Filed 11/27/18 In re J.W. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.W., a person coming under the Juvenile Court Law.	B288326 (Los Angeles County Super. Ct. No. FJ54950)
THE PEOPLE, Plaintiff and Respondent, v. J.W., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert Leventer, Commissioner. Affirmed.

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

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jason Tran and Stephanie C. Santoro, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant J.W. appeals from a juvenile court order declaring him a ward of the court under Welfare and Institutions Code section 602[1] following the sustaining of a petition filed October 31, 2017, charging him with second degree robbery (Pen. Code, § 211). Appellant contends that the court erred in refusing to exclude both an unreliable identification made as the result of an impermissibly suggestive field show–up, and his admission following an unlawful arrest. We affirm.

BACKGROUND

Prosecution Evidence

1. *The Robbery*

Around 8:45 p.m. on October 29, 2017, Alma Gallaga was walking on Main Street, near the intersection of Slauson Avenue in Los Angeles. Appellant and another minor approached Gallaga from behind, and grabbed her purse. Both minors wore Halloween masks. One minor held Gallaga's left arm, while the other pulled the purse from her right arm.

2. *Appellant's Detention*

Shortly thereafter, Los Angeles Police Department (LAPD) Officer Luis Sanchez and his partner, Officer Vargas were flagged down in their patrol car near the corner of Slauson and Main. Officer Vargas

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

saw a group of three young men, including appellant, fighting. As the patrol car approached, appellant and another person ran away. The third combatant, who remained at the scene, told officers that the two individuals who had fled had taken a woman's purse. The officers chased after the men, and detained appellant and another minor on a nearby corner. Appellant was arrested at about 9:00 p.m., and placed in the back of a patrol car. At trial, Officer Sanchez testified that, when appellant was detained, he told the officers he and the other minor had "planned to take the victim's purse. [Appellant] and [his companion] walked behind [the victim]. Took masks from a vendor and approached [the victim] from behind. . . . The other [minor] took [the victim's] purse and they both fled."

3. *Gallaga's Identification of Appellant*

At about 8:45 p.m. the same evening, LAPD Officers Armando Medina and Grenados responded to a backup call for a robbery on Slauson. Appellant and the other minor were in custody by the time Officer Medina and his partner arrived. Based on information on an identification card found in the stolen purse, Officers Medina and Grenados drove to Gallaga's home, and told her that her purse had been found.[2] Gallaga confirmed that her purse had been stolen a short while earlier.

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[2] The record does not indicate how the purse was recovered.

Officer Medina testified that he told Gallaga that "[The police] have it. Would you mind doing a field show up for us to identify them." He also recalled Officer Grenados telling Gallaga, that "We have the guys that took your purse. What we are going to do is we are going to take you where these guys are at. And if you say yes, that is it." Gallaga recalled this exchange differently. She testified that the officers "said . . . they had the two kids and [her] purse. So they took me to identify, I guess." When asked by the prosecution whether the officers had told her "in advance that [she] may or may not have to identify them but . . . if you saw someone, to say yes or no," Gallaga responded "Uh-huh. They said, 'We got them' and 'Do you think you want to see if those were the kids that took your purse?'" Gallaga also testified that Officer Grenados told her, "'we have the kids . . .' [and] said it was okay if [Gallaga] wanted to [identify them]." The officers drove Gallaga to the location where appellant was being held. Officer Medina read Gallaga the standard admonition for field showups,[3] which Gallaga said she understood.

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[3] Officer Medina read the following admonition to Gallaga: "An officer who attempts to conduct a field show up shall inform the victim or witness that the person is in temporary custody as a possible suspect only. And the fact that the person is in police custody does not indicate his/her guilt or innocence. And the purpose of the field show up is either to eliminate or identify the person as a suspect involved in the crime. Do you understand?"

