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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

G050527

(Super. Ct. No. DL044100)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W.  
Clapp, Judge. Affirmed.

Richard Jay Moller, 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, and Arlene A. Sevidal, Deputy Attorney General, for Plaintiff and Respondent.

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The court found true the People’s allegation that the minor S.G. committed second degree robbery, and declared him a ward of the court. Minor appeals, contending the evidence is insufficient to show he used force to escape with the stolen property. We affirm.

## FACTS

On the afternoon of May 18, 2014, Issa Chahla was working alone at his father’s liquor store. Minor entered the store, looked at Chahla (who was standing at the register), and walked around the store. Minor then walked out.

About 30 seconds to one minute later, minor returned and went directly to the beer cooler aisle. Chahla suspected minor was not there to make a purchase. Chahla came out from behind the counter carrying a plastic trash can and walked toward the front door as though he planned to throw away the trash. In reality, Chahla planned to use the trash can for protection and as an excuse to stand in front of the door.

Minor tried to leave the store, carrying two 40-ounce beer bottles, one bottle in each hand. Each bottle was about 14 inches high and was made of glass.

Chahla told minor he had to pay for the beers to take them, and tried to corner him in an area of the store. Minor replied, “‘If you don’t let me,’ . . . ‘I don’t want to hit you in the head with these, but I will.’” Chahla did not feel scared, because minor did not raise a beer bottle, although Chahla thought minor “would do it.”

As minor tried to run out of the store, Chahla “took a step back” and “smacked” a beer bottle out of minor’s hand. Minor ran across the street with one bottle in his hand.

*Evidence Concerning Minor’s Physical Contact with Chahla*

At first, Chahla testified minor made no physical contact with him. But in response to the prosecutor’s questioning, Chahla testified he did recall telling the responding officers on the afternoon of the incident that he was “pushed that day.” He had told the officers the truth, and the events had been fresh in his mind. Chahla then admitted that minor, while holding the beer bottles in his hands, had made physical contact with him. Specifically, minor had put his shoulder into Chahla’s chest, and tried to “move” or “nudge” Chahla out of the way. The prosecutor then asked Chahla whether he recalled telling the police that minor pushed him with both hands in Chahla’s shoulder area. Chahla testified, “I might have said that, but . . . I don’t recall.”

On cross-examination, Chahla testified minor tried to “go through [Chahla], and the only way to go through [him] was to make contact with [him].” Chahla had *not* told the responding officers he was afraid for his life. But he did tell them he did not want minor to ever return to or near the store, and that Chahla wanted no retaliation to the business.

On redirect, Chahla testified that when minor nudged him, it was not “a friendly nudge,” because minor was trying to move Chahla out of the way. Chahla confirmed he was a reluctant witness: he would not have testified in court had he not been subpoenaed. He wanted to avoid any retaliation to his business, such as an incident with more people or causing damage to the store or the building.

Two other prosecution witnesses testified about the physical contact between minor and Chahla. A customer who was at the liquor store to buy lotto tickets testified the store clerk “stood in the door frame not allowing the person to leave.” Minor “pushed the clerk out of the way or did something so that he could get by.” The customer testified minor “was holding two items, so it was kind of like a forward motion with his arms.” The customer demonstrated by holding “up both arms and fists around chest level and [making] forward motions.”

A responding officer testified Chahla told him that when he confronted “the suspect at the door, the suspect pushed [Chahla] and fled the scene.” Chahla “described it as like a two-hand push to the shoulder area, so they were face to face and he just did a double-hit push.” The officer demonstrated by pushing forward his arms extending all the way. Chahla told the officer he was in fear for his safety when minor threatened him. Chahla “seemed very hesitant, very scared,” and said he knew the area was a high-crime area and he was afraid that if he reported it, he would be a victim in further crimes.

In his own defense, minor testified Chahla was standing right in the middle of the doorway. There were two doors and both doors were open. Minor took one step backwards from Chahla, then tried to “joke” around Chahla’s right side. He “retracted” the bottles toward his stomach so he would “have room to slide by him.” Chahla “quickly took one step backwards and rotated to his side, allowing [minor] to go by.” Their clothes, or their bodies through their clothes, touched.

### *The Court's Ruling*

The court found true the petition's allegation of second degree robbery, believing minor used sufficient force for robbery.<sup>1</sup> The court found the offense to be a felony with a maximum term of confinement of five years. At the disposition hearing, the court declared minor a ward of the court, and released him to his parents on the usual terms and conditions of probation. In response to defense counsel's request that, in two years, minor be allowed to petition for dismissal of the charge under Welfare and Institutions Code section 782, the court stated it would recommend the true finding be dismissed in two years if minor complied with all requirements.

### DISCUSSION

Minor contends insufficient evidence supports the court's finding he used force to escape with the stolen beer and that his conviction for robbery should be reduced to the lesser included offense of petty theft.

"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 crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety." (*People v. Estes* (1983) 147 Cal.App.3d 23, 28.) A "robbery can be accomplished even if the property was peacefully or duplicitously acquired, if force or fear was used to carry it away." (*People v. Gomez* (2008) 43 Cal.4th 249, 256.)

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<sup>1</sup> As to whether minor accomplished the taking by means of fear, the court noted that Chahla testified he knew from looking at minor that minor did not intend to hit him with the beer bottles. In denying minor's motion to dismiss after the People presented their case, the court stated Chahla's testimony he was not afraid was credible.

Whether a perpetrator used sufficient force for the crime of robbery is a factual question (*People v. Mungia* (1991) 234 Cal.App.3d 1703, 1707) to be determined by the fact finder using “common sense” (*id.* at p. 1709). The term “force” for purposes of robbery has “no technical meaning peculiar to the law” and “is not synonymous with a physical corporeal assault.” (*Id.* at p. 1708.)

We review the entire record in the light most favorable to the prosecution to determine whether substantial evidence exists from which a reasonable trier of fact could find beyond a reasonable doubt minor used force. (*People v. Avila* (2009) 46 Cal.4th 680, 701.) We presume “in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*Ibid.*)

Minor contends his touching of Chahla was minimal and incidental, and not sufficiently forceful to support the offense of robbery. He relies on cases such as *People v. Morales* (1975) 49 Cal.App.3d 134, 139, a purse snatch case in which the appellate court stated that robbery requires more “than just that quantum of force which is necessary to accomplish the mere seizing of the property.” Such cases discuss the force required to take property from a victim’s possession, for example by grabbing or snatching property from the victim’s hand. (*Ibid.*)

In *People v. Garcia* (1996) 45 Cal.App.4th 1242, disapproved on another point in *People v. Mosby* (2004) 33 Cal.4th 353, 365, footnotes 2 and 3, the Court of Appeal concluded the defendant used sufficient force when he approached a store cashier as she stood in front of an open cash register and “lightly pushed his left shoulder against the cashier’s right shoulder, ‘like a tap,’” which caused the cashier to move away from the register. (*Garcia*, at p. 1244.) *Garcia* stated “the degree of force is immaterial.” (*Id.* at p. 1246.)

Here, substantial evidence supports the court’s finding minor used force to escape with the beer bottle. Chahla testified minor put his shoulder into Chahla’s chest to move Chahla. Chahla admitted he was a reluctant witness and was concerned about

retaliation. A store customer saw minor push Chahla with both arms. An officer testified that Chahla reported minor gave him a two-arm double-hit push.

#### DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.