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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

C.D.,

Defendant and Appellant.

G049795

(Super. Ct. No. DL042432)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

A juvenile court found true allegations C.D. (minor) committed petty theft. (Pen. Code, §§ 484, subd. (a), 488.) Because this was minor's second Welfare and Institutions Code section 602 petition, the court continued minor's preexisting wardship and probation with the added conditions minor pay \$50 restitution and complete 60 hours of community service.

Minor challenges the admission of his pretrial statement and the sufficiency of the evidence to support the court's true finding. We reject both contentions and affirm the judgment.

### **FACTS**

In 2012, minor, a Laguna Hills High School student, admitted driving while under the influence of alcohol. The juvenile court declared minor a ward of the court and placed him on probation for three years.

On June 4, 2013, minor came into possession of another Laguna Hills High School student victim's cell phone. Later the same day, minor got \$30 from the victim's father in exchange for the phone. The victim's parents recognized minor as a Laguna Hills High School student and contacted authorities.

The victim told authorities that at about 2:00 p.m., he put his cell phone inside his backpack and placed his backpack inside a locker in the men's locker room before going to the weight room. The victim said he secured the locker with a broken lock. When he returned about 90 minutes later, the victim found the locker door open and the locker empty. After a bit of frantic searching, the victim found his backpack on the shower floor. It was turned inside out and lying in a sea of school papers. When the victim checked inside the backpack, he realized his cell phone had been taken. He had not given anyone permission to take or use his phone.

About 15 minutes later, the victim used his brother's phone to remotely lock his phone, and he sent his phone a text message with an offer of a \$200 reward for its return. About an hour later, someone used the victim's phone to call the brother's

phone. The brothers put the call on speaker phone. A male voice told them he had found the phone at a nearby Starbuck's. He gave the brothers a place and time to meet, and said he was ready to "do the exchange for money."

A few minutes later, the victim's parents drove him to the location designated by the caller. Minor approached the victim's car. He asked the victim's parents if they were looking for a phone. They replied affirmatively. Minor asked for \$300. There was a brief back and forth conversation between the victim's father and minor before the victim's father handed over \$30, which was all the cash he had at the time. Minor did not appear pleased to receive one-tenth of his request, but he handed over the phone, took the \$30, and walked away.

Brian Gunsolley, a deputy sheriff working at Laguna Hills High School, interviewed minor at school two days later. The interview took place in the late morning. Gunsolley summoned minor to the assistant principal's office. The deputy advised minor he was under investigation for a crime. Gunsolley promised to recommend minor for diversion if minor cooperated, although Gunsolley admitted that he did not make the ultimate eligibility determination.

Minor told Gunsolley that he found a backpack on the floor in the men's locker room. He admitted taking a cell phone he found inside the backpack. Minor said he took the phone to a nearby Starbucks. He responded to a lost or stolen phone message, and the message sender offered him a \$300 reward. When minor contacted the owner, however, the owner only offered \$20. Minor later agreed to take \$30. They gave him the \$30, and he gave them the phone. About 15 days later, the Orange County District Attorney's Office filed a petition alleging minor committed petty theft (Pen. Code, §§ 484, subd. (a), 488) by taking the victim's cell phone.

## DISCUSSION

### *1. Admission of Minor's Statement*

Minor moved to suppress the statement he made to Gunsolley, citing *Miranda v. Arizona* (1966) 384 U.S. 436. The court conducted a midtrial Evidence Code section 402 hearing to determine the admissibility of minor's statement.

At the hearing, Gunsolley testified that after receiving information about a potential crime and minor's possible involvement in that crime, he summoned minor to the Laguna Hills High School assistant principal's office. It was around 11:45 a.m. on a school day. Gunsolley said minor appeared calm, and he was cooperative throughout the interview. Gunsolley usually leaves the door to the assistant principal's office open during student interviews, and he said the assistant principal may have been in the office for some, or all, of minor's interview. Minor was not restrained. However, because minor had been summoned to the assistant principal's office, Gunsolley admitted minor "would be expected to stay" until excused.

The assistant principal's office is 12 feet by 10 feet. It has a desk and desk chair and two visitor's chairs in front of the desk. Gunsolley, who was dressed in full police uniform with weapons, sat next to minor in one of the two visitor's chairs and told minor he was suspected of a crime. He also explained "for [minor's] cooperation, that I would enter his statement into the follow-up report and that I would state that he was cooperative and that I would recommend him for diversion rather than prosecution, if he's eligible. And I also advised him that I was not the one that makes that decision, but I would make that statement in my report." The interview lasted about 20 minutes. Gunsolley did include the promised diversion recommendation in his subsequent report.

Minor argued Gunsolley subjected him to a custodial interrogation without advising him of his *Miranda* rights. In the alternative, minor asserted Gunsolley's offer to recommend diversion constituted an impermissible offer of leniency and rendered involuntary his subsequent confession.

The court concluded minor had not been subjected to a custodial interrogation. Citing *In re Joseph R.* (1998) 65 Cal.App.4th 954, the court focused primarily on the facts Gunsolley interviewed minor in a setting familiar to minor, and that Gunsolley conducted the interview in a relatively informal manner. The court noted Gunsolley likely left the door open, and he purposefully sat next to, and not across from, the minor throughout the very brief, 20-minute, interview. Under these circumstances, the court determined minor had not been in custody when he talked to Gunsolley.