Gallaga remained in the patrol car at the field showup. Because it was dark, the minors were placed in front of car headlights. Gallaga was asked "Is this the person who took your purse?" Gallaga told the officers that "they looked like the ones that took [her] purse. But [she] didn't see the one that took [her] purse because he was wearing a mask." She asked to see the minors wearing masks. Gallaga did not remember whether an officer asked her to "take a look at the [minors'] clothing," or whether it was "the same clothing [her assailants] were wearing." Gallaga did not recall telling the police that both robbers wore masks. She told an officer that "only one was wearing the Halloween mask. . . . The one that grabbed [her] purse." After the minors donned "the mask,"[4] Gallaga identified appellant as the person who robbed her, based on the minors' respective heights and the clothing they wore. At the adjudication hearing Gallaga did not identify appellant as one of the individuals who had approached her from behind.

Regarding the field showup, Officer Medina testified as follows:

> "[DEFENSE COUNSEL]: Do you recall [Gallaga] saying or indicating that she could not recognize them because they were wearing masks at the time?
> "[OFFICER MEDINA]: Something, like, along that nature. Yes, I do remember.

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[4] The record does not indicate how a mask was obtained, or what it looked like.

"[DEFENSE COUNSEL]: And do you remember either you or another officer asking her if she can identify the clothing they were wearing?
"[OFFICER MEDINA]: Yes.
"[DEFENSE COUNSEL]: Do you remember her saying 'I don't know. It happened really fast. I don't know'?
"[OFFICER MEDINA]: Yes."

The trial court followed up:

"[THE COURT]: So I am clear. The field I.D. was not of these minors but of these minors wearing masks? Does that make sense? So she identified two people who robbed her. But at the time they robbed her they were wearing masks and she was able to find similarities between the minors because of their heights?
"[OFFICER MEDINA]: And clothing they were wearing.
"[THE COURT]: And clothing?
"[OFFICER MEDINA]: Correct."

Officer Medina also testified that Gallaga said she had been robbed by "one tall [person] and one short one."

4. *Appellant's Confession*

Appellant was taken into custody and interviewed by Officers Sanchez and Vargas. Officer Sanchez testified that appellant's mother was called, but could not remember whether he or his partner made the call.[5] Appellant was read his *Miranda* rights. He said that he

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[5] The detention report states that Officer Sanchez called appellant's father. Appellant's defense counsel sought to suppress the confession on the ground that appellant's mother was not called. (§§ 627, 701.1.) The motion was denied. Appellant concedes that failure to comply with

understood his rights, waived them and, as he had done earlier, confessed to the robbery. Appellant told the officers that he and another minor planned to steal Gallaga's purse. They took masks from a vendor, then approached Gallaga. Appellant's companion took the purse, and both minors fled.

Defense Case

Appellant's mother testified that the police did not contact her on October 29, 2017, regarding her son's arrest.

DISCUSSION

Appellant raises two arguments on appeal. First, he contends the juvenile court erred by refusing to exclude a purportedly unreliable eyewitness identification obtained as a result of impermissibly suggestive police tactics. Second, he contends that the court erred by admitting his confession obtained as the result of an arrest made without sufficient probable cause. Appellant maintains that there were no corroborating circumstances–apart from his flight–to cause a reasonable officer to believe he was one of the robbers, and his confession, which resulted from an unreliable identification and exploitation of the unlawful arrest, should have been excluded as

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section 627 does not constitute grounds for suppression of his confession. (See *People v. Davis* (1981) 29 Cal.3d 814, 826 [police need not contact a minor's parents before questioning the minor, although such a practice is "preferable"].)

tainted. Appellant insists that, because Gallaga's out–of–court identification and his admission were the only substantial evidence linking him to the crime, the true finding as to the petition must be reversed. We conclude otherwise. The record reflects that the field showup was not impermissibly suggestive, the identification was sufficiently reliable, and the confession properly admitted.

