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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A. P.,

Defendant and Appellant.

C068582

(Super. Ct. No. JV130720)

After finding the minor, A. P., competent to stand trial, the juvenile court sustained a petition alleging he committed three crimes: two counts of felony driving under the influence, and one count of misdemeanor driving without a valid license. The felony counts included three enhancements, each alleging the minor inflicted great bodily injury on three individuals as a result of his driving under the influence. The juvenile court adjudicated the minor a ward of the court, placed him on probation with numerous conditions, and committed him to the care and custody of his mother.

On appeal, the minor contends he was “denied his due process right to a fair trial and effective assistance of counsel because he was not competent, due to his retrograde amnesia, at the time of the jurisdictional hearing” We disagree and affirm.

BACKGROUND

Offenses

On October 3, 2009, A. P. (then 14 years old) and three of his friends (Trentin, Tanielau, and Charlie) stole a black automobile belonging to Trentin's grandfather. They rode around town drinking alcoholic beverages A. P. brought to them.

Between 1:00 and 2:00 a.m on October 4, 2009, the group drove to a Taco Bell, after which, Trentin and A. P. took turns driving the car. When A. P. took over driving, he drove very fast around the Del Paso Heights area of Sacramento, swerving at parked cars to see how close he could get without actually hitting one.

Around 4:00 a.m., Janet Fox was driving home from work when she saw a black car coming toward her, run through an intersection without stopping, and swerve into her lane; she had to move her car to avoid being hit. She then saw the car swerve back into its own lane and onto the dirt on the right side of the road, fish-tail, make a turn "flying right past" the front of her car, and into the front yard of a house on the corner next to Fox. Fox did not see the car stop, but she heard it crash and she called 911. She then parked her car, got out, and walked to a house where she saw the car had crashed into the house and was now on its side.

Melinda Peterson was asleep on her living room couch in the early morning hours of October 4, 2009. She awoke in another part of the room with her couch on top of her. Crawling out from under the couch, Peterson saw a giant hole in the wall of her home and a car partially in her living room. She also saw a "small boy" in the car moaning, another boy on the floor of the living room, and blood everywhere.

Sacramento Fire Captain Kurt Dittig arrived at the scene. Looking through the windshield of the car, Captain Dittig could see there were two boys lying horizontally, one on top of the other. He supervised others as they removed the roof from the car in order to free the boys. The first boy extricated was placed on a backboard and put in an ambulance. The second boy was then removed.

Peterson and all three boys were seriously injured. Peterson sustained fractures to vertebrae and spinal disk injuries. She also suffered numerous cuts and bruises. Trentin (14 years old) suffered a broken jaw and left femur. He lost a kidney and his spleen, and had to have a stent placed in his aorta. Trentin spent a month and one-half in the hospital, was released, then had to go back for another two weeks.

Tanileau (also 14 years old) was asleep in the backseat of the car when it crashed into Peterson's home. In the crash, he hit his head so hard his skull was opened on the left side; he spent two weeks in the hospital.

A. P. broke his right leg, fractured his pelvis, and suffered major abdominal injuries. As a result of his injuries, A. P. had to use a colonoscopy bag and was in a wheelchair at the time the wardship petition was filed.

A. P.'s Competency

A. P. could not remember the accident, so his counsel declared a doubt as to A. P.'s competence to stand trial. The juvenile court thus suspended proceedings for determination of A. P.'s competence and, at the court's direction, Eugene P. Roeder, Ph.D., evaluated the minor's competency.

A. P. told Dr. Roeder he felt guilty about what had happened, but he did not remember anything that happened that night; he could not remember if he was the one driving the car when it crashed into Peterson's home. Despite his memory loss, Dr. Roeder noted that A. P. showed "good knowledge of court procedures and courtroom participant roles," and testing showed no indications of "any diagnosable or treatable mental disorder." Dr. Roeder thus found that other than the "post concussive retrograde amnesia described by [A. P.] is consistent with his injuries, and it is not expected he will ever remember what transpired with this exception, however, [A. P.] does not present with any evidence of a mental disorder or other cognitive deficits which would prevent him from being capable of assisting his attorney." Accordingly, in Dr. Roeder's opinion, A. P. was competent to stand trial.

The People stipulated the minor had retrograde amnesia, and the minor relied solely on his retrograde amnesia to argue he was incompetent. The issue of the minor's competence was then submitted to the juvenile court based on Dr. Roeder's report and the court found the minor competent to stand trial.

In reaching its decision, the court found the minor had the capacity to understand the proceedings and noted the minor was "no worse off than a defendant [who] cannot remember where he was on a particular day because of the passage of time[,] because he was drunk, drugged, unconscious, or asleep at the time of the crime." The court also noted the minor still would be able to assist counsel in preparing a defense.

The court also found the minor would still receive a fair trial. There were eyewitness, multiple victims, and a "MAIT study" done that would provide further evidence of the circumstances surrounding the crime. Thus, the court concluded, "[t]he positioning of the minor in the car is certainly disputed, but all of that evidence is there, and that is certainly going to be something that the minor and his attorney will be able to cross-examine and defend. Now, he may not have the ability to remember what happened at that time, but that does not rise to the level of incompetency under the California Rules of Court[, rule] 5.645[,] subsection (d)."¹

The matter then proceeded to the contested jurisdictional hearing, at the conclusion of which the court adjudicated the minor a ward of the court.

