Filed 3/21/17 In re Z.K. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Z.K., a Person Coming Under the Juvenile Court Law.	B269848 (Los Angeles County Super. Ct. No. PJ51265)
THE PEOPLE, Plaintiff and Respondent, v. Z.K., Defendant and Appellant.	

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

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

On November 20, 2014, in a petition filed by the Los Angeles County District Attorney's Office pursuant to Welfare and Institutions Code section 602, it was alleged that Z.K. (minor) committed vandalism resulting in damage under $400. (Pen. Code, § 594, subd. (a).)[1] Minor admitted the allegation. The juvenile court declared minor a ward of the court and placed him on home probation.

On November 19, 2015, in an amended petition filed by the Los Angeles County District Attorney's Office pursuant to Welfare and Institutions Code section 602, it was alleged that minor committed disturbing the peace of a school campus (count 2; § 415.5, subd. (a)), vandalism resulting in damage under $400 (count 3; § 594, subd. (a)), and indecent exposure (count 4; § 314, subd. (1)).

Following adjudication, the juvenile court sustained the petition as to counts 2 and 4. The juvenile court declared minor a ward of the court and continued him on home probation with the same terms and conditions previously imposed. The juvenile court declared the maximum period of confinement was six months.

Minor appeals from the juvenile adjudication. He argues that we must reverse the true finding as to count 2 because section 415.5 does not apply; after all, minor was a registered student of the school in question. The People concede, and we agree. We therefore reverse the true finding as to count 2.

He further argues that insufficient evidence supports the juvenile court's true finding that minor committed indecent exposure (count 4). We

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

disagree. Because the evidence supports the true finding, we affirm the juvenile court's true finding as to count 4.

FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2015, Brandi Davis (Davis) was the Sequoia Charter School's administrator. According to Davis, minor was a student at the school and had attended that school for just over a year. Joshua Hammock (Hammock) was a "campus supervisor." As part of his duties, Hammock escorted minor from his classroom to the main office for a dress code violation. While escorting minor, it appeared to Hammock that minor was upset and angry.

Davis and Hammock were in a room in the main office with minor. Minor's pants were "sagging very low," causing his undergarments and shorts to show. His pants and shorts hung midway down his thigh to such a degree that they impeded his ability to walk. Minor was asked multiple times to pull up his pants to where they belonged, but he refused. Minor was belligerent, loud, defiant, and used curse words. Eventually, he pulled his pants much higher than requested and said something like, "[I]t's squeezing my dick" or "Now my dick is being squeezed." Afterward, minor left the main office for about 45 seconds to five minutes before returning. He had the same demeanor as before he left the office. Minor was told that the school would contact his mother to bring other pants that complied with the school's dress code.

Minor told Davis that he should spit in her face as he was already going to be suspended. Next, he exposed his genitals by pulling his pants, shorts, and boxers down to his knees. Davis, who was sitting at the time, averted her gaze and asked, "'Did that just happen?'" When told his actions could be deemed sexual harassment, minor replied, "'I don't care.'" Minor then hiked

his pants above his waist and dropped his pants, shorts, and boxers down to his ankles again. Davis tried to cover her eyes and avert her gaze, but she saw minor's legs.

Hammock, who was still present, saw minor's genitals both times minor dropped his pants. The first time he dropped his pants for about 10 seconds; the second time, he dropped his pants for about 20 seconds. After Hammock pointed out that minor had exposed himself a second time, minor was argumentative and denied exposing himself.

At that point, minor "became very upset with himself." He said things like he was confused, he did not mean to expose his genitals, and he did not realize that he had exposed himself. He hit himself in the face at least three times, resulting in a small cut near his left eyebrow and possible injuries to his nose and lip. Minor refused medical assistance. The school resource officer was contacted.

DISCUSSION

I. *Count 2*

Minor was charged in count 2 with disturbing the peace of a school campus in violation of section 415.5, subdivision (a). However, section 415.5, subdivision (f), provides, in relevant part, that this statute "shall not apply to any person who is a registered student of the school." (§ 415.5, subd. (f).) Because minor was a registered student of Sequoia Charter School where the incident took place, section 415.5, subdivision (a), does not apply. (*In re Fernando C.* (2014) 227 Cal.App.4th 499, 504.) Accordingly, we reverse the juvenile court's true finding as to count 2.

II. *Count 4*

Minor contends that the juvenile court's true finding as to count 4 is not supported by sufficient evidence.

As the parties agree, we apply the substantial evidence test. (*People v. Cuevas* (1995) 12 Cal.4th 252, 260.) In doing so, we review the record in the light most favorable to the verdict below to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Section 314 provides, in relevant part: "Every person who willfully and lewdly . . . . [¶] 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby . . . . [¶] . . . is guilty of a misdemeanor." (See *People v. Carbajal* (2003) 114 Cal.App.4th 978, 982.) The defendant must not only expose himself, but also intend "his conduct to direct public attention to his genitals for purposes of sexual arousal, gratification, or affront." (*In re Smith* (1972) 7 Cal.3d 362, 366 (*Smith*).) The defendant "does not have to act for purposes of either sexual arousal or sexual gratification." (*People v. Archer* (2002) 98 Cal.App.4th 402, 406 (*Archer*).) Rather, "it is enough if the defendant exposed himself for purposes of 'sexual affront.'" (*Ibid.*) Such an affront exists when a defendant "intentionally exposes 'his person, or the private parts thereof' to another for the purposes of *sexually* insulting or offending the other person." (*Ibid.*)

Ample evidence supports the trial court's finding that minor exposed himself for purposes of sexual affront. Initially, Davis and Hammock were confronted with a student who was angry and upset after being told to pull up his pants to comply with the school's dress code. Minor became

belligerent, loud, and defiant. At that point, minor engaged in unacceptably offensive conduct, but not sexual affront.

However, minor shifted his words and conduct to cause sexual affront as part of his intense multipronged effort to offend the victims. He pulled his pants up too high and complained that his pants were "squeezing [his] dick." A reasonable factfinder could conclude that minor deliberately made this comment to offend Hammock and Davis. After briefly leaving the room, and threatening to spit in Davis's face, minor took his offensive behavior to another level by exposing his genitals to Davis and Hammock. In doing so, he incorporated "sexual affront" as part of his overall intent to cause great offense by sexually insulting or offending the victims. (*Archer*, *supra*, 98 Cal.App.4th at p. 406.)

Making matters worse, even after being told that he was sexually harassing the victims, minor exposed himself a second time, and left himself exposed twice as long as he did before. As minor said, he did not care that he was being offensive by exposing himself.

In re Dallas W. (2000) 85 Cal.App.4th 937 (*Dallas*) does not compel a different result. "To the extent the opinion in *Dallas* suggests a person does not violate section 314 if he does not intend '"to arouse himself or a third person by his act"' (*Dallas*, *supra*, 85 Cal.App.4th at p. 940), that suggestion is contrary to the Supreme Court's decision in *Smith*. As the Supreme Court made clear, a person acts 'lewdly' for purposes of section 314 if he exposes himself 'for purposes of sexual arousal, gratification, *or* affront.' [Citation.]" (*Archer*, *supra*, 98 Cal.App.4th at p. 406.) Because the evidence amply demonstrates that minor exposed himself for purposes of sexual affront, the trial court's finding must be affirmed.

Finally, we reject minor's contention that the evidence shows that he "most likely unintentionally exposed himself." We cannot, and will not, reweigh the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

DISPOSITION

The juvenile court's finding as to count 2 is reversed. In all other respects, the judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT