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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B232423
(Los Angeles County
Super. Ct. No. YJ35244)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Irma J. Brown, Judge. Affirmed.

Courtney M. Selan, 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, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Peggy Z. Huang and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

Minor Joseph P. appeals from the order of wardship entered following a finding that he committed vandalism in violation of Penal Code section 494, subdivision (a). Minor contends the evidence was insufficient to support the order. We affirm.

BACKGROUND

Through the glass front door of her Torrance home, Maria Ortega saw a yellow Xterra drive past her house and park along the street three or four houses away about 11:30 p.m. on June 26, 2010. (Date references are to 2010.) Ortega then saw minor and another boy approach the driver's side of her Chevy Tahoe, which was parked on the street in front of her house. Ortega knew minor by sight and by name because he had been her son's baseball teammate and had ridiculed her son. Ortega had seen minor at almost all of the team's games and practices, and she knew that minor's mother drove a yellow Xterra. Minor knelt alongside the front tire on the driver's side of Ortega's Tahoe, while the other boy stood nearby. The boys then ran to the Xterra and got in it. While they were running, Ortega stepped outside and shouted, "I saw you." She went to the Tahoe and heard a hissing sound, then noticed air escaping from a hole in the front tire on the driver's side.

Ortega testified at the adjudication hearing that the boy who accompanied minor was one of his brothers. She did not recognize him at the time of the offense, but during the ensuing summer months she saw him at baseball practice.

Torrance Police Department Officer Daniel Cid testified that he responded to Ortega's home on June 26 and saw a hole in the front tire of a Chevy Tahoe parked in front of Ortega's house. Ortega told Cid she saw minor standing next to her tire and gave Cid the name of minor's mother. According to Cid, Ortega described the suspect as being "five foot one, 130 pounds" "with shaggy brown hair."

Ortega, who testified with the assistance of a Spanish interpreter, insisted she told the responding officer that minor had "blondish" hair or "light brown, blondish" hair.

Minor testified that he knew Ortega's son because they were baseball teammates. Ortega's son had attempted to hit him in the face and kick him, but minor thought it was

funny and did not take Ortega's son seriously. Minor's mother told him to stay away from Ortega's son.

Minor denied puncturing Ortega's tire, but admitted that he, his mother, his younger and older brothers, and their friend Michael were outside Ortega's house in the yellow Xterra on the night of June 26. Minor testified that his mother drove them to the home of his older brother's friend so that they could toilet paper the house. They abandoned that plan because there were too many people and too many lights in the area. Minor's mother drove on, and they passed the Ortega house. Someone in the car suggested toilet papering the Ortega house. Minor thought it would be a fun prank because Ortega's son had previously bragged about toilet papering homes. Minor's mother decided they should not do the Ortega house because the lights were on in the house and there were people out on the street. Minor's mother drove them home and they all went to bed early.

Minor also presented the testimony of two character witnesses who testified that minor was honest and truthful and exhibited no propensity for destroying the property of others.

Officer Jeff Marcure testified that he first had contact with minor on October 1 and arrested him for vandalism on October 7. Marcure wrote in his arrest report that minor was approximately 5 feet 6 inches tall, weighed approximately 110 pounds, and had blond hair. Marcure was the "resource officer" at the high school minor and Ortega's son attended and knew there was a restraining order protecting Ortega's son. Marcure had also seen minor's brothers and agreed that minor's younger brother was about 5 feet 1 inch tall and weighed about 130 pounds, but he could not remember whether the younger brother's hair was "more blond or brown." Marcure confirmed that minor's mother drove a yellow Xterra that was registered to her.

The juvenile court rejected minor's arguments that Ortega's testimony was not credible and that he did not match the description of the perpetrator that Cid testified Ortega gave him. The court stated that it found Ortega's testimony credible, she

identified minor as the perpetrator, she was able to identify minor from prior contact, she identified the “very distinct vehicle” driven by minor’s mother, and minor “himself puts himself in the same time frame around the same time at that location.” The court found the vandalism allegation true, sustained a Welfare and Institutions Code section 602 petition, declared minor to be a ward of the court, and ordered him home on probation.

