Filed 12/18/19 In re J.R. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.R., a Person Coming Under the Juvenile Court Law.	2d Crim. No. B298425 (Super. Ct. No. KJ40862) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. J.R., Defendant and Appellant.	

J.R. appeals the juvenile court's order sustaining a wardship petition (Welf. & Inst. Code, § 602) on allegations that appellant committed an attempted carjacking (Pen. Code,[1] §§ 215, subd. (a), 664) and an assault with caustic chemicals

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

(§ 244). The court declared appellant a ward and ordered her suitably placed with a maximum term of 10 years in confinement. Appellant contends the evidence is insufficient to support the finding that she committed the charged offenses. She also claims that her maximum term of confinement must be reduced to four years and six months. The People concede the latter claim and we shall order the judgment amended accordingly. Otherwise, we affirm.

STATEMENT OF FACTS

Prosecution

At about 6:00 p.m. on March 10, 2019, Qingxio Zhou[2] was opening her car door in a shopping center parking lot when two girls approached her. One of the girls asked Zhou for her car keys. The second girl tried to open the door all the way and Zhou leaned against the door in an attempt to prevent her from doing so. One of the girls began hitting Zhou in the head and Zhou was peppered sprayed in her eyes. Zhou was unsure how many people were attacking her because she had her back turned to them and had pepper spray in her eyes.

Zhou's assailants fled after a bystander intervened. One of the girls left behind her sweater, which was caught in Zhou's car door.

Appellant, M.G., J.C., M.S., and R.M. were detained nearby a short time later. Baldwin Park Police Officer Ernest Barrios searched the area and found a can of pepper spray, two backpacks, and a shopping bag. The officer also checked all five girls' hands and found a dark residue on appellant's right index finger. Based on his training and experience, Officer Barrios

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[2] Zhou testified at the section 602 hearing through a Mandarin Chinese language interpreter.

concluded that the residue was from pepper spray. At an in-field showup, Zhou identified appellant, M.G., and J.C. as her assailants based on the clothing they were wearing, which was predominantly red. At the police station, appellant was heard telling M.G. that J.C. had left her sweater wedged in Zhou's car door.

Defense

Appellant testified on her own behalf. On the day of the incident, she and her friend M.G. were at a drug store when they met J.C., M.S., and R.M. Appellant did not know the other three girls, but she and M.G. eventually followed them to a grocery store across the street. J.C. and M.G. left the grocery store while the others were still shopping. As appellant was leaving the store, she saw J.C. and M.G. approach Zhou and begin talking to her. J.C. began hitting Zhou and M.G. peppered sprayed Zhou. When a bystander stopped to help Zhou, J.C. and M.G. fled and appellant, M.S., and R.M. ran into a nearby apartment complex. All five girls were apprehended a short time later.

On cross-examination, appellant claimed she was holding a cup with chili powder on the rim when the police stopped her. The residue that Officer Barrios observed on her right index finger was chili powder from the cup. She acknowledged that Officer Barrios found a can of pepper spray that belonged to her, yet claimed the officer found it in her backpack rather than on the ground. According to appellant, she told another officer that M.G. also had a can of pepper spray and had hidden it behind a nearby church.

Appellant acknowledged that she was wearing a "pretty unique looking" red jacket when the crimes were committed, but claimed that all five girls were wearing the same jacket.

According to appellant, they all met up at the mall weeks prior to incident and bought the same jacket because it was "half off." When confronted with her prior testimony that she had not previously met J.C., M.S., and R.N., appellant offered that she had gone to the mall with her friend M.G. and the other three girls "were there, but I never talked to them . . . ."

DISCUSSSION

Sufficiency of the Evidence

Appellant contends the evidence is insufficient to support the findings that she committed an attempted carjacking and assault with caustic chemicals. She claims that Zhou's identification of her was insufficient to establish her identity as one of the perpetrators, that Officer Barrios's testimony regarding the residue on her right index finger was merely speculative, and that there is no evidence to establish she intended to facilitate either the attempted carjacking or the assault. We are not persuaded.

