Filed 2/4/26 In re L.C. CA6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re L.C., a Person Coming Under the Juvenile Court Law.	H052630 (Santa Clara County Super. Ct. No. 23JV46048B)
THE PEOPLE, Plaintiff and Respondent, v. L.C., Defendant and Appellant.	

L.C. was declared a ward of the juvenile court based on findings that he committed second degree robbery and used a deadly or dangerous weapon in committing the offense. (Pen. Code, §§ 211; 12022, subd. (b)(1).)[1] L.C. contends on appeal that the juvenile court erred in admitting evidence tending to show his gang affiliation or membership and that insufficient evidence supports the court's finding that he used a knife during the robbery. We conclude that the court did not prejudicially err in admitting testimony suggestive of L.C.'s gang affiliation but that the evidence to support the alleged use of a deadly weapon is insufficient as a matter of law. We will reverse the juvenile court's order and remand for further proceedings.

[1] Undesignated statutory references are to the Penal Code.

I. BACKGROUND

The Santa Clara County District Attorney filed a wardship petition under Welfare and Institutions Code section 602, subdivision (a), alleging that L.C., then 16 years old, had committed robbery in violation of section 211. The district attorney further alleged, under section 12022, subdivision (b)(1) (section 12022(b)(1)), that L.C. used a deadly or dangerous weapon (knife) to commit the offense.[2] The matter proceeded to a contested jurisdictional hearing.

A. *Jurisdictional Hearing Evidence*

On the day of the incident, 13-year-old Joseph O. went to the Oakridge mall with two friends, both minors. He was wearing a black and red hoodie. Joseph was briefly separated from his friends when they went ahead of him to the food court. While walking alone near the movie theater, a group of older teenagers, including L.C., approached him, and one of them asked: "Do you bang?" Joseph understood the speaker was asking him whether he was in a gang and said no, before walking away to rejoin his friends.

The older teenagers approached Joseph again while he was sitting at the food court with his friends. L.C. asked Joseph to come talk to him near the restrooms. Joseph noticed that L.C. had a black pocketknife clipped to the inside of his front pants pocket. He was unable to see the blade. Joseph reluctantly agreed to go to the restroom area with L.C. because he was "scared" and did not want to cause problems.

Upon reaching the restroom area, L.C. told Joseph that L.C.'s girlfriend liked Joseph's hoodie and asked Joseph to give it to him. Joseph initially refused, but eventually gave L.C. the hoodie after "eight or more" of L.C.'s friends joined them. One of the friends showed Joseph a hat and pair of shoes belonging to Joseph's friend and told

[2] "A person who personally uses a deadly or dangerous weapon in the commission of a felony . . . shall be punished by an additional and consecutive term of imprisonment in the state prison for one year." (§ 12022, subd. (b)(1).)

Joseph: "I took your homeboy's stuff." Another friend told Joseph that if he wanted problems, he should call his "bigger homies."

Scared of L.C.'s "friend group" and reluctant to "start anything," Joseph relented and gave his hoodie to L.C. Joseph was not looking at L.C.'s hands but did not believe L.C. had them near the knife during their interaction. Nor did Joseph recall saying otherwise to police who responded after the incident. While talking to Joseph, L.C. did not touch, look at, or reach for the knife. He did not threaten Joseph with the knife. Joseph could see that L.C. had the knife in his pocket, and both the knife and L.C.'s group of friends made him afraid.

After giving his hoodie to L.C., Joseph fled the mall and called his mother, who reported the incident. San Jose Police Officer Brent Osborn detained L.C. shortly after the robbery. Osborn observed a red folding knife in L.C.'s left pants pocket. The handle of the knife was partially exposed and the blade was retracted. Osborn opined that this type of knife is used "typically [for] protection" and capable of causing "great bodily injury or death." L.C. was wearing red pants and a Cincinnati Reds hat, which is "typically worn by either Norteño gang members in the area, or Norteño affiliates."