DISCUSSION

Minor contends that the evidence was insufficient to support the juvenile court’s order because Ortega’s testimony identifying him as the perpetrator was both unworthy of belief and physically impossible. He argues, “[Ortega]’s unexplainable inability to recognize [minor]’s brother in the fall, but subsequent ability to recognize him the following spring *based on having seen him during the past summer* cannot reasonably be relied upon. Additionally, the fact that [minor] is 5' 6", 110 pounds, with blonde hair renders [Ortega]’s testimony that [minor] was the perpetrator, but the perpetrator was 5' 1", 130 pounds, with brown hair a physical impossibility.” (Italics in original.)

To resolve this issue, we review the whole record in the light most favorable to the juvenile court’s order to decide whether substantial evidence supports the court’s finding, so that a reasonable fact finder could find the allegation true beyond a reasonable doubt. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) We also presume in support of the juvenile court’s finding the existence of every fact the trier could reasonably deduce from the evidence and make all reasonable inferences that support the finding. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1089.)

Only the trier of fact may determine the credibility of a witness and the facts upon which such credibility depends. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We may not substitute our own view of a witness’s credibility. (*Ibid.*) Weaknesses and inconsistencies in eyewitness testimony are for the trier of fact to evaluate. (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) Testimony believed by the trier of fact is rejected on appeal only if physically impossible or obviously false. (*Ibid.*) Discrepancies between a witness’s description of a suspect and a defendant’s actual appearance are a

proper subject of argument in the trial court, but do not necessarily invalidate testimony identifying the defendant. (*People v. Marquez* (2000) 78 Cal.App.4th 1302, 1307.)

Minor's contention that Ortega's identification testimony was not credible is premised in part upon matter outside the record pertaining to identification of minor's brother as the boy who stood near minor during the commission of the offense. At the adjudication, minor asked Ortega if she said in October that she could not identify the other boy. Ortega said she did not remember. Minor then asked if she remembered "testifying at a restraining order, and . . . saying you could not identify the boy that was with the boy that supposedly slashed your tire?" Ortega said she did not remember. Minor then attempted to refresh Ortega's recollection with a transcript that was not identified for the record. The prosecutor objected that she had not been given an opportunity to review the transcript. The court recessed for lunch. When the adjudication resumed after lunch, the prosecutor objected that minor was attempting improper impeachment. Although the court overruled the objection, minor abandoned the line of inquiry. Thus, the record contains no evidence that Ortega was unable to identify minor's brother at a prior hearing. We further note that this factually unfounded theory pertains to the identification of minor's brother as a potential accomplice, not the identification of minor as the principal perpetrator.

Ortega knew minor and identified him by name. The court had the opportunity to observe minor's appearance in the courtroom. Any discrepancies between Ortega's description of minor to Cid and minor's actual height, weight, and hair color were merely factors for the court to consider with respect to Ortega's credibility, but did not render her identification incredible, physically impossible, or obviously false. Ortega may have underestimated minor's height and overestimated his weight, minor (who turned 14 about two weeks after the offense) may have grown taller in the more than three-month interval between the date of the offense and his arrest, there may have been a language barrier between Ortega (who required an interpreter at the adjudication) and Cid (who did not testify that he spoke to Ortega in Spanish), and exposure to the sun may have lightened

minor's hair color. Whatever the cause, any inconsistencies did not require the juvenile court to reject Ortega's identification testimony. In addition, as the court noted, minor partially corroborated Ortega's testimony by admitting that he was near Ortega's house in his mother's yellow Xterra on the night of June 26. Substantial evidence supports the juvenile court's order.

DISPOSITION

The order under review is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.