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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re M.C., a Person Coming Under the Juvenile Court Law.	B293308
THE PEOPLE, Plaintiff and Respondent, v. M.C., Defendant and Appellant.	(Los Angeles County Super. Ct. No. NJ28087)

APPEAL from a judgment of the Superior Court of Los Angeles County, Fumiko Wasserman, Judge and John C. Lawson II, Judge. Reversed and remanded with directions.

Mary Bernstein, under appointment by the Court of Appeal, for Minor and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General and Michael C. Keller, Acting Supervising Deputy Attorney General for Plaintiff and Respondent.

INTRODUCTION

While in a juvenile detention facility for a previous offense, M.C. assaulted a detention services officer. The juvenile court sustained a petition under Welfare and Institutions Code section 602[1] alleging assault by means of force likely to produce great bodily injury. The juvenile court placed M.C. in a group home with a maximum period of confinement of five years.

Assault by means of force likely to produce great bodily injury is a wobbler offense that, in the case of an adult, can be punished as a misdemeanor or a felony. M.C. argues the juvenile court erred by failing to state on the record whether her offense was a misdemeanor or a felony, as required by section 702. Because the juvenile court failed to comply with the statutory requirement of declaring whether the offense was a misdemeanor or a felony, we reverse and remand to allow the juvenile court to make that declaration.

FACTUAL AND PROCEDURAL HISTORY

A. *M.C. Suffers Prior Juvenile Adjudications*

M.C. was a 17-year-old girl with a history of mental illness and disruptive behavior. Since 2014, when the People filed their first petition under section 602 against her, M.C. had spent much of her adolescence in detention or on probation. In 2015 the People filed another petition against M.C., which the court subsequently sustained, alleging M.C. choked another minor for

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

getting chalk on her shirt. The court placed M.C. in a facility in Utah, with a maximum period of confinement of four years.

B. *M.C. Attacks a Detention Services Officer*

After running away from a group home placement, M.C. was detained at Los Padrinos Juvenile Hall. On June 28, 2018 M.C. attacked Detention Services Officer Arnika Hughes during the evening shower period.

Both M.C. and Officer Hughes testified that, in the days preceding the incident, M.C. became increasingly agitated. M.C. stated that, on the day of the attack, her level of agitation on a scale of one to 10 was "a 10."

At 8:45 p.m. Officer Hughes was supervising the evening showers. M.C., who had just woken up from a nap, was the last girl to shower. As M.C. walked slowly down the hall, she told the other officers she did not want Officer Hughes supervising her shower. When Officer Hughes walked past M.C. to deliver blankets to the other girls, M.C. began yelling at her. M.C. called Officer Hughes a "weak bitch" and said "fuck your family." M.C. walked up behind Officer Hughes and, when the officer turned to face M.C., "bumped [her] out," chest-to-chest. Officer Hughes pushed M.C. back. M.C. charged at Officer Hughes, hit her with a closed fist under her left eye, and grabbed her hair. Officer Hughes slipped on a blanket, and she and M.C. fell to the ground, with M.C. landing on top of the officer. M.C. straddled the officer, hit her in the head and upper body, pulled her hair, and put her hand in Officer Hughes's mouth, which caused the officer to bite down on M.C.'s hand. It took two or three minutes before other officers were able, after spraying M.C. with pepper spray, to separate M.C. and Officer Hughes. Officer Hughes testified

that, as the other officers pulled M.C. off her, M.C. said, "That's why I got you bitch. Look at your face." Hughes suffered a swollen eye and injuries to her shoulder, and she had to take medical leave from work.

M.C. testified Officer Hughes yelled at her in the shower, threw down a clipboard she was holding, and pushed M.C. in the chest. M.C. said she feared for her safety and defended herself, which included grabbing Officer Hughes's hair. M.C. also testified she was unaware of her actions during the fight because she was refusing to take her psychotropic medication and her "mind gets clouded" when she gets angry.

