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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.M., a Person Coming Under the Juvenile Court Law.	B241717
THE PEOPLE, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	(Los Angeles County Super. Ct. No. MJ20687)

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

Esther R. Sorkin, 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, Assistant Attorney General, Linda C. Johnson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

J.M. (minor), appeals from a March 8, 2012 order declaring him a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 based on a finding that he committed an attempted first degree residential burglary (Pen. Code §§ 664, 459). He contends there was insufficient evidence to support the finding that he appreciated the wrongfulness of the charged conduct as required by Penal Code section 26 for persons under the age of 14. At the time of the charged conduct, minor was 13 years 3 months old. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A Welfare and Institutions Code section 602 petition alleged that on June 10, 2011, minor attempted to break into Christopher Arterberry's home.[1] Viewed in accordance with the usual rules of appeal (*In re Brandon G.* (2008) 160 Cal.App.4th 1076, 1079-1080), the evidence established that on June 10, 2011, Arterberry's primary residence was a house on West 39th Street. A few days before June 10, Arterberry locked the doors and activated the alarm before leaving his home. He did not return until the morning of June 10, in response to a police request. Arterberry did not know minor and had not given anyone permission to go into the house.

Ruth Powell lived next door to Arterberry. A little before 10:00 a.m. on June 10, Ruth looked out her window and saw minor and two companions standing in Arterberry's driveway, near the fence to his backyard. None of the three young men was familiar to Ruth and she assumed they were someone's grandchildren. A few minutes later, the sound of pounding and then glass shattering in Arterberry's backyard caused Ruth to look out a different window. This time, she saw minor and his two companions in Arterberry's backyard. Minor was at the fence looking towards the street, but Ruth could not see what his companions were doing. Ruth called 911. Within seconds, a helicopter was hovering over the house and police officers were there within a minute. Later that

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[1] All future undesignated statutory references are to the Welfare and Institutions Code unless otherwise specified.

morning, police escorted Ruth to a nearby location where they showed her three people, including minor. She identified minor and one other person as being in Arterberry's backyard, but she could not positively identify the third person.

Responding to the call, police officer Sunny Sasajima was walking down the driveway toward the tarp-covered chain link fence separating the driveway from the backyard when he saw minor, on the backyard side of the fence, pop his head up over the fence, then run towards the back of the house. As Sasajima ran towards the fence, he heard someone warn that the police had arrived. When Sasajima got to the fence, he saw minor and two companions running towards a fence, at the southwest corner of the property. As they climbed over that fence, minor and one of his companions looked back, giving Sasajima the opportunity to see their faces. Sasajima radioed his observations to the police helicopter. Sasajima entered the backyard and noticed shattered glass on the ground beneath a broken window. Hearing that police officers on the next street had spotted the suspects, Sasajima ran to that location. There, Sasajima saw minor and his two companions taken into custody.

Later that day, police officer Dean Thompson interviewed minor at the police station. After waiving his *Miranda* rights,[2] minor told Thompson that he had been skateboarding with friends when "Flores" said he needed to give some money to minor. Flores came up with the idea of breaking into the house.

On March 8, 2012, the court sustained the section 602 petition and declared minor a ward of the court. It placed minor home on probation with his mother upon specified terms. Minor timely appealed.

DISCUSSION

Minor's sole contention on appeal is that the trial court's finding that he understood the wrongfulness of his conduct, as required by Penal Code section 26 and *In re Gladys R.* (1970) 1 Cal.3d 855 (*Gladys R.*), was not supported by substantial

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[2] *People v. Miranda* (1966) 384 U.S. 436 (*Miranda*).

evidence.[3] He argues that his mother's testimony to the effect that she taught him right from wrong and evidence that he ran from the police were legally insufficient. We disagree.

Penal Code section 26 excepts from the general rule that all persons are capable of committing crimes: "[c]hildren under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." In *Gladys R., supra*, our Supreme Court held, Welfare and Institutions Code "[s]ection 602 should apply only . . . to those under the age of 14 who clearly appreciate the wrongfulness of their conduct." (*Gladys R., supra,* 1 Cal.3d at p. 867.)