B. ***Findings and Disposition***

The juvenile court sustained the petition, finding that L.C. committed second degree robbery. The court also found true the use enhancement alleged under section 12022(b)(1), citing Joseph's testimony that L.C.'s knife was visible during their interaction and what the court believed was Joseph's testimony that L.C. "had his hands near that knife." At the subsequent dispositional hearing, the court adjudged L.C. a ward of the court, granted probation with wraparound services, and ordered L.C. to serve a term on electronic monitoring.

L.C. timely appealed.

II. DISCUSSION

Contesting the juvenile court's jurisdictional findings, L.C. contends that it was error to admit testimony that his attire suggested gang affiliation or membership and that insufficient evidence supports the section 12022(b)(1) finding that he used a knife.

A. *Evidence of Gang Attire*

L.C. argues that his red pants and Cincinnati Reds hat, together with Osborn's opinion that these were gang attire, lacked any relevance to the robbery allegation and should at a minimum have been excluded under Evidence Code section 352. "We review for abuse of discretion a trial court's rulings on relevance and the exclusion of evidence under Evidence Code section 352." (*People v. Avila* (2006) 38 Cal.4th 491, 578.)[3]

In arguing that gang evidence was irrelevant, L.C. contends Joseph never suggested that he believed L.C. was affiliated with a gang, so he had no basis to fear him on that ground. To be sure, there was no *direct* evidence that Joseph feared L.C. because of L.C.'s gang membership or affiliation: Joseph did not say this. But the circumstantial evidence permitted a reasonable fact finder to infer that Joseph's fear of L.C. and his "friend group" and reluctance to "start anything" with them by resisting could logically have been enhanced by suspicion that the group members were bonded by criminal street gang affiliation rather than something more innocuous: (1) Upon first approaching Joseph, one of L.C.'s friends immediately asked him, "Do you bang?" which Joseph understood to be an inquiry into gang affiliation; (2) Joseph resisted surrendering his hoodie to L.C. until eight or more of L.C.'s friends had converged upon him, at which point the sight of "all of them" standing together made him "scared that something was going to happen"; and (3) before Joseph relinquished his hoodie, one of L.C.'s friends

[3] To the extent that L.C.'s trial counsel did not contemporaneously object to the admission of this evidence, we address the merits, given L.C.'s additional argument that counsel was constitutionally ineffective for failing to preserve the issue. (See *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1125–1126.)

boasted of having just relieved Joseph's friend of his shoes, as though to suggest that L.C. and his friends shared criminal objectives and were prepared to act on those shared objectives. The court could reasonably have found that L.C.'s attire, in this context, made it more likely that Joseph would understand L.C. to be affiliated with a gang, making the presence of L.C.'s cohorts amplify Joseph's fear. We reject L.C.'s suggestion that the absence of any formal gang allegation defeats the relevance of gang evidence: That the district attorney lacked a basis to plead that the robbery of Joseph benefitted a criminal street gang does not foreclose an inference that apparent criminal street gang affiliation benefitted L.C. by facilitating his taking of Joseph's hoodie by fear.

Nor did the court abuse its discretion in declining to exclude this testimony under Evidence Code section 352, which gives the court discretion to admit or exclude evidence upon balancing its "probative value" against "the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Osborn's testimony relating to L.C.'s attire was brief—consisting of two substantive questions and answers—so the court was not irrational in implicitly finding that the testimony would not unduly consume time. And because a jurisdictional hearing takes place before a judge, not jury, Evidence Code section 352's additional concerns relating to jury confusion and prejudicial impact are significantly diminished. (See *People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1408 [explaining that "courts . . . presume that a professional jurist is capable of weighing admissible evidence without being prejudiced by extraneous matters"]; *In re Hernandez* (1966) 64 Cal.2d 850, 851 [holding, in the context of prior convictions, that a judge is "presumably able to weigh the evidence without being prejudiced," even in circumstances where a jury cannot]; *People v. Lashley* (1991) 1 Cal.App.4th 938, 952 [similar, but pertaining to inflammatory argument by counsel].)

