And in *Edy D.*, *supra*, 120 Cal.App.4th 1199, the appellate court explained: “The [juvenile] court’s statement that if the minor inconvenienced witnesses by having them come to court for an adjudication hearing, the option of a [certain] disposition ... would no longer be available to him, reveals that the court gave consideration to the minor’s election to exercise his right to an adjudication. That he chose not to admit the allegation ‘is completely irrelevant at sentencing; if a judge bases a sentence, or any aspect thereof, on the fact that such a plea is entered, error has been committed and the sentence cannot stand.’ (*In re Lewallen*, *supra*, 23 Cal.3d 274, 279.) We conclude that the court’s statement indicates the court was basing the minor’s disposition at least in part on the fact that he declined the disposition prior to the adjudication. (See *In re Lawanda L.* (1986) 178 Cal.App.3d 423, 432-433.)” (*Edy D.*, *supra*, at p. 1202.)

Objectively viewed, the juvenile court’s statements in this case did not show that the court was punishing C.J. for contesting the petition. The court’s statements suggested only that C.J. previously had the opportunity to accept the plea bargain but, after rejecting it, he was no longer in the position to insist that he reap the benefits of the bargain. The court said nothing suggesting it was considering C.J.’s decision in finding the offense a felony. The court was following the probation officer’s recommendation, which provided valid reasons for the decision, such as the nature of the offense and C.J.’s failure to take responsibility for the offense. On this record, we cannot conclude “that the court’s statement indicates the court was basing the minor’s disposition at least in part on the fact that he declined the disposition prior to the adjudication. [Citation.]” (*Edy D.*, *supra*, 120 Cal.App.4th at p. 1202.)

### **DISPOSITION**

The juvenile court’s findings and orders are affirmed.