C. *The People File Another Petition Against M.C.*

The People filed a section 602 petition, M.C.'s third, alleging M.C. committed an assault by means of force likely to produce great bodily injury, "a [f]elony." (Pen. Code, § 245 subd. (a)(4).) One department of the juvenile court, which the parties refer to as the "adjudication court," heard and sustained the petition, stating it was "a violation of Penal Code section 245(a)(4), which is a felony offense." The adjudication court also denied M.C.'s motion to dismiss the petition and denied without prejudice her motion to reduce the offense from a felony to a misdemeanor because M.C. had "a home court," which the parties also refer to as the "disposition court" and which was more familiar with M.C.'s history and supervision. The adjudication court made the required findings under California Rules of Court, rule 5.780(e)(1)-(4),[2] that proper notice had been given, that M.C.'s birthday and county of residence were as stated in the petition, that the allegations were true beyond a reasonable

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[2] References to rules are to the California Rules of Court.

doubt, and that M.C. was a child described by section 602. Regarding the finding required under rule 5.780(e)(5), the degree of the offense and "whether it would be a misdemeanor or a felony," the court stated, "Count 1 is a violation of Penal Code section 245(a)(4), which is a felony offense." The court did not state that it had considered "which description" [misdemeanor or felony] applies."

The adjudication court transferred the case to M.C.'s "home court" for disposition. The minute order had a marked box indicating the "[o]ffense is declared to be a . . . Felony."

The disposition court, which had ongoing supervision of M.C. and had heard the previous petitions against M.C., received her probation reports. The disposition court described the case as an "allegation of 245(a)(4) [as] a felony." The court set a "new" maximum period of confinement of five years. The court also ordered M.C. to pay a $100 restitution fine and perform 100 hours of community service. M.C. timely appealed.

DISCUSSION

A. *Applicable Law*

Section 702 provides, in relevant part, that "[i]f the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." Such offenses are commonly referred to as "wobblers." (See Pen. Code, § 17, subd. (b); *People v. Park,* (2013) 56 Cal.4th 782, 789.)[3] The purpose of section 702 is two-

[3] The allegation sustained against M.C., assault by means of force likely to produce great bodily injury, "is a wobbler because it

fold: (1) to facilitate "the determination of the limits on any present or future commitment to physical confinement for a so-called 'wobbler' offense," and (2) to ensure "that the juvenile court is aware of, and actually exercises, its discretion" to declare the offense a misdemeanor. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1206, 1207 (*Manzy W.*).) Rule 5.780(e)(5), which implements section 702, states "the court must consider which description [felony or misdemeanor] applies and expressly declare on the record that it has made such consideration, and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing."

Section 702 requires "strict compliance." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1204.) The juvenile court must make the declaration required by section 702 and rule 5.780(e)(5) expressly and on the record; an implied finding is insufficient. "[N]either the pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony." (*Manzy W.*, at p. 1208; see *id.* at p. 1209 ["setting of a felony-length maximum term period of confinement, by itself, does not eliminate the need for remand when the statute has been violated"].) "'[S]ection 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.'" (*Id.* at p. 1204; see *In re Kenneth H.* (1983) 33

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is punishable by 'imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.'" (*People v. Park*, *supra*, 56 Cal.4th at p. 790.)

Cal.3d 616, 619.) When the juvenile court commits a minor on a wobbler offense without making the express declaration section 702 requires, the reviewing court must remand because "it is entirely possible that the judge simply sentenced [the minor] as a felon without considering the possibility of sentencing [her] as a misdemeanant." *(Manzy W.*, at p. 1208.) "The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor." (*Id.* at p. 1209.)

B. *Neither the Adjudication Court nor the Disposition Court Made an Express Declaration of the Degree of the Offense*

The record shows that the adjudication court did not expressly state on the record whether the offense was a felony or a misdemeanor and that the adjudication court intended to allow the disposition court to decide the issue. The adjudication court, after finding M.C. was a person described by section 602, did state the allegation in the petition "is a violation of Penal Code section 245(a)(4), which is a felony offense." But it is not clear whether the court was describing the petition, stating that a violation of Penal Code section 245, subdivision (a)(4), is a felony (which is not always the case because it can be a misdemeanor), or making an express declaration under rule 5.780(e)(5) that it had considered whether the offense was a felony or a misdemeanor and was declaring it to be a felony.