Finally, even if the court erred in admitting the attire evidence, this error was not prejudicial. (*People v. Partida* (2005) 37 Cal.4th 428, 439 [absent issues of fundamental

fairness, state law errors in admitting evidence are subject to the traditional test of *People v. Watson* (1956) 46 Cal.2d 818, 836].) The attire evidence was brief and minimally considered by the court, which focused more heavily on Joseph's testimony, calling him the "more relevant [witness]," and repeatedly emphasizing his credibility. And evidence of L.C.'s guilt for the robbery was strong—Joseph testified he gave into L.C.'s demand for his sweatshirt because L.C.'s friends converged upon him and made him afraid, and that testimony was corroborated by video surveillance footage showing that conduct, followed by Joseph (now without his hoodie) running from the area in fear. It is not "reasonably probable" that the outcome of the jurisdictional hearing would have been more favorable to L.C. absent the attire-related testimony. (*Watson*, at p. 836.)

B. *Knife Use Enhancement*

L.C. next contends that insufficient evidence supports the juvenile court's finding that he used a deadly or dangerous weapon under section 12022(b)(1). Section 12022(b)(1) allows a defendant's sentence to be enhanced if he or she personally used a deadly or dangerous weapon during a felony. To prove "use," the evidence must show "something more than merely being armed." (*People v. Chambers* (1972) 7 Cal.3d 666, 672.) Intentionally displaying a weapon in a menacing manner qualifies. (*People v. Wims* (1995) 10 Cal.4th 293, 302.) When a defendant "deliberately shows" a weapon "or otherwise makes its presence known, and there is no evidence to suggest any purpose other than intimidating the victim (or others) so as to successfully complete the underlying offense, the [fact finder] is entitled to find a facilitative use rather than an incidental or inadvertent exposure." (*People v. Granado* (1996) 49 Cal.App.4th 317, 325 (*Granado*).) But the use enhancement is not applicable if the evidence shows that "the defendant's conduct with respect to the weapon appears to be purely incidental to the crime" (*id*. at p. 324, italics omitted), or if the defendant did no more than "passively display[]" the weapon (*People v. Hays* (1983) 147 Cal.App.3d 534, 548–549 (*Hays*)).

To determine whether the defendant used a knife for purposes of section 12022(b)(1), we may "properly consult cases construing the term 'uses' in other enhancement statutes," including cases involving the personal use of a firearm. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1198, overruled on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) But in doing so, we are mindful that unlike a firearm, "a knife can be, and usually is, used for innocent purposes," and for that reason "is not among the few objects that are inherently deadly weapons." (*People v. Aledamat* (2019) 8 Cal.5th 1, 6 (*Aledamat*).)

"In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains 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." (*People v. Albillar* (2010) 51 Cal.4th 47, 59–60.)

We agree with L.C. that insufficient evidence supports the juvenile court's true finding that he used a deadly or dangerous weapon. The evidence of course supported the undisputed propositions that (1) L.C. was carrying a knife, (2) Joseph noticed the knife, (3) the knife contributed to Joseph's fear and could be used to cause "great bodily injury or death." But there is no evidence from which a fact finder could reasonably infer that L.C. engaged in a "deliberate display [of the knife], intended to convey menace, for the purpose of advancing the commission of the [robbery]." (*Granado*, *supra*, 49 Cal.App.4th at p. 325.) To the contrary, despite the prosecutor's efforts to remind him of a prior statement to law enforcement, Joseph maintained that L.C. never touched, looked at, or reached for the knife during their interaction; Joseph "honestly" did not think L.C. even had his hands near the knife. (See *Alvarado v. Superior Court* (2007) 146 Cal.App.4th 993, 997 & 1005 (*Alvarado*) [having gun on nearby table insufficient for firearm use enhancement, even when defendant briefly rested hand on gun]; *Hays*, *supra*,

147 Cal.App.3d at pp. 548–549 [having rifle strapped to chest and shoulder in full view of others insufficient for firearm use enhancement].) This lack of evidence that L.C. did anything with the knife is particularly problematic here, because a pocketknife, unlike a firearm, is not inherently dangerous or deadly as a matter of law: It acquires those characteristics only by the manner of its use, which here appears to have been passive. (See *Aledamat*, *supra*, 8 Cal.5th at p. 6 [explaining that " 'a knife is not an inherently dangerous or deadly instrument as a matter of law [but] it may assume such characteristics, depending upon the manner in which it was used' "]; *People v. McCoy* (1944) 25 Cal.2d 177, 188 [same].)

