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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re WILLIAM H., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM H., a Minor,

Defendant and Appellant.

D058974

(Super. Ct. No. J226618)

APPEAL from an order of the Superior Court of San Diego County, Albert T. Harutunian, III and Carolyn Caietti, Judges. Affirmed in part and reversed in part with directions.

Following a court trial the juvenile court found the allegations in a petition filed under Welfare and Institutions section 602 to be true. Specifically, the court found that William H. (the Minor) committed battery with serious bodily injury (Pen. Code,¹ § 243, subd. (d)) and simple battery (§ 242).

¹ All further statutory references are to the Penal Code unless otherwise specified.

In a separate disposition hearing, which included disposition of other unrelated offenses, the Minor was placed on probation on various terms and conditions. The court set the maximum confinement for all the offenses at five years.

The Minor appeals contending there is not sufficient evidence to support the true finding on section 243, that the juvenile court misunderstood the law regarding aiding and abetting, and that the court erred in failing to make a specific finding that the violation of section 243 was a felony or a misdemeanor as required by *In re Manzy W.* (1997) 14 Cal.4th 1199. We agree the court failed to specify whether the violation of section 243 was a felony or misdemeanor, and we will set aside the disposition order with regard to this petition and remand the case with directions to the juvenile court to make the sentencing determination as required by *In re Manzy W.* We will affirm the adjudication order.

STATEMENT OF FACTS

The events in this case took place at a retail center in Carlsbad in the evening of May 21, 2010. At that time, the victim, Sean P., and three of his friends were outside the Ultrastar Movie Theater. The victim and his friends attended Carlsbad High School together. When they reached the movie theater they were accosted by the Minor and two of his friends, Alex D. and Cody K. The Minor and his friends attended La Costa Canyon High School. The Minor and his friends yelled "Fuck Carlsbad," referred to the victim and his friends as "faggots," and said they were going to "beat [their] asses." The Minor and his group said they wanted to fight in the parking lot.

The victim and his friends attempted to avoid the Minor and his friends and took the opposite stairs down to where they were to be picked up. The Minor and his friends apparently changed their directions and confronted the victim and his friends.

After the Minor and his friends taunted the victim group, the Minor started the affray by spitting on one of the victim's friends. Next Alex D. struck the victim in the face. The victim took off his back pack since he was going to have to defend himself. As he turned around he was hit several more times by Alex D. Then, the Minor hit the victim with a "pretty solid punch" to his face.

About that time various people had stopped to break up the fight. One of the adults told the Minor and his friends to "get out of here." The Minor attempted to run but the victim grabbed his tank top to restrain him. The Minor pulled away, tearing the tank top.

About the same time, Cody K. came from behind the victim and struck him with a very hard blow to the face. The blow rendered the victim unconscious for 15 to 30 seconds. The victim suffered cuts to his mouth that required seven stitches and suffered from bruising and swelling on his face.

The Minor and his friends fled from the scene but were apprehended a short distance away and were identified by the victim in a curbside lineup.

DISCUSSION

I

AIDING AND ABETTING

The Minor challenges the true finding on count 1, battery with serious bodily injury, on two related grounds. He contends the evidence is not sufficient to support the finding he aided and abetted Cory K., who delivered the final blow to the victim which produced the injury, and that the trial court did not understand the law relating to aiding and abetting. The Minor is wrong on both theories.

At the outset we observe that the Minor does not challenge the true finding on count 2, simple battery. His challenge to count 1 is based largely on his misapprehension of the applicable rule of aiding and abetting that applies to this case. The Minor, in overly exhaustive briefing exceeding 100 pages, argues the natural and probable consequences theory applies to this case. From that faulty premise he argues there is no evidence he aided in the final blow to the victim and, since that is the more serious offense, it did not arise from any target crime. The rule that applies to this case is that of direct aiding and assisting in the crime committed.

At base, as we will explain, the Minor and his friends collectively assaulted the victim group with the stated intent of "beating [their] asses." In the affray several battery offenses were committed by the Minor and by Alex D. The final blow in the affray was struck by Cory D. as the group was starting to leave to avoid the police. The blow struck was simply another battery. The difference is the resulting injury, not any difference in purpose or manner of committing it. As the trial court observed the Minor very actively

participated in starting the fight, participating directly in hitting the victim and it was entirely foreseeable that each of his cohorts would strike blows. That one of the blows caused serious injury was a very likely outcome of the Minor's group assault.

A. Standard of Review

When we review a contention that a conviction is not supported by sufficient evidence we apply the very familiar substantial evidence standard of review. Under that standard we review the entire record, drawing all reasonable inferences in favor of the decision. We do not make credibility determinations nor do we attempt to reweigh the evidence. The issue we must resolve is whether there is sufficient substantial evidence in the record from which the trial court could have been satisfied, beyond a reasonable doubt that the appellant committed the charged offense. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We apply the same standard of review when the decision is based on circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

B. Legal Principles

A person aids and abets the crimes of another when that person (1) acts with knowledge of the unlawful purpose of the perpetrator, (2) with the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates the commission of the crime. (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) An aider and abettor is responsible for the crimes of another when he or she acts with knowledge of the perpetrator's purpose and intentionally aids or encourages the perpetrator. The aider and abettor is liable for the offense committed as a principal. (*People v. McCoy* (2001) 25 Cal.4th 1111, 1118, 1120.)

