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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B266288

(Los Angeles County  
Super. Ct. No. YJ38263)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed as modified.

Lynnette Gladd Moore, 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, Steven D. Matthews and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant A.C. appeals from an order adjudicating him a ward of the juvenile court under Welfare and Institutions Code section 602. Appellant contends there was insufficient evidence to support the juvenile court's finding that he committed an assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)).<sup>1</sup> He further contends that the disposition order should be modified to accurately reflect the probation conditions the court orally imposed, an argument with which respondent agrees.

We modify the disposition order to reflect the probation conditions the court orally imposed. We otherwise affirm.

### **PROCEDURAL HISTORY**

A Welfare and Institutions Code section 602 petition filed on March 20, 2015, alleged appellant committed second degree robbery (§ 211), assault with a deadly weapon, a "shod foot" (§ 245, subd. (a)(1)), and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)). After a contested adjudication hearing, the juvenile court dismissed the allegations of robbery and assault with a deadly weapon but found true the allegation that appellant committed assault by means likely to produce great bodily injury.

The court declared appellant a ward of the court and ordered him placed in a camp community placement program for a term of five to seven months, with a maximum confinement period of four years. The court imposed various probation conditions and awarded appellant 86 days of predisposition custody credit. Appellant timely appealed.

### **FACTUAL BACKGROUND**

Victim Sebastian B. was walking to work along Main Street in Santa Monica around 4:00 a.m. on March 19, 2015. Minor X.W. approached Sebastian on foot and began following him. Sebastian heard X.W. make a sound like "psst," at which point two

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<sup>1</sup>All further statutory references are to the Penal Code unless otherwise indicated.

other minors, appellant and Z.S., crossed the street and wound up in front of Sebastian. They allowed Sebastian to pass them and then joined X.W. in following him.

Sebastian continued walking but only made it about eight meters before one of the minors pushed him from behind and knocked him to the ground. All three minors immediately “pile[d] up on him” and began hitting and kicking him “all over” as he lay on the ground. They kicked him in the head and would not let him get up. Sebastian thought the minors were going to kill him and covered his face and head with his arms in an attempt to protect himself.

At some point during the attack, which lasted less than five minutes, Sebastian’s cell phone fell off his belt holster. One of the minors picked up the phone and ran away. The other two assailants continued to hit Sebastian for a few moments but then ran away to join the third. All three turned back to look at Sebastian, and he was able to see their faces.

After the minors left, Sebastian flagged down a passerby and called the police. Responding Santa Monica Police Officer Daniel Diaz found three individuals about two blocks away on Barnard Way. Officer Diaz identified the individuals in court as appellant, X.W., and Z.S.

About 25 minutes after the attack, Officer Adam Prato took Sebastian to Barnard Way for a field show-up with the three individuals Officer Diaz had detained. Sebastian identified them as his assailants.

As a result of the attack, Sebastian sustained cuts, scrapes, and bruising all over his body. He testified that his injuries were “On my knee. On my body. On my head. . . . Everything.” He was in pain. The police offered to call an ambulance, but Sebastian declined because he was late to work and did not have the money to pay for medical treatment. Sebastian’s cell phone was never recovered.

## **DISCUSSION**

### **I. Substantial Evidence Supported the Court’s Finding**

Appellant contends the juvenile court’s finding that he committed assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)) is not supported

by substantial evidence because “there was no substantial evidence that appellant and his co-minors employed force likely to cause great bodily injury, or intended to do so.” In appellant’s view, the short duration of the attack and minimal nature of the damage inflicted “were consistent with a scuffle, not an attack calculated to inflict serious injury.” We disagree.

“The same standard governs review of the sufficiency of the evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt.” (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540; see also *In re Roderick P.* (1972) 7 Cal.3d 801, 808-809.) “Substantial evidence is evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the appellant guilty beyond a reasonable doubt. [Citation.] The test is not whether guilt is established beyond a reasonable doubt, but whether any ‘rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.]” (*In re Chase C.* (2015) 243 Cal.App.4th 107, 113.)

