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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re R.O., a Person Coming Under the  
Juvenile Court Law.

H041892  
(Santa Clara County  
Super. Ct. No. 3-13-JV-39929B)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.O.,

Defendant and Appellant.

R.O. was found to have committed second degree burglary on or about September 28, 2014 and to have personally used a knife in the commission of the offense as alleged in a second juvenile wardship petition filed against him.<sup>1</sup> (Welf. & Inst. Code, § 602, subd. (a).)<sup>2</sup> R.O. appeals from the December 19, 2014 disposition orders continuing him as a ward of the court, committing him to juvenile hall for 15 actual days, ordering him to

<sup>1</sup> A first juvenile wardship petition was filed against R.O. on March 15, 2013. R.O. admitted that, on March 13, 2013, he violated Penal Code section 415, subdivision (2) (maliciously and willfully disturbing another person by loud and unreasonable noise), and the court sustained the petition. The court declared R.O. a ward of the court on November 19, 2013, and it ordered him to serve 45 actual days on the electronic monitoring program and to return to parental custody on probation under certain terms and conditions.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

serve 90 days on the electronic monitoring program following his release from juvenile hall, and returning him to parental custody on probation under specified terms and conditions.

R.O. now contends that the evidence was not sufficient to sustain the petition, and he raises an alternative ineffective assistance of counsel claim in the event that this court finds the evidence to be sufficient. We reject these contentions and affirm.

## I

### *Procedural History*

A second juvenile wardship petition was filed against R.O. on September 30, 2014. (See § 602, subd. (a).) The petition alleged that, on September 28, 2014, R.O. committed second degree robbery (Pen. Code, §§ 211-212.5, subd. (c)) and that, in committing the alleged robbery, R.O. personally used a dangerous and deadly weapon, a knife, within the meaning of Penal Code sections 667 and 1192.7.

The court held contested jurisdiction and disposition hearings. After the jurisdiction hearing at which the loss prevention officer testified, the court found the allegations of the petition to be true beyond a reasonable doubt. The evidence adduced at the jurisdiction hearing showed the following facts.

Reginald Brown worked as loss prevention officer for Monument Security, and he was working at the Save Mart on McKee Road in San Jose on September 28, 2014. Brown had started working for Monument Security about two to three weeks before that date. His duty as a loss prevention officer was to prevent theft from a store by surveillance of the customers and watching the store's monitors. As part of his job, Brown was allowed to grab bags, but he was not allowed to fight or use excessive force, such as a choke hold. Brown was 5 feet 5 inches tall, and he weighed between 130 and 138 pounds.

At approximately 6:15 to 6:30 p.m. on September 28, 2014, Brown was patrolling the Save Mart. He was walking around the premises and looking for shoplifters. He was

not wearing a uniform. Brown was dressed casually; he was wearing a black sweatshirt or hoody and dark jeans. Brown was carrying his badge on his person, perhaps in his back pocket.

Brown saw two males, R.O. and a companion, enter the store within a couple of seconds of each other. Brown was standing by the registers. R.O. was the smaller of the two males. They walked together side by side, and one of them was holding an empty cloth bag. Brown began conducting surveillance of them.

In general, Brown pays attention to younger looking people because teens and young adults are usually the thieves. Brown especially watches the liquor, the meat, and the pharmaceutical areas for shoplifters.

R.O. and his companion headed to the liquor department, where Brown saw them roam and stand together. Brown did not see them put anything into their bag while they were in the liquor department. After that, they went to the freezer and snack aisles, and finally they headed to the meat department, where Brown saw them talking to each other. Up to that point, R.O. and his companion had switched off holding the bag “a couple of times.”

In the meat area, Brown saw R.O.’s companion pick up two packages of meat, which Brown testified was valued at approximately \$26 to \$27 and Brown saw him put the meat in the bag while R.O. was present. R.O. left the meat department while his companion, who was still holding the bag, continued to look at the meat.

