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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H042615
(Monterey County
Super. Ct. No. J48435)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.C.,

Defendant and Appellant.

D.C. (the minor) appeals an order of the juvenile court in which he was found to have committed second degree robbery (Pen. Code, § 211)¹ with personal use of a firearm (§ 12022.5, subd. (a)). The minor was declared a ward of the court and placed in the custody of the Monterey County Probation Youth Center for 436 days, with credit for time served of 71 days. The juvenile court imposed various probation terms and conditions.

On appeal, the minor challenges two of the probation conditions, specifically a curfew condition and a stay away condition, arguing that both conditions are overbroad and that the stay away condition is vague. The minor also argues there is not substantial evidence to support the court's finding that the allegations of the petition were true.

¹ Unspecified statutory references are to the Penal Code.

The People concede the minor's curfew condition should be modified to permit him to leave his home in the company of his mother or legal guardian. We also find that the stay away condition must be modified to correct certain grammatical errors. We disagree with the minor's remaining arguments and will affirm the dispositional order, as modified.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Welfare and Institutions Code section 602 petition

On April 16, 2015, the People filed a petition under Welfare and Institutions Code section 602, subdivision (a), alleging that the minor committed second degree robbery (§ 211). The petition further alleged that the minor personally used a firearm in the commission of the offense (§ 12022.5, subd. (a)) and that the offense was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)).

B. Jurisdictional hearing and disposition

On the afternoon of April 7, 2015,² the two victims, brothers aged 15 (victim 1) and 12 (victim 2), were at a park with some friends. The two boys had ridden their bicycles to the park and left the bicycles about 15 to 20 feet away from where they were playing. As they sat in the park, the minor suddenly ran up, picked up victim 2's bicycle and rode away. Victim 1 ran after him, although the minor was already about 30 yards away. When the minor was about 50 yards away, he pulled out a black gun and waved it in the air, turning his head back towards victim 1. Victim 1 may have run another 10 yards, but then stopped as the minor was "already pretty far" and victim 1 did not know what the minor "was going to do."

² Although both victims testified at the jurisdictional hearing that the incident occurred on April 10, 2015, the incident was reported on April 7, 2015, and investigated by police on April 10, 2015.

Sometime after the minor stole victim 2's bike, victim 1 saw the minor near his house and asked him where the bike was. The minor said he had sold it. Victim 1 asked him for the money he got from selling the bike, but the minor said he had spent it already. The minor walked away towards his house, and victim 1 walked home.

Victim 1 said he "[k]ind of" knew the minor, but was not friends with him. About three months before the minor stole victim 2's bike, the minor showed victim 1 a gun he was carrying. The minor was "acting dumb with it and pointed it at" victim 1. Victim 1 thought the minor was "trying to joke around," so he punched him. Nothing more happened and the minor and victim 1 went "[their] separate ways."

Sometime after this incident, the minor again showed victim 1 a gun and victim 1 thought the minor was trying to show off. The minor told victim 1 the gun was loaded and that it was for "licks" which victim 1 understood to mean robberies.

Victim 2 testified that when he and his brother got to the park, he left his bicycle about 12 feet away from him. As he sat there with his brother, someone ran up and rode off on his bike. The person was wearing a gray hooded jacket with the hood up, but as he rode away, the hood "flew off," and victim 2 could see some of the side of his face.

Afterward, victim 2 spoke with police officers who showed him six photos to identify the person who took his bicycle. Victim 2 could not really recognize anyone by their face, but because the person who took his bike was "really skinny," he picked the one photograph showing a skinny person, which victim 2 identified as the minor. Victim 2 had seen the minor at the park on prior occasions but he did not know him.

Victim 2 was afraid when his bicycle was taken because the person who had taken it was bigger than he was. Victim 2 chased after the person a short distance but not very far. Victim 1 was about 100 yards ahead of him at the time, and at some point victim 2 lost sight of both his brother and his bicycle.

Salinas Police Officer David Pritt put together a photo lineup of suspects and showed it to victim 2. Pritt used a photo of the minor from his high school yearbook.

When he showed the lineup to victim 2, victim 2 identified the minor as the person who had taken his bicycle.

Pritt also spoke to victim 1, who told him he was afraid of the minor when he displayed the gun the day of the robbery. Victim 1 also said he was afraid of the minor because he knew the minor associated with gang members.

Pritt interviewed the minor at the police station. The minor first said he was skateboarding with a friend in town, but later said he was with two of his other friends at the park. One of his two friends jumped on someone's bike and rode off. Pritt asked for his friend's name, but the minor said he did not know it. After his unidentified friend rode off on the bike, the minor went home and one of the victims followed, yelling at him to get the bike back. Pritt asked the minor if his "homies" were to give him a gun and tell him to rob someone, would he do as they asked? The minor said he would.