1. *Admission of Eyewitness Identification Evidence*

Defendant contends that the police used unnecessarily suggestive tactics in this case by telling Gallaga they had apprehended the robbers, then taking her to a showup at which she said appellant was similar in height to one of the robbers and wore similar clothing, but admitted she was not certain because she had only a brief encounter in the dark with a masked robber.

Field showups, like lineups, pose a danger of suggestiveness. (*Manson v. Brathwaite* (1977) 432 U.S. 98, 106, 116 (*Manson*); *People v. Medina* (1995) 11 Cal.4th 694, 753 (*Medina*).) By its very nature, a showup suggests that the person or persons at the showup may have committed the crime. (*People v. Odom* (1980) 108 Cal.App.3d 100, 110 (*Odom*).) Nevertheless, such procedures, while typically discouraged, are not "necessarily or inherently unfair." (*People v. Clark* (1992) 3 Cal.4th 41, 136, overruled on another ground by *People v. Edwards* (2013) 57 Cal.4th 658, 705; see *Stovall v. Denno* (1967) 388 U.S. 298, 302, overruled on other grounds by *Griffith v. Kentucky* (1987) 479 U.S. 314, 321 [one–person showups are "widely condemned" but violate due

process only if they are "unnecessarily suggestive"]; *Odom,* at p. 110 [showups are inherently, but not unconstitutionally, suggestive].) Despite their suggestive nature, such identification procedures have long been deemed permissible, and due process compels the exclusion of such identification evidence only if the procedure used to obtain was unduly suggestive, unnecessary and, as a result, unreliable. (*People v. Ochoa* (1998) 19 Cal.4th 353, 413 (*Ochoa*); *Medina*, at p. 753 [although showups pose a danger of suggestiveness, they are not necessarily or inherently unfair and all circumstances must be considered].) Indeed, some courts encourage the use of "in–field identifications . . . , because the element of suggestiveness inherent in the procedure is offset by the reliability of an identification made while the events are fresh in the witness's mind, and because the interests of both the accused and law enforcement are best served by an immediate determination as to whether the correct person has been apprehended. [Citation.]" (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 387 (*Carlos M.*).) "The law permits the use of in-field identifications arising from single-person show-ups so long as the procedures used are not so impermissibly suggestive as to give rise to a substantial likelihood of misidentification." (*Ibid.*; *People v. Garcia* (2016) 244 Cal.App.4th 1349, 1359 [same].)

"In order to determine whether the admission of identification evidence violates a defendant's right to due process of law, we consider (1) whether the identification procedure was unduly suggestive and unnecessary, and, if so, (2) whether the identification itself was

nevertheless reliable under the totality of the circumstances, taking into account such factors as the opportunity of the witness to view the suspect at the time of the offense, the witness's degree of attention at the time of the offense, the accuracy of his or her prior description of the suspect, the level of certainty demonstrated at the time of the identification, and the lapse of time between the offense and the identification. [Citations.]" (*People v. Cunningham* (2001) 25 Cal.4th 926, 989 (*Cunningham*); see *Ochoa, supra*, 19 Cal.4th at p. 413 [For an identification procedure to violate a defendant's due process rights, "the state must, at the threshold, improperly suggest something to the witness—i.e., it must, wittingly or unwittingly, initiate an unduly suggestive procedure"]; *Manson, supra,* 432 U.S. at p. 114.) "'If, and only if, the answer to the first question is yes and the answer to the second is no, is the identification constitutionally unreliable.' [Citation.]" (*Ochoa,* at p. 412.) "[T]here must be a 'substantial likelihood of irreparable misidentification' under the ""totality of the circumstances"" to warrant reversal of a conviction on this ground." (*Cunningham,* at p. 990; see also *People v. Clark* (2016) 63 Cal.4th 522, 556–558 (*Clark*).)