Brown went outside Save Mart and waited for R.O. and his companion near the exit. At that point, Brown could not see R.O., who was no longer in the meat department. In the moments while he was waiting outside the store, Brown tried to call his partner, another loss prevention officer who worked for Monument Security, for backup.

From a distance, Brown observed R.O.’s companion, still holding the bag, head straight for the exit door and leave Save Mart. Brown was standing to the side of the exit door, about seven feet from R.O.’s companion. Only seconds after R.O.’s companion

exited Save Mart, Brown saw, in his peripheral vision, R.O. leave the store and walk away.

Brown identified himself as “loss prevention” and displayed his badge to R.O.’s companion. The badge was about three and a half inches by two and a half or three inches in size, and Brown held the badge in his hand. About the time Brown was announcing that he was a loss prevention officer, the other loss prevention officer was on the phone responding to his earlier call; Brown was wearing a Bluetooth headset. Brown specifically said to R.O.’s companion, “[E]xcuse me, sir, Loss Prevention, can you please stop so I can bring you back inside.” The exchange was at a volume of a “loud conversation.” At that moment, R.O. was located over by the shopping carts by the exit, approximately 25 to 30 feet away from Brown; R.O. was walking away in the direction of a liquor store.

R.O.’s companion just glanced at Brown, ignored Brown, and kept walking. Brown followed R.O.’s companion and grabbed the bag he was holding from behind; he tried to yank it back. Brown and R.O.’s companion struggled over the bag. In the struggle, Brown dropped his badge on the ground. When the struggle began, R.O. stopped and turned around. When it looked like R.O.’s companion was not “going to get away with the bag,” R.O. ran over to Brown.

R.O. said to Brown something like do you want to get “whopped or mopped,” which Brown understood as asking whether he wanted to get beaten up. R.O. pulled up his sagging pants and then stepped toward Brown. R.O. pulled out a knife and brandished it. Brown let go of the bag and backed away. Brown said he was “calling the cops.” R.O. and his companion ran off toward the street. R.O. never asked Brown who Brown was; R.O. did not say let go of my friend.

Brown called 911, and the police came to the scene. The officers drove Brown to the location where the suspects had been found, and Brown identified them.

At the hearing, defense counsel contended that R.O. did not know that Brown, who was dressed in civilian clothing, was a loss prevention officer. Defense counsel asserted that Brown had grabbed the bag from behind like a thief and that R.O. was merely defending his friend. Defense counsel argued that R.O. used the knife merely for defense of his companion, not to retain or steal the merchandise, and that R.O. was merely trying to stop Brown from attacking his friend or stealing his friend's bag. Defense counsel maintained that there was no evidence showing that R.O. participated in the theft or knew that his companion was intending to take meat or other merchandise.

In her argument to the juvenile court, the prosecutor contended that R.O. and his companion did not behave as ordinary shoppers, but instead they traded the empty bag back and forth between them, they split up in the store, and they did not go to the cashier and leave the store together. She asserted that it was not reasonable to infer from the evidence that R.O. believed Brown was a thief since R.O. only asked whether Brown wanted "to get whopped" and then pulled out a knife.

The court found that the defense of another theory was not persuasive or credible. It found Brown to be a credible witness. The court found it noteworthy that the two males entered Save Mart together, interacted with each other, and exchanged the bag between them, but they then exited the store separately and split up. The court also found it significant that R.O. pulled up his pants and postured, threatened Brown, and pulled out a knife. The court found that the fact that the two males ran from the scene when Brown retreated was a clear indication of consciousness of guilt. It found the allegations to be true and sustained the petition.