DISCUSSION

The minor contends the juvenile court violated his rights to a fair trial and to effective assistance of counsel by finding him competent to stand trial despite the

¹ California Rules of Court, rule 5.645 implements the Lanterman Act whether a juvenile should be held for a 72-hour evaluation. Subdivision (d) refers to the capacity to cooperate with counsel where the minor lacks a rational understanding of the charge against him.

amnesia that prevented him from remembering the car accident. A. P. argues that, because he could not remember any part of the “incident,” he could not adequately assist in his own defense, nor testify on his own behalf. A. P. also argues that because the prosecutor’s evidence was circumstantial, his inability to remember the incident necessarily rendered the trial unfair. He is wrong.

Subjecting an incompetent minor to a juvenile delinquency trial is a violation of the due process clauses of the state and federal Constitutions. (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234.) In determining whether a minor is competent to stand trial, “the inquiry is whether the [minor] ‘ “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him.” ’ [Citation.]” (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 857, quoting *Dusky v. United States* (1960) 362 U.S. 402 [4 L.Ed.2d 824].)

On review of the juvenile court’s finding, we determine whether substantial evidence, viewed in the light most favorable to the ruling, supports the court’s finding. Evidence is substantial if it is reasonable, credible, and of solid value. (*People v. Amador* (1988) 200 Cal.App.3d 1449, 1453.)

Here, the minor contends he was incompetent solely because he suffers from retrograde amnesia and, as such, does not remember any of the incident for which he was adjudged a ward of the court. In California and “[a]lmost universally,” however, “amnesia in and of itself does not render a defendant incapable of standing trial, of receiving a fair trial, or of assisting his counsel in the defense of his case. [Citation.]” (*People v. Amador, supra*, 200 Cal.App.3d at p. 1453.)

As also noted by the juvenile court here, “[t]he amnesic defendant is no worse off than the defendant who cannot remember where he was on a particular day because of the passage of time, or because he was drunk, drugged, unconscious or asleep at the time. . . . [Citation.]” (*People v. Amador, supra*, 200 Cal.App.3d at p. 1454.) Moreover,

“[a]mnesia as to the alleged offense does not totally incapacitate the defense and a defendant is still free to assist counsel in numerous other ways. A defendant is entitled to a fair trial, not necessarily a perfect trial. [Citation.]” (*Ibid.*)

A. P. nevertheless argues that because he did not admit the facts of the wardship petition and because “the prosecution’s case here was not overwhelming,” that his case is not controlled by the law set forth in *Amador*. We disagree. The decision reached in *Amador* was not based on the overwhelming case of the prosecution, or the fact that he pled not guilty after he was found competent to stand trial. (*People v. Amador, supra*, 200 Cal.App.3d at pp.1451, 1453-1455.) Rather, the decision in *Amador* is firmly grounded in the definition of what it means to be “competent” to stand trial. (*Ibid.*) Accordingly, in *Amador*, the court found the defendant competent to stand trial because his amnesia did not prevent him from assisting counsel in his defense or understanding the proceedings against him or his role in those proceedings. (*Ibid.*)

Defendant further relies on the federal decision in *Wilson v. United States* (D.C. Circuit 1968) 391 F.2d 460. In *Wilson*, the court considered whether a defendant received a fair trial despite his retrograde amnesia. (*Id.* at p. 461.) The competency motion was made posttrial, and the court ruled the defendant’s amnesia was but one factor to consider in assessing whether he had received a fair trial. (*Id.* at p. 463.) The court listed numerous other factors to be considered in assessing the fairness of a trial before a defendant is sentenced, including “the strength of the prosecution’s case.” (*Id.* at pp. 463-464.)

We are not persuaded that the *Wilson* approach is the better one. We agree with the *Amador* court: “Given the prosecutor’s burden to prove a criminal case beyond a reasonable doubt without the defendant’s testimony, it is difficult to conceive of a case where the evidence independent of the defendant’s testimony and observations would not be sufficient to preclude denial of a fair trial based upon defendant’s amnesia *alone*.” (*People v. Amador, supra*, 200 Cal.App.3d at p. 1455.) Notably, we are not alone in

disregarding *Wilson's* approach to the issue, which has “almost never been followed.” (Tysse, *The Right to an “Imperfect Trial--Amnesia, Malingering, and Competency to Stand Trial* (2005-2006) 32 Wm. Mithchell L.Rev. 353, 368-369.)

Here, the minor argues he was incompetent to stand trial solely because he suffers from retrograde amnesia. Without more, this does not render him incompetent to stand trial. (*People v. Amador, supra*, 200 Cal.App.3d at p. 1453.) Accordingly, we find no error.

DISPOSITION

The orders of the juvenile court are affirmed.

 ROBIE , J.

We concur:

 RAYE , P. J.

 BLEASE , J.