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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MANUEL C.,

a Person Coming Under the Juvenile
Court Law.

B238154

(Los Angeles County
Super. Ct. No. JJ19238)

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Donna Groman, Judge. Affirmed as modified.

Lea Rappaport Geller, 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, Senior Assistant Attorney General, Scott A. Taryle and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Manual C. challenges the sufficiency of the evidence to support the juvenile court's finding that he committed corporal injury to a cohabitant within the meaning of Penal Code section 273.5, subdivision (a), a felony, as alleged in a petition filed under Welfare and Institutions Code section 602. We conclude there was insufficient evidence of cohabitation and modify the jurisdictional order to reflect a finding of a violation of Penal Code section 243, subdivision (e)(1),¹ a misdemeanor and a lesser included offense.

FACTUAL AND PROCEDURAL BACKGROUND

According to the evidence presented at the jurisdiction hearing, a neighbor contacted the South Gate Police Department after hearing loud noises coming from appellant's apartment. Officers Eder Vergara and Christian Perez arrived at the apartment in response to the call. Diana Cardona (Cardona), appellant's girlfriend, was crying. Her right cheek and right arm were red, and she had a scrape on her lower back.

Officer Perez took appellant into custody. In an interview, appellant told the officer he was arguing with Cardona, who was seven months pregnant with their child. Appellant wanted "to kick [Cardona] out of the house," and he grabbed her by the arms as she was sitting on the floor. Cardona resisted and, at some point, appellant pushed her and she fell to the floor.

Appellant did not testify or present other evidence in his defense.

At the conclusion of the jurisdiction hearing, the juvenile court found true the allegation beyond a reasonable doubt, sustained the petition, and declared the offense a felony. At the disposition hearing, the court adjudicated appellant a ward of the court and ordered him home on probation.

¹ All further statutory references are to the Penal Code.

DISCUSSION

Section 273.5, subdivision (a), prohibits inflicting “corporal injury resulting in a traumatic condition” upon a spouse, cohabitant, former spouse or cohabitant, or parent of a defendant’s child. The juvenile court’s finding that appellant committed the offense was based upon the People’s theory that he and Cardona were cohabitating. Appellant contends the evidence was insufficient to support the finding because it did not show he was cohabitating with Cardona at the time of the offense.

The same standard governs review of the sufficiency of evidence in juvenile cases as in adult criminal cases. “[W]e review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, italics omitted; see *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.)

Cohabitating means unrelated persons living together in a substantial relationship—one shown at least “by permanence and sexual or amorous intimacy.” (*People v. Holifield* (1988) 205 Cal.App.3d 993, 1000.) “‘Cohabitation,’” as used in

section 273.5, is interpreted broadly and does not require a “quasi-marital relationship.” (*People v. Moore* (1996) 44 Cal.App.4th 1323, 1333.) Nonetheless, cohabitation requires “something more than a platonic, rooming-house arrangement.” (*Holifield, supra*, at p. 999.) Cohabitation may exist even though the defendant lives elsewhere part-time while continuing to reside for significant periods of time with the domestic violence victim and maintaining a substantial relationship with that person. (*Moore, supra*, at p. 1335; see, e.g., *People v. Belton* (2008) 168 Cal.App.4th 432, 438-439 [the defendant and the victim were cohabitating, although they lived together sporadically; the victim paid the defendant’s living expenses and slept with him in a car because he was unwelcome in the house where she was staying]; *People v. Taylor* (2004) 118 Cal.App.4th 11, 18-19 [the victim would leave the defendant to live elsewhere but always returned to the defendant and was living with him at the time of the attack].)

Neither appellant nor Cardona testified at the jurisdiction hearing. The sole evidence as to the nature of their relationship and living arrangements came from the testimony of the responding officers. According to the officers, appellant and Cardona both said she was his girlfriend and pregnant with their child. This evidence was undoubtedly sufficient to infer that they were sexually intimate at one point, but not that they were living together at the time of the offense. The People’s claim to the contrary notwithstanding, appellant’s statement that he wanted to kick Cardona out of the house merely showed he wanted her to leave his home, not that she had been residing there with him. There is insufficient evidence to support the finding that appellant committed corporal injury to a cohabitant within the meaning of section 273.5, subdivision (a).

In response to our request for supplemental briefing on the issue, the parties agree the evidence is sufficient to support a finding that appellant committed battery in violation of section 243, subdivision (e)(1), a lesser included offense.

Battery is defined as “any willful and unlawful use of force or violence upon the person of another.” (§ 242.) Section 243, subdivision (e)(1), provides: “When a battery is committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant’s child, former spouse, fiancé, or fiancée, or a

person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.” The form of battery proscribed by section 243, subdivision (e)(1), is a lesser included offense of corporal injury to a cohabitant as proscribed by section 273.5, subdivision (a). (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1457; *People v. Jackson* (2000) 77 Cal.App.4th 574, 580.)

There is sufficient evidence that appellant committed the lesser included offense of battery upon Cardona, a person with whom appellant had at the time, or previously had, a dating relationship. Appellant identified Cardona to police as his girlfriend, who was then seven months pregnant with their child. Appellant admitted he and Cardona had been involved in physical altercation before the officers arrived, and when speaking to Cardona, the officers noted injuries to her skin. Therefore, the jurisdictional order shall be modified to show appellant committed battery as defined by section 243, subdivision (e)(1). As the offense is a misdemeanor, rather than a felony, the order that appellant is to provide a DNA sample pursuant to section 296, subdivision (a)(1), shall be stricken. (See *In re Nancy C.* (2005) 133 Cal.App.4th 508, 512.)

DISPOSITION

The jurisdictional order is modified to reflect a finding appellant violated section 243, subdivision (e)(1), a misdemeanor, and the order that appellant provide a DNA sample under section 296, subdivision (a)(1), is stricken. As modified, the order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.