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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.J.,

Defendant and Appellant.

G045421

(Super. Ct. No. DL038405)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Lilia E. Garcia, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The court declared A.J. (the minor) a ward of the court after finding he committed second degree robbery. The minor contends no substantial evidence showed he used fear to take the victim's iPod. He further contends the court wrongly excluded some of the victim's prior violent acts, which he offered to show the victim was unafraid. But the record sufficiently shows the victim was afraid, and his prior acts were inadmissible to show his state of mind. We affirm.

FACTS

The victim, a 13-year-old boy, was walking down a street one afternoon when the minor called to him from across the street. The victim recognized the minor as a former schoolmate. The victim walked over to the minor, who was standing with another boy.

The minor asked the victim to give him \$5. The victim replied he did not have the money. The minor asked his companion, "What do we do? Do we check him?" The companion responded, "I don't know, do whatever you want. I am not in this."

The minor asked the victim to give him his iPod. The victim refused. The minor asked the victim, "Do you want to do this the hard way or the easy way?" The minor told the victim to come with him down a nearby apartment's hallway. The victim followed because he was "scared" the two boys would "get" him.

The minor again demanded the victim's iPod. The minor told the victim, "If you don't give it to me, I'm going to tax you." The victim understood this to mean the minor would beat him up. The victim begged, "Come on, don't do that." The minor raised his fist. The victim believed the minor was going to hit him — "I thought he was really going to punch me." The minor then reached his hand toward the victim and grabbed his iPod earbuds out of his shirt pocket. The minor told the victim, "Give me the iPod or I will tax you." The victim gave him the iPod because he was "afraid" the minor was "going to beat [him] up."

After a bench trial, the court found the minor had committed one count of second degree robbery. (Pen. Code, §§ 211, 212.5, subd. (c).) It declared him a ward of the court and granted him probation on the condition he serve 48 days in juvenile hall.

DISCUSSION

First, the minor contends no substantial evidence shows the victim was actually afraid of him. "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) "The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his property." [Citations.] It is not necessary that there be direct proof of fear; fear may be inferred from the circumstances in which the property is taken. [Citation.] [¶] If there is evidence from which fear may be inferred, the victim need not explicitly testify that he or she was afraid. [Citations.] Moreover, the jury may infer fear "from the circumstances despite even superficially contrary testimony of the victim." [Citations.] [¶] The requisite fear need not be the result of an express threat or the use of a weapon. [Citations.] Resistance by the victim is not a required element of robbery [citation], and the victim's fear need not be extreme to constitute robbery

[citation]. All that is necessary is that the record show ““conduct, words, or circumstances reasonably calculated to produce fear”” [Citation.] [¶] Intimidation of the victim equates with fear. [Citation.] An unlawful demand can convey an implied threat of harm for failure to comply, thus supporting an inference of the requisite fear.” (*People v. Morehead* (2011) 191 Cal.App.4th 765, 774-775.)

““The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt.”” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We “view the evidence in the light most favorable” to the verdict, and presume the existence of every fact the jury might reasonably deduce from it. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not “substitute our evaluation of a witness’s credibility for that of the fact finder.” (*People v. Jones* (1990) 51 Cal.3d 294, 314.) “[T]he testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions.” (*People v. Leigh* (1985) 168 Cal.App.3d 217, 221.)

Here, direct evidence shows the victim handed over his iPod out of fear. He testified he was “afraid” the minor “was going to beat [him] up.” In addition, “the circumstances in which the property [was] taken” sufficiently showed the victim was afraid. (*People v. Morehead, supra*, 191 Cal.App.4th at p. 775.) The minor had no right to demand the iPod. (*Ibid.* [“An unlawful demand can convey an implied threat of harm”]; accord *People v. Renteria* (1964) 61 Cal.2d 497, 499 [“Men do not ordinarily give up their hard-earned cash to a stranger who threatens them with a gun”].) Before the victim acquiesced to the demand, the minor repeatedly threatened to “tax” the victim, raised his fist, and grabbed the iPod earbuds out of the victim’s shirt pocket. Even without the victim’s express testimony, the circumstances reasonably show he was afraid.

The minor asserts other circumstances showed the victim was not afraid. He notes the victim is five inches taller than him and the victim willingly walked with him — the victim conceded he was “not really” scared (“not a lot”) “when [he] was in the

hallway.” But we review the record for substantial evidence supporting the judgment, not for contrary evidence. (*People v. Johnson*, 26 Cal.3d at p. 576; *People v. Ochoa* (1993) 6 Cal.4th at p. 1206.) The court credited the victim’s statement he was afraid, and resolved any inconsistencies in the victim’s testimony in favor of that. (See *People v. Jones*, *supra*, 51 Cal.3d at p. 314 [trial court determines credibility]; see also *People v. Leigh*, *supra*, 168 Cal.App.3d at p. 221 [inconsistent testimony can support judgment]; *People v. Renteria*, *supra*, 61 Cal.2d at p. 499 [court may reject victim’s “bravado”].)

Second, the minor contends the court wrongly excluded evidence of the victim’s prior violent acts.¹ He contends the acts tended to show the victim was unafraid of the minor due to the victim’s violent character. “We review a trial court’s exclusion of evidence for abuse of discretion.” (*People v. Gutierrez* (2009) 45 Cal.4th 789, 827.)

The defense may offer “evidence of the character or a trait of character . . . of the victim” “to prove conduct of the victim in conformity with the character or trait of character.” (Evid. Code, § 1103, subd. (a)(1).) Self-defense is the typical context. The defense may offer evidence of the victim’s violent character to show the victim acted in conformity with it by initiating or escalating the assault. (*People v. Tackett* (2006) 144 Cal.App.4th 445, 454 [Evid. Code, § 1103 codified existing law providing that “evidence of a victim’s character for violence could be admitted in a trial for a crime of violence where self-defense is claimed”].)

¹ Defense counsel conceded the litany of the victim’s prior violent acts was “sort of confusing.” Taken as separate acts against separate victims, the defense offered evidence the victim had, in total: choked a student, threw a student “on the floor,” kicked and pushed a student, “used his middle finger — well, said some bad words,” destroyed a lunch pail, grabbed a student’s shoulders, punched a student “on the arm,” kicked “a girl . . . in a private spot,” touched “the backside of another girl,” punched a student “in the mouth,” “punched another student on the ribs,” “pushed a student,” and “intentionally bump[ed] into a teacher trying to get into some sort of an altercation [or] confrontation with that teacher.”

Here, the victim’s prior acts are inadmissible because the minor did not offer them to “prove conduct . . . in conformity with [his] character” (Evid. Code, § 1103, subd. (a)(1).) The minor was not offering the prior acts to show the victim had threatened him, provoked him, or attacked him. “Where no evidence is presented that the victim posed a threat to the the [minor], exclusion of evidence regarding the victim’s propensity for violence is proper.” (*People v. Gutierrez, supra*, 45 Cal.4th at p. 828.) In fact, the minor was not offering the acts to show any kind of conduct. Rather, the minor offered the prior acts to show the victim’s mental state — his lack of fear. The plain language of the statute does not authorize that, and the minor offers no cases so holding.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

O’LEARY, P. J.

MOORE, J.