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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL E.,

Defendant and Appellant.

B279168

(Los Angeles County  
Super. Ct. No. VA136976)

APPEAL from a judgment of the Superior Court of Los Angeles County, Roger Ito, Judge. Conditionally reversed and remanded.

Gail Harper, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, David E. Madeo and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Angel E. was charged as an adult and convicted by a jury of one count of first degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)), one count of first degree burglary (§ 459) and two counts of home invasion robbery (§ 211). The jury found true the allegation that defendant personally killed the victim during the course of a robbery (§ 190.2, subd. (a)(17)). The trial court sentenced defendant to a term of 25 years to life in prison.

Defendant filed a timely notice of appeal. He contends that the Public Safety and Rehabilitation Act of 2016 (Proposition 57), passed by California voters two months after his conviction, applies retroactively to his case and requires reversal of his case and remand to the juvenile court for a transfer hearing. Respondent agrees. We agree as well and conditionally reverse defendant's conviction and sentence and remand the matter to the juvenile court to conduct a juvenile transfer hearing.

## **BACKGROUND**

The offenses in this case took place in the early morning hours of September 20, 2014. Defendant and codefendants Jesus Adame and Sergio G. killed Sergio's father during their attempt to rob Sergio's parents. Defendant was 15 years old at the time.<sup>2</sup>

The trial of this matter occurred in August and September 2016, with the jury reaching its verdicts on September 2, 2016. Defendant was sentenced on November 1, 2016, and thereafter filed a timely notice of appeal.

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

<sup>2</sup> Codefendants Sergio and Adame are not parties to this appeal. Sergio was 17 years old at the time of the crimes. Adame was 18 years old.

## DISCUSSION

On November 8, 2016, California voters passed Proposition 57; it went into effect the next day. The bill amended sections of the Welfare and Institutions Code to eliminate direct filing of criminal charges against a juvenile in criminal court. The amendments permit some minors to be tried in criminal court, but only after a juvenile court holds a transfer hearing to consider factors such as the minor's maturity, degree of criminal sophistication and potential for rehabilitation.

On February 1, 2018, the California Supreme Court held that Proposition 57 applied retroactively to all juveniles charged directly in adult court whose judgment was not final at the time the proposition was enacted. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 304 (*Lara*).) Defendant is such a juvenile; his appeal was pending in this court when the Supreme Court issued its opinion.

The Supreme Court explained that the remedy for juveniles who are entitled to a transfer hearing under Proposition 57 will generally be a limited remand. (*Lara, supra*, 4 Cal.5th at pp. 309-310.) The juvenile's conviction and sentence should be conditionally reversed and the matter remanded to the juvenile court with directions to conduct a juvenile transfer hearing. If, after conducting the hearing, the court determines that the juvenile is "not a fit and proper subject to be dealt with under the juvenile court law" (Welf. & Inst. Code, § 707.1, subd. (a)), then the juvenile's convictions and sentence should be reinstated. If the juvenile court finds that it would *not* have transferred the juvenile to a court of criminal jurisdiction, then the court shall treat the juvenile's conviction as a juvenile adjudication and

impose an appropriate disposition. (*Lara, supra*, 4 Cal.5th at p. 310.)

### **DISPOSITION**

Defendant's convictions and sentence are conditionally reversed and this matter is remanded to the juvenile court for a transfer hearing as set forth in this opinion.

ROGAN, J.\*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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\* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.