"A claim that an identification procedure was unduly suggestive raises a mixed question of law and fact to which we apply a standard of independent review, although we review the determination of historical facts regarding the procedure under a deferential standard." (*Clark, supra,* 63 Cal.4th at pp. 556–557.) On a challenge regarding the sufficiency of evidence, we uphold the judgment if there was substantial

evidence supporting the ruling, and we view the evidence in the light most favorable to the prosecution, adopt all reasonable inferences and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence, regardless of whether the prosecution relied mainly on direct or circumstantial evidence. (*People v. Avila* (2009) 46 Cal.4th 680, 701 (*Avila*); *People v. Valencia* (2008) 43 Cal.4th 268, 289, abrogated on other grounds by *People v. Rangel* (2016) 62 Cal.4th 1192, 1219.) Defendant bears the burden of demonstrating that the identification procedure was unreliable. (*Avila,* at p. 700; *Cunningham, supra*, 25 Cal.4th at p. 989.)

2. *The Showup Was Not Impermissibly Suggestive*

The first question is whether something about the officers' conduct rendered the showup unduly suggestive. The answer is no. "Suggestive comments or conduct that single out certain suspects or otherwise focus a witness's attention on a certain person in a lineup can cause such unfairness so as to deprive a defendant of due process of law. [Citation.] However, the reviewing court must examine the 'totality of the circumstances' in determining whether or not a lineup procedure has been unconstitutionally suggestive. [Citation.]" (*People v. Perkins* (1986) 184 Cal.App.3d 583, 588-589.) Unfairness in the procedure must be established "as a demonstrable reality, not just speculation." (*Id.* at p. 589.)

Appellant contends that the officers constructed an impermissibly suggestive identification procedure when Officer Grenados told Gallaga

that the police "have the guys that took your purse." Gallaga's testimony refutes this assertion. Gallaga testified that, before escorting her to the showup, the police officers told her they "had the two kids and [her] purse." However, she also testified that she was asked before the showup, "Do you think you want to see *if* those were the kids that took your purse?" (Italics added.) At the showup, Officer Medina gave the standard admonition, instructing Gallaga not to assume that the individuals shown were the ones who robbed her. Gallaga testified that, at the showup, she was asked "Is this the person who took your purse?" Thus, despite the language used by the police officers, Gallaga understood that she was being asked *whether the detained minors were the ones* who stole her purse.

In explaining what would constitute an impermissibly suggestive identification procedure, the Supreme Court in *United States v. Wade* (1967) 388 U.S. 218, described a procedure in which "the witness is told by the police that they have caught the culprit after which the defendant is brought before the witness alone." (*Id.* at p. 233; see also *Ochoa, supra*, 19 Cal.4th at p. 413 [for a witness-identification procedure to violate due process, the state must, at the threshold, wittingly or unwittingly, improperly suggest something to the witness].) We cannot conclude that such an impermissibly suggestive procedure definitively occurred here. Rather, viewing the factual record in the manner that supports the judgment, we conclude that, although the officers could have worded their questions more carefully, they did not impermissibly suggest either that they had apprehended the culprit, or

that Gallaga should identify appellant. Rather, they told her she "may or may not . . . identify them." At the showup, Gallaga was properly admonished and asked only if she could identify her assailant. Gallaga informed the officers that, although she had not seen the face of the masked person who took her purse, based on their heights and the clothing they wore, she could say that the individuals at the showup looked "like the ones that took [her] purse." On this record we cannot conclude that the police employed unduly suggestive tactics.

Moreover, considering all the circumstances of this case, the showup was conducted in reasonable, expeditious fashion. Field showups are usually held because police have found someone resembling the suspect. Here, once the police identified and found the victim, she was immediately taken to the location where the possible suspects had been apprehended based on information received from an unidentified informant at the scene. The short lapse of time between the crime and showup, coupled with Gallaga's recall of certain details about her assailants (their heights and clothing), increased the likelihood of a reliable identification. (See *Carlos M., supra*, 220 Cal.App.3d at p. 387 ["single–person show–ups *for purposes of in–field identifications* are encouraged, because the element of suggestiveness inherent in the procedure is offset by the reliability of an identification made while the events are fresh in the witness's mind, and because the interests of both the accused and law enforcement are best served by an immediate determination as to whether the correct person has been apprehended"].) Viewed in context, we conclude there was no

"'substantial likelihood of irreparable misidentification.'" (*Cunningham, supra*, 25 Cal.4th at p. 990.) The trial court properly found Gallaga's identification sufficiently reliable.

