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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.H. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

A.R. et al.,

Defendants and Respondents;

B.H., a Minor, etc., et al.,

Appellants.

B282329

Los Angeles County
Super. Ct. No. DK20121

APPEALS from orders of the Superior Court of Los Angeles County, Emma Castro, Juvenile Court Referee. Reversed and remanded.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Appellant.

Law Office of Marissa Coffey and Marissa Coffey, under appointment by the Court of Appeal, for Appellants B.H., a Minor, etc., et al., and J.H, a Minor, etc., et al.

Zaragoza Law Office and Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Respondent A.R.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Respondent C.H.

INTRODUCTION

This case presents the rare appeal by the social services agency, and the children it is charged with protecting, from the juvenile court's dismissal of the dependency petition filed on the children's behalf. The Los Angeles County Department of Children and Family Services (DCFS) filed a petition under section 300 of the Welfare and Institutions Code¹ on behalf of minor children B.H. and J.H. The petition alleged the children were at substantial risk of sexual abuse based on their father C.H.'s alleged sexual abuse of his daughter, their half-sister, and their mother A.R.'s failure to keep father away from the children. Father was arrested for sexually abusing the half-sister and, while the dependency proceeding was pending, pled nolo contendere and was convicted of two felony counts of sexual abuse.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

Before the jurisdictional hearing, father objected under section 355 to the admission into evidence of his daughter's hearsay statements, as well as hearsay statements of an unrelated child he was alleged to have abused years earlier, to establish a jurisdictional finding. The juvenile court found there was no evidence independent of the hearsay statements to corroborate their allegations and so did not consider the statements, dismissing the petition for lack of evidence. DCFS moved for reconsideration and sought to introduce evidence of father's criminal conviction as prima facie evidence the children were at substantial risk of abuse. The court denied the motion.

DCFS and the children contend (1) the court erred when it did not consider the hearsay statements alleging father's sexual abuse in light of existing independent corroborating evidence sufficient to sustain the petition, and (2) the court should have considered evidence of father's criminal conviction and granted the motion to reconsider. We agree the juvenile court should have considered certain hearsay statements in light of the corroborating evidence, and on that basis reverse and remand.

FACTS AND PROCEDURAL BACKGROUND

1. *Initial referrals to DCFS*

On February 13, 2013, DCFS received a referral alleging sexual abuse of B.H. and J.H. The caller alleged father sexually abused a child in a restaurant bathroom two years earlier. DCFS concluded the allegations of sexual abuse were unfounded; B.H. denied the allegations and his exam was normal.

DCFS also received a related referral in February 2013, alleging father had sexually abused Andrew C., a boy unrelated to B.H. and J.H. Father is a relative of Andrew C.'s stepfather.

Andrew reported to his counselor that he had been sexually molested by father two years earlier.

The police met with Andrew on March 11, 2013. Andrew reported that two years earlier father lived with Andrew and his family. He reported that while he was outside the house, father grabbed him and covered his mouth so he could not yell. Father then pulled down his shorts and attempted to place his penis in Andrew's mouth. Andrew was able to free himself. Andrew reported that, later the same day, father called him to the bathroom to talk. When Andrew walked into the bathroom father allegedly pulled Andrew's shorts down and then his own and placed his penis between Andrew's buttocks. Andrew pushed father away. Andrew left the bathroom and father picked him up from behind and began to rub himself through his shorts on the back of Andrew's shorts. When asked, Andrew told police he waited so long to tell someone about the incident because he was scared and did not want to be taken away from his family.

At a follow-up interview by police on March 14, 2013, Andrew reported he told his aunt about the incident two years after it occurred because he woke up scared that father would lie and tell everyone what had happened first. When asked if it was possible he made up the incident with father, Andrew told police, "[Y]es." Andrew previously had told his mother he stabbed his sister, killed someone, and had a sexual relationship with a boy at school. But, he realized it was a dream after he "went to a mental hospital." Andrew was 11 at the time of the interview.

