Filed 10/25/12 In re R.C. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.C., a Person Coming Under the Juvenile Court Law.	B237652 (Los Angeles County Super. Ct. No. GJ29008)
THE PEOPLE, Plaintiff and Respondent, v. R.C., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed as modified and remanded.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Minor R.C. (minor) appeals from the juvenile court's judgment of November 2, 2011, declaring him a ward of the court under Welfare and Institutions Code section 602, after sustaining allegations he committed the crimes of petty theft from Bria H. and grand theft from the person of Araceli V. (Pen. Code, §§ 484, 487, subd. (c).)[1] The court ordered minor home on probation and fixed his maximum period of physical confinement at three years two months. Minor contends: substantial evidence does not support the finding he aided and abetted in taking the cell phone of Araceli; the juvenile court erred in failing to determine whether his offense of grand theft person was a felony or misdemeanor; and it was an abuse of discretion to fix a maximum period of confinement. We remand for a determination whether the offense of grand theft person was a felony or misdemeanor, modify the judgment to strike the maximum period of confinement, and affirm the judgment in all other respects.

FACTS[2]

Prosecution Case

On August 20, 2011, minor and his brother followed Araceli and her friend Gabriela for several blocks as the girls were walking in Old Town Pasadena. The boys were on scooters. The girls did not know them. The girls stepped to one side to allow the boys to pass them, but the boys held back behind the girls. The brother then took the iPhone Araceli was holding, and he and minor rode away together on their scooters. Araceli followed them and asked for her phone back. Laughing, minor and his brother tossed the phone back and forth over Araceli's head, while Araceli was in the middle trying to intercept it. The brother rode away with the phone in one direction and minor

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1 All statutory references are to the Penal Code, unless otherwise indicated.

2 We need not state the facts of the sustained allegation of theft of Bria H., as minor raises no contention concerning it.

rode away in another direction. Following the brother, Araceli continued to ask for her phone back. The brother told her he did not have the phone and stated, "'[but] I have this,'" lifting his shirt to reveal the handle of a gun in his waistband. The police found a gun that appeared to be a BB gun in the bedroom of minor and his brother.

Minor's Case

Minor presented no witnesses.

DISCUSSION

Substantial Evidence Minor Committed Grand Theft Person

Minor contends substantial evidence does not support the finding he aided and abetted[3] the taking of the phone and, therefore, did not commit grand theft person (§ 487, subd. (c)). We disagree with the contention.

"Our review of the [minor's] substantial evidence claim is governed by the same standard applicable to adult criminal cases. [Citation.] '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.]' [Citation.] '"[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

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[3] "All persons concerned in the commission in of a crime, . . . and whether they directly commit the act constituting the offense, or aid and abet in its commission, . . . are principals in any crime so committed." (§ 31.)

warrant reversal of the judgment. [Citation.]' [Citation.]" **(***In re V.V.* (2011) 51 Cal.4th 1020, 1026.)

Under section 487, subdivision (c), the crime of grand theft is committed "[w]hen the property is taken from the person of another." "[P]roof of aider and abettor liability requires proof[, inter alia, of] knowledge of the direct perpetrator's unlawful intent and an intent to assist in achieving those unlawful ends, and . . . conduct by the aider and abettor that in fact assists the achievement of the crime. [Citation.]" (*People v. Perez* (2005) 35 Cal.4th 1219, 1225.)

The juvenile court found minor committed grand theft person (§ 487, subd. (c)) as an accomplice. The court stated: "[Minor was an] accomplice to a grand theft person since [the phone] was taken from the person of the victim Araceli[,] and [minor], obviously, was involved in that close enough to see his brother take it, knowing that his brother had it, close enough . . . to the victim to know that it's time to run away, and so that's evidence of his guilt and being an accomplice to the taking."

We disagree with minor's contention the facts are insufficient to establish he intended to assist or actually assisted his brother in taking the phone. It is reasonable to infer from the following facts minor knew his brother would commit a theft, intended to assist him, and did assist him. Minor knew the girls he and his brother were following for several blocks were strangers whom they had no legitimate reason to follow. Neither boy flirted with the girls. When the girls gave them room to pass, minor stayed with his brother as his brother held back, which placed the brother in a position to snatch Araceli's phone from behind. When the brother took the phone, minor was close enough to hear Araceli demand its return and to see that his brother did not return it. When the brother rode away with the phone, minor went with him and helped him keep the phone away from Araceli, even though she made it clear she wanted the phone back and was not playing a game with them. Each time the brother tossed the phone to minor, minor tossed it back instead of returning it to Araceli. Minor knew his brother had the phone when the brother fled the scene, because minor had tossed it to him. When his brother fled, minor fled in another direction, which indicates consciousness of guilt.

Minor argues there was evidence, and inferences from evidence, that minor could have thought nothing more was going on than game playing or flirting. The argument is a request we reweigh the evidence. As required, we do not reweigh the evidence, but we view the evidence in the light most favorable to the judgment, drawing all inferences in support of the findings. (*In re V.V.*, *supra*, 51 Cal.4th at p. 1026.) Reviewing the record in the light most favorable to the judgment, there is ample evidence to support the finding minor committed grand theft person.

Failure to Declare Whether the Offense is a Misdemeanor or Felony

We agree with minor's contention the juvenile court erred in failing to determine whether his offense of grand theft person was a felony or misdemeanor. Section 489, subdivision (b), provides in the alternative for punishment of grand theft person as either a felony or misdemeanor. Welfare and Institutions Code section 702 provides in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." "[F]ailure to make the mandatory express declaration requires remand of [the] matter for strict compliance with Welfare and Institutions Code section 702." *(In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) In accordance with Welfare and Institutions Code section 702, as interpreted in *Manzy W.*, the cause must be remanded to allow the juvenile court to declare if the offense is a felony or misdemeanor.

The Court Was Not Authorized to Fix the Maximum Period of Physical Confinement

Minor contends it was improper for the disposition order to fix the maximum period of confinement, because he was not removed from parental custody. We agree. Section 726 provides in pertinent part as follows: "(c) If the minor is removed from the

physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." The statute has been interpreted as meaning the juvenile court lacks the authority to fix a maximum term of confinement when a minor is placed home on probation. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) As minor was placed home on probation, the order fixing the maximum period of confinement was unauthorized and must be stricken.

DISPOSITION

The order setting the maximum period of physical confinement is stricken, and the cause is remanded to the juvenile court for an express declaration as to whether the violation of section 487, subdivision (c) is a felony or misdemeanor. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.