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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

B.M.,

Defendant and Appellant.

A135439

(San Francisco County
Super. Ct. No. JW10-6553)

This appeal comes before us following findings by the juvenile court that defendant committed the offenses of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) as charged in count one, assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) as charged in count two, and misdemeanor assault (Pen. Code, § 240) as the lesser offense of assault by means of force likely to produce great bodily injury charged in count three of a petition filed pursuant to Welfare and Institutions Code section 602. Defendant argues that the evidence fails to support the finding that the victim in count two was assaulted by means of force likely to produce great bodily injury. We conclude that the finding is supported by substantial evidence, and affirm the judgment.

STATEMENT OF FACTS¹

At around 8:00 p.m. on January 7, 2012, the victim, Wasiem Mansour, walked with three female friends from his apartment on Natoma Street in San Francisco toward a car on 7th Street. Mansour noticed “three men” walk past him as he received a call on his cell phone. While Mansour talked on his cell phone he fell behind his friends. He then felt someone place a hand around his neck, followed by “other arms” clamped on his shoulders. Mansour’s friend Heidi Petty heard Mansour yell, and turned around to see three men, whom she described as a taller Black male, a shorter Black male, and a Hispanic male, grab the victim’s shoulders and neck and pull him forcefully to the ground. The Hispanic male,” who was “lighter skinned” with “longer hair” and a ponytail, was identified by Mansour and Petty as defendant.

Mansour was thrown to the street. His eyeglasses flew from his face and shattered, and his back was hurt. As Mansour was on his back, holding his cell phone, defendant and his two companions began kicking the victim, at least 10 to 20 times, on the left side of his body and the front of his legs. Defendant was standing closest to the front of Mansour, kicking him repeatedly. Defendant and one other assailant kicked the victim, while the “taller Black male” grabbed for Mansour’s phone. Mansour crouched into a fetal position and clutched the phone to his chest while he was kicked.

Standing about four feet away from the attack, Petty exclaimed, “what the fuck,” and yelled to her friend Lorraine to “call the cops.” She then put her hands on defendant’s shoulders and attempted to pull him away from Mansour. Petty and defendant struggled briefly before he threw her to the street, onto her right hip. Mansour heard Petty yell, and realized she may be in danger. He released his cell phone to prevent her “from getting hurt.” The “tallest Black man” grabbed the victim’s phone, and all three of the assailants “ran off” together toward 6th Street.

¹ Defendant does not challenge the evidence that he committed the assault, only the evidence of the degree of force used. Our recitation of the facts will therefore focus on the evidence of force rather than the testimony that identified defendant as the perpetrator.

Mansour and his friends returned to his apartment and called the police. After the police arrived, the location of Mansour's phone on 7th and Market was traced through the use of the Find My Phone GPS application. Defendant was found in possession of the phone. Mansour and Petty identified defendant as one of the perpetrators of the robbery and assaults.

Mansour described the injuries he received as the result of the assault: his back was hurt and the left side of his body was bruised for one to two weeks, a concrete burn on his left hand that was still present three months later, and minor scratches on his forehead. As a result of the injuries Mansour stayed home from work for a few days, but he did not seek medical treatment. Petty suffered a bruised hip, and a cut on her wrist that left a scar.

DISCUSSION

Defendant argues that the evidence fails to prove he committed felony assault against Wassem Mansour. He specifically challenges the evidence of use of force likely to produce great bodily injury. He asserts that in light of the "minor injuries" actually suffered by the victim, and the "brief duration and nature of the encounter," the evidence "at most" supports "a finding of misdemeanor simple assault."

In this appeal claiming lack of sufficient evidence to support a juvenile court judgment, "we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371; see also *In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404.) We undertake a very "limited" assessment of sufficiency of the evidence to support the judgment. (*People v. Lewis* (2001) 25 Cal.4th 610, 643; see also *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.) "[W]e ask not whether there is evidence from which the trier of fact could have reached some other conclusion, but whether, viewing the evidence in the light most favorable to respondent, and presuming in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence, there is substantial evidence of appellant's guilt, i.e., evidence that is credible and of solid value, from which a reasonable trier of fact could

have found the defendant guilty beyond a reasonable doubt. Thus, our sole function as a reviewing court in determining the sufficiency of the evidence is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*In re Michael M.* (2001) 86 Cal.App.4th 718, 726, fn. omitted; see also *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088–1089.) “We may not reverse a conviction for insufficiency of the evidence unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955; see also *People v. Wader* (1993) 5 Cal.4th 610, 640.)