On August 27, 2016, B.H. and J.H. were alleged to be victims of a threat of sexual abuse by father after their then 14-

year-old half-sister Ana Z.² reported to police that father had sexually abused her. Ana Z. is father's biological child. At the time, she was living with mother, father, and her half-brothers while visiting father from North Carolina where she lived with her mother.

Ana reported to police that a week earlier father tickled her while she was lying on her bed and bit her breast over her pajama top. He then walked away. Ana told police she ignored the incident because she did not know what to think about it. Ana also reported that the day before she called police, father approached her from behind after she asked him for an iPhone. He said, " 'You want me to get you a new [i]Phone,' " and then allegedly placed his hands on her breasts over her shirt. Ana told police father then turned her to face him, touched her vagina over her clothes with his hands, lifted her shirt and started to kiss and suck on her bare breasts and neck. At that point, Ana pushed father away and went to her room. She told no one because she did not know what to do. The next morning while father was at work, he allegedly texted Ana and asked her to send him a picture of her breasts. She did. Father then texted Ana and asked her to send him a picture of her naked. Ana reported she texted father that she would not and then called police.

The police report states Ana "suffered approximately two small red marks to the left side of her neck." The police booked Ana's iPhone as evidence. The report also notes the officers could testify to all statements made in the police report.

DCFS substantiated the allegations as to Ana. She was taken into protective custody and returned home to her mother in

² Ana Z. is not a party to this dependency proceeding.

North Carolina. The allegations as to B.H. and J.H. were closed as inconclusive. Neither child reported any sexual abuse by father or anyone else. Mother was cooperative during the investigation and agreed to participate in sexual abuse awareness classes and counseling for the children. She also agreed to seek a family law order and told DCFS she had no contact with father.

2. *Detention of B.H. and J.H.*

On October 20, 2016, DCFS received a report that mother was allowing father to have unmonitored contact with B.H. and J.H. while father's criminal case relating to the allegations of sexual abuse of their half-sister was pending. A DCFS child social worker responded by interviewing the children separately at their schools.

B.H., who was just under eight at the time, told the social worker that father brought them McDonald's for dinner the night before while mother was at work. When asked about sleeping arrangements, B.H. reported mother moved the bed from Ana Z.'s former room to the living room "because the room '[was] too hot.'" He told the social worker he, J.H., and mother slept in the bed and father slept on the couch. When asked if father left at night to sleep in another house, B.H. said, " 'No, he lives with us because my sister left already.' " He denied any physical or sexual abuse by father or mother. He was happy his father was back in the home. J.H., who was four at the time, recognized the social worker from her visit in August and announced, " 'My daddy is back.' " J.H. was too young to focus on the social worker's questions.

The social worker interviewed mother the next day at B.H.'s school. She denied that father was having unmonitored

visits with the children. She reported that father visited the children only at their aunt's house and that he did not live with her and the children. She told the social worker she had “ ‘ended everything with him today[.]’ ” When the social worker told mother she had information that father was in the home and had dinner with the children while mother was at work, mother replied, “ ‘Well[,] he does come and see the children at my house but he doesn't sleep there[.]’ ” She reported father had been having contact with the children for the past two weeks. Mother also reported that she felt that Ana Z. made up the allegations against father to get revenge on him because he was sending her back to her mother in North Carolina. Mother said she did not like how Ana treated B.H. and J.H. because Ana was aggressive with them. The social worker noted in the detention report, however, that during the DCFS investigation in August, mother had reported to her that on August 27 father told mother that Ana would be staying with him long term in Los Angeles due to issues she had with her biological mother in North Carolina. The detention report also states that, during the August investigation related to Ana, mother “minimized the allegations and blamed . . . Ana for acting ‘more like a woman and not a daughter’ to father.”

DCFS placed the children in protective custody on October 26, 2016. Father was arrested that same day and put in custody.³

³ Although DCFS did not know it at that time, on October 28, 2016, father was charged with having committed multiple felony sex abuse offenses based on the August 2016 incidents.

