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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B286928
(Super. Ct. No. YJ38906)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

By age 15, A.P. had been charged in three petitions with theft offenses from four retail stores committed over a one year period. The juvenile court sustained the petitions, which alleged grand theft, commercial burglary, petty theft and shoplifting. She was declared a ward of the court and put in suitable placement. (Welf. & Inst. Code, § 602.)

A.P. contends that some of the sustained counts were not supported by substantial evidence. She also claims that she was improperly charged with petty theft and shoplifting. The record supports the court's factual findings. There are, however, three legal errors. First, A.P. was improperly charged with petty theft and shoplifting for taking the same property. (Pen. Code, § 459.5, subd. (b).)¹ Second, crimes A.P. committed on October 16, 2016 had the sole objective of stealing and could not result in multiple punishments. (§ 654.) Third, the court neglected to set a maximum term of confinement after removing A.P. from parental custody. (Welf. & Inst. Code, § 726, subd. (d)(1).) The Attorney General concedes these errors. We remand for resentencing. In all other respects, we affirm.

FACTS AND PROCEDURAL HISTORY

Petition Filed October 28, 2016

The first petition alleges six crimes committed by 14-year-old A.P. at Ulta beauty stores in October 2016.

The manager of an Ulta store in Rolling Hills witnessed a theft on October 16, 2016. She testified that six people entered the store, side by side, went directly to the "Prestige" section where high-priced items are displayed, and "picked up a bunch of product and concealed them in their bags." The manager told them that she was calling the police.

The manager met with a deputy about the thefts. They reviewed images from security cameras that recorded the group entering the store, committing the thefts and leaving. A.P. was part of the group. A.P. put items in her bag while others in her group served as lookouts.

¹ Unlabeled statutory references are to the Penal Code.

No one paid for any of the 69 items taken from the Rolling Hills store. The manager made a list to determine the extent of the loss. The total value was over \$3,000.

The manager of the Ulta store in Compton was on duty on October 18, 2016, when four girls entered the store, including A.P. The manager recognized them from photographs being circulated among Ulta stores, showing theft ring members. She approached them, to be sure of her identification. They were in the Prestige section.

As the manager neared, she saw the girls taking and concealing items. They departed when they heard the manager call for an immediate police response. Security cameras recorded the thefts. A.P. took two items that cost \$36 each.

On October 20, 2016, the same store manager in Compton saw a group of four enter and go directly to the Prestige section. They looked around to see if anyone was watching and began to move items, but departed when security sensors started beeping. An inventory showed that \$514 in products was stolen that day. Though the manager did not recognize A.P. in the courtroom, she identified A.P. as part of the group from a security camera photo in People's Exhibit 7.

A detective testified about his surveillance of a car that traveled to five Ulta stores on October 26, 2016. When officers stopped the car, A.P. was one of the people who got out. She was detained. After waiving her right to remain silent, A.P. told the detective that she has stolen items from about 10 Ulta stores and entered the stores with the intent to steal.

The detective reviewed security images of the October 16 theft in Rolling Hills and saw A.P. in them. He also recognized A.P. in screen shots from the October 18 and 20 thefts in Compton. He showed still photos from the security recordings to

A.P., who identified herself in several pictures, including People's Exhibit 7.

The court found that that A.P. committed felony grand theft of personal property (count 1); felony second degree commercial burglary (count 2); petty theft (counts 3 and 5); and shoplifting (counts 4 and 6). (§§ 487, subd. (a), 459, 484, subd. (a), 459.5, subd. (a).)

Petition filed November 15, 2016

The second petition arose from A.P.'s theft of clothing valued at less than \$950 from a Target store on August 16, 2016. A.P. admitted the allegations and the court sustained a count of petty theft. (§§ 484, subd. (a), 490.2.) A.P. does not challenge the sustained second petition.

Petition Filed September 5, 2017

The third petition alleged that A.P. stole clothing valued at less than \$950 from an Abercrombie & Fitch store on July 21, 2017. The petition alleged petty theft and shoplifting. (§§ 484, subd. (a), 459.5, subd. (a).) The court sustained both counts, based on eyewitness testimony from the store manager and a police officer. A.P. does not challenge the sufficiency of the evidence supporting the sustained findings of the third petition.

DISCUSSION

1. Sufficiency of the Evidence

A.P. challenges the sufficiency of the evidence underlying the crimes in the petition filed October 28, 2016. We construe the evidence in the light most favorable to the judgment. (*In re Dennis B.* (1976) 18 Cal.3d 687, 697.) All reasonable inferences are drawn in support of the juvenile court's findings when determining if they are supported by substantial evidence. (*In re Bettye K.* (1991) 234 Cal.App.3d 143, 148.)