Following counsels' arguments, the juvenile court found the allegations had been established beyond a reasonable doubt. The juvenile court stated, as follows: "[T]he elements of the robbery were made . . . in that when [victim 1] is chasing the minor, who's fleeing with the bicycle. He clearly said . . . that . . . one of the reasons that he stopped was when the minor . . . waived [*sic*] what [victim 1] immediately thought was the gun. [¶] So it seems to me that that is clear evidence that what he was worried about was being hurt by the weapon in some fashion. Which to me is circumstantial evidence that fear existed." The juvenile court continued, "I believe beyond a reasonable doubt that all the elements of the robbery were met. That there was fear, that the property was taken from his immediate presence. He did have custody or control over it. And that a weapon, the gun, was, in fact, used during the commission of that crime." Accordingly, the juvenile court sustained the petition on the charge of

second degree robbery (§ 211) as well as the personal use enhancement (§ 12022.5, subd. (a)).³

On June 24, 2015, the juvenile court declared the minor a ward of the court, removed him from his mother's home and placed him in the Monterey County Probation Youth Center Program for 436 days, with credit for time served of 71 days. The juvenile court imposed 40 terms and conditions, including the following: "13. You are not to be out of your home between 8:00 p.m. and 6:00 a.m. without approval of the Probation Officer. [¶] . . . [¶] 20. You are not to have direct or indirect contact with Victim 1 or Victim 2 or anyone known to you to be a member of the victim's [sic] family. Stay at least 100 yards away from the victim, victim's residence, vehicle, school, and place of employment."

II. DISCUSSION

A. Sufficiency of the evidence

The minor argues there was insufficient evidence presented to show he committed robbery, specifically that he took the bicycle by force or fear while it was in the victim's immediate presence. According to the minor, by the time he supposedly displayed the gun, he was already 50 yards away from victim 1, who was on foot, and thus would be unable to catch up to him and recover the bike. We disagree.

1. Applicable legal standards

a. Standard of review

“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

³ Prior to the commencement of the jurisdictional hearing, the juvenile court dismissed the gang enhancement (§ 186.22, subd. (b)(1)(C)) at the People's request.

doubt.’ ” (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077, quoting *People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) “ ‘ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ ” (*People v. Bean* (1988) 46 Cal.3d 919, 933, quoting *People v. Hillery* (1965) 62 Cal.2d 692, 702.)

b. Elements of robbery

“In California, robbery is defined as ‘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.) 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. Bacon* (2010) 50 Cal.4th 1082, 1117.) The requisite forcible act may be an act committed after the initial taking if it is motivated by the intent to retain the property. (*People v. Gomez* (2008) 43 Cal.4th 249, 265 (*Gomez*).) The use of force or fear to escape or otherwise retain even temporary possession of the property is sufficient for robbery. (*People v. McKinnon* (2011) 52 Cal.4th 610, 686; *Gomez, supra*, at p. 257.)

As used in the definition of robbery, “ ‘immediate presence’ is ‘an area over which the victim, at the time force or fear was employed, could be said to exercise some physical control’ over his property. [Citation.] ‘Under this definition, property may be found to be in the victim’s immediate presence “even though it is located in another room of the house, or in another building on [the] premises.” ’ ” (*Gomez, supra*, 43 Cal.4th at p. 257.)

2. Analysis

We are unpersuaded by the minor’s attempts to distinguish this case from *Gomez*. In *Gomez*, a restaurant manager arrived at his restaurant and noticed that someone had broken in and was still on the premises, so he returned to his truck and called 911.

(*Gomez, supra*, 43 Cal.4th at p. 253.) As he was on the phone with the police dispatcher, the manager saw the defendant leave through a side door and walk away. The manager followed in his truck, while remaining on the line with the dispatcher, to help police find the defendant. As the manager followed at a distance of 100 to 150 feet, the defendant turned and fired two shots at him. The manager fled in his truck, but the defendant was arrested a short time later. (*Ibid.*) The California Supreme Court found there was sufficient evidence of a robbery based on these facts, because the manager was prevented from catching up to the defendant only because of the defendant's conduct in shooting at him. (*Id.* at p. 265.) Quoting from the lower court's decision, the Supreme Court continued, " 'It would certainly be anomalous to say a robbery occurs if you allow the victim to catch up with you and then hit him, but not if you keep him away by shooting at him.' " (*Ibid.*)

It is true that in this case, unlike in *Gomez*, it was the minor who had the advantage in terms of top speed, and he could conceivably have easily outdistanced victim 1 on the stolen bicycle. Nevertheless, the fact remains that the minor chose not to rely on this advantage and simply ride away. Instead, he pulled out his gun, waved it in the air and turned his head to look at victim 1, sending a direct message that continued pursuit would be hazardous to victim 1's health. Because this exhibition took place when the distance between the two was about 50 yards, the minor claims victim 1 could never have overtaken him. What *might* have happened had victim 1 continued pursuing the minor is anyone's guess. The minor could have tired, lost his balance or hit an obstacle, allowing victim 1 to catch up. It was the minor's display of the weapon that forestalled any further pursuit and guaranteed his escape. Under these circumstances, there was sufficient evidence to support the juvenile court's finding that a robbery took place.