The record also shows that the disposition court did not make a declaration under section 702. The disposition court received the case back from the adjudication court, and based on the minute order, stated that the adjudication court had "found

true the allegation of section 245(a)(4) [as] a felony." But, as discussed, it is not clear that is what actually occurred. Nor is there any indication in the record the disposition court knew the adjudication court yielded to the disposition court the determination whether the offense should be reduced. Moreover, when counsel for M.C. specifically asked the adjudication court to reduce the adjudication from a felony to a misdemeanor, the court denied the request "without prejudice" because, according to the court, M.C. had "a home court." It was entirely proper for the adjudication court to defer the section 702 determination until disposition and to transfer the case to the disposition court to make the required declaration. Indeed, as stated, rule 5.780(e)(5) specifically authorizes the juvenile court to do just that. But lost in the transfer of M.C.'s case was the actual declaration. No one told the judge in the disposition court that the judge in the adjudication court had left the issue open for disposition.[4] Counsel for M.C. at disposition never renewed the request to reduce the offense to a misdemeanor the adjudication court judge had denied without prejudice. And, as discussed, an after-the-fact attempt to extrapolate from the few data points in the record, such as the court's determination of the maximum period of confinement or the amount of the restitution fine,[5]

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[4] M.C. and the People were both represented by different lawyers at disposition than those who had appeared at the adjudication.

[5] It is not even possible to infer from the amount of the fine whether the court considered the offense a felony or a misdemeanor. Section 730.6, subdivision (b)(1), provides that a restitution fine for a minor who commits a felony offense "shall not be less than" $100. Section 730.6, subdivision (b)(2), provides

cannot cure the court's failure to comply with section 702. (See *Manzy W.*, *supra*, 14 Cal.4th at pp. 1208, 1209; see, e.g., *In re Ricky H.* (1981) 30 Cal.3d 176, 191 [remand was required under section 702 even though the juvenile court, after sustaining a section 602 petition alleging assault by means of force likely to produce great bodily injury, imposed a felony period of confinement and the minute order stated the offense was a felony]; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23 [imposition of a felony sentence and notation in the minute order listing the offense as a felony did not cure the juvenile court's failure to comply with section 702].)

The juvenile court's failure to comply with section 702 was particularly significant for M.C., who has a history of juvenile adjudications. In order to correctly calculate the maximum term of confinement in any other adjudications, the court must know whether past wobbler offenses were felonies or misdemeanors. (See *Manzy W.*, *supra*, 14 Cal.4th at p. 1206 [section 702 "serves the collateral administrative purpose of providing a record from which the maximum term of physical confinement for an offense can be determined, particularly in the event of future adjudications"].) The juvenile court's failure to declare whether

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that a restitution fine for a minor who commits a misdemeanor offense "shall not exceed" $100. The juvenile court here imposed a restitution fine of exactly $100, the only amount that the court could impose for either a felony or a misdemeanor offense. Although the court raised the fine from $50 to $100 when the prosecutor stated the fine should be $100 because he believed it "was a felony that . . . was sustained," the court stated it was imposing the "$100 maximum" fine, which suggests the court was considering the offense a misdemeanor.

the offense was a misdemeanor or a felony in this case may make it more difficult for the court in any future cases involving M.C. to determine appropriate confinement periods.

In light of all of the uncertainties in the record, remand is appropriate for the juvenile court to make a proper declaration. (See *In re Curt W.* (1982) 131 Cal.App.3d 169, 186 [remanding under section 702 and rule 5.780(e)(5) for a formal declaration under section 702 to "remove that nagging doubt that [the juvenile court] gave consideration to possible misdemeanor disposition"]; *In re Jeffery M.* (1980) 110 Cal.App.3d 983, 985 [section 702 "requires the court to expressly consider the classification of the underlying offense and make a specific finding," and "[n]othing should be subject to surmise"].)

DISPOSITION

The judgment is reversed and remanded with directions for the juvenile court to make an express declaration under section 702. If the court determines the offense is a misdemeanor, the court should recalculate M.C.'s maximum period of confinement.

SEGAL, J.

We concur:

PERLUSS, P. J. FEUER, J.