“However, [e]vidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction. . . .’ [Citation.]” (*People v. Tripp, supra*, 151 Cal.App.4th 951, 955–956; see also *People v. Wader, supra*, 5 Cal.4th 610, 640.) “ ‘Substantial evidence must be more than evidence which merely raises a strong suspicion of guilt as mere suspicion will not support an inference of fact.’ [Citation.]” (*People v. Thongvilay* (1998) 62 Cal.App.4th 71, 79.) To withstand an insufficiency of the evidence challenge, the trial court must find and the record must contain evidence substantial enough to support the finding of each essential element of the crime. (*United States v. Gaudin* (1995) 515 U.S. 506, 522–523; *People v. Johnson* (1992) 5 Cal.App.4th 552, 558.) That means not only every element of the offense, but also all of the “facts necessary to establish each of those elements” (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 277–278; see also *People v. Crawford* (1997) 58 Cal.App.4th 815, 821.)

Penal Code section 245, subdivision (a)(1), “makes it a felony offense to ‘commit[] an assault upon the person of another with a deadly weapon or instrument other than a firearm *or* by any means of force likely to produce great bodily injury.’ [Citation.]” (*People v. Delgado* (2008) 43 Cal.4th 1059, 1065.) “To be guilty of the offense” described in section 245, subdivision (a)(1), “it is not necessary to inflict great bodily injury.” (*People v. Smith* (1981) 122 Cal.App.3d 581, 586; see also *People v. Brown* (1980) 110 Cal.App.3d 24, 34) The crucial inquiry “ ‘is not whether serious injury was caused, but whether the *force used* was such as would be likely to cause it.’ ”

(*People v. Duke* (1985) 174 Cal.App.3d 296, 302, quoting 1 Witkin, Cal. Crimes (1963) § 272, pp. 255–256.) “ ‘The statute prohibits an assault by means of force *likely* to produce great bodily injury, not the use of force which does *in fact* produce such injury. While . . . the results of an assault are often highly probative of the amount of force used, they cannot be conclusive.’ [Citation.]” (*People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1065–1066.) “It is enough that the force used is likely to cause serious bodily injury. No injury is necessary.” (*People v. Hopkins* (1978) 78 Cal.App.3d 316, 320.) “ ‘[T]he gist of the offense . . . is the likelihood of bodily injury as the result of force used and the degree of force used is not as significant as the manner of use. . . .’ [Citation.]” (*People v. Gray* (1964) 224 Cal.App.2d 76, 79.) “The term ‘great bodily injury’ as used in the felony assault statute means significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or marginal harm.” (*People v. Duke, supra*, at p. 302.) “ ‘What kind of force is likely to produce great bodily injury is a question of fact for the [trier of fact]’ [Citation.]” (*People v. Gray, supra*, at p. 79.)

Here, while the victim’s actual injuries were not severe, they easily could have been. According to established and uniform law, an assault perpetrated by the use of hands or feet alone may be sufficient to support a conviction of assault by means of force likely to produce great bodily injury. (*People v. Tallman* (1945) 27 Cal.2d 209, 212; *People v. Rupert* (1971) 20 Cal.App.3d 961, 967–968; *People v. Chavez* (1968) 268 Cal.App.2d 381, 384; *People v. Hamilton* (1968) 258 Cal.App.2d 511, 518; *People v. Nudo* (1940) 38 Cal.App.2d 381, 385.) The essential determination focuses on the force and manner of the impact, and the circumstances under which the force was applied. (*People v. Rupert, supra*, at p. 967; *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1161–1162; *People v. Kinman* (1955) 134 Cal.App.2d 419, 422; *People v. Score* (1941) 48 Cal.App.2d 495, 498.) Mansour was vulnerable, and unprepared to protect himself from the surprise, violent attack by multiple perpetrators. (*People v. White* (1961) 195 Cal.App.2d 389, 391–392.) He was grabbed without provocation around the neck and shoulders, thrown to the street with enough force to hurl his glasses from his face, then kicked repeatedly, five or six times by defendant alone, while he was essentially lying

helpless on the ground. We conclude that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt of committing an assault by means of force likely to produce great bodily injury. (See *People v. Armstrong, supra*, 8 Cal.App.4th 1060, 1066; *In re Nirran W., supra*, at p. 1162; *People v. Chavez, supra*, at p. 384; *People v. Gray, supra*, 224 Cal.App.2d 76, 79; *People v. Horton* (1963) 213 Cal.App.2d 185, 188.)

Accordingly, the judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.