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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re STEVEN C., a Person Coming Under
the Juvenile Court Law.

B234021
(Los Angeles County
Super. Ct. No. FJ44401)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Robert J. Totten, Judge. Affirmed.

Bruce G. Finebaum, 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., and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Appellant Steven C., a minor, appeals from an order of the juvenile court declaring him to be a ward of the court under Welfare and Institutions Code section 602 and committing him to the Division of Juvenile Justice for a maximum term of 11 years. Appellant contends there was insufficient evidence that he committed assault with a firearm. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 7, 2011, at approximately 10:30 a.m. to 11:30 a.m., Vincent S. was standing at the bus stop near his high school in Los Angeles. Two male Hispanics approached him and asked, “Where you from fool?” When Vincent responded “Nowhere,” one of the two said “Fuck niggers.” One of them placed a gun to Vincent’s stomach. The two males then walked off and Vincent went home.

Vincent did not report the incident because he lived in the area and was afraid. The following day he saw appellant walking down the street with two girls. He made eye contact with appellant. A few days later Vincent reported the incident at school after a teacher overheard him talking about it. The school notified the police.

On March 11, 2011, Los Angeles County Police Detective David Mejia spoke with Vincent in the principal’s office at his high school. Vincent was scared because his neighborhood had a history of gang problems and he feared retaliation. Vincent eventually told Detective Mejia “the whole story.”

On March 15, 2011, Detective Mejia went to Vincent’s home and showed him a photographic six-pack. Vincent studied the six-pack, circled appellant’s picture, and identified appellant as the person who placed a gun to his stomach on March 7, 2011.

On March 18, 2011, the district attorney filed a petition against appellant under Welfare and Institutions Code section 602 alleging assault with a firearm (Pen. Code, § 245, subd. (a)(2)).¹ The petition further alleged that appellant personally used a firearm

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

(§ 12022.5) within the meaning of sections 667.5, subdivision (c), and 1192.7, subdivision (c).

At the adjudication hearing, Vincent testified that Detective Mejia showed him a six-pack and he identified the person who put a gun to his stomach by drawing a circle around the person's photograph. Vincent said he circled the picture "because he looked like the guy from the picture but here in person it does not look like the same person. It's not the same person that did it." But when the court asked: "You agree that the person in that photograph number five is the same person who is sitting here today." Vincent responded, "Yes, that is him right there, isn't it?"

Vincent admitted that he did not want to testify because he did not want anything to happen to his family.

In closing argument, appellant's counsel argued that there was insufficient evidence to identify appellant as the perpetrator. The court sustained the petition and found the allegation to be true. Appellant was declared a ward of the court under Welfare and Institutions Code section 602. The court declared the offense to be a felony and deemed it to be a strike.

DISCUSSION

Appellant contends that the juvenile court's true finding on the assault allegation is not supported by substantial evidence because Vincent gave uncorroborated and inconsistent testimony when identifying appellant as the perpetrator.

In reviewing a claim that the evidence is insufficient to support a conviction, "[w]e review the whole record in a light most favorable to the judgment to determine whether it contains substantial evidence, i.e., evidence that is credible and of solid value, from which a rational trier of fact could find beyond a reasonable doubt that the accused committed the offense." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 859, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.) In determining whether substantial evidence exists, "we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate

the credibility of witnesses.” (*People v. Cortes* (1999) 71 Cal.App.4th 62, 71.) ““The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]”” (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088, quoting *In re Jose R.* (1982) 137 Cal.App.3d 269, 275.)

The same test for substantial evidence is used to determine whether an out-of-court identification is sufficient to support a criminal conviction. (*People v. Cuevas* (1995) 12 Cal.4th 252, 272.) “[T]he probative value of [a dubious prior identification] and whatever other evidence there is in the record are considered together to determine whether a reasonable trier of fact could find the elements of the crime proven beyond a reasonable doubt.” (*Id.* at p. 274.) Although out-of-court identifications may have shortcomings, we may not substitute our assessment of the credibility of witnesses for that of the trier of fact. (*People v. Roa* (2009) 171 Cal.App.4th 1175, 1179–1180.)

Appellant contends that there is “zero evidence in the instant case to support or corroborate Vincent’s conditional identification.” Identification by a single eyewitness may be sufficient to prove appellant’s identity as the perpetrator. (*People v. Anderson* (2001) 25 Cal.4th 543, 570–575.) It has been “recognized that an out-of-court identification generally has *greater* probative value than an in-court identification, even when the identifying witness does not confirm the out-of-court identification: ‘[T]he [out-of-court] identification has greater probative value than an identification made in the courtroom after the suggestions of others and the circumstances of the trial may have intervened to create a fancied recognition in the witness’ mind. [Citations.] The failure of the witness to repeat the [out-of-court] identification in court does not destroy its probative value’ [Citations.]” (*People v. Cuevas, supra*, 12 Cal.4th at p. 265.)

Appellant contends that Vincent was unfamiliar with appellant and only saw him briefly and told Detective Mejia that appellant “looked similar to the guy that pulled out the gun on me.” But the evidence showed that Vincent saw the perpetrator the day following the incident just a few blocks from the school and made eye contact with him.

Testimony that a defendant “resembles” or “looks like” the perpetrator is sufficient to establish identity. (*People v. Jackson* (1999) 183 Cal.App.2d 562, 568.)

Although reluctant at first to talk to Detective Mejia in the postincident interviews, Vincent positively identified appellant as the person who placed a gun to his stomach. Prior to trial, Vincent expressed reluctance to testify and in court stated that he feared retaliation against his family. He stated, “If you tell on somebody, you already know what they are going to do, you know, the outcome of that.” In addition, Detective Mejia testified that Vincent was scared because the area in which he lived had a history of gang violence and retaliation against families. Based on fear of retaliation, Vincent had motive to recant at trial and his testimony with respect to identification was inconsistent. The trial court permissibly credited the postincident interviews and identification and rejected the recanting testimony in sustaining the petition.

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