## II

### *Discussion*

#### A. *Sufficiency of the Evidence*

##### 1. *Standard of Review*

Review of R.O.’s challenge to the sufficiency of the evidence is “governed by the same standard applicable to adult criminal cases. (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1328.)” (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) “ ‘In reviewing the sufficiency of the evidence, we must determine “whether, after viewing 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.]’ (*People v. Davis* (1995) 10 Cal.4th 463, 509.) ‘ “[O]ur role on appeal is a limited one.” [Citation.] Under the substantial evidence rule, we must presume in support of the judgment the existence of every fact that the trier of fact could reasonably have deduced from the evidence. [Citation.] Thus, if the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]’ (*People v. Medina* (2009) 46 Cal.4th 913, 925, fn. 2.)” (*Ibid.*)

##### 2. *Analysis*

R.O. now contends that there was insufficient evidence to prove that, during the September 28, 2014 incident, he used force or fear for the purpose of assisting his friend in carrying away property stolen from Save Mart or that he was guilty of robbery under an aiding and abetting theory.

“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.” (§ 211.) “Reflected in that statutory definition are larceny’s elements of ‘the taking of another’s property, with the intent to steal and carry it away.’ (*People v.*

*Gomez* (2008) 43 Cal.4th 249, 254-255 (*Gomez*.)” (*People v. Williams* (2013) 57 Cal.4th 776, 786 (*Williams*.)

“Theft and robbery have the same felonious taking element, which is the intent to steal, or to feloniously deprive the owner permanently of his or her property. (*People v. Montoya* (2004) 33 Cal.4th 1031, 1037.)” (*People v. Bacon* (2010) 50 Cal.4th 1082, 1117 (*Bacon*.) A specific intent to steal is one of the essential elements of robbery. (*People v. Ford* (1964) 60 Cal.2d 772, 793, abrogated on another ground in *People v. Satchell* (1971) 6 Cal.3d 28, 35-40 [overruled on another ground in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12].) “[T]he intent to deprive permanently is satisfied by the intent to deprive temporarily but for an unreasonable time so as to deprive the person of a major portion of the value or enjoyment. (*People v. Avery* (2002) 27 Cal.4th 49, 58.)” (*Bacon, supra*, 50 Cal.4th at p. 1117.)

Larceny “requires ‘asportation,’ which is a carrying away of stolen property. (*Gomez, supra*, 43 Cal.4th at p. 255, citing *People v. Lopez* (2003) 31 Cal.4th 1051, 1056.)” (*Williams, supra*, 57 Cal.4th at p. 787.) “This element of larceny, although satisfied by only the slightest movement, continues until the perpetrator reaches a place of temporary safety. (*Gomez*, at p. 255.) Asportation is what makes larceny a continuing offense. (*Id.* at p. 254.) Because larceny is a continuing offense, a defendant who uses force or fear in an attempt to escape with property taken by larceny has committed robbery. (*Id.* at pp. 259-260; *People v. Estes* (1983) 147 Cal.App.3d 23, 27-28.)” (*Ibid.*) “[M]ere theft becomes robbery if the perpetrator, having gained possession of the property without use of force or fear, resorts to force or fear while carrying away the loot. [Citations.]” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1166, fn. 8.)

“By the same logic, the immediate presence element can be satisfied at any point during the taking.” (*Gomez, supra*, 43 Cal.4th at p. 261.) “A victim who tries to stop a thief from getting away with his property *is* in the presence of the property.” (*Id.* at p. 264, fn. omitted.)

California law “limits victims of robbery to those persons in either actual or constructive possession of the property taken.” (*People v. Nguyen* (2000) 24 Cal.4th 756, 764.) “By requiring that the victim of a robbery have possession of the property taken, the Legislature has included as victims those persons who, because of their relationship to the property or its owner, have the right to resist the taking . . . .” (*People v. Scott* (2009) 45 Cal.4th 743, 757-758 (*Scott*)). The Legislature “has excluded as victims [of robbery] those bystanders who have no greater interest in the property than any other member of the general population.” (*Id.* at p. 758.)