3. *The Confession Was Properly Admitted*

Appellant argues that his confession was inadmissible because it was the product of an unlawful arrest. In particular, appellant contends that the police lacked probable cause to arrest him in light of the fact that the victim said only that he appeared to be the same height as, and wore clothing similar to that worn by one assailant. Appellant ignores important details, including that a tipster at the scene pointed him out as one of the thieves, that he fled when the patrol car approached, and the recovery of Gallaga's purse at or near the scene.

"Cause for arrest exists when the facts known to the arresting officer 'would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime.'" (*People v. Harris* (1975) 15 Cal.3d 384, 389; *People v. Celis* (2004) 33 Cal.4th 667, 673 (*Celis*) [probable cause to arrest exists if facts known to police would sufficiently persuade a person of "reasonable caution" that the individual arrested committed a crime]; *People v. Bowen* (1987) 195 Cal.App.3d 269, 274 (*Bowen*).)

Information provided by an unnamed informant (such as the third combatant who remained at the scene here) may constitute a sufficient basis for finding probable cause if "the informant's statement is

reasonably corroborated." (*Jones v. United States* (1960) 362 U.S. 257, 269, overruled on another ground by *U.S. v. Salvucci* (1980) 448 U.S. 83, 85.) In examining whether police obtained reasonable corroboration, we apply a totality of the circumstances determination in which an informant's "'reliability,' and 'basis of knowledge'" are "relevant considerations." (*Illinois v. Gates* (1983) 462 U.S. 213, 230, 233 (*Gates*).) An informant's basis of knowledge—the grounds upon which he believes or knows something to be true—is important, because a tip is more trustworthy if the informant has first–hand knowledge of the criminal activity. (*Id.* at pp. 277–280 [discussing cases where the court focused on whether the informant spoke with personal knowledge].) An informant's "'veracity,'" "'reliability'" and "'basis of knowledge'" are not rigid "independent requirements" each of which must be present. (*Id.* at p. 230.) Rather, the focus is on the "overall reliability" of the tip. (*Id.* at p. 233; *People v. Spencer* (2018) 5 Cal.5th 642, 664-665; see *In re J.G.* (2010) 188 Cal.App.4th 1501, 1506 [probable cause is determined based on the totality of the circumstances, not any isolated event].)

Here, the information obtained from the tipster was reasonably corroborated by appellant's flight, and rapid recovery by the police of the purse the tipster claimed appellant had stolen. In addition, appellant was stopped after fleeing from the vicinity of the location where a robbery had occurred moments before. The officers' reasonable suspicion that appellant was the culprit was further corroborated when Gallaga confirmed that his clothing and height were consistent with her

recollection of the robbers. Collectively, these facts would be sufficient to persuade an officer exercising "reasonable caution" that appellant had committed a crime; i.e., constitute probable cause to arrest. (*Celis, supra*, 33 Cal.4th at p. 673; *Bowen, supra,* 195 Cal.App.3d at pp. 274–275.) In *Bowen*, police similarly detained the defendant, whose physical appearance and clothing matched the description of a one suspect who had committed several purse snatchings in the vicinity. (*Bowen, supra,* 195 Cal.App.3d at pp. 274–275.) The court found probable cause to arrest the defendant based on a victim's identification of a man at a showup and clothing worn by the defendant. (*Ibid.*)

In conclusion, we find that Gallaga's identification was neither unreliable nor obtained as a result of impermissibly suggestive police procedures, that the police had probable cause to arrest appellant, and that his confession was properly admitted.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J. COLLINS, J.