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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re F.F., a Person Coming Under
the Juvenile Court Law.

B285043
(Los Angeles County
Super. Ct. No. PJ49967)

THE PEOPLE,

Plaintiff and Respondent,

v.

F.F.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Morton Rochman, Judge. Affirmed.

Gerald Peters, 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, Scott A. Taryle and Christopher G. Sanchez,
Deputy Attorneys General, for Plaintiff and Respondent.

F.F. challenges the juvenile court's decision sustaining a petition against him pursuant to Welfare and Institutions Code section 602 on the ground that he committed sexual battery in violation of Penal Code section 243.4, subdivision (e)(1). A probation officer at the juvenile camp where F.F. was residing accused him of touching her genitals. F.F. contends that the trial court improperly admitted evidence of an incident one week earlier in which F.F. touched the same guard in a non-sexual manner. We affirm.

FACTS AND PROCEEDINGS BELOW

In March 2017, F.F. was living in a juvenile camp following a prior adjudication that he was a ward of the court. While Jennifer P., a probation officer, was supervising F.F. and other juveniles at the camp, F.F. tapped her on the shoulder. Jennifer P. responded by warning F.F. not to touch her or violate her personal boundaries in any way. F.F. responded, "Okay[,] fine," and walked away.

Approximately one week later, F.F. was in his dormitory at the camp waiting to receive medication. A nurse was distributing medicine from a medicine cart while Jennifer P. stood two to four feet to the side of the cart to supervise the minors. Normally, a minor stands in line near the cart, approaches the cart when his name is called, and returns to his bed.

When F.F. was called, however, he veered off to the right, walked toward Jennifer P. rather than the nurse, and touched her vagina with his fingers. Jennifer P. immediately pushed appellant away and yelled, "Don't fucking touch me." F.F. then stared at her for a few seconds before grabbing his medication and walking away.

The district attorney filed a petition alleging that F.F. comes within the provisions of Welfare and Institutions Code section 602 on the ground that he committed a sexual battery in violation of Penal Code section 243.4, subdivision (e)(1). After a

hearing, the juvenile court sustained the petition and placed F.F. in a detention camp for a new five- to seven-month term.

DISCUSSION

F.F. contends that the juvenile court violated his right to due process by admitting evidence of the shoulder-tapping interaction, which he argues was improper propensity evidence. We need not decide whether the court erred in admitting evidence of the shoulder-tapping because any error would have been harmless.

Evidence Code section 1101, subdivision (a) prohibits the admission of “evidence of a person’s character or a trait of his or her character . . . to prove his or her conduct on a specified occasion.” Evidence Code section 1101, subdivision (b), however, provides that evidence of a person’s prior conduct may be admissible “when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.” “The categories listed in [Evidence Code] section 1101, subdivision (b), are examples of facts that legitimately may be proved by other-crimes evidence, but . . . the list is not exclusive.” (*People v. Catlin* (2001) 26 Cal.4th 81, 146.) The admission of propensity evidence may violate a defendant’s right to due process by lightening the prosecution’s burden of proof. (*People v. Garceau* (1993) 6 Cal.4th 140, 186, overruled on another point in *People v. Yeoman* (2003) 31 Cal.4th 93, 117-118.)

In a hearing pursuant to Evidence Code section 402, F.F. sought to exclude evidence of the shoulder-touching incident as improper propensity evidence. The People argued that the evidence was admissible “not to show that the minor had a . . . character of touching people,” but to show his intent to touch Jennifer P. and that the incident that happened a week later was

not an accident, as F.F. had been warned to respect personal boundaries immediately afterward. The juvenile court concluded that the evidence was not admissible for purposes of proving that F.F. knew what he was doing was wrong or inappropriate. Nevertheless, the court admitted Jennifer P.’s testimony about the shoulder-tapping “for the limited purpose of showing that there was a discussion between [Jennifer P.] and [F.F.] regarding boundaries and the need to respect boundaries.”

We need not decide whether the juvenile court erred by admitting the evidence because any error would have been harmless under either the *Watson* standard¹ or the more stringent *Chapman* standard.² (See *People v. Mungia* (2008) 44 Cal.4th 1101, 1134.) The danger of admitting propensity evidence is that the evidence will have a “ ‘highly inflammatory and prejudicial effect’ on the trier of fact.” [Citation.] The ‘admission of this evidence produces an “over-strong tendency to believe the defendant guilty of the charge merely because he is a likely person to do such acts.” ’” (*People v. Holt* (1984) 37 Cal.3d 436, 450–451, superseded by statute on another ground, as stated in *People v. Muldrow* (1988) 202 Cal.App.3d 636, 644-645.) The evidence of the shoulder-tapping incident was not at all dangerous in this way. It showed only that F.F. touched Jennifer P. in a nonsexual way, and its admission could not have prejudiced the trier of fact against F.F. on the charge of sexual battery.

Furthermore, the juvenile court stated that it did not rely on the shoulder-tapping incident to show propensity, but rather to show that F.F. had had a conversation “regarding boundaries and the need to respect boundaries.” As evidence of F.F.’s responsibility for the sexual battery, the court relied on testimony from the nurse and the victim, as well as surveillance footage.

¹ See *People v. Watson* (1956) 46 Cal.2d 818, 836.

² See *Chapman v. California* (1967) 386 U.S. 18, 24.

The nurse testified that he saw F.F. brush against Jennifer P. with the whole right side of his body “for no apparent reason” right before Jennifer P. told him that F.F. had put his hand on her genitals. Jennifer P. testified she felt F.F.’s hand cup her vaginal area as he walked much closer to her than necessary. Finally, the surveillance footage of the incident showed Jennifer P. reacting strongly immediately after F.F. approached her. In the face of all this evidence whose admissibility F.F. does not challenge, the evidence of the shoulder touching could not have made a difference in the case.

DISPOSITION

The judgment of the juvenile court is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.