An “employee’s relationship with his or her employer constitutes a ‘special relationship’ sufficient to establish the employee’s constructive possession of the employer’s property during a robbery.” (*Scott, supra*, 45 Cal.4th at p. 754.) “[B]ased upon a theory of constructive possession, ‘a store employee may be the victim of a robbery even though he is not its owner and not at the moment in immediate control of the stolen property.’” [Citation.] ‘Robbery convictions have been upheld against contentions that janitors and night watchmen did not have a sufficient possessory interest in their employer’s personal property to qualify as victims.’ [Citations.]” (*Id.* at p. 751.) In *People v. Estes, supra*, 147 Cal.App.3d 23, the victim was a security guard employed by Sears to prevent thefts of merchandise. (*Id.* at p. 26-27.) The security guard, “[a]s the agent of the owner and a person directly responsible for the security of the items, . . . was in constructive possession of the merchandise to the same degree as a salesperson. [Citation.]” (*Id.* at p. 27.)

Where a thief takes merchandise from a store and a security guard employed by a neighboring store tries to stop him from carrying away the stolen property, the security guard cannot be a robbery victim because the security guard has no special obligation to protect that property and he does not constructively possess that property based on a special relationship with the property’s owner. (*Sykes v. Superior Court* (1994) 30 Cal.App.4th 479, 484.) But even if a security guard is not a direct employee of a store,

the security guard may be a victim of robbery if he or she had “a special relationship with the store and had the duty and authority to retrieve its stolen property.” (*People v. Bradford* (2010) 187 Cal.App.4th 1345, 1347-1348 (*Bradford*)). In *Bradford*, security guards were employees of a security company, which was contractually obligated to provide security services to businesses in a shopping mall. (*Id.* at p. 1350.) Consequently, they had a special relationship with the retail store from which merchandise was taken, they “could be ‘expected to resist the taking’ of property from [the store],” and they could be regarded as being in constructive possession of the stolen property. (*Ibid.*)

“A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime. (*People v. Beeman* [(1984)] 35 Cal.3d 547, 561.)” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) “[T]he commission of a robbery for purposes of determining aider and abettor liability continues until all acts constituting the robbery have ceased. The asportation, the final element of the offense of robbery, continues so long as the stolen property is being carried away to a place of temporary safety. Accordingly, in order to be held liable as an aider and abettor, the requisite intent to aid and abet must be formed *before or during such carrying away of the loot to a place of temporary safety.*” (*Id.* at p. 1161.) To be liable as an aider and abettor of robbery, the person “must form the intent to facilitate or encourage commission of the robbery *prior to or during the carrying away of the loot to a place of temporary safety.*” (*Id.* at p. 1165, fn. omitted.)

In this case, it could be reasonably inferred from the conduct of R.O. and his companion that they came into Save Mart with the shared purpose and intent to shoplift. They entered the store together with a cloth bag, they roamed the aisles including the liquor and meat areas where shoplifting was prone to occur, they passed the bag between

them a couple of times and spoke to each other, R.O.'s companion placed packages of meat in the bag while R.O. was present. R.O. and his companion then split up and, consequently, both of them could not be watched at the same time by Brown. R.O.'s companion exited the store without paying and seconds later R.O. separately left the store and headed away from his companion. It is inferable from the evidence that R.O. knew that his companion had committed theft, he was carrying away the stolen property, and he was struggling with Brown in an attempt to escape with the stolen property.

On appeal, R.O. argues that he could have reasonably thought that Brown was an innocent bystander acting as a good citizen, rather than someone with a special relationship to Save Mart, because Brown was in civilian clothing and Brown did not announce himself as security guard or exhibit his badge when R.O. ran over to him. R.O. concedes that there is sufficient evidence to establish that he aided and abetted petty theft. R.O. does not contend that Brown lacked sufficient possessory interest in Save Mart's property to qualify as a victim of robbery or that his companion was unaware that Brown was a loss prevention officer when they were struggling.

“Direct evidence of the mental state of the accused is rarely available except through his or her testimony.” (*People v. Beeman, supra*, 35 Cal.3d at p. 558.) “Mental state and intent are rarely susceptible of direct proof and must therefore be proven circumstantially. [Citations.]” (*People v. Thomas* (2011) 52 Cal.4th 336, 355.)

