Filed 2/28/17 In re Jose A. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JOSE A., a Person Coming Under the Juvenile Court Law.	B275811 (Los Angeles County Super. Ct. No. FJ53306)
THE PEOPLE, Plaintiff and Respondent, v. JOSE A., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Robin Miller Sloan, Judge. Reversed and remanded.

Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

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The juvenile court found Jose A. (minor) guilty of committing battery that inflicted injury upon a firefighter, and the court placed minor on probation (Pen. Code, § 243, subd. (c)(1)). On appeal, minor argues (1) there was insufficient evidence of injury, (2) the court erred in not declaring the wobbler offense to be a felony or misdemeanor, and (3) the court erred in not determining the minor's eligibility for deferred entry of judgment, should the court declare the offense to be a felony. Minor's first argument lacks merit, but the People concede—and we agree—that minor's last two arguments necessitate a remand. Accordingly, we affirm in part and remand for the court to make the required findings on the record.

FACTS ANDPROCEDURAL BACKGROUND

In the early morning hours of October 10, 2015, minor, who was then 17 years old, punched a firefighter in the right side of his face with a closed fist. The firefighter was in the apartment where minor's brother had experienced a seizure, and was trying to prevent the brother from flailing his arms and legs. As a result of the punch, the firefighter cut the inside of his lip on his tooth and bled, his face reddened for a few hours, and his jaw was sore for a few days. The firefighter went to the hospital for medical treatment. His jaw was examined, and he was given an ice pack, which he applied for 15 minutes. The firefighter returned to duty later that morning.

The People filed a petition against minor alleging a felony count of battery with injury on emergency personnel (Pen. Code, § 243, subd. (c)(1)). The juvenile court sustained the petition, declared minor to be a ward of the court under Welfare and

Institutions Code section 602,[1] and placed him on home probation for six months.

Minor filed this timely appeal.

DISCUSSION

I. Sufficiency of the Evidence

A person who "commit[s]" "a battery . . . against . . . [a] firefighter" is guilty of misdemeanor (Pen. Code, § 243, subd. (b)), but is guilty of a "wobbler" offense (that is, an offense punishable as either a felony or a misdemeanor) if "an injury is inflicted" upon that firefighter (*id.*, subd. (c)(1)). For these purposes, an "injury" means "any physical injury which requires professional medical treatment." (*Id.*, subd. (f)(5).) In assessing whether an injury meets this definition, what matters "is the nature, extent, and seriousness of the injury"—not whether the victim actually sought medical attention. (*People v. Longoria* (1995) 34 Cal.App.4th 12, 17 (*Longoria*).)

Minor argues there was insufficient evidence to support the juvenile court's finding that the firefighter in this case suffered an "injury." In evaluating this claim, "'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.' [Citation.]" (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.)

Although it is a close question, we conclude that sufficient evidence supported the juvenile court's finding that the

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

firefighter suffered an "injury" because minor's punch cut the firefighter's lip and caused bleeding and also caused redness and soreness in the firefighter's jaw that necessitated application of an icepack. Convictions based on similar injuries have been upheld. In *Longoria*, the court concluded that a police officer who had been kicked in the groin, who suffered cuts to one of his hands, and whose hand was crushed in a way that made it difficult for him to hold a gun for a few days was "injured." (*Longoria*, *supra*, 34 Cal.App.4th at pp. 15-18.) Similarly, in *People v. Lara* (1994) 30 Cal.App.4th 658, 667-668, the court concluded that a police officer who bruised both his knees and received numerous cuts and abrasions on his hands while subduing the defendant was "injured." The injuries suffered by the firefighter in this case are of a similar ilk. Those injuries are also greater than the injuries found to be insufficient in other cases. (See *In re Michael P.* (1996) 50 Cal.App.4th 1525, 1530 [soreness in chest and chin, with no bruising and no cuts; not "injury"]; *In re D.W.* (2015) 236 Cal.App.4th 313, 323-327 (*D.W.*) [irritation in the eyes stemming from causes *other than* defendant's act in spitting in victim's eye, and medical treatment to test for "communicable disease"; not "injury"].)