On appeal, minor claims the court improperly determined no *Miranda* warnings were required before Gunsolley questioned him. ““Before being subjected to “custodial interrogation,” a suspect “must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”” [Citations.]” (*People v. Leonard* (2007) 40 Cal.4th 1370, 1399-1400.) “An interrogation is custodial when ‘a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ [Citation.] Whether a person is in custody is an objective test; the pertinent inquiry is whether there was ““a “formal arrest or restraint on freedom of movement” of the degree associated with a formal arrest.”” [Citation.]” (*Id.* at p. 1400)

We agree with the juvenile court that *Miranda* warnings were not required. The interview setting was informal and familiar to minor. There was a certain amount of psychological restraint involved in a student being called to the assistant principal’s office, but Gunsolley did not employ any means to physically restrain minor. Minor spent about 20 minutes telling Gunsolley what happened, and then minor walked out of the office. Even factoring in minor’s youth and relative naivety in all things criminal, the circumstances of minor’s interview do not equal a custodial interrogation.

As for voluntariness, the court found minor’s statement had been voluntarily made, rejecting minor’s assertion Gunsolley used intimidation, pressure, or promises of leniency to coerce his statement. Again, we agree with the trial court.

“Under both state and federal law, courts apply a totality of circumstances’ test to determine the voluntariness of a confession. [Citation.] Among the factors to be considered are “the crucial element of police coercion [citation]; the length of the interrogation [citation]; its location [citation]; its continuity” as well as “the defendant’s maturity [citation]; education [citation]; physical condition [citation]; and mental health.”” [Citation.] On appeal, the trial court’s findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence, but the trial court’s finding as to the voluntariness of the confession is subject to independent review. [Citations.] In determining whether a confession was voluntary, ‘[t]he question is whether defendant’s choice to confess was not ‘essentially free’ because his will was overborne.’ [Citation.]” (*People v. Massie* (1998) 19 Cal.4th 550, 576.)

In this case, minor’s entire interview lasted 20 minutes, and Gunsolley conducted the interview in the assistant principal’s office at minor’s own high school. Gunsolley did not use physical restraints, and he did not threaten minor with negative outcomes or try to instill fear. In fact, Gunsolley sat down next to minor in a chair and told minor he was under investigation for a crime, but that Gunsolley intended to try to help minor by recommending diversion. The totality of the circumstances does not support minor’s contention Gunsolley threatened, promised, and pressured him into making a statement.

Furthermore, Gunsolley’s diversion recommendation marginally qualifies as a promise of leniency. “When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity.” (*People v. Hill* (1967) 66 Cal.2d 536, 549.) Gunsolley merely pointed out that for some cooperation, minor had the chance at not having this particular crime on his record.

But even assuming otherwise, Gunsolley’s statement he would recommend diversion does not appear to be the “motivating cause of [minor’s] admissions.” (*People*

*v. Williams* (1997) 16 Cal.4th 635, 661.) Rather, minor seemed to treat the incident as a routine matter. His candid statement was voluntarily made. Thus, the record supports the court's denial of minor's midtrial motion to suppress.

## 2. *Sufficiency of the Evidence*

Minor challenges the sufficiency of the evidence to support the court's finding he committed misdemeanor petty theft. On appeal from sustained allegations of a Welfare and Institutions Code section 602 petition, we apply the same standard of review used for claims challenging the sufficiency of the evidence to support a criminal conviction.

“Under this standard, the critical inquiry is ‘whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.] An appellate court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.]” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.)

The juvenile court found minor intended to “feloniously steal, take, carry, lead, or drive away the personal property of another . . . .” (Pen. Code, §§ 484, subd. (a), 488.) At trial, minor argued the prosecution failed to introduce evidence he knew the backpack belonged to someone, as opposed to being lost property, and failed to introduce evidence he intended to permanently deprive the owner of his cell phone. Minor's arguments stem from a false premise.

“[T]he general rule is that the intent to steal required for conviction of larceny is an intent to deprive the owner *permanently* of possession of the property. [Citations.]’ [Citations.] The rule is not ‘inflexible,’ however, and in certain cases ‘the requisite intent to steal may be found even though the defendant's primary purpose in

taking the property is not to deprive the owner permanently of possession,' such as '(1) when the defendant intends to "sell" the property back to its owner, (2) when the defendant intends to claim a reward for "finding" the property, and (3) when . . . the defendant intends to return the property to its owner for a "refund."' [Citation.] In each of those exceptions, although the defendant does not intend to deprive the owner permanently of possession of the property, the defendant does intend to appropriate the value of permanent possession of the property." (*People v. Bell* (2011) 197 Cal.App.4th 822, 826-827.)

Here, by his own admission, minor came upon the victim's backpack as it lay on the floor in the men's locker room of his own high school. The prosecution did not need refute the notion minor might have believed the backpack was abandoned property. The very idea minor could have mistaken a backpack, on the locker room floor of his high school, during school hours for lost or abandoned property seems ludicrous. Under the circumstances, the reasonable scenario is that minor knew the backpack belonged to a fellow student.

Furthermore, minor admitted he rifled the backpack and removed a cell phone he found inside. Then, he left the backpack in the shower and took the cell phone to a nearby Starbucks. At least an hour passed without any effort on his part to find the phone's rightful owner. While minor may simply have needed prolonged refreshment before starting his exhaustive search for the phone's true owner, the juvenile court was under no obligation to adopt that view of the evidence. In short, substantial evidence supports the juvenile court's finding minor took the victim's cell phone with the intent to keep it, but changed his mind when he saw the reward. Thus, substantial evidence supports the judgment.

**DISPOSITION**

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.