On October 31, 2016, DCFS filed a section 300 petition on behalf of B.H. and J.H. The petition alleged father's sexual abuse of Ana Z., B.H.'s and J.H.'s half-sibling, and the failure of mother to protect them, placed B.H. and J.H. "at risk of serious physical harm, damage, sexual abuse and failure to protect" under subdivisions (b)(1), (d), and (j). The petition also alleged father's sexual abuse of unrelated child Andrew C. placed B.H. and J.H. "at risk of serious physical harm, damage, sexual abuse and failure to protect" under subdivisions (b)(1) and (d).

The juvenile court held the detention hearing that same day. It found father was the presumed father of B.H. and J.H. and ordered the children remain detained. The court ordered monitored visitation for mother and ordered DCFS to provide mother referrals for parenting and individual counseling. The court continued the matter to December 12, 2016 for father's arraignment.

3. *Father's arraignment*

Father was arraigned on December 12, 2016. In its last minute information for the court, DCFS noted mother was enrolled in sexual abuse awareness group classes and individual therapy. DCFS continued to recommend the children remain in suitable placement because mother continued to deny father sexually abused his daughter Ana Z. (and Andrew C. in 2013). DCFS noted father currently was incarcerated for the sexual abuse allegations, but mother did not believe Ana's allegations.

DCFS also reported that Ana's mother would like to appear in court, but would need financial assistance for the transportation from North Carolina to California. Financial assistance could not be provided because Ana was not a

dependent of the court. Ana's mother told DCFS that Ana would be available on January 25, 2017 for a conference call.

At the December 12, 2016 hearing, the juvenile court ruled that Ana could testify by court call, and directed county counsel to make those arrangements. The court also ordered the children remain detained.

4. *Jurisdiction/disposition report and hearing*

a. *Father's section 355 objections*

On December 20, 2016, father filed objections under section 355 to all hearsay statements contained in the DCFS reports, their attachments, and any other documentation DCFS sought to introduce into evidence. Father specifically objected to the statements of Ana Z. contained in the October 31, 2016 detention report and its attachments; the statements of Andrew C. contained in the detention report and attachments; and the statements of Andrew C.'s mother contained in the detention report's attachments. Father also objected to allowing Ana to testify by telephone on the ground the court would not be able to assess her credibility adequately.

b. *The jurisdiction/disposition report*

The January 25, 2017 jurisdiction/disposition report includes statements made by mother when she was interviewed by DCFS on November 8, 2016. Mother stated she never saw anything suspicious with Ana Z. Mother stated that Ana "said that she would do whatever it took to stay here. One has to think if the things are true.'" She said father "was always an excellent father with our children.'" As to the allegations by Andrew C., mother stated she never knew the details until she went to court. At the time of the investigation of Andrew's allegations, mother stated she asked father about the incident

and said, “ ‘He always told me it was a lie. I asked him (father) what happened and he (father) said that Andrew said it was a dream and it was a lie.’ ”

The report also contains father’s statements from a December 29, 2016 interview. Father stated Ana Z.’s mother wanted her to return home and that when he told Ana that he had to take her back home, Ana “ ‘had a tantrum. She said she was going to do whatever it took to stay here. That’s when this happened. . . . She said she would do whatever it took to be with me. I was in the kitchen. She came, grabbed both of my hands and placed them on her breasts . . . I thought she was grabbing my hands to hug me. I pulled back when my friend came [and] I told her (child Ana), we’ll talk later.’ ”

When asked about kissing Ana’s neck, father told the social worker, “ ‘when I came back home from work I would hug her and kiss her. . . . She asked me to kiss her neck. I told her why and she said she wanted a kiss. Yes, I did kiss her neck.’ ” Father denied kissing Ana’s breasts. He stated, “ ‘I was told there was DNA (on her breasts) but I never saw them (child Ana’s breasts).’ ” When asked about the text messages to Ana, father stated, “ ‘That’s what I’ve been analyzing. How did those texts come from my number? I didn’t send her (child Ana) those texts asking for pictures. Not even with the mother of my children do I send her those texts, especially my daughter. I honestly can’t tell you what happened. I would text her (child Ana) at work asking how she was I can’t explain how it (the texts) happened.’ ”

Father also denied having touched Andrew C. Father explained Andrew was the son of his uncle’s wife. He stated that Andrew changed his statement. Father said he was available,

but the police never interviewed him. He stated he never was left alone with Andrew and never played with him.

