Filed 1/18/18 In re D.M. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.M., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B281862 (Super. Ct. No. PJ51885) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. D.M., Defendant and Appellant.	

D.M., a minor, appeals from an order adjudicating him a ward of the court (Welf. & Inst. Code, § 602) after the juvenile court found true the allegation that D.M. possessed a weapon on school grounds (Pen. Code,[1] § 626.10). The court placed him home on probation.

[1] Further unspecified statutory references are to the Penal Code.

D.M. contends the juvenile court erred in granting a motion to amend the petition to change the description of the weapon he possessed from "taser" to "taser/stun gun" because (1) the amendment violated his due process right to adequate notice, and (2) there was insufficient evidence that he possessed a stun gun. We affirm.

FACTUAL AND PROCEDURAL HISTORY

D.M. brought an item to school and told the school dean that it was a flashlight. The dean and a school administrator obtained the item, and saw that it was also a "taser." The administrator pointed the item at the floor and tested it. The item sparked.

The administrator called the police and gave the item to the responding officer. The officer described it as a "taser" with a flashlight on it. The officer looked up the make and model of the item online. It was listed under "tasers and stun guns" by the manufacturer. She activated the item by pressing the button on the side, and the item made a "loud cracking noise followed by a very thin light."

The officer testified that a taser or stun gun temporarily disables a person by providing "a shock through their body." She was familiar with tasers and stun guns because she was involved in 12 arrests in which law enforcement used a taser or stun gun on a person. The item in this case was different from the types of tasers or stun guns used by law enforcement, which function by firing two projectile probes. The item in this case operated through direct contact with an individual. During the hearing, the officer looked up the item using the name, serial number, and the description, i.e., "stun gun/taser" on "Google Images." The results contained "multiple pictures of different

types of stun guns," including a match for the item recovered from D.M.

At the close of the prosecution's case, the prosecutor moved to amend the petition to change the description of the weapon from "taser" to "taser/stun gun" to conform to proof. The juvenile court granted the motion.

DISCUSSION

Amendment of the Petition

D.M. contends the juvenile court erred in granting the motion to amend the petition to include the term "stun gun" at the close of the prosecution's case because the amendment violated his due process rights by depriving him of adequate notice. We disagree.

Due process requires that a minor have adequate notice of the charge so that they may intelligently prepare a defense. (*In re Robert G.* (1982) 31 Cal.3d 437, 442 (*Robert G.*).) Compliance with this requirement mandates that the minor be notified, in writing, of "'the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.' [Citation.]" (*Ibid.*) But a juvenile court may allow an amendment of a wardship petition to correct or make more specific the factual allegations supportive of the charged offense when the nature of the charge remains unchanged. (*In re Man J.* (1983) 149 Cal.App.3d 475, 479-480 (*Man J.*).) The court's decision to allow amendment of a petition is reviewed for abuse of discretion. (*Id.* at p. 481.)

The juvenile court did not abuse its discretion here because the amendment did not change the nature of the offense.

(*Man J.*, *supra*, 149 Cal.App.3d at p. 481.) The amendment merely "ma[de] more specific" a factual allegation in the original petition to conform to proof. (*Ibid.*) The evidence shows that D.M. possessed an item that emitted an electrical charge and was listed as a "taser[] and stun gun[]" by the manufacturer. The two types of weapons are similar in function (see §§ 244.5, 16780),[2] and they are both listed as prohibited items under section 626.10, subdivision (a)(1). Regardless of whether the item was a stun gun or a taser, D.M. had adequate notice that he was charged with possession of an electrical weapon listed under section 626.10.

That the amendment occurred at the close of the prosecution's case did not prejudice D.M. When the nature of the charge remains unchanged, such an amendment to a factual allegation may be made at any time during the proceedings. (See *Man J.*, *supra*, 149 Cal.App.3d at p. 481.)

This case is similar to *Man J.*, *supra,* 149 Cal.App.3d 475. There, after the close of the prosecution's case, the juvenile court allowed an amendment to the petition to change the factual allegations to conform to proof that the minor destroyed cars belonging to victims other than the victim named in the original petition. (*Id*. at pp. 478, 481.) The evidence showed that the minor participated in destroying multiple cars, and not just the

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[2] A stun gun is defined as an item that is "capable of temporarily immobilizing a person by infliction of an electrical charge." (§ 244.5, subd. (a).) A taser is not specifically defined by statute, but section 16780, subdivision (a) defines a "less lethal weapon" as those that expel "less lethal ammunition . . . for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition . . . ."

car belonging to the named victim. The petition was amended to include the destruction of "cars, not his own, belonging to S. Wagner *and others*." (*Id*. at p. 478.) The court reasoned that the minor was on notice of the charges against which he would have to defend, since the identification of the individual owners of the damaged cars was not material to the nature of the charge. (*Id*. at p. 480.)

D.M. relies on *Robert G.*, *supra*, 31 Cal.3d 437 and *In re Johnny R.* (1995) 33 Cal.App.4th 1579, but those cases are distinguishable. In those cases, the petitions were amended to allege a new offense after the prosecution failed to produce sufficient evidence to support the originally charged offense. (*Robert G.*, at pp. 442-443 [inadequate notice where the petition originally charged assault with a deadly weapon, but was amended to allege battery]; *In re Johnny R.*, at pp. 1584-1585 [juvenile court erred in allowing the prosecution to amend the petition to allege possession of a dirk or dagger, where the petition only alleged an assault with a deadly weapon charge].) In contrast, the amendment here did not add any new offenses, nor did it prejudice D.M. The trial court was well within its discretion to allow the amendment.

Sufficiency of Evidence

D.M. contends the evidence was insufficient to support the trial court's finding that he possessed a taser or stun gun on a school campus (§ 626.10).

We review the juvenile court's finding for sufficiency of evidence. In doing so, we review the evidence in the light most favorable to the judgment to determine whether any rational trier of fact could have found the elements of the crime beyond a

reasonable doubt. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.)

Sufficient evidence supports the juvenile court's finding. Here, the item sparked and emitted an electrical charge when activated. An officer, who was familiar with stun guns and tasers, stated that such weapons functioned by temporarily immobilizing a person by sending an electrical "shock" through the body. She explained that the taser or stun gun operated through direct contact with an individual. In light of her familiarity and field experience with similar weapons, it was not necessary that the officer knew the precise specifications of the item to testify about its capabilities. (See *In re Branden O.* (2009) 174 Cal.App.4th 637, 642-643 [officer's testimony regarding the capability of the item at issue, without evidence that the victim was actually immobilized by the item, was sufficient to show the item was a stun gun in light of his training and experience with stun guns].) The item was also listed as a taser or stun gun by the manufacturer. The evidence sufficiently supports the finding that D.M. possessed a taser or stun gun on school grounds.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Fred J. Fujioka, Judge

Superior Court County of Los Angeles

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

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