C. Analysis

It is virtually undisputed that the Minor and his cohorts collectively challenged the victim group to fight. They taunted and threatened the victim group and wanted to fight with them in the parking lot. When the victim group attempted to avoid a fight by leaving in a different direction, the Minor's group headed them off and continued the confrontation. It is also clear that all three of the boys in the Minor's group actively taunted and challenged the others to fight. It was the minor who started the fight by spitting on one of the boys in the victim group.

Once the Minor started the fight his colleague, Alex D. immediately punched the victim. The Minor immediately weighed in by also punching the victim. The entire affair lasted only a few moments when nearby adults began to break up the fight. As the Minor and Alex D. were starting to run away, their cohort, Cory K., got in the last punch, which knocked out the victim and caused the physical injuries he suffered. Cory K. did not use a weapon and did nothing different than his two partners did, that is he punched the victim in the face.

The Minor makes much of his description of the last blow as a "sucker punch" because it took the victim by surprise. Based on such characterization, the Minor reasons that the last blow was therefore separate from the rest of the affray. He also relies on the aggravated nature of battery under section 243. From that premise, the Minor cites to federal cases which found homicides committed by members of a group were outside the scope of the activities the defendants in those cases had anticipated. (*Juan H. v. Allen* (9th Cir. 2005) 408 F.3d 1262; *Mitchell v. Prunty* (9th Cir. 1997) 107 F.3d 1337;

overruled in part by *Santamaria v. Horsley* (9th Cir. 1998) 138 F.3d 1280.) The Minor's reliance on those cases is misplaced.

In the cases he relies on, there was an absence of evidence to show the aider had any knowledge of the confederate's unlawful purpose. That is not the circumstance in this case. Here the Minor clearly was aware that he and his cohorts were going to "beat [their] asses" and he actively participated in encouraging and assisting his friends. Although he calls Cory K.'s blow a "sucker punch" it remains simply a punch, the unlawful application of force to another. It is only the consequence of the blow that is different and physical injury to someone who you are beating is clearly foreseeable.

Battery with serious bodily injury is simply the crime of battery, with a form of injury resulting from the battery (§ 243, subd. (d)). The crime does not require a specific intent or purpose. Rather, it is only the causation of injury that distinguishes the crime of simple battery (§ 242) from aggravated battery (§ 243, subd. (d)). Thus neither the Minor, nor his accomplice, Cory K., were required to intend, or have actual knowledge of the potential for injury. (*People v. Medina* (2009) 46 Cal.4th 913, 920.) It is sufficient, as the juvenile court correctly noted, that the potential for serious bodily injury be foreseeable. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1133; *People v. Leon* (2008) 161 Cal.App.4th 149, 158.) Clearly the Minor could reasonably foresee that the result of a group beating could be serious bodily harm. Indeed the injuries in this case, brief unconsciousness and significant cuts to the victim's mouth, are highly likely results of repeated blows to the victim's face.

Finally, the Minor argues he had retreated from the affray before the last blow was struck. The trial court could reasonably find that such was not the case. The fight was brief and then others were beginning to interfere with the Minor's group attack on the victim. The court could reasonably find the last blow, which was struck while the Minor was still at the scene, was simply a continuation of the brief fight that the Minor and his friends started. The evidence in this record plainly supports the true finding on the section 243 offense.

II

THE DISPOSITION HEARING

The Minor contends the juvenile court erred at the disposition hearing by failing to specify whether the section 243 offense was a misdemeanor or a felony. We agree.

Welfare and Institutions Code section 702 requires the juvenile court to declare whether an offense committed by a minor is a felony or misdemeanor. The court has required strict compliance with that section. (*In re Manzy W.*, *supra*, 14 Cal.4th 1119, 1207.)

The People recognize the trial court had a duty to state the level of the offense at the disposition hearing. We are urged, however, to find there was an implied finding based on a brief remark by the court in taking an admission by the Minor to a later and separate offense. We decline to imply a finding on this record.

The court's focus at the disposition hearing was on the Minor's admission to both felony and misdemeanor drug offenses unrelated to the battery case before us. We have reviewed the transcript of the disposition hearing and find there was only a brief

reference to the present case and that related to the possibility of restitution, to be resolved after the Minor's appeal from the present case. The comment on which the People rely has to do with the potential total exposure to custody if the Minor admitted the new offenses in light of the true finding in the present case. In our view the comment is at best ambiguous with regard to this case, and it certainly does not comply with the requirement of the applicable statute or the specific direction of the court in *In re Manzy W, supra*, 14 Cal.4th 1119. Accordingly we will vacate the dispositions with regard to the offenses in this case and remand the matter to permit the juvenile court to specify whether the violation of section 243, subdivision (d) in this case is a felony or a misdemeanor.

DISPOSITION

The adjudication and true findings on the petition are affirmed. The disposition in this case is vacated and the case is remanded to the juvenile court to permit it to comply with Welfare and Institutions Code section 702.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.