The record belies A.P.'s claim that she was not proven to have participated in the October 20, 2016 crime in Compton. She argues that "[t]here is no evidence she was present in the Ulta store;" however, a security camera captured A.P. in the store that day. She admitted to a detective that she was in the screen shots, told him that she entered with the intent to steal, and stole from 10 Ulta stores, including Compton. The store manager testified that items worth \$540 were stolen.

Substantial evidence thus supports the court's finding that A.P. entered a commercial establishment during regular business hours, with the intent to commit larceny, "where the value of the property that is taken or intended to be taken" is less than \$950. (§ 459.5, subd. (a).) It is unimportant that the store manager did not witness A.P. taking items, because "shoplifting do[es] not require any taking, merely an entry with the required intent." (*People v. Gonzales* (2017) 2 Cal.5th 858, 872.)

The record supports the court's finding that the value of the cosmetics taken on October 16, 2016 in Rolling Hills exceeded \$950. The crime was grand theft. Security camera images showed A.P. putting items in her bag while others served as lookouts. The manager tallied 69 missing items. A.P. paid for none of them. The total value of the loss was over \$3,000.

A.P. argues that the manager's testimony "was not reliable" and "confused and self-contradictory." The court examined the manager's list of items stolen on October 16th; the price of each item was scanned to arrive at a total. The court found this testimony "very credible."

The court's assessment of witness credibility is binding. ""To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be

apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.” [Citation.]” (*People v. Maciel* (2013) 57 Cal.4th 482, 519.) A.P.’s claim that the manager may have been mistaken when she tallied the missing items is unsupported speculation. The record supports the sustained charge for grand theft of personal property valued in excess of \$950. (§ 487, subd. (a).)

Substantial evidence supports the sustained charge for second degree commercial burglary. The crime includes entry into a shop with intent to commit larceny. (§ 459.) A.P. admittedly entered with the intent to steal and the amount stolen on October 16, 2016 exceeded \$950, i.e., grand larceny.

2. A.P. Was Improperly Charged With Petty Theft and Shoplifting

Under section 459.5, subdivision (b), “[a]ny act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. *No person who is charged with shoplifting may also be charged with burglary or theft of the same property.*” (Italics added.) We asked the parties to address the application of section 459.5 to the first and third petitions. (Gov. Code, §68081.)

Appellant’s counsel and the Attorney General agree that A.P. could not be charged with theft and shoplifting of the same property worth less than \$950 from commercial establishments during regular business hours. (*People v. Gonzales, supra*, 2 Cal.5th at pp. 876-877 [the statute precludes a burglary charge based on the theft of property that is the subject of a shoplifting charge].) Where, as here, a minor was prosecuted for both

shoplifting *and* theft of the same property, the theft counts must be reversed.

3. The Court Must Resentence A.P.

A.P. argues that the record discloses two sentencing errors. The Attorney General concedes both errors. We agree that the court failed to apply section 654 and Welfare and Institutions Code section 726 at sentencing.

Section 654 applies to juvenile court sentencing. (*In re Michael B.* (1980) 28 Cal.3d 548, 556, fn. 3.) It proscribes multiple punishments for a single act made punishable by different statutes, but does not apply to a defendant who had multiple independent criminal objectives. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) The defendant's objectives generally pose a factual question, but the applicability of section 654 to conceded facts is a question of law. (*Ibid.*)

In the first petition, counts 1 and 2 for grand theft and commercial burglary arose from A.P.'s crimes at the Rolling Hills Ulta on October 16, 2016.² A.P. told the investigating detective that her objective was to steal cosmetics. The record does not disclose any other objective, nor did the court identify multiple objectives. The Attorney General concedes that A.P. had one objective. On remand, the court must impose a stay pursuant to section 654.

After declaring A.P. a ward of the court and removing her from parental custody, the juvenile court did not set a maximum term of confinement. This was legal error. "If the minor is

² Counts 3 and 4 for petty theft and shoplifting arise from A.P.'s conduct on October 18, 2016. Counts 5 and 6 for petty theft and shoplifting arise from her conduct on October 20, 2016. As discussed in section 2, *ante*, these sustained petty theft charges violate section 459.5, subdivision (b).

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 which brought or continued the minor under the jurisdiction of the juvenile court.” (Welf. & Inst. Code, § 726, subd. (d)(1).) The court must comply with the quoted statute and specify a maximum term.

DISPOSITION

Pursuant to Penal Code section 459.5, counts 3 and 5 of the petition filed October 28, 2016, and count 1 of the petition filed September 5, 2017 are reversed and dismissed. The matter is remanded to the juvenile court to resentence A.P. in accordance with this opinion. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

J. Christopher Smith, Judge

Superior Court County of Los Angeles

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