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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Crim. No. B277876
(Super. Ct. No. FJ53285)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.P.,

Defendant and Appellant.

C.P., a minor, appeals orders of the juvenile court sustaining a Welfare and Institutions Code section 602 petition and finding that he committed carjacking (Pen. Code, § 215, subd. (a)¹) and battery with serious bodily injury (§ 243, subd. (d)). We conclude, among other things, that 1) substantial evidence

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

supports the judgment, but 2) the juvenile court erred in calculating the maximum period of physical confinement. (Welf. & Inst. Code, § 726, subd. (d)(1).) We modify that period. In all other respects, we affirm.

FACTS

In the early morning hours of August 13, 2016, Alfredo Mendez was in his parked car. Three young men approached. One of them opened the driver's side door of Mendez's car and asked, "What are you doing here?" Mendez responded, "I live here." The man asked, "What do you have in your pocket?" Mendez said, "I don't have anything."

The man punched Mendez in the face. The three men then physically assaulted Mendez. One of them asked, "Where are your car keys?" Mendez said, "They're in the ignition." Mendez got out of the car.

Mendez testified that, in addition to the three men who initially attacked him, there were two or three others who surrounded him. C.P. was in this second group. C.P. and the other four or five men attacked him. Mendez said, "[T]hey all started ganging up on me. . . . [E]verybody started beating me."

Someone started Mendez's car's ignition. The young men drove Mendez's car away and then abandoned it. The police quickly located the vehicle, contacted Mendez and took him to the area where the car was discovered. At that location, Mendez saw C.P. hiding "underneath" a truck. The police pulled C.P. out. Mendez identified him and told the police that "that's one of the motherfuckers."

C.P. testified that he hid underneath the truck because he "was afraid of getting jumped." He heard the "screech" of a vehicle. He said, "[A] car pulls up fast, stops in front of me. . . .

[T]hat's when I took 2 steps towards the truck." C.P. said he saw "all four doors open"; "[he] immediately threw [himself] under the truck." He said, "I thought they came for me." He was not involved in the attack on Mendez or the carjacking.

The People filed a Welfare and Institutions Code section 602 petition in the juvenile court alleging that C.P., a minor, committed carjacking, a felony (§ 215, subd. (a)) (count 1) and battery with serious bodily injury, a felony (§ 243, subd. (d)) (count 2).

After trial, the juvenile court sustained the petition. It found C.P.'s testimony was not credible. The court ruled that 1) C.P. is "a person described by Section 602 of the Welfare and Institutions Code" and is a ward of the court, 2) "custody" must "[be] taken from [C.P.'s] parents," 3) C.P. will be placed in the Camp-Community Placement Program for a "5-7 month term," 4) C.P. is placed "in the care, custody and control of the Probation Officer," and 5) the offenses are "declared to be" felonies. The court required him to complete 130 hours of community service and imposed several "conditions of probation." It ruled that C.P. may not be held in physical confinement for a period to exceed 10 years 4 months.

DISCUSSION

Substantial Evidence

C.P. contends that "there is insufficient evidence to establish [he] committed the offense of carjacking."

The People claim the evidence supports "the juvenile court's finding that [C.P.] committed the carjacking as an aider and abettor." We agree.

In reviewing the sufficiency of the evidence, we must draw all reasonable inferences from the record in support of the

judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence or decide the credibility of the witnesses, as those are matters exclusively for the trier of fact. (*Ibid.*; *People v. Beeman* (1984) 35 Cal.3d 547, 558-559.)

“A conviction for carjacking requires proof that (1) the defendant took a vehicle that was not his or hers (2) from the immediate presence of a person who possessed the vehicle or was a passenger in the vehicle (3) against that person’s will (4) by using force or fear and (5) with the intent of temporarily or permanently depriving the person of possession of the vehicle.” (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 534; § 215, subd. (a).)

“All persons concerned in the commission of a crime, whether it be felony or misdemeanor, 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, italics added.)

There must be “proof that an aider and abettor act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or *facilitating commission* of, the offense.” (*People v. Beeman, supra*, 35 Cal.3d at p. 560, some italics added.) “An aider and abettor’s fundamental purpose, motive and intent is to aid and assist the perpetrator in the latter’s commission of the crime.” (*Id.* at p. 556.) “Direct evidence of the mental state of the accused is rarely available except through his or her testimony. The trier of fact is and must be free to disbelieve the testimony and to infer that the truth is otherwise when such an inference is supported by circumstantial evidence regarding the actions of the accused.” (*Id.* at pp. 558-559.)

The juvenile court could find C.P. was an aider and abettor. From Mendez's testimony, it could reasonably infer he was part of the group that attacked him to facilitate the carjacking. This was a coordinated attack. Mendez testified that they "*all* started ganging up on [him]" and that "*everybody* started beating [him]." (Italics added.) C.P. was part of the group of five to six young men involved in this attack. He also was present at the exact location where the carjackers had abandoned Mendez's car. The trial court found C.P.'s testimony was not credible. It could reasonably infer his act of hiding under the truck when the police arrived showed his consciousness of guilt.

The Maximum Period of Physical Confinement

The juvenile court found the maximum period of physical confinement was 10 years 4 months. The People and C.P. agree the court erred because the maximum period of physical confinement is 10 years.

Welfare and Institutions Code section 726, subdivision (d)(1) provides, in relevant part, "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" (Italics added.) To determine this maximum, we use the "'upper term' for the base offense" and add "one-third of the 'middle term' for the subordinate offense." (*In re Deborah C.* (1981) 30 Cal.3d 125, 140.) The upper term for carjacking is nine years (§ 215, subd. (b)), the middle term for battery with serious injury is three years (§ 243, subd. (d)), and

one-third of that middle term is one year. Consequently, the maximum period of confinement is 10 years.

DISPOSITION

The maximum period of confinement is modified to 10 years. (Welf. & Inst. Code, § 726, subd. (d)(1).) In all other respects, the judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Robert J. Totten, Commissioner
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Appeal, for Defendant and Appellant.

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