B. Probation conditions

1. Legal standards

A juvenile court is empowered to impose upon a ward placed on probation “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) “The juvenile court has wide discretion to select appropriate conditions and may impose ‘any reasonable condition that is ‘fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) This discretion is in fact broader with respect to the imposition of probation conditions for juveniles than it is for adult offenders. (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1152; see also *In re Sheena K.*, *supra*, at p. 889 [probation condition that may be unconstitutional for adult offender may be permissible for minor under juvenile court’s supervision].)

Both adult offenders and juveniles may challenge a probation condition on the grounds that it is unconstitutionally vague or overly broad. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 887.) As we have explained: “Although the two objections are often mentioned in the same breath, they are conceptually quite distinct. A restriction is unconstitutionally vague if it is not ‘sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.’ ” [Citations.] A restriction failing this test does not give adequate notice—‘fair warning’—of the conduct proscribed. [Citations.] A restriction is unconstitutionally overbroad, on the other hand, if it (1) ‘impinge[s] on constitutional rights,’ and (2) is not ‘tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.’ [Citations.] The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some

infringement.” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 910.)

2. *Curfew condition*

The minor challenges probation condition No. 13 concerning curfew. The condition reads: “You are not to be out of your home between 8:00 p.m. and 6:00 a.m. without approval of the Probation Officer.” The minor argues that the condition should be modified to include an exception in the event the minor is accompanied by a parent or legal guardian.

The People concede there is no evidence in the record to indicate that the juvenile court considered the minor’s mother to be unsuitable in any way or unfit to accompany him outside the home during the curfew hours without prior approval. The People do object to allowing the minor to be outside his home if accompanied by a “parent,” however, since his father’s whereabouts are apparently unknown and mother had tried (unsuccessfully) to serve a restraining order on the minor’s father. We agree the concession is appropriate and will modify the probation condition as set forth in the disposition below.

3. *Stay away condition*

The minor also challenges probation condition No. 20, which reads: “You are not to have direct or indirect contact with Victim 1 or Victim 2 or anyone known to you to be a member of the victim’s [*sic*] family. Stay at least 100 yards away from the victim, victim’s residence, vehicle, school, and place of employment.” The minor contends that this condition is so vague and overbroad it violates due process.⁴ Specifically, he claims he may not be able to consistently recognize the victims, both minors, as they will likely

⁴ We are aware that the California Supreme Court is currently reviewing the issue: “Must no-contact probation conditions be modified to explicitly include a knowledge requirement?” (See *In re A. S.* (2014) 227 Cal.App.4th 400, review granted Sept. 24, 2014, S220280.)

change in appearance as they age. He will not necessarily know where they are living at any particular time, what kind of vehicle they may be driving or riding in or where they are attending school.

Vague probation conditions neither provide “ ‘adequate notice to potential offenders’ ” nor prevent “ ‘arbitrary law enforcement.’ ” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) In *People v. Rodriguez* (2013) 222 Cal.App.4th 578 (*Rodriguez*), we found a probation condition requiring a probationer to stay away from “the victim” fatally ambiguous when another probation condition identified two separate victims of the defendant’s criminal conduct. (*Id.* at pp. 594-595.) It was not clear which victim the court had in mind. We also noted that the condition did “not sufficiently identify the victims, their addresses, or vehicles they own or operate” and there was nothing in the circumstances of the crime indicating that the defendant knew or reasonably should know who owned the car he damaged or where she lived and worked. (*Id.* at p. 595.)

This is not a case like *Rodriguez* where a probation condition referred to “the victim” when there were multiple victims. It is clear from the complaint and the probation report that there were two people who could be described as victims of the minor’s offenses. The minor does not argue otherwise; rather, he argues that the victims’ appearances will likely change over the course of time. However, “[i]t is well established that a probation violation must be willful to justify revocation of probation.” (*Rodriguez*, *supra*, 222 Cal.App.4th at p. 594.) The order requires only that the minor “remove himself . . . when he knows or learns of a victim’s presence.” (*Ibid.*)

While we reject the minor’s vagueness and overbreadth arguments in relation to this probation condition, we do note that it is grammatically incorrect. The first sentence refers to victim 1 and victim 2, but then uses the singular possessive “victim’s,” rather than the plural possessive “victims’ ” in referencing the victims’ family. The second sentence also again incorrectly uses the singular “victim,” although there are two victims

in this case. We will accordingly modify the condition as set forth in the disposition below.

III. DISPOSITION

The jurisdictional order is affirmed. Two of the probation conditions set forth in the dispositional order are modified as follows: “13. You are not to be out of your home between 8:00 p.m. and 6:00 a.m., unless accompanied by your mother or legal guardian, without approval of the Probation Officer.” “20. You are not to have direct or indirect contact with Victim 1 or Victim 2 or anyone known to you to be a member of the victims’ family. Stay at least 100 yards away from the victims, victims’ residence, vehicle(s), school(s), and place(s) of employment.” As so modified, the dispositional order is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Grover, J.