Filed 9/17/13 In re J.T. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re J.T., a Person Coming Under the Juvenile Court Law.	B245099 (Los Angeles County Super. Ct. No. JJ19430)
THE PEOPLE, Plaintiff and Respondent, v. J.T., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Catherine J. Pratt, Juvenile Court Referee. Affirmed.

Steven A. Torres, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court declared appellant J.T. a ward of the court under Welfare and Institutions Code section 602 and placed her at home on probation after finding that she committed second degree robbery (Pen. Code, § 211),[1] assault (§ 240), misdemeanor resisting a police officer (§ 148, subd. (a)(1)), misdemeanor battery on a police officer (§ 243, subd. (b)), and misdemeanor attempted battery on a police officer (§§ 243, subd. (b), 664). J.T. contends that there was insufficient evidence of fear or force to sustain the finding she committed second degree robbery. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2012 at approximately 11:00 a.m., Abigail Buenrostro, her nine-year-old granddaughter, and two small children were walking along Broadway near Gage Avenue in South Los Angeles. Buenrostro's granddaughter held a dog on a leash. J.T. and three companions rode up on bicycles and surrounded Buenrostro. J.T. placed her hand on Buenrostro's right shoulder to stop her from walking. J.T. then grabbed Buenrostro's gold chain from around her neck. The chain broke and fell to the ground. Buenrostro testified that she stood "in shock" and that, "[o]nce [her] chain was taken . . . [she] was frightened . . . because [she] had the two children." J.T. and her companions also tried to grab the dog's leash from Buenrostro's granddaughter. When they were unsuccessful "they threw [Buenrostro's granddaughter] on the floor" and the dog escaped. J.T. took the chain with her as she and her companions fled the scene.

At approximately 11:25 a.m., Los Angeles Police officers responded to the alleged robbery and arrested J.T. and two of her companions at an apartment nearby. In a

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

subsequent interview J.T. waived her *Miranda*[2] rights and admitted stealing Buenrostro's necklace.

The People filed a petition pursuant to Welfare and Institutions Code section 602, alleging that J.T. committed second degree robbery of Buenrostro, attempted second degree robbery of Buenrostro's granddaughter, assault on Buenrostro's granddaughter, misdemeanor resisting a police officer, misdemeanor battery on a police officer, and misdemeanor attempted battery on a police officer. The juvenile court sustained the petition as to all counts except attempted second degree robbery of Buenrostro's granddaughter, which the court dismissed. J.T. filed a timely appeal.

DISCUSSION

A. *Standard of Review*

The same standard governs review of the sufficiency of evidence in juvenile cases and adult criminal cases. (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 471, fn. 6; *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) We review the whole record in the light most favorable to the juvenile court's findings "to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, italics omitted; *In re Christopher F.*, *supra*, 194 Cal.App.4th at p. 471, fn. 6.) "The record must disclose substantial evidence to support the [findings]—i.e., evidence that is reasonable, credible, and of solid value . . . ." (*Zamudio*, *supra*, at p. 357.) Even if we conclude that a reasonable trier of fact could reconcile the circumstances with a contrary finding, we affirm the court's order unless it appears "'"that upon no hypothesis whatever is there sufficient substantial evidence to support"' the [court's findings]." (*Ibid*.)

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

B. *There Was Sufficient Evidence of Force or Fear To Support a Conviction For Second Degree Robbery*

J.T. contends that there was insufficient evidence to establish the force or fear element of robbery. She argues that she did not use force or fear to take or keep the chain she took from Buenrostro's neck. We find that there is substantial evidence in the record to support the juvenile court's finding she committed second degree robbery.

"Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) The requisite force or fear does not need to occur only at the time of the taking. (*People v. McKinnon* (2011) 52 Cal.4th 610, 686; *People v. Gomez* (2008) 43 Cal.4th 249, 256; *People v. Flynn* (2000) 77 Cal.App.4th 766, 771-772.) If the appellant uses force or fear to escape or otherwise retain even temporary possession of the property, he or she is guilty of robbery. (See *McKinnon*, *supra*, at p. 686; *Gomez*, *supra*, at p. 257.) Whether the appellant used force or fear to accomplish the taking is a question for the trier of fact. (*People v. Mungia* (1991) 234 Cal.App.3d 1703, 1707; see *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 166.)

"Force" is not synonymous with a physical assault. (*People v. Wright* (1996) 52 Cal.App.4th 203, 210; *People v. Mungia*, *supra*, 234 Cal.App.3d at p. 1708.) The force used need not be extreme. (*People v. Garcia* (1995) 32 Cal.App.4th 1756, 1776.) At the very least, the force "must be a quantum more than that which is needed merely to take the property from the person of the victim." (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259; *Wright*, *supra*, at p. 210.) For example, in *People v. Roberts* (1976) 57 Cal.App.3d 782, disapproved on another ground in *People v. Rollo* (1977) 20 Cal.3d 109, 120, footnote 4, the court held that there was sufficient evidence to support a robbery conviction based on force when the defendant grabbed the victim's purse with such force that the handle broke. (*Roberts*, *supra*, at pp. 785, 787; see *Burns*, *supra*, at p. 1259 [evidence that the victim tried to hold on to her purse after the defendant stepped on her foot to overcome her resistance supported conviction for robbery]; *People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246, disapproved on another ground in *People v. Mosby*

(2004) 33 Cal.4th 353, 365, fns. 2 & 3 [“rather polite . . . mere ‘tap’” on the victim’s shoulder supported conviction for robbery because the touching went beyond the force necessary to merely seize the property]; *Mungia*, *supra*, at p. 1709 [evidence that the defendant shoved the pregnant victim to seize her purse supported conviction for robbery].)