The standard of review of an insufficiency of the evidence claim is the same in juvenile cases as in adult criminal cases: "we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt. [Citations.]" (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) "'We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence . . . and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]' [Citations.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1089.)

"Apropos the question of identity, to entitle a reviewing court to set aside a jury's finding of guilt the evidence of identity must be so weak as to constitute practically no evidence at all." (*People v. Lindsay* (1964) 227 Cal.App.2d 482, 493.) When the circumstances surrounding an identification and its weight are explored at trial and the trier of fact believes the identification, the trier of fact's determination is binding on the reviewing court. (*In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497.)

The evidence is sufficient to support the juvenile court's findings that appellant committed an attempted carjacking and an assault with a caustic chemical. Zhou identified appellant, M.G., and J.C. as the perpetrators based on the distinctive red clothing they were all wearing. Although Zhou could not identify appellant by her facial features, her identification was bolstered by the fact that appellant also had residue on her right index finger that appeared to be pepper spray. Contrary to appellant's claim, the juvenile court did not err in crediting Officer Barrios's professional opinion, based on his years of experience and training, that the substance was pepper spray. Appellant also essentially overlooks her own testimony, in which she directly contradicted Officer Barrios and provided inherently incredible explanations for her behavior. (See *People v. Beyah* (2009) 170 Cal.App.4th 1241, 1249, and cases cited therein [intentionally false trial testimony can be considered as evidence of consciousness of guilt].) Appellant "'"did not simply deny [her] guilt; [she] ventured upon an explanation so unusual that the trier[] of fact could conclude that it was an intentional fabrication indicating consciousness of guilt and the absence of any true exculpatory explanation.'" [Citation.]" (*Ibid.*)

Appellant's citation to *United States v. Goldtooth* (9th Cir. 2014) 754 F.3d 763, is unavailing. That case involves the federal aiding and abetting statute (18 U.S.C.A. § 2), as interpreted in *Rosemond v. United States* (2014) 572 U.S. 65 [188 L.Ed.2d 248]. As numerous courts have recognized, *Rosemond* only applies to prosecutions for particular federal statutory offenses and has no effect on state law aiding and abetting standards. (See, e.g., *Whitaker v. State* (R.I. 2019) 199 A.3d 1021, 1029 [recognizing that *Rosemond* "has no impact on state law"]; see also *State v. Ward* (Mo. Ct. App. 2015) 473 S.W.3d 686, 693 ["Nothing in *Rosemond* suggests that its holding rests on any constitutional requirement or has any application to state criminal laws on accomplice liability; rather, the Court's analysis was merely a question of federal interpretation of the federal aiding and abetting statute"].)

In any event, the crimes at issue here were not "an act of spontaneity" of which appellant had no advance knowledge and in which she did not participate. (*United States v. Goldtooth*, *supra*, 754 F.3d at p. 769.) The evidence, viewed in the light most favorable to the judgment, is sufficient to establish that appellant participated as a direct perpetrator of the crimes against Zhou rather than a mere aider and abettor.

Maximum Term of Confinement

Appellant contends that her maximum term of confinement must be reduced from 10 years to four years and six months. The court arrived at the 10-year term by imposing nine years for the attempted carjacking, plus one year for the assault with caustic chemicals. Appellant asserts, and the People concede, that the one-year term of for the assault should have been stayed under section 654 because the crime was committed to facilitate the

attempted carjacking. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1215.) The People also concede that the maximum term for attempted carjacking is four years and six months, i.e., one-half the maximum term of nine years for the crime of carjacking. (§§ 215, subd. (b), 664, subd. (a); Welf. & Inst. Code, § 726, subd. (d)(1).) We shall order the judgment so modified.

DISPOSITION

The judgment (adjudication and disposition order) is modified to reflect a maximum term of confinement of four years and six months. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Robert Leventer, Commissioner
Superior Court County of Los Angeles

Lynnette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

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