Filed 5/9/12 In re Montel H. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MONTEL H., a Person Coming Under the Juvenile Court Law.	B236801 (Los Angeles County Super. Ct. No. VJ41541)
THE PEOPLE, Plaintiff and Respondent, v. MONTEL H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Heidi Shirley, Juvenile Court Referee. Affirmed.

Holly J. Jackson, 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, Linda C. Johnson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Montel H. appeals from an order of wardship (Welf. & Inst. Code, § 602) entered after the juvenile court found he had committed robbery (Pen. Code, § 211) and personally used a firearm to commit the offense (*id.*, § 12022.53, subd. (b)).[1] The court directed appellant into a short-term camp community placement program and calculated the maximum term of confinement as 15 years. Appellant now contends the evidence is insufficient to support the finding. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Jurisdiction Hearing

1. Prosecution

At approximately 10:30 p.m. on August 3, 2011, a young man wearing a sweatshirt with its hood over his head approached seven teenagers seated together at a picnic table. He asked them what they were doing before inquiring about a wallet on the table. Philip H. said the wallet belonged to him. In response, the young man lifted his sweatshirt, revealing the handle of a gun, and asked if there was going to be a problem. He picked up Philip's wallet and looked through it.[2] Philip was too frightened to attempt to retrieve his wallet. The young man then repeatedly threatened the teenagers and demanded that they empty their pockets. After they complied, the young man apparently found nothing more of value to him and left with Philip H.'s wallet. The teenagers contacted police.

The issue at the jurisdiction hearing was whether it was appellant who committed the robbery. Jason K., one of the seven teenagers, was seated at the picnic table about

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[1] The court found not true two allegations of attempted robbery, each with a firearm-use enhancement.

[2] Philip was unable to identify appellant as the robber.

three feet away from the robber. Jason testified that he wanted to see who the robber was, so he looked up at the young man's face and recognized appellant, a fellow student and football player at his high school. Jason also identified appellant in court as the robber.

Aaron K., who was seated at the picnic table with Philip and Jason, testified that a few days after the robbery, police showed him a six-pack of photographs, and he identified appellant as the robber. Aaron also identified appellant in court as the robber. E.C. was seated at the picnic table with the others when appellant came up and took Philip's wallet. A few days following the robbery, police showed E.C. a six-pack of photographs, and she selected appellant's photograph as "most likely" that of the robber. She also identified appellant in court as the robber.

2. Defense

Appellant's defense was mistaken identity. Appellant's fraternal twin brother testified that at approximately 9:00 p.m. on August 3, 2011, he and appellant rode their bicycles together to a friend's house where they remained until midnight, when their mother picked them up. Appellant's mother corroborated her son's testimony that he and appellant rode their bicycles to a friend's house on the night of August 3, 2011. She testified that at approximately 11:25 p.m., sheriff's deputies came to her home looking for appellant. When she was unable to reach appellant by phone, the deputies told her she could bring him to the station the next morning, which is what she did.

DISCUSSION

In reviewing the sufficiency of the evidence to support a juvenile adjudication, the standard of review is the same as that applied in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Michael M.* (2001) 86 Cal.App.4th 718, 726.) In either case, "we review the whole record in the light most favorable to the judgment to determine whether it discloses

substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*In re Sylvester C.*, *supra*, at p. 605; accord, *People v. Kraft* (2000) 23 Cal.4th 978, 1053; *People v. Bolin* (1998) 18 Cal.4th 297, 331.) Additionally, in deciding the sufficiency of the evidence, we do not reweigh evidence or resolve credibility issues, which are "the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181; see also *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Furthermore, "unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young*, *supra*, 34 Cal.4th at p. 1181.) Only if a witness's testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions, will an appellate court reject the statements given by a witness who has been believed by a trial court. (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on another ground in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12.)

Appellant contends that there was insufficient evidence that he committed the robbery, "[b]ased on the totality of the evidence—the inconsistent testimony on several facts, the inherent improbability of an accurate identification based on the darkness of the night, the lack of lighting, and the dark clothing and hood worn by the assailant—coupled with the evidence of an alibi . . . ."

Appellant's contention amounts to no more than a request that we reweigh the evidence and substitute our judgment for that of the trier of fact, which is not the function of a reviewing court. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139; *People v. Culver* (1973) 10 Cal.3d 542, 548.) There was conflicting evidence as to whether appellant was the robber. Jason's testimony identifying appellant was neither physically impossible nor inherently improbable. Jason knew appellant after seeing him about four times a month over the course of the two academic years they attended high school together. They also played on the high school football team together during Jason's freshman year. During the robbery, although it was dark and the robber's head was covered by the hood of his sweatshirt, Jason intentionally peered into his face, in an effort

to ascertain the robber's identity. Jason consistently identified appellant in a photographic six-pack and in court. His identification of appellant was corroborated by Aaron and E.C. The evidence was sufficient to convince a rational trier of fact, beyond a reasonable doubt, that appellant committed the robbery.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.