Penal Code section 26 creates a presumption that children under the age of 14 are not capable of appreciating the wrongfulness of their conduct, a presumption that may be rebutted by clear and convincing evidence to the contrary. (*People v. Lewis* (2001) 26 Cal.4th 334, 378 (*Lewis*).) Knowledge cannot be inferred from the act itself, but " 'the attendant circumstances of the crime, such as its preparation, the particular method of its commission, and its concealment' may be considered. [Citation.] Moreover, a minor's 'age is a basic and important consideration [citation], and, as recognized by the common law, it is only reasonable to expect that generally the older a child gets and the closer [he] approaches the age of 14, the more likely it is that [he] appreciates the wrongfulness of [his] acts.' [Citation.]" (*Ibid*.)

During the penalty phase of his capital trial, the defendant in *Lewis* challenged the admissibility of evidence that many years earlier he had been declared a ward of the court when, at the age of 13 years 9 months, he committed a murder by pouring gasoline and throwing a lighted match into a car in which the victim was sleeping. Evidence that the defendant had fled from the scene and then gave conflicting statements to detectives "constitut[ed] clear proof that defendant knew the wrongfulness of his act. [Citation.]

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3 The People introduced evidence that minor filled out a *Gladys R.* questionnaire after he was arrested. Finding it unclear whether minor waived his *Miranda* rights before or after he answered the *Gladys R.* questions and that a waiver of *Miranda* rights must precede a *Gladys R.* interview, the court struck the evidence of the questionnaire, a ruling respondent does not challenge on appeal.

Moreover, at the time of the murder defendant was nearly 14 years old, which makes it more likely that he understood the wrongfulness of his act." (*Lewis, supra,* 26 Cal.4th at p. 379.)

A juvenile court finding that a minor knew the wrongfulness of his conduct at the time he committed the charged act is reviewed for substantial evidence. Under that standard, the appellate court views the evidence in the light most favorable to the respondent and presumes the existence of every fact the trier of fact may have deduced from the evidence. (*Lewis, supra,* 26 Cal.4th at p. 379.)

Here, minor's mother testified that she believed that as of June 10, 2011, the date of the incident, minor knew it was wrong to break into somebody else's house because it was common knowledge and was something that she would have taught him. Asked how she taught minor right from wrong, she testified, "I mean, just self-explanatory. . . . [I]f he does something wrong that he is not supposed to do I am going to correct him. I am going to let him know not to do it no more and what to do to prevent that." For example, after minor was found to have committed misdemeanor vandalism of school property in April 2011, mother "told him it was wrong. I mean -- I mean, I am tired of going to court. Basically, I don't want to be involved in this type of stuff. This is not how I raised my kids and basically what happened was an accident. So I just told him, you know, this is what happens. If you get into trouble, it's hard to get out of trouble. You got to be careful what you are doing, the things that you do can lead you to get in trouble." This colloquy followed: "[THE PROSECUTOR]: . . . And with regard to being on somebody else's property without permission? [¶] [MOTHER]: Well, of course, that is automatically wrong. [¶] [THE PROSECUTOR]: Let me finish, I'll let you answer. Have you ever taught him it was wrong to do that? [¶] [MOTHER]: I never had a problem with that. I never -- that never even came up into my head. I don't deal with people that do things like that so, no, I never said -- we [did not ever] have a discussion before about going onto someone else's property without permission, that he don't know. [¶] [THE PROSECUTOR]: What about taking things from people without permission? [¶] . . . [¶] [MOTHER]: If he takes something from somebody, yes. [¶] [THE

PROSECUTOR]: Well, did you ever tell him it was wrong to steal? [¶] . . . [¶] [MOTHER]: Of Course. [¶] . . . [¶] . . . I would tell him it was wrong to steal."

The juvenile court concluded that mother's testimony about teaching minor right from wrong was by itself sufficient to satisfy *Gladys R.* The court also found minor's understanding of the wrongfulness of his behavior could be inferred from the fact that he ran away from the police.

Minor argues on appeal that the mother's testimony was conclusory and in some instances she actually denied that she and minor had discussed the specific subjects asked by the prosecutor. He also argues that children and adults often have different understanding of what is common sense. We agree with this last point, as that is the foundation of Penal Code section 26. We reject the notion mother's testimony was too vague or otherwise insufficient. Mother taught her son the difference between right and wrong, that it was wrong to steal, and it was wrong to damage school property. This evidence, coupled with minor's age (13 yrs. 3 mos.) and the evidence of flight, was more than enough for the juvenile court to find minor appreciated the wrongfulness of his conduct.[4]

DISPOSITION

The March 8, 2012 order declaring minor a ward of the court is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.

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[4] Minor cites several cases where the "flight" evidence was more compelling than evidence here. We find those cases unhelpful as they do not establish that the flight evidence and the mother's testimony here were legally insufficient.