Filed 1/31/13 In re Mario R. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re MARIO R., a Person Coming Under the Juvenile Court Law.	B242493
THE PEOPLE, Plaintiff and Respondent, v. MARIO R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. YJ36215)

APPEAL from a judgment of the Superior Court of Los Angeles County. Irma J. Brown, Judge. Affirmed.

Lynette Gladd Moore, 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 and Paul M. Roadarmel, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court found Mario R. had committed the offense of battery on school property, a misdemeanor. (Pen. Code, § 243.2, subd. (a).) We affirm.

FACTS

On October 12, 2011, Fidel R. stopped to talk to some friends as he walked to his fifth period class at Venice High School, then continued on his way and stopped to talk to a girl from his math class. After the girl left, Fidel heard a sound, turned around and saw three young males – Mario, Luis S.,[1] and a third person — approaching him. Fidel knew Mario and Luis from a prior altercation. Mario pointed to Luis, and told Fidel, "Homey wants a one-on-one" and "Let's hit the cut." Fidel understood this to mean they wanted to fight someplace where they would not be seen by security officers. Fidel chuckled and said "no." As Fidel turned away, someone told him not to "make a scene," then someone hit him in the face. Fidel did not definitively see who hit him first, but he "believed" it was Mario. Fidel then felt a tug on his shirt and fell down. At least two of the trio kept hitting Fidel on the side, top and back of his head. Fidel was momentarily dazed and did not definitively see who was hitting him, but saw Mario and Luis near him, within arm's reach. When Fidel got up and faced Mario and Luis, they said to each other, "Let's get the hell out of here," and ran.

After the incident, Fidel's shirt was ripped by the shoulder. He took it off and went to the bathroom to clean himself up. Fidel was bleeding from his lip and had bumps on his head. A police officer came into the bathroom to talk to Fidel, then he went to the nurse's office. At the nurse's office, Fidel was treated with an ice pack.

About a week later, Los Angeles Police Department Detective Freddy Lilomaiava tried to talk to Mario regarding the incident. Detective Lilomaiava advised Mario of his *Miranda*[2] rights. Mario did not give a statement.

---

[1] Luis S. was also involved in a juvenile proceeding; his adjudication was at the same hearing as for Mario's proceeding. Luis is not involved in the current appeal.

[2] *Miranda v. Arizona* (1966) 384 U.S. 436

In December 2011, the People filed a petition alleging that Mario committed the offense of misdemeanor battery on school property. (Pen. Code, § 243.2, subd. (a).) At an adjudication in July 2012, the People presented evidence establishing the facts which are summarized above. Luis S., testifying in his own behalf, claimed that he and Mario were just walking prior to the incident. According to Luis, Fidel started everything by saying something to the effect, "What are you looking at special ed retard," and then, before Luis or anyone else said or did anything in response, throwing the first punch. Basically, Luis testified he did no more than defend himself. Mario did not present any defense evidence. At the end of the hearing, the juvenile court found the allegation that Mario committed a battery to be true.

Mario filed a timely notice of appeal.

DISCUSSION

Mario contends the juvenile court's battery finding is not supported by substantial evidence. More specifically, Mario starts with the premise that he was adjudged to have committed the battery offense as an aider and abettor, and argues the prosecution failed to present sufficient evidence proving he "knew of the unlawful purpose of the person who attacked Fidel . . . , [or to prove he] intended to further that criminal end, and somehow assisted [the attacker]." Further, Mario argues the evidence did not prove that he directly participated in the battery. Mario's arguments are defeated by the standard of review.

When reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the decision below, and presume every fact the trier of fact reasonably could have deduced from the evidence; we may not reweigh evidence nor substitute our assessment of the credibility of witnesses for that of the trier of fact. (See. e.g., *People v. Boyer* (2006) 38 Cal.4th 412, 480; *In re Ryan N*. (2001) 92 Cal.App.4th 1359, 1373.)

Applying these rules, we find the juvenile court's battery finding is supported by substantial evidence. First, the testimony of the victim, Fidel, is sufficient to prove that Mario committed a battery as a direct attacker on the victim. The prosecutor's statement during argument that Fidel "didn't see exactly who hit him" was not binding on the trial court nor is it binding on appeal. Fidel testified he was hit when he was on the ground,

and that he saw Mario and Luis within arm's reach. No more is needed. Second, to the extent aiding and abetting is considered, the evidence summarized above is sufficient to support the court's express or implied finding that Mario assisted in the attack. When the evidence proves that three youths accost a victim and then at least two of the assailants begin hitting the victim, there is sufficient evidence to show aiding and abetting by each of the three young men. Such was the evidence here, and viewed in the light most favorable to the lower's court's finding, establishes the crime.

The trial court's statements at the adjudication, explaining its assessment of the credibility of the witnesses' testimony, and the direct and inferential facts the testimony established is binding, and wholly reasonable, and we must accept it on appeal. This is the court's ruling:

> " . . . [Fidel] was talking to someone and then heard a sound that drew his attention. [¶] When he attempted to determine the source of the sound he saw [Mario and Luis] that he knew from previous occasions, seen them around school and earlier during a confrontation that he had with them sometime previously, and that there was a third person there that he did not recognize. He went on to testify that [Mario] got his attention, pointed to [Luis] and said that he wanted to go one-on-one with him. Fidel testified that he chuckled and continued to keep walking and within a few steps he felt a blow to the left side of his head facial area followed by other blows that eventually caused him to fall to the ground, along with his shirt being tugged, that he was startled for a while, somewhat dazed, and got up and started to defend himself.
>
> "He did testify that while he was on the ground prior to getting up that he was aware of at least two . . . if not three individuals being in his presence, that he believed them to be the two minors that he had initially recognized, that would be [Mario and Luis], but that the first person that he came into physical contact with was the third person who was present at the event.

"So [Luis] indicates that he was there, that he fought the victim but that the fight was in self-defense, that it wasn't initiated by him. Then [Luis] testified that though he was in the fight, [Mario] was nowhere around and was not engaged in the fight. That would seem to be inconsistent with the testimony of the victim as to what had occurred. . . .

"So then we look at the demeanor and I looked at both minors throughout the proceeding . . . . [¶] Bottom line is I don't believe [Luis's] testimony to be true. I do believe that [Mario] was present, that it was his comments that invited the fight to take place, and that when [Fidel] was on the ground . . . that both [Mario and Luis] participated in administering the blows that he received."

Under the standard of review rules noted above, there is sufficient evidence supporting the juvenile court's finding that Mario committed a battery. The juvenile court's comments and findings are supported by the evidence we see in the record.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.