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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

T.A.,

Defendant and Appellant.

E061620

(Super.Ct.No. J249013)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,  
Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

On April 22, 2013, a first amended juvenile wardship petition was filed against  
defendant and appellant T.A. (minor), pursuant to Welfare and Institutions Code section

602. The petition alleged that minor committed second degree commercial burglary (Pen. Code<sup>1</sup>, § 459) and vandalism (Pen. Code, § 594, subd. (B)(2)(A)). Minor admitted the burglary allegation, and the court dismissed the other count. The court declared him a ward and placed him on probation, in the custody of his mother. Minor subsequently admitted that he violated his probation. The court ordered him to serve 30 days in custody at juvenile hall and maintained him at home on probation. Approximately two months later, the court found true the allegation that minor committed grand theft (Pen. Code, § 487, subd. (a)), and it reduced the allegation to a misdemeanor. The court placed him on the house arrest program, but later ordered the program terminated after he violated the terms. The court ordered minor placed in a suitable foster care facility. A few weeks later, he admitted that he violated his probation again. The court continued him as a ward and ordered him placed in juvenile hall, pending placement. The court placed him at Clearview Treatment Center on terms of probation. On April 25, 2014, the instant Welfare and Institutions Code section 602 petition was filed, alleging three counts: (1) sexual battery (Pen. Code, § 243.4, subd. (e)(1), count 1); (2) battery (Pen. Code, § 242, count 2); and (3) assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4), count 3). On minor's counsel's motion, the court dismissed count 1, pursuant to Welfare and Institutions Code section 701.1. The court found true the allegations in counts 2 and 3, and it denied minor's motion to reduce count

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

3 to a misdemeanor. (Pen. Code, § 17, subd. (b).) The court continued minor as a ward, found that prior dispositions had failed, and committed him to the Gateway program.

Minor filed a timely notice of appeal. We affirm.

#### FACTUAL BACKGROUND

Elva Perez Sanchez worked as a childcare staff worker at Clearview Treatment Center, the group home for delinquents where minor was placed. On March 7, 2014, Sanchez and minor were passing each other in the hallway, and minor touched her right below her left buttock, with his finger. Sanchez said, “Hey, watch it.” About 10 to 15 minutes later, Sanchez was looking for something in the hall closet. Minor passed her and touched her in the same way. When she said something to him again, minor said, “Oh, my bad. Sorry.” Two days later, at approximately 9:30 p.m., Perez was lying on the couch watching television, when minor came up and touched her a little below her shoulder, above her left breast. She told him not to touch her, and instructed him to go back to his room. On March 15, 2014, at approximately 4:30 a.m., Sanchez was lying on the couch watching television, when minor touched her above her left breast. He said he just wanted to tell her he wanted to get a drink of water and go to the bathroom. He got a drink of water and left. Approximately 30 minutes later, minor came up behind Sanchez, who was still on the couch, and “went straight for [her] crotch.” He touched her upper thigh and inner thigh. She grabbed his hand and said, “No. Stop.” Minor claimed he was going to touch her hand, but she said this was the third time he touched her. She told him again not to touch her and told him to go to his room. After he left, Sanchez texted her supervisor, who instructed her to write an incident report.

On March 16, 2014, at approximately 1:30 a.m., Sanchez finished checking all the rooms and went back to the couch to sit down. She started writing in her report that all the boys appeared to be asleep. She was leaning forward a little bit as she was writing, when she saw a shadow. She then felt a wet pillow cover her face and chin and pull her back against the couch. Her head was pulled back about a foot. Sanchez started trying to turn her face, but she could not do it. So, she started twisting and turning her body until she finally “got out of his grasp.” The pillow was covering her face for approximately 30 seconds, and she could not breathe. As she looked up, Sanchez clearly saw minor walking away. She started screaming and then called the police. At the jurisdiction hearing, Sanchez testified that she lost control of her bladder and urinated in her pants because she was afraid for her life.

Officer Raymond Perez responded to the call and arrived approximately 40 minutes later. Officer Perez interviewed Sanchez, who told him that a wet pillow had been held against her face. By the time he examined the pillow, it was dry. Officer Perez cited minor for battery and released him. Officer Perez did not find any witnesses to the incident.

### DISCUSSION

Minor appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and two potential arguable issues: (1) whether there was sufficient evidence to support the court’s true finding that minor committed an assault likely to produce great bodily

injury (§ 245, subd. (a)(4), count 3); and (2) whether the court abused its discretion in refusing to reduce count 3 to a misdemeanor, pursuant to section 17, subdivision (b). Counsel has also requested this court to undertake a review of the entire record.

We offered minor an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.