Appellant was found to have violated section 245, subdivision (a)(4). The essential elements of that crime are the commission of an assault upon the person of another by any means of force likely to produce great bodily injury. (§ 245, subd. (a)(4).) The statute focuses on the *likelihood* that the force used will produce great bodily injury, not whether such injury in fact occurs. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) No physical contact with the victim is necessary to sustain a conviction, and the existence and extent of the victim’s injuries is immaterial. (*Ibid.*) The trier of fact may consider the injuries resulting from an assault, as they are often highly probative of the amount of force used, but such injuries are not conclusive. (*People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1065.) “[T]he question of whether or not the force used was such as to have been likely to produce great bodily injury, is one of fact for the determination of the jury based on all the evidence, including but not limited to the injury inflicted. [Citations.]’ [Citation.]” (*Id.* at p. 1066.) “Great bodily injury is bodily injury which is

significant or substantial, not insignificant, trivial, or moderate.” (*Ibid.*) “Abrasions, lacerations and bruising can constitute great bodily injury.” (*People v. Jung* (1999) 71 Cal.App.4th 1036, 1042, citing *People v. Escobar* (1992) 3 Cal.4th 740, 752.)

It is well established “[t]hat the use of hands or fists alone may support a conviction of assault ‘by means of force likely to produce great bodily injury.’” (*People v. Aguilar, supra*, 16 Cal.4th at p. 1028; see also *People v. Chavez* (1968) 268 Cal.App.2d 381, 384; *People v. Kinman* (1955) 134 Cal.App.2d 419, 422.) “‘Whether a fist would be likely to produce such injury is to be determined by the force of the impact, the manner in which it was used and the circumstances under which the force was applied.’ [Citation.]” (*People v. Kinman, supra*, 134 Cal.App.2d at p. 422; see also *People v. McDaniel* (2008) 159 Cal.App.4th 736, 748-749.) Indeed, a single punch to the jaw alone may support a finding that a juvenile committed assault by means of force likely to produce great bodily injury. (See *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1159, 1162-1163.)

Here, the barrage of blows inflicted by appellant and his co-assailants fortuitously caused Sebastian only relatively minor injury. The trier of fact readily could have concluded, however, that the manner and circumstances in which appellant and the other minors wielded their hands and shod feet demonstrated both an intention to use and actual use of force likely to cause great bodily injury. Appellant and his companions, three teenaged males, coordinated with one another to accost Sebastian from behind without warning while he walked alone in the dark. One of them knocked Sebastian to the ground, and all three “pile[d] up” on Sebastian and began pummeling him indiscriminately all over his body, including his head, “a particularly vulnerable part of the body.” (*People v. Manibusan* (2013) 58 Cal.4th 40, 88.) Sebastian testified that the assailants would not let him get up, and that he covered his head and face because he feared the beating would kill him. The force of the group beating caused Sebastian’s cell phone to fall out of its holster, and he wound up with painful cuts, scrapes, and bruises all over his body after mere minutes. This evidence is substantial and amply supports the

court's finding that appellant committed the crime of assault with force likely to produce great bodily injury.

## **II. The Probation Conditions Must be Modified**

According to the minute order documenting the disposition hearing, the juvenile court imposed probation condition 13B, which provides "You must not knowingly participate in any type of criminal street gang or illegal tagging activity. You must not knowingly associate with members of illegal tagging crews or criminal street gangs." According to the reporter's transcript of the hearing, however, the court did not orally impose condition 13B. Appellant contends that the minute order must be conformed to reflect the court's oral pronouncement, and respondent agrees. We accept respondent's concession and modify the minute order accordingly.

When there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the general rule is that the oral pronouncement controls. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345-1346.) Nothing in the record suggests that a departure from that general rule is warranted in this case, where the probation report which the court's order tracked did not recommend probation condition 13B and no gang affiliation was alleged.

"If the judgment entered in the minutes fails to reflect the judgment pronounced by the court, the error is clerical, and the record can be corrected at any time to make it reflect the true facts.' [Citation.]" (*People v. Rowland* (1988) 206 Cal.App.3d 119, 123.) We accordingly modify the disposition minute order dated August 13, 2015 by striking the imposition of probation condition 13B.

## **DISPOSITION**

The minute order dated August 13, 2015 is modified to strike the imposition of probation condition 13B. The judgment of the juvenile court is otherwise affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.