Ana Z. was interviewed by a DCFS social worker on August 27, 2016. She described the incidents she had reported to the police. As to the initial incident, Ana told the social worker that she did not believe father intentionally touched or bit her on the breast; she believed he may have been drunk and that it was a onetime incident. She wanted to return home as soon as possible.

The jurisdiction/disposition report also includes the police report filed August 27, 2016 in response to Ana Z.'s allegations and the March 2013 police report and follow-up interview concerning Andrew C.'s allegations.

DCFS concluded that Ana Z.'s statements, the detention report, the police report, and father's arrest all suggested that father sexually abused Ana. DCFS also concluded mother failed to protect the children because she allowed father full access to the children after telling DCFS that she would keep him away from them following Ana's allegations in August. She also knew father had been accused of sexually abusing Andrew C., but continued to live with father and allow him unmonitored access to the children. DCFS assessed father as posing an imminent risk to B.H. and J.H. based on the accusations that he sexually molested two children and did not appear to have a gender preference as to his victims.

DCFS recommended family reunification services, sexual abuse awareness classes, and counseling for both parents.

The court continued the jurisdiction hearing from January 25, 2017 to March 1, 2017. On February 16, 2017, forensic

interviews of the children were conducted; the children did not report any sexual abuse.

The contested jurisdiction hearing proceeded on March 1, 2017. The court admitted the DCFS reports and attachments into evidence subject to father's section 355 objections. DCFS no longer requested that Ana Z. be permitted to appear by telephone and informed the court that neither Ana Z. nor Andrew C. was available for cross-examination. The court also admitted into evidence documents demonstrating mother had attended sexual abuse awareness group therapy sessions, individual and group therapy sessions, and had completed a 14-session parenting class. No witnesses were called. After hearing argument from counsel, the court continued the matter to March 14, 2017 for its ruling.

The court then engaged in the following exchange with father:

Court: "[W]here are you in the trajectory of your criminal proceeding? Have you had a trial?"

Father: "Yes."

Court: "And have you been found guilty? Or did you enter a plea?"

Father: "No. I plead guilty."

Court: "And when will you be sentenced?"

Father: "I have already been sentenced."

Court: "And what was your criminal sentence?"

Father: "Three years, and I will be serving only two of the three."

The court asked father if he knew what state prison he would be sent to so that the court could make a transportation order for him.

On March 14, 2017, the court dismissed the petition. The court found there was insufficient evidence to find the petition true because Ana Z.'s and Andrew C.'s allegations of sexual abuse were subject to father's section 355 objections. The court explained, "I have gone through every single page of every exhibit that was submitted to the court to determine whether or not there was any evidence that is not subject to the hearsay declarations of the alleged victim [Ana] Z[.], and there simply is no substantiating evidence other than the statements that are hearsay statements." The court released the children to mother's custody, but admonished:

"Let me just say this, Ms. Hernandez. Your husband has been convicted of a crime involving sexual abuse against children. That's why he went to jail, and that is why he is serving a state prison sentence. Those are proceedings held in a criminal court with a higher standard of evidence than what is required in these court proceedings.

"So my dismissal of the petition does not mean that I don't believe the allegations on the petition. However, I am bound to have sufficient legal evidence to find the petition true, and that is why I'm dismissing the petition.

"So you need to be aware that your husband is serving a short prison sentence. And if he comes out and you let him move back in without addressing what has occurred because of his criminal conviction . . . and there are any more involvements with D.C.F.S., your children could be removed from you again."

