Filed 8/28/13 In re K.I. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.I., a Person Coming Under the Juvenile Court Law.	B244777
THE PEOPLE, Plaintiff and Respondent, v. K.I., Defendant and Appellant.	(Los Angeles County Super. Ct. No. TJ19554)

APPEAL from an order of the Superior Court of Los Angeles County, Kevin L. Brown, Judge. Affirmed as modified.

Courtney M. Selan, 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, Paul M. Roadarmel, Jr., Deputy Attorney General, for Plaintiff and Respondent.

Appellant K.I. was declared a ward of the court pursuant to Welfare and Institutions Code section 602 based on her entry into a residence and theft of items there, and in a separate incident, battery on a school officer. She claims the court should have stayed her term for either the burglary or grand theft under Penal Code section 654.[1] She also argues there was insufficient evidence to support the true finding on the charge of battery on a school officer. We agree execution of sentence must be stayed on the grand theft count, and otherwise affirm.

FACTUAL AND PROCEDURAL SUMMARY

The first incident occurred in May 2011. On the evening of May 22, Ben Jones returned to his home in Compton to discover that the back door and the door to his bedroom were both broken, as were the padlocks on the doors. In the bedroom, the partition to enter the attic crawlspace was partially open, although it had been closed when he left his house. A bag of jewelry was missing from his dresser drawer. Two cookie cans containing approximately $150,000 were taken from the attic. A black duffle bag also was taken, but a portable DVD player that had been in the bag was left on Mr.Jones's bed.

A neighbor showed Mr. Jones a video recording, marked with the date "2011-05-22" and the time "11:21:35." In the video, Mr. Jones saw an individual wearing a brown sweatshirt with the hood partially up and carrying his black duffle bag. Mr. Jones recognized the person in the video as appellant. He knew it was she because he could see portions of her face on the video and he recognized "the little walk she has and the movements." He identified a second person in the video as appellant's brother. Appellant and her mother had been living in a house behind Mr. Jones's house for approximately two and a half years, and Mr. Jones had seen appellant two or three times a week.

The second incident occurred in May 2012. Uniformed school security officers Larry Ventress and Timothy Bowdry were on the basketball court at Compton High

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

School investigating an incident involving five male students. They noticed a teacher in a nearby classroom telling appellant she did not belong in that class. Officer Ventress called her over and told her to stand at the corner of the building while he continued to talk to the other students. Appellant got upset and walked away. The officers handed off the other students to another security officer and followed appellant in a golf cart.

They caught up with appellant near the school cafeteria. Officer Ventress told her to get into the cart; he repeated this instruction another three times. According to Officer Ventress, appellant "started cussing me out. She had a book bag on her back. I took my finger and put it on the strap . . . trying to steer her towards the cart." When he did that, appellant "turned around and just started swinging." Her hand caught the left side of his face and knocked his glasses off. The two officers restrained her with handcuffs and took her into custody.

In August 2011, a Welfare and Institutions Code section 602 petition was filed with respect to the first incident, alleging appellant violated sections 459 (first degree residential burglary) and 487, subdivision (a) (grand theft of personal property). The juvenile court determined she was eligible for deferred entry of judgment pursuant to section 790. In June 2012, a second Welfare and Institutions Code section 602 petition was filed with respect to the school incident, alleging violation of section 243.6 (battery on a school employee).

Both counts in the first petition were found true, and both were found to be felonies. The single count in the second petition was found true, and it was found to be a misdemeanor. Appellant was declared a ward of the court and ordered to camp community placement for the middle term of six months. The court set the maximum period of confinement at six years, four months, and ordered the sentences for the residential burglary and the grand theft to run concurrently.

DISCUSSION

I

Appellant claims the court erred when it ordered the maximum terms of confinement for the burglary and grand theft to run concurrently. Section 654, subdivision (a) prohibits multiple punishment for the same act. The purpose of this section "is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense . . . ." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) If all of the offenses are incident to one objective, the defendant may be punished for any one of the offenses, but not for more than one. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1468.)

Burglary consists of entry into a house or other specified structure with the intent to commit grand or petit larceny or any felony. (§ 459.) There was no evidence in this case that appellant's entry into Jones' home was for any purpose other than the taking of personal property. Respondent's assertion that appellant entered the home with intent to vandalize it, in retaliation for being evicted, is speculative. Section 654 thus precludes punishment for both burglary and theft where the evidence shows only that the burglary is based on an entry with intent to commit that theft. (*People v. Alford*, *supra*, 180 Cal.App.4th at p. 1468.) Execution of sentence must be stayed on the grand theft count.

II

Appellant also claims the true finding for battery on a school officer cannot stand because there was no evidence that she acted with the requisite intent. She asserts her physical contact with Officer Ventress was accidental.

Battery is "any willful and unlawful use of force or violence upon the person of another." (§ 242.) It is a general intent crime, requiring only an intent to do the act that causes the harm. (*People v. Lara* (1996) 44 Cal.App.4th 102, 107.)

Appellant testified that when Officer Ventress grabbed her, "my reaction was get up off me, and my hand flew up. I didn't mean to hit him in the face. That wasn't my intention." She knew he was behind her, and when he grabbed her backpack, "It was a reaction. It was a reflex." Viewing this evidence in the light most favorable to the judgment, we find sufficient evidence that appellant acted with the general intent to commit the act which resulted in the officer being struck in the face.

DISPOSITION

The dispositional order is modified to stay execution of sentence for grand theft. In all other respects, the order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.