Fear may be either “1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative . . . or member of his [or her] family; or [¶] 2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.” (§ 212.) The element of fear is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for his or her property. (See *People v. Morehead* (2011) 191 Cal.App.4th 765, 774-775 [implicit threat of harm in bank robber’s demands for money gave rise to victim’s actual and reasonable fear].) The element of fear need not arise from an express threat; intimidation of the victim is enough. (See *id*. at p. 775 [“requisite fear need not be the result of an express threat or the use of a weapon,” and “[i]ntimidation of the victim equates with fear”]; *People v. Brew* (1991) 2 Cal.App.4th 99, 104 [evidence that defendant was considerably larger than the victim supported conviction for robbery based on fear or intimidation].) In addition, the victim’s fear need not be extreme, and the victim does not have to testify that he or she was afraid. (*Morehead*, *supra*, at p. 775.) “So long as the perpetrator uses the victim’s fear to accomplish the retention of the property, it makes no difference whether the fear is generated by the perpetrator’s specific words or actions designed to frighten, or by the circumstances surrounding the taking itself.” (*People v. Flynn*, *supra*, 77 Cal.App.4th at p. 772 .) For example, in *Flynn*, even though the defendant did nothing to instill fear prior to the taking, evidence that the defendant was taller and bigger than the female victim was, and that he and his fellow gang members outnumbered the victim six to one, was sufficient to support a conviction for robbery. (*Ibid*.)

J.T. contends, quoting *People v. Morales* (1975) 49 Cal.App.3d 134, 139, that this “appears to be a simple snatch and grab” where “the necklace was taken with only the

modicum of force 'necessary to accomplish the mere seizing of the property.'" A rational trier of fact, however, could have found that J.T. used force. As in *People v. Garcia*, *supra*, 45 Cal.App.4th at page 1246, where even a polite tap was sufficient force because the defendant intentionally touched the victim to move her out of the way and reached into the register, the trier of fact here could have found that J.T. intentionally placed her hand on Buenrostro's shoulder to stop her and grab the necklace. The touching was more than incidental and went beyond the force necessary to snatch the necklace. Even though J.T. merely placed her hand on Buenrostro's shoulder, once the force element is established for purposes of robbery, "the degree of force is immaterial." (*Ibid*.) In addition, as in *People v. Roberts*, *supra*, 57 Cal.App.3d at pp. 785, 787, where there was sufficient evidence of force because the defendant broke the handle of the victim's purse when he grabbed it, J.T. grabbed Buenrostro's necklace with such force that the necklace broke. (See *ibid*.)

People v. Morales, *supra*, 49 Cal.App.3d 134, relied on by J.T., involved a different issue. In *Morales*, the Court of Appeal reversed the conviction for robbery because the trial court erred in refusing to instruct the jury on the lesser included offense of grand theft from a person. (*Id*. at p. 141.) The court in *Morales* did not find that the evidence was insufficient to support the robbery conviction. The court found only that because there was reasonable doubt as to whether the force used in the purse snatching was sufficient to constitute robbery, the trial court should have given an instruction on theft. (*Id.* at pp. 140-141.)

J.T.'s reliance on a hypothetical from *People v. Jackson* (2005) 128 Cal.App.4th 1326, is similarly misplaced. J.T. argues that "[t]his case is the analytical equivalent of the 'unsuspecting and unresisting' purse snatching victim described in [*Jackson*], against whom a larceny or theft may have been committed, but not a robbery . . . ." The *Jackson* court was referring to a victim who was drunk, unconscious, or completely unaware that a robbery was occurring. (*Id.* at p. 1331; but see *People v. Magallanes* (2009) 173 Cal.App.4th 529, 534 ["the victim need not be consciously aware that the defendant is using force or fear to take possession of the vehicle for a [carjacking] conviction . . . to

stand"].) In contrast to the victim in *Jackson*, Buenrostro was consciously afraid and aware that J.T. was taking her necklace from her.

There is also substantial evidence of the element of fear. As in *People v. Flynn*, *supra*, 77 Cal.App.4th at page 772, where the defendant and his group of gang members outnumbered the victim and took advantage of the victim's fear to take and retain her purse, J.T. and her companions outnumbered Buenrostro when they rode up behind her and surrounded her on their bicycles. After J.T. grabbed Buenrostro's necklace, Buenrostro stood "in shock" as J.T. and her companions pushed Buenrostro's granddaughter to the ground. Buenrostro testified that she was frightened for the safety of her nine-year-old granddaughter and the two other children with her. (See § 212 [requisite fear can be "[t]he fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery"].) Although J.T. contends there was insufficient evidence of fear because there were "no threats of any kind, and no weapon was ever shown" and "[t]here was nothing about the alleged fear that led to either the taking or the retention of the property," neither the victim's resistance nor the perpetrator's threats are necessary elements of robbery. Buenrostro's fear allowed J.T. to accomplish the crime. (See *People v. Morehead*, *supra*, 191 Cal.App.4th at p. 778; *People v. Mungia*, *supra*, 234 Cal.App.3d at p. 1708.) Therefore, the juvenile court reasonably could have found that J.T. took advantage of Buenrostro's fear to retain the necklace after she yanked it from Buenrostro's neck.

DISPOSITION

The order is affirmed.

SEGAL, J.*

We concur:

PERLUSS, P. J.

WOODS, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.