Under the circumstances, the court as the trier of fact could reasonably infer from the evidence that R.O. was aware that Brown was a loss prevention officer even though Brown was in plainclothes. It was inferable from the evidence that that R.O. knew that the bag contained stolen meat because R.O. was present when his companion put the meat in the bag and his companion headed straight for the exit from the meat department without paying and R.O. exited only seconds after his companion. Given R.O.'s proximity, it was inferable that R.O. was within earshot when Brown announced that he was a loss prevention officer and that R.O. heard Brown. Since Brown saw, out of the

corner of his eye, R.O. exit Save Mart, walk away from the store, and then run over when his friend and Brown began to struggle, it was also inferable that R.O. was aware that Brown was attempting to recover the stolen property and detain his companion and that R.O. ran back to help his companion to get away with the stolen property. Based on the evidence and the inferences there from, it was inferable that R.O. intended to assist, and did assist, his companion in committing robbery by threatening violence and brandishing a knife against Brown.

We reject R.O.'s insufficiency of the evidence argument.

*B. Alleged Ineffective Assistance of Counsel*

R.O. argues that his defense counsel provided ineffective assistance by failing to argue that R.O. lacked the mental state necessary for aiding and abetting robbery because he reasonably believed that Brown was only a bystander who lacked the requisite possessory interest in the stolen property and the defense of another applied under such circumstances. R.O. maintains that his counsel should have stressed the weakness of the evidence showing that he knew Brown was a loss prevention officer. R.O. asserts that his counsel should have argued that he “could have reasonably perceived that Brown was an innocent bystander, rather than a security guard, who was trying to take the bag away from [his] friend . . . when [he] intervened in the struggle for the bag.” R.O. contends that there exists a reasonable probability that the court would not have found that he aided and abetted robbery had his defense counsel argued that, “even if [R.O.] knew Brown was trying to recover the stolen property, [R.O.] did not know, or have a strong reason to know, that Brown was a security guard . . . .”

To prove ineffective assistance of counsel, R.O. must show that his counsel's performance was deficient and caused prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*)). He must show that his “counsel's representation fell below an objective standard of reasonableness,” as measured against “prevailing professional norms.” (*Id.* at p. 688.) Our scrutiny of his counsel's performance is “highly deferential.”

(*Id.* at p. 689.) We evaluate his counsel’s performance from his “counsel’s perspective at the time” without the “the distorting effects of hindsight,” and we “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . . .” (*Ibid.*)

The prejudice prong requires R.O. to establish that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (*Strickland, supra*, 466 U.S. at p. 694.) “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” (*Ibid.*) “In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. [Citations.] Instead, *Strickland* asks whether it is ‘reasonably likely’ the result would have been different. [Citation.] This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’ [Citation.] The likelihood of a different result must be substantial, not just conceivable. [Citation.]” (*Harrington v. Richter* (2011) 562 U.S. 86, 111-112.)

Although R.O.’s counsel did not couch his argument in exactly the terms R.O. now proposes, his counsel made the argument that R.O. did not know that Brown was a loss prevention officer. R.O.’s counsel contended that there was no evidence that R.O. participated in the theft, that R.O. knew his companion was stealing from Save Mart, or that Brown, who was dressed in civilian clothing, was a loss prevention officer. R.O.’s counsel asserted that Brown grabbed the bag held by R.O.’s companion from behind as if Brown were a thief, and that R.O. was merely defending his friend.

“In the usual case, where counsel’s trial tactics or strategic reasons for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel’s acts or omissions.

[Citations.]” (*People v. Weaver* (2001) 26 Cal.4th 876, 926 (*Weaver*)). “On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding. [Citations.]” (*People v. Mai* (2013) 57 Cal.4th 986, 1009.)