The surveillance footage of the incident likewise shows no more than a passive display of the knife. L.C.'s arms can be seen hanging down at his sides, and to that extent, each of his hands was "near" the corresponding pocket on each side of his pants. But nothing in the video shows L.C. moving either hand from its natural, "passive" position toward the knife.[4] And Joseph's fear of the knife, though understandable, is not alone enough to establish use. (See *Hays*, *supra*, 147 Cal.App.3d at p. 548 [explaining that while "even a passive display of a firearm may engender a response in the victim," that "fear of a potential use does not escalate an 'armed with' status to a 'use' "].)

We surmise from the prosecutor's failed efforts to refresh Joseph's recollection with a police report that Joseph made a relevant prior statement to law enforcement.[5]

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[4] The digital video surveillance footage appears to only intermittently capture the incident. But the absence of complete video from the footage, even if the missing portions could in theory have been incriminating, does not assist the district attorney's case in our review for sufficiency. (See *People v. Superior Court (Valenzuela)* (2021) 73 Cal.App.5th 485, 498 [explaining that " '[a]n absence of evidence is not the equivalent of substantial evidence' " and " '[n]o finding can be predicated on the absence of evidence' "].)

[5] Asked whether he recalled previously telling police that he was afraid because L.C. had a knife in his pocket and kept his hand close to that pocket, Joseph said he did

And we recognize the difficulty of examining a young and potentially frightened victim of crime, even without the additional complication of language interpretation. We also recognize that in a hearing spanning several days, a trier of fact's recollection of the precise contours of witness testimony is necessarily imperfect.[6] But the prosecutor's questions are not evidence, of course, so if Joseph's prior statement to law enforcement was inconsistent with his trial testimony, it was the prosecution's burden to produce evidence of that inconsistency—if not through Joseph's recollection and acknowledgement of it then by calling the police officer who took the statement.

Viewing the evidence in the light most favorable to the judgment and drawing all favorable inferences, we still cannot say that L.C. did anything but "passively display[]" the knife during the robbery. (*Hays*, *supra*, 147 Cal.App.3d at p. 548.) Such display is insufficient to establish use under section 12022(b)(1). (*Alvarado*, *supra*, 146 Cal.App.4th at p. 1006 [holding that "absent evidence of some type of conduct or action with the gun[,] its potential for use is insufficient alone to support a finding of 'use' "].)[7]

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not recall such a statement. And when pressed, Joseph repeated that L.C. did not have his hands near the knife.

[6] L.C.'s counsel could have reminded the court that Joseph had denied that L.C.'s hands were near the knife. But on a claim of insufficiency of the evidence, we consider the record evidence, not how a trial court might have responded to a timely objection. (*People v. McCullogh* (2013) 56 Cal.4th 589, 596; see also *In re I.A.* (2020) 48 Cal.App.5th 767, 776 ["No objection is necessary to preserve a challenge to the sufficiency of the evidence for appeal"]; *People v. Hiller* (2023) 91 Cal.App.5th 335, 345 ["a challenge to the sufficiency of the evidence is generally not subject to forfeiture"].)

[7] The Attorney General does not dispute L.C.'s observation that reversal of the use enhancement for insufficiency of the evidence bars retrial of the enhancement. (*Tibbs v. Florida* (1982) 457 U.S. 31, 42; see also *People v. Eroshevich* (2014) 60 Cal.4th 583, 591.)

III. DISPOSITION

The juvenile court's order is reversed, and the true finding that L.C. used a deadly or dangerous weapon under Penal Code section 12022, subdivision (b)(1) is vacated. On remand, the juvenile court shall strike this allegation and hold a new dispositional hearing.

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LIE, J.

WE CONCUR:

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GROVER, Acting P. J.

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WILSON, J.

People v. L.C.
H052630