

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ERIC T., a Person Coming
Under the Juvenile Court Law.

B294521
(Los Angeles County
Super. Ct. No. TJ22563)

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC T.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County. Catherine J. Pratt, Judge. Affirmed as
modified.

Laini Millar Melnick, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,
Assistant Attorney General, Susan Sullivan Pithey and Peggy Z.
Huang, Deputy Attorneys General, for Plaintiff and Respondent.

In a July 6, 2016, petition filed by the Los Angeles County District Attorney's Office pursuant to Welfare and Institutions Code section 602, it was alleged that Eric T. (minor) committed three counts of assault with a deadly weapon with force likely to produce great bodily injury upon a peace officer or firefighter. (Pen. Code, § 245, subd. (c).)¹ The three counts arose out of the same incident and pertained to three alleged victims: Francis Coughlin (count 1), Erick Ortiz (count 2), and Tiffany Norwood (count 3). Minor denied the allegations.

The juvenile court granted minor's motion to dismiss counts 2 and 3. After a contested adjudication, the juvenile court found true the allegations in count 1 and declared minor a ward of the court pursuant to Welfare and Institutions Code section 602. Minor was placed at home with his parent on probation.

Minor appeals from the juvenile adjudication. He argues that the true finding as to count 1 of the petition must be reversed because it is not supported by substantial evidence. He also asserts that the juvenile court erred in calculating the maximum term of confinement.

We agree with minor that the maximum term of confinement set forth in the juvenile court's minute order must be stricken because he was placed home on probation. In all other respects, we affirm.

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

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

A. People's Evidence

On July 4, 2016, at around 7:40 p.m., about 100 individuals gathered at a walkway between 101st Street and 102nd Street in Los Angeles, where the Jordan Downs Housing Project is located. Some individuals were lighting illegal fireworks.

Los Angeles Police Department Officer Francis Coughlin responded to the housing project. Officers Coughlin, Ortiz, Norwood, and Holman were standing next to a police car in the middle of the intersection at 102nd Street trying to disperse the crowd. The crowd became agitated and yelled at the officers. Officer Coughlin called the gang unit for backup.

Los Angeles Police Department Officer Jason Valles was a gang officer who responded to the scene to ensure that the other officers were safe. He was standing about 40 feet away from the officers who were dispersing the crowd. There were about 50 people remaining in the area. Officer Valles saw minor light a M-80 firework and throw it in the direction of the officers. Officer Coughlin saw a flash of light. The firework landed about a foot from Officer Ortiz and exploded. It was a deafening sound.

Minor ran away, and Officer Valles and other officers followed on foot. Officer Valles broadcasted a description of minor wearing a white shirt with an American flag on the left side of the shirt. He was detained a block away.

Officer Coughlin experienced ringing in his ears for at least six hours after the incident. According to Officer Coughlin, Officer Norwood also experienced ringing in her ears and went home early because she felt sick.

A video depicting the incident was played. It depicted about 50 individuals gathered in an area and Officers Coughlin, Ortiz, and Norwood next to a police car. The video also depicted the lighted firework flying through the air and landing on the ground with an explosion.

B. Minor's Evidence

Minor testified on his own behalf. At the time, he lived across the street from the Jordan Downs Housing Project. On the night of the incident, minor was standing across the street from where the crowd was congregating. At around 10:30 p.m., minor and his brother, Ryan D. (Ryan), were walking near the housing project when two males with black hoodies asked Ryan for a lighter. The individuals appeared to be 16 years old. Because they were wearing hoodies, minor did not see their faces. Ryan gave a lighter to them. One of the individuals took out a firework from his pocket and lit it. He threw it over the building.

Minor was standing about 10 feet away from the individual and did not see where the firework landed. He heard the explosion. Minor and Ryan ran away with the two individuals and then separated from them. Minor and Ryan ran into an alley and stopped to sit on a porch. The officers ran past them and then returned. They arrested minor and Ryan.

II. Juvenile Court's Findings

Following the presentation of the People's evidence, minor moved to dismiss "in terms of the allegations that this was an assault with a weapon against Officers Coughlin, Ortiz and Norwood, particularly Officer[s] Ortiz and Norwood where there's been no evidence of what their injuries were, what they sustained." Minor continued: "I don't believe that there is sufficient evidence to counts 2 and 3 based on the fact that the

court has not heard from these officers and based on Coughlin's testimony that we don't know how far away the explosive, or merely being witnesses to fireworks doesn't necessarily mean that equals a victim." In other words, there was no evidence of the injuries, if any, sustained by Officers Ortiz and Norwood.

The juvenile court granted minor's motion to dismiss counts 2 and 3. It reasoned: "I don't believe that there is sufficient evidence based upon the testimony we have today to allow me to conclude beyond a reasonable doubt that Officers Ortiz and Norwood were sufficiently close to the explosion so that it was likely to cause great bodily injury."