Under the foregoing standard, R.O. has not shown that his counsel’s argument constituted deficient performance. “ ‘[W]e accord great deference to counsel’s tactical decisions’ (*People v. Frye* (1998) 18 Cal.4th 894, 979), and . . . ‘courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight’ (*People v. Scott* (1997) 15 Cal.4th 1188, 1212).” (*Weaver, supra*, 26 Cal.4th at pp. 925-926.)

Moreover, the argument that R.O. now proposes would have been problematic for a number of reasons. Aside from Brown’s dress, there was no evidentiary basis for arguing that R.O. believed that Brown was a good citizen as opposed to a plainclothes loss prevention officer. The proposed argument would have in effect conceded that R.O. realized that his companion had committed theft. That implicit concession would have been a double-edged sword in that the court might well have found that R.O.’s knowledge that his companion had shoplifted undercut any claim that R.O. did not comprehend that Brown was a loss prevention officer. In addition, the “innocent bystander” argument would not have provided a complete justification for R.O.’s conduct and would have made it likely that the court, at the minimum, would have found R.O. to be an aider and abettor of theft and adjudged a ward of the court. “ ‘Theft is a lesser included offense of robbery, which includes the additional element of force or fear.’ (*People v. Melton* (1988) 44 Cal.3d 713, 746.)” (*People v. Bradford* (1997) 14 Cal.4th

1005, 1055.) The record does not establish that R.O.'s counsel had no rational tactical purpose for making the argument that he did.

R.O. asserts that he had a right to defend his friend if he “reasonably thought Brown was an innocent bystander [who] had no constructive possession [of] the property” and that his counsel “failed to argue the significance of [his] reasonable perception as to the identity of Brown.” But R.O. cites no legal authority even suggesting that a person may threaten violence in defense of a friend, whom the person knows has just shoplifted and possesses the stolen property, when the person believes that a private citizen is attempting to stop the thief using reasonable force.<sup>3</sup>

In any case, R.O. has not shown the prejudice necessary to establish an ineffective assistance of counsel claim. R.O.'s counsel clearly argued that R.O. was acting in defense of his friend and that R.O. did not know that Brown was a loss prevention officer. The juvenile court impliedly found that, when R.O. threatened to use violence against Brown, R.O. was aware that his companion had taken food from the Save Mart and that Brown was a plainclothes loss prevention officer attempting to stop his companion from carrying away the stolen goods. There is not a reasonable probability that the result of the proceeding would have been more favorable to R.O. if his counsel

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<sup>3</sup> A private person has the authority to arrest someone for “a public offense committed or attempted in his presence.” (Pen. Code, § 837.) “An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.” (Pen. Code, § 835.) A private person is entitled to use reasonable force to effect an arrest, and the person being arrested has “no right to ‘defend’ against a valid arrest. [Citation.]” (*People v. Fosselman* (1983) 33 Cal.3d 572, 579.) A person acts in lawful defense of another only if the person reasonably believes that another person is in imminent danger of suffering bodily injury or is being touched unlawfully, the person reasonably believes that the immediate use of force is necessary to defend against that danger, and the person uses no more force than is reasonably necessary to defend against that danger. (See CALCRIM No. 3470.)

had argued that Brown appeared to R.O. to be an “innocent bystander” rather than a “thief.”

R.O. also asserts that his counsel acted incompetently by failing “to adequately explain how defense of others [was] an affirmative defense in this case.” We presume that the court was familiar with and understood the law concerning “defense of another.” (See *People v. Thomas* (2011) 52 Cal.4th 336, 361 [“In the absence of evidence to the contrary, we presume that the court ‘knows and applies the correct statutory and case law.’ [Citations.]”]; see also Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”].) The record does not establish any prejudice resulting from the failure of R.O.’s counsel to give a full explication of the law regarding defense of another.

R.O. fails to establish either the deficient performance prong or the prejudice prong of an ineffective assistance of counsel claim.

#### DISPOSITION

The December 19, 2014 disposition orders are affirmed.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.