Three days later, DCFS filed a motion to reconsider based on sections 385 and 355.1 and Code of Civil Procedure section 1008. DCFS asked the court to reconsider its ruling in light of a January 23, 2017 minute order indicating father pled nolo contendere to and was found guilty of committing two counts of felony sex abuse on a minor. The juvenile court denied that motion on April 21, 2017. DCFS also filed an application for rehearing under section 252 on March 24, 2017. That request was denied on April 10, 2017.

DCFS and counsel for the children filed timely notices of appeal.⁴ DCFS also filed a petition for writ of supersedeas, joined by counsel for B.H. and J.H. and opposed by father. We issued a temporary stay of the juvenile court's order dismissing the DCFS petition on May 10, 2017. We then denied the petition for writ of supersedeas and vacated the stay order on June 2, 2017.

CONTENTIONS

Appellants primarily contend the juvenile court erred when it dismissed the section 300 petition because it (1) failed to consider independent evidence that corroborated the hearsay statements demonstrating B.H. and J.H. were at substantial risk of being sexually abused by father, and (2) failed to reconsider its decision in light of evidence of father's criminal conviction for sexually abusing Ana Z. Because we conclude the juvenile court erred on the first ground, we need not consider whether the court erred when it denied the motion for reconsideration.

⁴ DCFS and the children filed separate appeals, but join in each other's arguments. Parents filed separate respondent's briefs and also join in each other's arguments.

DISCUSSION

1. *Standard of review*

A juvenile court's order dismissing a dependency petition is a final judgment that we review for substantial evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197, 199.) "Substantial evidence is evidence that is 'reasonable, credible, and of solid value'; such that a reasonable trier of fact could make such findings. [Citation.] [¶] It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] 'Issues of fact and credibility are questions for the trial court.' [Citations.] It is not an appellate court's function, in short, to redetermine the facts. [Citation.]" (*Id.* at pp. 199-200.)

We also are mindful that "[w]hen ruling in dependency proceedings, the welfare of the minor is the paramount concern of the court. [Citation.] The purpose of these proceedings is not to punish the parent, but to protect the child. [Citation.] As a person, the child's future is as vitally affected as is that of the parties competing for his or her custody. [Citation.] Consequently, a trial court should not restrict or prevent testimony on formalistic grounds. On the contrary, the court should avail itself of all evidence which might bear on the child's best interest. [Citation.]" (*In re B.D.* (2007) 156 Cal.App.4th 975, 983.)

As our Supreme Court has stated, "When . . . a juvenile court hears a dependency case under section 300 . . . , the court

deals with children who have been seriously abused, abandoned, or neglected. The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

2. *Applicable law*

Section 300 provides the grounds for adjudging a child a dependent of the juvenile court. Relevant to the petition here, the juvenile court may take jurisdiction over a child if "there is a substantial risk that the child will be sexually abused . . . by his or her parent or guardian or a member of his or her household," or if the child's sibling has been sexually abused and there is a substantial risk that the child will be also. (§ 300, subds. (d), (j).) A child also may be declared a dependent of the juvenile court if "there is a substantial risk that the child will suffer[] serious physical harm or illness[] as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (*Id.* at subd. (b)(1).)

At the jurisdictional hearing, the juvenile court first considers whether the minor falls within any of the categories enumerated by section 300. (§ 355, subd. (a).) "The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court's jurisdiction." (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859.) "Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence." (§ 355, subd. (a).) Social worker reports and hearsay evidence contained in them are "admissible and constitute[] competent evidence upon which a

finding of jurisdiction pursuant to Section 300 may be based.” (*Id.* at subd. (b).) Nevertheless, if “a party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based,” absent certain exceptions, including that the hearsay declarant is available for cross-examination. (*Id.* at subd. (c)(1).) Although section 355 limits “‘the extent to which . . . social study hearsay evidence can be relied on exclusively, there is no limitation, except for fraud, deceit, or undue influence, on the admission of hearsay evidence.’” (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 983.)

