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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B236527  
(Los Angeles County  
Super. Ct. No. NJ21849)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Heidi W. Shirley, Juvenile Court Referee. Affirmed.

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

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

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D.L., a minor, appeals from the order sustaining a Welfare and Institutions Code section 602<sup>1</sup> petition against her by reason of her having committed petty theft (Pen. Code, § 484, subd. (a)), a misdemeanor. The juvenile court continued appellant on home probation and ordered her to pay a \$50 fine. After acknowledging that appellant paid the fine, the juvenile court terminated jurisdiction. Appellant contends that there is insufficient evidence to support the juvenile court's finding that she committed petty theft.

We affirm.

## **FACTUAL BACKGROUND**

### ***Prosecution's evidence***

On December 20, 2009, near 10:00 a.m., appellant was shopping at Kohl's Department store in Cerritos, California. She was in the Junior's department, a "high-theft" area of the store. Loss Prevention Officer Renee Perez, watching on closed circuit television, observed appellant select some clothing and proceed to the dressing room. Officer Perez had a store employee make certain the dressing room was empty when appellant went inside. When appellant came out of the dressing room, the employee checked inside and found no clothes.

Officer Perez never lost sight of appellant when she was in the store, except when appellant was in the dressing room. She watched appellant as she left the store, without attempting to stop or pay for any merchandise. Officer Perez went out on the department store floor and saw some empty tags and hangers. She stopped appellant outside the store and asked her to come inside. Appellant complied. Officer Perez recovered one man's shirt and a few "tops" worth \$182. At trial, Officer Perez was asked, "When you recovered the items from the minor after she had exited the store, were there still shopping tags on all of the items?" Officer Perez responded, "I don't recall."

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

### ***The defense's evidence***

Appellant testified in her own defense. She admitted selecting several items in the store, but denied removing them from the store. She testified that she “didn’t get to leave because [she] got stopped right before [she] exited the store.” When asked, “What, if anything, did you do with those items before you were stopped,” appellant responded, “Well, I knew I was being followed; so I just put them under the rack.”

### **DISCUSSION**

Appellant’s sole contention on appeal is that there is insufficient evidence to support the juvenile court’s finding that she committed petty theft. She argues that there was no evidence that she took possession of the merchandise with the intent to permanently deprive the store of its property because there was no evidence that (1) the stolen items were recovered from appellant after she left the store, (2) who recovered the items, or (3) where the removed tags were found. This contention lacks merit.

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) This standard applies whether direct or circumstantial evidence is involved. (*People v. Catlin* (2001) 26 Cal.4th 81, 139.) The same principles apply with respect to juvenile proceedings under section 602. (*In re Jesse L.* (1990) 221 Cal.App.3d 161, 165.)

The elements of theft by larceny are: (1) taking possession of personal property owned by someone else; (2) without the owner’s consent; (3) with the intent to deprive the owner of it permanently; and (4) asportation of the property, even a small distance, and retention of the property for any period of time, however brief. (*People v. Catley* (2007) 148 Cal.App.4th 500, 505.) Asportation of the goods requires only that they ““were severed from the possession or custody of the owner, and in the possession of the

thief, though it be but for a moment.””” (*People v. Khoury* (1980) 108 Cal.App.3d Supp. 1, 4.) In *People v. Tijerina* (1969) 1 Cal.3d 41, a unanimous California Supreme Court stated: “Defendant maintains that the theft was not complete, on the ground that he did not succeed in removing the coat from the store. . . . [D]efendant reduced the cashmere coat to his possession. His subsequent failure to remove the coat from the store did not render the theft incomplete.” (*Id.* at p. 47.)

While this is a close case as a result of some of the questions that were not asked, the evidence is nonetheless sufficient to establish that appellant had committed petty theft. Appellant admitted possessing store merchandise as she walked through the store toward the exit. In response to the question, “What, if anything, did you do with those items before you were stopped?,” she responded, “Well, I knew I was being followed; so I just put them under the rack.” Not only does this testimony establish possession, it also reflects a consciousness of guilt and an intent to steal the merchandise. Why would she put the merchandise under a rack when being followed, unless appellant harbored a nefarious intent to steal?

Appellant argues that Officer Perez was never asked if she recovered the stolen merchandise from appellant and if appellant had the merchandise when she was stopped outside the store. While those questions would have made the record clearer, there is still substantial circumstantial evidence that appellant left the store with the stolen items. Officer Perez did not stop appellant until she had left the store. The only reason for delaying a stop until then would be to establish appellant’s intent to permanently deprive Kohls of its property by leaving the store with it unpaid. Officer Perez testified that she saw appellant leave the store without paying for the items she took. This impliedly indicated that appellant had the items as she walked past the registers toward the exit doors. Further, when Officer Perez was asked, “When you recovered the items from the minor after she had exited the store, were there still shopping tags on all of the items?,” she did not say that she did not recover the items after appellant exited the store, the natural response to that question if the merchandise was not recovered then. Instead, she said that she simply did not recall whether there were shopping tags on the items. Officer

Perez specifically described that she recovered a man’s shirt and some tops of the value of \$182. While she did not specifically state that these items were recovered from appellant, that inference is implicit in context.

In any event, it was not necessary that appellant carry the items outside the store to find her guilty of petty theft. (*People v. Tijerina, supra*, 1 Cal.3d 41 at p. 47 [“[D]efendant reduced the cashmere coat to his possession. His subsequent failure to remove the coat from the store did not render the theft incomplete”]; see also *People v. Shannon* (1998) 66 Cal.App.4th 649, 654.) Her conduct reflected that she ““severed [the merchandise] from the possession or custody of the owner, and [it was] in the possession of the thief, though it be but for a moment.”” (*People v. Khoury, supra*, 108 Cal.App.3d Supp. at p. 4.) Appellant took clothing from the racks, went to the dressing room, did not leave the clothing there when she left and proceeded to the exit. When followed, by her own version of events, she placed the items under a rack, evidence of her consciousness of guilt and intent.

We find these facts sufficient to support the juvenile court’s finding that appellant committed petty theft.

### **DISPOSITION**

The order appealed from is affirmed.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