Minor resists this conclusion. He asserts that the fact that the firefighter sought medical treatment is not enough by itself to qualify as an "injury"; he is right (*D.W.*, *supra*, 236 Cal.App.4th at p. 324), but we are not relying solely on that fact. Minor contends that obtaining an "ice pack" as treatment is not enough and cites several out-of-jurisdiction cases to support this proposition. But those cases are not using the definition of "injury" we must apply here. (*Quintanilla v. United States* (D.C.Ct.App. 2013) 62 A.3d 1261, 1263-1265 ["significant bodily

injury"]; *Robinson v. Moreland* (8th Cir. 1981) 655 F.2d 887, 889-890 ["serious medical needs"]; *King v. State* (Del. 2007) 935 A.2d 256 ["physical injury" requiring "impairment of physical condition or substantial pain"].) More importantly, "the application of ice to mild swelling" *is* a form of medical treatment. (E.g., *People v. Burroughs* (1984) 35 Cal.3d 824, 830, overruled in part on other grounds by *People v. Blakeley* (2000) 23 Cal.4th 82.) Minor lastly argues that the firefighter was able to resume work the same day. This certainly bears on the "extent" and "seriousness" of the injury, and is what makes this a close case; however, it does not negate the validity of our conclusion that the totality of the evidence regarding the firefighter's injury shows that he was "injured."

II. Sentencing Issues

A. Violation of section 702

When a juvenile is found guilty of a crime, like Penal Code section 243, subdivision (c)(1), that is a "wobbler" offense, the juvenile court "shall declare the offense to be a misdemeanor or felony." (§ 702; accord, Cal. Rules of Court, rule 5.795(a).) This mandate is "strict[ly]" enforced. (*In re Jacob M.* (1987) 195 Cal.App.3d 58, 65.) The juvenile court must generally make this declaration on the record in open court; it is not enough if the offense is charged as a felony or if the court's minute order contains the declaration, although a declaration in a signed "Findings and Order" will suffice. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1208 [felony charge insufficient]; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23 [minute order insufficient]; cf. *In re Kenneth H.* (1983) 33 Cal.3d 616, 619-620 [Findings and Order sufficient].)

Minor argues that the juvenile court did not make a proper declaration, and the People agree. So do we. Although the crime is charged as a felony and the juvenile court's minute order declares the crime to be a felony, there is no declaration to that effect on the record. Under the precedent cited above, we must remand for the juvenile court to make this declaration in an appropriate manner.

B. Deferred entry of judgment

A minor who is charged with a non-aggravated felony, who has no history of incarceration or failed probation, and who is otherwise eligible for probation may seek deferred entry of judgment—that is, to plead guilty to the felony and seek withdrawal of the plea and dismissal of the charge upon successful completion of a period of probation. (§ 790, subd. (a); *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123 (*Luis B.*) [noting juvenile court's discretion whether to grant deferred entry of judgment to an eligible minor].) The prosecutor is charged with determining a minor's eligibility for deferred entry of judgment. (§ 790, subd. (b).)

Minor asserts that the prosecutor failed to do so in this case, and the People agree. The prosecutor included with the petition a standardized form regarding minor's eligibility for deferred entry of judgment, but left it blank. Should the juvenile court declare the offense to be a felony, the prosecutor is required to determine minor's eligibility for deferred entry of judgment. If minor is eligible, the juvenile court must set aside its findings and dispositional orders and conduct further proceedings in accordance with section 790. (*Luis B.*, *supra*, 142 Cal.App.4th at pp. 1123-1124.)

DISPOSITION

This case is remanded with directions to the juvenile court to make an oral declaration classifying minor's battery offense as either a felony or misdemeanor. If the offense is declared to be a felony, the court is also instructed to conduct proceedings in compliance with section 790.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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