Thus, a section 355 objection does not render hearsay statements in a social worker’s report *inadmissible*. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 980-981, 984.) Rather, “corroborating evidence . . . which . . . support[s] the witnesses’ hearsay statements sufficiently to sustain a jurisdictional finding” also must exist. (*Id.* at p. 984 [section 355 objection “meant that uncorroborated, the [children’s] hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300”].) Corroborating evidence is that “which supports a logical and reasonable inference that the act described in the hearsay statement occurred.” (*Id.* at p. 984.)

3. *Independent evidence corroborated the hearsay statements*

The juvenile court erred in dismissing the petition without considering independent corroborating evidence in conjunction

with Ana Z.'s hearsay statements that could have supported a jurisdictional finding.⁵

The Third District Court of Appeal has analogized “the quantum of corroboration necessary to support a jurisdictional finding after a section 355, subdivision (c)(1) objection” “to the rule in criminal law requiring independent corroborative proof of accomplice testimony.” (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 984.) The court reasoned “this to be an appropriate analogy, because as with the objected to hearsay in a social worker’s report, the corroboration requirement of accomplice testimony relates to the sufficiency of the evidence, not its admissibility.” (*Ibid.* [citing *People v. Riel* (2000) 22 Cal.4th 1153, 1190; *In re Lucero L.* (2000) 22 Cal.4th 1227, 1244].)

In that context, “ [c]orroborative evidence, direct or circumstantial, is sufficient if it tends to connect defendant with the crime even though it is slight and entitled, when standing by itself, to but little consideration [citations], nor does it need to establish the precise facts testified to by the accomplice. It is sufficient if it tends to connect the accused with the commission of the offense, and defendant’s own statements and admissions, made in connection with other testimony, may afford corroboratory proof sufficient to sustain a verdict. It is not necessary that the corroborating evidence should go so far as to establish by itself, and without the aid of the testimony of an accomplice, that the defendant committed the offense charged.

⁵ The record does not reflect the existence of independent, nonhearsay evidence to support Andrew C.’s allegations. We therefore do not consider hearsay statements concerning his allegations in determining whether the juvenile court erred in dismissing the petition.

[Citations.] [¶] Moreover, defendant’s own testimony and inferences therefrom, as well as the inferences from the circumstances surrounding the entire transaction, may be sufficient corroborative testimony. [Citations.] False or misleading statements to authorities may constitute corroborating evidence or as part of circumstances supportive of corroboration [citation], and “[a]lthough it has been said that corroboration is not sufficient where the circumstances are consistent with the innocence of the accused [citations], the more recent decisions have held that whether the corroborating evidence is as compatible with innocence as it is with guilt is a question of weight for the trier of fact [citations].” [Citation.]’ ” (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 984-985.)

In re B.D., relied on by appellants, is one of the only published cases—if not the only one—that addresses whether the juvenile court erred in *dismissing* a section 300 petition after sustaining section 355 hearsay objections. Neither mother nor father addresses this case.⁶ There, section 300, 342, and 387 petitions were filed on behalf of the mother’s children after she allegedly struck her toddler at a train station. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 979-980.) Invoking section 355, the mother objected to the admission of all witness statements in the detention and jurisdiction/disposition reports regarding the incident, including statements from unrelated individuals who observed the alleged incident at the train station. (*In re B.D.*, at p. 981.) As in this case, no witnesses testified at the jurisdiction/

⁶ Mother cites to *In re B.D.* for the general proposition that, after objection, uncorroborated hearsay statements cannot form the *exclusive* basis for a jurisdictional finding.

disposition hearing.⁷ (*Id.* at p. 982.) The juvenile court dismissed the section 300 petitions finding no independent evidence to corroborate the witness statements. (*In re B.D.*, at p. 982.)