Following presentation of minor's evidence, the juvenile court found sufficient evidence to conclude beyond a reasonable doubt that the allegations in count 1 were true. The juvenile court based its finding upon the testimony of Officers Valles and Coughlin and the information depicted in the video.

DISCUSSION

I. Substantial evidence supports the juvenile court's finding that minor committed an assault by means of force likely to produce great bodily injury

Minor contends that the juvenile court's true finding as to count 1 is not supported by sufficient evidence because the juvenile court found the evidence insufficient as to the other officers who were in close proximity. He further argues that the temporary ringing in the ears experienced by Officer Coughlin was not the type of injury contemplated by section 245.

As the parties agree, we apply the substantial evidence test. (*People v. Cuevas* (1995) 12 Cal.4th 252, 260.) In doing so, we review the record in the light most favorable to the verdict below to determine whether it discloses evidence that is

reasonable, credible, and of solid value such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt (*People v. Bolin* (1998) 18 Cal.4th 297, 331).

Assault is the unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (§ 240.) Section 245, subdivision (a)(1), penalizes assault by means of force likely to cause great bodily injury. Section 245, subdivision (c), prohibits any individual from committing an assault with a deadly weapon or instrument, or by any means likely to produce great bodily injury upon the person of a police officer. A person can commit an assault without making actual physical contact with the victim because the focus is on the use of the weapon or force likely to produce great bodily harm; it is immaterial whether the victim suffers any harm. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028, superseded by statute on other grounds as stated in *People v. Perez* (2018) 4 Cal.5th 1055, 1068.) A deadly weapon can be “any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.” [Citation.]” (*People v. Aguilar, supra*, 16 Cal.4th at pp. 1028–1029.) It is for the trier of fact to determine whether the force used was such as to have been likely to produce great bodily injury. (*People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1066.)

Ample evidence supports the juvenile court’s finding that minor violated section 245. Officer Valles testified that the firework landed and exploded about a foot from Officer Ortiz. Officer Coughlin testified that he was standing near Officer Ortiz. Officer Coughlin suffered ringing in his ears “throughout the night” or at least six hours. In addition, video depicted the firework exploding in the proximity of Officer Coughlin. This

evidence sufficiently supports the juvenile court's finding as to count 1.

In urging us to reverse, minor essentially argues that the verdict is inconsistent. After all, the juvenile court dismissed the assault charges related to Officers Ortiz and Norwood. Since the evidence showed that all three officers were standing close to one another, if the evidence was insufficient to sustain allegations relating to Officers Ortiz and Norwood, then the evidence must have been insufficient to sustain allegations relating to Officer Coughlin.

We are not convinced. Minor moved to dismiss counts 2 and 3 largely because there was no evidence of what injuries Officers Ortiz and Norwood sustained. The juvenile court seemed to have agreed with minor when it dismissed counts 2 and 3. It follows that the juvenile court's finding as to count 1 is not inconsistent with its dismissal of counts 2 and 3. Just because that evidence was insufficient to sustain allegations relating to Officers Norwood and Ortiz does not mean that the evidence necessarily was insufficient regarding the victim who testified, Officer Coughlin. (See, e.g., *People v. Santamaria* (1994) 8 Cal.4th 903, 911 ["[I]f an acquittal of one count is factually irreconcilable with a conviction on another, or if a not true finding of an enhancement allegation is inconsistent with a conviction of the substantive offense, effect is given to both"]; *People v. Lewis* (2001) 25 Cal.4th 610, 656 [an inconsistent verdict "may show no more than jury lenity, compromise, or mistake, none of which undermines the validity of a verdict"].)

Minor further argues that the temporary ringing in his ears experienced by Officer Coughlin "does not constitute a substantial injury," and therefore the evidence was insufficient to

sustain count 1 of the petition. Minor confuses the issue. Regardless of whether ringing in the ears constitutes a substantial injury, the question, as minor concedes in his opening brief, is whether the force used was such as would be likely to cause great bodily injury. (*In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1161–1162.) Throwing a firework at someone certainly falls within the scope of force likely to produce great bodily injury. (*People v. Duke* (1985) 174 Cal.App.3d 296, 302.)

Viewing the evidence in the light most favorable to the prosecution (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), sufficient evidence supports the juvenile court's true finding that minor assaulted Officer Coughlin, as alleged in count 1.

II. *The maximum term of confinement in the juvenile court's minute order is stricken*

Welfare and Institutions Code section 726, subdivision (d)(1), provides that when the juvenile court removes a child from the physical custody of his or her parents, it must specify the maximum term of physical confinement that could be imposed upon an adult convicted of the same offense or offenses. But, when a juvenile is committed to the custody of his or her parents, the juvenile court's order should not include a maximum confinement term. (*In re A.C.* (2014) 224 Cal.App.4th 590, 592.) The remedy in such a circumstance is to strike the term. (*Ibid.*)

Here, minor was placed home on probation. Accordingly, the juvenile court's order should not have set forth a maximum term of confinement. We hereby strike that term.

DISPOSITION

The maximum term of confinement in the juvenile court's order is stricken. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT