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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B256355
(Los Angeles County
Super. Ct. No. MJ22568)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Denise
McLaughlin-Bennett, Judge. Affirmed.

Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Joseph S. appeals from the order of wardship (Welf. & Inst. Code, § 602) entered as a result of his commission of the felony of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)). The juvenile court placed Joseph S. in a long term camp community placement program for a period of nine months with a maximum term of confinement of four years. We affirm.¹

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

On February 21, 2014, Jesse O. had a barbeque at his home in Lancaster. Joseph S. was one of the guests at the party. By approximately 11:00 o'clock that evening, Jesse O. had drunk approximately four drinks called "Jager Bombs." He had started drinking at about 8:00 o'clock.

At approximately 11:00 p.m., an argument broke out between two additional guests, David V. and a young man named Andrew. The two men were arguing inside the house and Jesse O.'s wife asked Jesse O. to ask David V. and Andrew to leave. Joseph S., his brother, Brian S., and a youth named Josh, were also in the house at the time and they, along with David V., Andrew and Jesse O., walked out of the house. They, however, remained on the walkway and driveway in front of the residence.

Jesse O. decided to attempt to have a talk with Andrew about what had happened and he asked the others to leave his property.² Josh immediately walked to his car. The other young men, however, including Joseph S., stayed behind. Joseph S. and his brother, Brian S., were standing to the right of Jesse O., who was holding a glass filled

¹ This case was heard with a companion case involving Joseph S.'s brother, Brian S. Brian S.'s case was filed under a different number, Los Angeles Superior Court Case No. MJ22547, and is the subject of a separate appeal, filed as *In re B.S.*, Case No. B255270. The respondent's brief is due in that matter on December 9, 2014.

² There was evidence Jessie O. wished to speak to Andrew because Andrew had at one time been someone who had visited the residence on a regular basis. He apparently had been the boyfriend of Jessie O.'s daughter or stepdaughter. Jessie O. intended to tell Andrew that he had to accept the young woman's new boyfriend if he was going to continue to regularly visit the house.

with an alcoholic beverage. When Jesse O. again asked Joseph S. and Brian S. to leave, Brian S. got “lippy” with Jesse O. and told him he did not have to listen to him. Jesse O. then told Brian S. to “have a little respect and leave.” The conversation between the young men became a “heated verbal exchange” and when Jesse O. told Brian S., who was standing in the driveway, to not come back, Joseph S. grabbed the back of Jesse O.’s shirt and pulled Jesse O. down onto the ground. While Joseph S. repeatedly kicked Jesse O., Brian S. got on top of Jesse O., straddled him, then appeared to stab him with a knife on the left side of his abdomen. At that point, Jesse O. lost consciousness for a moment. When he regained consciousness, Brian S. was no longer on top of him. Jesse O. was able to stand up and walk into his house. He “went straight to [his] back bathroom” to examine his wounds.

Someone in the house called 911 and Jesse O. was eventually taken to a hospital where he had surgery to repair “the damages [to his] insides.” Three staples were required to close the stab wound and 23 staples were necessary to close the surgical incision. Jesse O. also suffered bruises on his knees, elbows and shoulder. Jesse O. was required to stay in the hospital for five days.

When Jesse O. later spoke with a police officer, he did not tell the officer that he did not realize he had been stabbed until he “picked [himself] up off the ground.” He had been laying on the ground and knew immediately when he had been stabbed and who had stabbed him. When he walked into his house, he told the first person he saw, his stepdaughter, that Brian S. had stabbed him. Later, in the bathroom, he told his wife that it had been Brian S. who had stabbed him.

Jesse O. admitted that, within the previous two and one-half years, he had been involved “in another altercation where alcohol [had been] involved.” After the incident, he had been “charged with assault with a deadly weapon and [on November 23, 2011, had] ultimately pled guilty or no contest to [the offense].”

Gregory J. lives in a house with Jesse O., his mother, Teresa J., and his sister, Kayla J. On the night of February 21, 2014, when Jesse O. was having a barbeque, Gregory J. had been working at his job until approximately 8:00 p.m. When he then went

home, Gregory J. remembered that among the guests at the barbeque were Joseph S. and his brother, Brian S. After Gregory J. had been at home for about three hours and had consumed “a couple of beers” he, accompanied by his mother and several other individuals, ran outside because one of the guests had come in and said that “Jesse was getting jumped.”

When he went outside the house, Gregory J. saw Joseph S. kicking Jesse O. in the back and stomach as he was lying on the ground. In addition, Brian S. and another individual were “hunched over” on top of Jesse O., near his waist. However the second Gregory J. and the others ran down the steps, everyone in the yard, including Joseph S. and Brian S. “scattered.” Jesse O. was left laying on the driveway.

Gregory J. chased the group of young men, which included Brian S., down the street. Gregory J. eventually caught up with Brian S. in the desert, where Brian S. had flagged down a car. Before he left, Brian S. told Gregory J. that it had not been him and he “wouldn’t stab a brother.”

When Gregory J. returned to his house, several police cars and an ambulance were there. Jesse O. was taken to the hospital and police officers took statements from various individuals. A number of officers then left and Gregory J. noted that a helicopter was hovering over the desert. He believed the police officers were looking for suspects.

Gregory J., who had been at the house throughout the evening, had seen no “altercation or argument” develop between Jesse O. and either Joseph S. or Brian S. As far as Gregory J. knew, Jesse O., Joseph S. and Brian S. had never previously been involved in any kind of confrontation.

Gregory J. did not realize that Jesse O. had been stabbed until he returned to the house and, before the ambulance took Jesse O. to the hospital, Gregory J.’s sister, Kayla J., told him. Gregory J. then went over to Jesse O. and saw “all [this] blood and fat hanging out.” Later, Jesse O. told Gregory J. that, at first he had not realized he had been stabbed. “When it first happened he thought it was a punch” and “after he got up he realized he [had been] stabbed.” Jesse O. believed he had been stabbed by Brian S.

Ahron R. was a guest at the barbeque at Jesse O.'s house. Throughout the afternoon and evening, Ahron R. did not consume any alcoholic beverages. At some point, Ahron R. saw both Joseph S. and Brian S. at the party.

Later in the evening, Ahron R. saw two young men, David V. and Andrew, arguing. Although he observed some of the altercation, for the most part, Ahron R. "just stayed away." Ahron R. believed, however, that the two were fighting over the fact that Andrew had taken David V.'s mother's bottle of vodka. For a time, Andrew went outside while David V. stayed inside the house. Andrew then returned, accompanied by Joseph S. and Brian S. Andrew, Joseph S., Brian S. and David V. were then all asked to leave the house. They did so and went outside, accompanied by Jessie O. and a couple of other individuals. Jesse O. apparently asked everyone except Andrew to leave the premises.

Ahron R. had stayed inside the house. However, a short time later, when David's mother came inside and stated that Jessie O. "was getting jumped," he and a number of other guests ran outside. There, Ahron R. saw Jesse O. lying on his back on the ground. Joseph S. was standing up and kicking him in the stomach and side while Brian S. and a young man named Andrew were hunched over Jessie O.'s chest area. It appeared to Ahron R. that Brian S. was "punching" Jessie O.

Ahron R., assisted by a number of other guests, pulled Joseph S. away from Jessie O. and pulled Brian S. and Andrew off of Jessie O. Andrew "kind of just . . . left" while Brian S. "took off running." Ahron R. and some friends followed Brian S. and, when they eventually caught up with him, Ahron R. heard Brian S. say, "I wouldn't stab."

Later, after Jessie O. returned home from the hospital, Ahron R. was in the room while Jessie O. was speaking with a detective. Ahron R. heard Jessie O. say he had been stabbed and "Brian was . . . the one who did it."

2. Procedural history.

In a petition filed pursuant to Welfare and Institutions Code section 602 on March 6, 2014, it was alleged that 16-year-old Joseph S. committed assault by means of

force likely to produce great bodily injury in violation of Penal Code section 245, subdivision (a)(4), a felony.

Pending a hearing on the matter, Joseph S. was detained as, after the matter was reviewed by the Probation Department, the juvenile court determined, among other factors, that a “prima facie showing ha[d] been made that the minor [was] a person described by Section 602 WIC,” it was “a matter of immediate and urgent necessity for the protection of the minor and the person and property of others that the minor be detained” and “[c]ontinuation in the home [would be] contrary to the minor’s welfare.”

After the evidence had been presented at a hearing held on March 26 and 27, 2014, defense counsel made a motion to have the charge of assault by means of force likely to produce great bodily injury reduced from a felony to a misdemeanor. She argued Joseph S. had failed to inflict upon the victim “substantial injury.”

In response, the prosecutor argued Joseph S. could be held “criminally responsible [as] an accomplice not only for the crime that he . . . intended to aid and abet, . . . , but also for any crime that [was a] natural and probable consequence of that target crime.” The prosecutor indicated, “it’s [what] a reasonable person in the defendant’s position, not what . . . the minors knew themselves, it’s what the objective person in that position would know [when accompanying] two individuals that were . . . there [to] potentially back their friend[, Andrew.] Is it unreasonable to believe that they wouldn’t think that after a fight was going to occur that also a stabbing could occur?”

The prosecutor continued: “As to Joseph [S.] this was a group beating perpetrated on [Jessie O.], [which] if not stopped by the people coming outside . . . would have continued. This is the type of beating that commonly results in great bodily injury and, in fact, [Jessie O.] did suffer great bodily injury in this case. It is not while the stabbing was perpetrated; it is, in fact, an injury he suffered during this group beating that all are liable for.” The prosecutor then noted that, at the time of the beating of Jessie O., Joseph S. “[had] just [been] released from camp 11 days before . . . [after having] served nine months” for an assault with a deadly weapon in violation of Penal Code section 245,

subdivision (a)(1). So the prosecutor “did not believe this [was] a proper case to be reduced to a misdemeanor.”

The juvenile court indicated it had concluded the most credible witness in the matter had been Ahron R. There was no evidence Ahron R. had consumed any alcohol that evening and his testimony that, after leaving the house he “first grab[bed] Andrew” was consistent with the fact Andrew was the individual closest to the area the stab wound had been inflicted on Jessie O. In addition, the juvenile court noted from the testimony given that there had been “an altercation between Andrew and David [V.] that had nothing to do with [Joseph S. or Brian S.],” that Andrew had left after the initial altercation only to return with Joseph S. and Brian S. and, although defense counsel had argued the three young men had returned simply to enjoy the barbeque, there was “enough evidence to suggest that there was some ill motive on the part of all three individuals [and that they] came back to address a perceived wrong on the part of Andrew.” The juvenile court stated its assessment of the testimony indicated “there was some hostile intention and conduct exhibited[,] enough for the wife of the victim to be concerned, according to the victim, [and] that’s why [Jesse O.] asked these individuals to leave” The juvenile court also determined that Jesse O.’s testimony that he wished to talk with Andrew regarding his relationship with either Jesse O.’s daughter or stepdaughter to be a “reasonable explanation” with regard to why he followed Andrew, Joseph S., Brian S. and David V. out when they left the house and why he asked all of them, with the exception of Andrew, to leave the premises.

The juvenile court indicated it had taken the time to make a record regarding these events because it was “indicative of the mentality of [the] minors, [their] motive . . . , and the actual reason why they were there.” An “altercation did take place where . . . [Joseph S.] was involved by kicking the victim [repeatedly], and Brian [S.] was also involved as he was crouched over the victim . . . and was seen . . . punching the victim.” The juvenile court indicated it was “clear . . . that these minors aided and abetted Andrew in the perpetration of this crime.” Moreover, the juvenile court decided the People had met their burden of showing “it was natural and probable that one of the participants

would [use] a weapon . . . during the altercation.” Under these circumstances, the juvenile court denied Joseph S.’s counsel’s motion to reduce the charge to a misdemeanor.

After indicating it had reviewed the case law cited by the parties, including *People v. Prettyman* (1996) 14 Cal.4th 248, the juvenile court concluded “a person who aids and abets the commission of a crime is a principal . . . and thus shares the guilt of the actual perpetrator. And that an aider and abetter is guilty not only of the offense he intended to facilitate or encourage, but also of any reasonabl[y] foreseeable offense which the person he aids and abets commits.” As to Joseph S., the juvenile court concluded “[t]he People [had] met their burden and [the juvenile court found] that the minor . . . committed the crime of assault by means [of force] likely to produce great bodily injury, in violation of Penal Code section 245[, subdivision] (a)(4), a felony.” Accordingly, the juvenile court sustained the petition.

After having reviewed the pre-plea probation report, the juvenile court declared Joseph S. a ward of the court pursuant to Welfare and Institutions Code section 602, removed custody of Joseph S. from his parent or guardian and ordered him committed to the care, custody and control of the Probation Department for placement in camp community placement for a period of nine months. The juvenile court indicated the maximum confinement time for Joseph S. would be four years, then awarded him credit for 34 days already served.

Joseph S. filed a timely notice of appeal from the juvenile court’s order on May 16, 2014.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed October 3, 2014, the clerk of this court advised Joseph S. to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The order of wardship is affirmed.

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ALDRICH, J.

We concur:

KITCHING, Acting P. J.

LAVIN, J.*

* Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.