The appellate court reversed and remanded, concluding the juvenile court failed to consider independent evidence in the record that could have corroborated the witness statements. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 985, 987.) Specifically, the court found the mother's own statements that she had "tapped" her child on the back of the head, and that a woman had approached her in the station about hitting her child, were consistent with the hearsay statements, by three of the witnesses, that mother had struck her child in the back of the head. (*Id.* at p. 985.) Thus, the trial court could have considered mother's own statements, which provided "some corroboration of the witnesses' statements." (*Ibid.*) The mother also had provided inconsistent explanations as to the cause of her child's bloody nose following the incident. (*Ibid.*) The appellate court concluded that, had the juvenile court considered the mother's statements, it could have found them false and misleading, and if so, "this could also provide corroboration of the witnesses' statements." (*Ibid.*)

Additional evidence included a police report that noted officers' observations of a bump on the child's forehead and medical reports indicating the child had a bruise and a bloody nose. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 980, 985.) The

⁷ After the parties submitted the matter and the court announced it would not rely on the witness statements, the petitioner sought to call the mother to the stand. The court sustained mother's objection and did not permit mother to be called to testify. (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 982.)

Court of Appeal explained that, while innocent explanations could account for those injuries, they did not “eliminate the marks as potentially corroborative evidence of the witnesses’ statements[;] rather those innocent explanations go to their weight.” (*Id.* at p. 985.)

Finally, the court found “most compelling” observations of the child’s interaction with the mother following the incident. (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 986.) The child, who was two years old at the time, was seen to be afraid of the mother during visits after the incident whereas their interactions had been “appropriate” before the incident. (*Ibid.*)

Based on the evidence in the record, the court concluded independent evidence that corroborated the witnesses’ statements existed and, thus, the juvenile court erred in dismissing the petitions “without considering the witness statements in light of the corroborating evidence.” (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 986.)

The available independent evidence here is similar. Like the petitioner in *In re B.D.*, DCFS did not call any witnesses at the jurisdiction hearing, instead relying on its previously-filed reports and their attachments, a transcribed video interview of Andrew C., and the juvenile court’s prior orders.

Father objected to the admission into evidence of hearsay statements contained in the DCFS reports on section 355 grounds. And, at the hearing, DCFS advised the court that neither Ana Z. nor Andrew C. would be available for cross-examination. Independent evidence that corroborated Ana’s statements existed, however, so that the juvenile court could have considered her statements to determine if B.H. and J.H. were subject to the court’s jurisdiction under section 300.

(*In re B.D.*, *supra*, 156 Cal.App.4th at p. 986 [finding hearsay evidence “could be considered[;] it just could not, by itself, form the basis for a jurisdictional finding”].)

As in *In re B.D.*, father’s own statements—had they been considered—provided corroborating evidence of Ana’s allegations. Father admitted he kissed Ana’s neck, but said she asked him to do so. He also admitted his hands were on her breasts the day Ana alleged he groped her, but claimed Ana placed his hands there. When asked about the text messages father allegedly sent Ana asking for nude photos of her, father told the social worker he could not understand how the texts came from his number.

Father’s admissions—that he kissed Ana and had his hands on her breasts, and that texts asking for pictures came from his phone number—constitute independent evidence that corroborates Ana’s allegations. Although father maintained Ana was the aggressor, not him, and denied sending the texts himself, those explanations relate to the weight of the evidence, not its potential to corroborate Ana’s allegations of abuse and connect father to the commission of that abuse. The juvenile court, therefore, should have considered father’s own statements in connection with Ana’s statements to the police and social worker when determining whether a basis for jurisdiction under section 300 existed.

Additionally, the DCFS detention and jurisdiction/disposition reports reflect that father had been arrested based on Ana’s allegations of sexual abuse. The petition itself alleges father was arrested for sexual abuse of Ana Z. The last minute information, filed with the court before the detention hearing, also states, “father is currently incarcerated for the sexual abuse allegations.” The juvenile court was fully aware of father’s

pending criminal case as father appeared in custody at his arraignment and the jurisdiction hearing, and, at the end of the jurisdiction hearing, the court questioned father about the status of his criminal case. During that questioning, father admitted that he had pled guilty, had been convicted, and had been sentenced to three years in prison. And, at the time the juvenile court announced its decision to dismiss the petition, it also acknowledged father had been convicted of sexual abuse and was serving a state prison sentence. Father's arrest and conviction of sexually abusing Ana Z. certainly corroborated her hearsay statements describing his abuse.

Nevertheless, the juvenile court found its colloquy with father concerning his criminal conviction was not evidence submitted by the parties. Appellants contend the juvenile court had the power to elicit additional information sua sponte after DCFS rested its case as in *In re Emily D.* (2015) 234 Cal.App.4th 438, 445-446 (finding juvenile court was authorized to request additional drug test results from mother's drug testing after DCFS had rested in contested jurisdiction hearing under its authority as the fact finder). Father contends the court questioned father, not to obtain additional information to determine the truth of the petition, but to secure father's appearance at the continued March 14 hearing. The juvenile court's purpose in questioning father, however, does not negate the court's knowledge of father's conviction. That father did not mention to the court the specific crime for which he had been convicted also is immaterial, contrary to respondents' contentions; the juvenile court knew from the DCFS reports and petition that father was in custody for sexually abusing Ana Z. The juvenile court heard father's admission *two weeks before* it

made its ruling on the petition and had the power to consider the conviction as corroborating evidence of Ana's allegations. And, as parents do not dispute father's conviction, they would not have been prejudiced by the court's consideration of it in adjudicating the petition.

Moreover, the police officers' observations of red marks on Ana's neck⁸ also independently corroborated Ana's statements that father kissed and sucked on her neck and father's own admission that he kissed her neck. Like the police observations and medical reports of injuries to the child in *In re B.D.*, whether the marks on Ana's neck were the result of an innocent explanation goes to the *weight* of the evidence, not its admissibility potentially to corroborate Ana's hearsay statements.

Mother and father contend the police officers' observations of Ana's neck are not corroborative because no photographs of the marks on her neck were introduced into evidence, although they were taken at the time. Similarly, they contend father's statements about the text messages to Ana do not corroborate Ana's allegations because father mentioned text messages only generally and did not specify their content. Respondents'

⁸ Although those observations were contained in the police report, nothing in the record indicates the officers were not available for father to call and cross-examine as to their observations. Moreover, the officers' own observations reflected in the police report were admissible as an exception to father's section 355 objection. (§ 355, subd. (c)(1)(C) [hearsay evidence admissible where hearsay declarant is a peace officer "to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court"].)

arguments again concern the weight of the evidence, not its admissibility. Had the court considered father's statements, it reasonably could have inferred father was admitting the texts Ana described came from his phone. (*In re B.D., supra*, 156 Cal.App.4th at p. 985 [defendant's "'own testimony and inferences therefrom, as well as the inferences from the circumstances surrounding the entire transaction, may be sufficient corroborative testimony'"].) The court then could assess whether father's denial of having sent those texts was credible. Similarly, the absence of photographs of the marks on Ana's neck concern the weight to give that evidence.

Having determined there was independent evidence that corroborated Ana Z.'s statements, we find the trial court erred in dismissing the petition without considering Ana's statements⁹ in light of that corroborating evidence, including evidence of father's conviction of sexual abuse. From the juvenile court's comments on the record, it is clear to us that the court did not assess or weigh the credibility of the independent evidence described above. "However, because '[i]ssues of fact and credibility are questions for the trial court' we will remand this matter for further jurisdictional proceedings." (*In re B.D., supra*, 15 Cal.App.4th at p. 986.) Because well over a year has passed since the court dismissed the petition, we agree with father that on

⁹ Given that father's own statements and the police officers' observations provide sufficient independent evidence corroborating Ana Z.'s allegations that father sexually abused her, we need not determine whether Ana Z.'s and Andrew C.'s hearsay statements corroborated each other.

remand the court may consider evidence relevant to the petition that has evolved while this appeal has been pending.¹⁰

DISPOSITION

The juvenile court's order is reversed and the matter is remanded for further jurisdictional proceedings consistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J

¹⁰ On remand, DCFS may submit proof of father's conviction into evidence.