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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

S.P.,

Defendant and Appellant.

F067184

(Super. Ct. No. JJD066729)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Jennifer Conn Shirk, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Hill, P.J., Levy, J. and Cornell, J.

Defendant, S.P., appeals from a judgment entered following his no contest plea to misdemeanor infliction of corporal injury on a cohabitant and the mother of his child. He contends the juvenile court abused its discretion when it accepted his no contest plea without finding a sufficient factual basis for the plea. We find no abuse of discretion or prejudicial error and affirm the judgment.

BACKGROUND

On January 29, 2013, a petition was filed pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that defendant committed a felony violation of Penal Code section 273.5, subdivision (a),¹ when he “did willfully and unlawfully inflict corporal injury resulting in a traumatic condition upon C.V.,” the mother of his child.

The detention report, completed by a deputy probation officer, contained the following information regarding the circumstances of the offense:

“I was dispatched to [a residential address] regarding a spousal abuse report between a 15 year old female and a 16 year old male. The couple has lived together for approximately one year and have a two month old son together. C.V. said the argument turned physical when [defendant] hit her a few times with a closed fist to her head then choked her which left red marks on her neck.”

On March 7, 2013, defendant entered a plea of no contest to a misdemeanor violation of section 273.5, subdivision (a). Before the juvenile court accepted defendant’s plea, the following exchange occurred:

“THE COURT: Mr. Rubinger [defense counsel], have you had time to discuss this case and all its ramifications?”

“MR. RUBINGER: I have.

“THE COURT: Have you advised him of his rights, defenses, possible consequences of his plea?”

“MR. RUBINGER: I have.

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

“THE COURT: You represent your client understands his right, you consent and concur in his admission?

“MR. RUBINGER: I do. [¶] ... [¶]

“THE COURT: Mr. Sterling [the prosecutor], do you want to give me a brief recitation of the facts?

“MR. STERLING: On the 27th of January of this year, the minor hit and choked the mother of their 2 month old child that they had together. And this occurred in the home of the minor where I believe they were living together.

“THE COURT: All right. Is that in Tulare County?

“MR. STERLING: It’s in Tulare County, yes.

“THE COURT: All right. Mr. Rubinger, do you stipulate that there is a factual basis for the plea?

“MR. RUBINGER: I do.

“THE COURT: All right. [Defendant], in count 1 you’re charged with violation of Penal Code section 273.5(a), as a 17b misdemeanor, which occurred on January 27, 2013. What is your plea?

“THE MINOR: No contest.

“THE COURT: All right.... The minor understands his constitutional and statutory rights and knowingly, intelligently, and voluntarily waives them, the nature of the crime charged and the consequence of his admission. The minor’s admission is free and voluntary....”

DISCUSSION

Section 1192.5 requires a trial court, upon entry of a plea of guilty or nolo contendere, to “cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.” (§ 1192.5.) “The extent of the inquiry must be left to the discretion of the trial court, but it should develop the factual basis on the record. [Citation.] The trial court should ask the accused to describe the conduct that gave rise to the charge, make specific reference to those portions of the record providing a factual basis for the plea, or elicit information from

either counsel. [Citation.]” (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1576 (*Wilkerson*).

The purpose underlying the requirement that the court inquire about a factual basis “is to “protect against the situation where the defendant, although he realizes what he has done, is not sufficiently skilled in law to recognize that his acts do not constitute the offense with which he is charged.” [Citations.]” (*Wilkerson, supra*, 6 Cal.App.4th at p. 1576.)

Recently, the California Supreme Court addressed the issue of “whether section 1192.5 is satisfied when counsel stipulates to a factual basis for the plea without referring to a particular document that provides an adequate factual basis.” (*People v. Palmer* (2013) 58 Cal.4th 110, 113.) The Court concluded:

“[W]hile inclusion of such reference in the stipulation is desirable as a means of eliminating any uncertainty regarding the existence of a factual basis, the trial court may satisfy its statutory duty by accepting a stipulation from counsel that a factual basis for the plea exists without also requiring counsel to recite facts or refer to a document where, as here, the plea colloquy reveals that the defendant has discussed the elements of the crime and any defenses with his or her counsel and is satisfied with counsel’s advice.” (*Id.* at p. 118.)

Applying *Palmer* to the instant case, we conclude the juvenile court met its statutory obligation to determine the existence of a factual basis for the plea. Contrary to defendant’s assertions, the plea colloquy sufficiently demonstrated that defendant had discussed the elements of the crime and any defenses with counsel and was satisfied with counsel’s advice. Therefore, it was not an abuse of discretion for the juvenile court to accept defense counsel’s “bare stipulation” to the existence of a factual basis for the plea. (*Palmer, supra*, 58 Cal.4th at p. 114.) Before accepting defense counsel’s stipulation, the court ascertained that counsel had discussed the case with defendant and advised him of his rights, defenses, and the possible consequences of his plea, and that counsel and defendant were both in agreement on entering a plea. Defendant was present when his counsel made these representations regarding their discussion of the case and nothing in

the record suggests that defendant disagreed with any of them or was in any way dissatisfied with counsel's advice.

Defendant attempts to distinguish *Palmer* on the ground that there it was the defendant, not defense counsel, who "affirmed during voir dire that he had discussed the elements of the crime with his counsel, and that he was satisfied with counsel's advice." (*Palmer, supra*, 58 Cal.4th at p. 119.) Defendant complains that "there was absolutely no acknowledgment by [defendant] in the plea colloquy that he had discussed the elements of the offense or any defenses with his counsel, or that he was satisfied with counsel's advice." But we can discern nothing in *Palmer* suggesting that evidence of such discussion and satisfaction with counsel can only be provided by the defendant. As seen above, eliciting information from counsel is one of the ways a court can satisfy its duty to inquire into the existence of a factual basis for the plea. (See *Wilkerson, supra*, 6 Cal.App.4th at p. 1576.)

However, even assuming it was error for the juvenile court to accept defense counsel's stipulation, defendant cannot show resulting prejudice. Any error in failing to determine a factual basis is subject to harmless error analysis. In this regard, we consider whether "the record contains sufficient information to ensure the defendant committed the acts to which the plea was entered." (*Wilkerson, supra*, 6 Cal.App.4th at p. 1576; see *People v. Coulter* (2008) 163 Cal.App.4th 1117, 1122 [court's failure to find factual basis at initial entry of negotiated plea harmless error where subsequent probation report supported the finding]; see also *People v. Holmes* (2004) 32 Cal.4th 432, 443.)

Defendant contends he was prejudiced because the prosecutor's recitation of the facts at the plea hearing and the petition charging him failed to "identify or allege what specific injury or traumatic condition was caused by his alleged conduct upon the alleged victim." Thus, defendant suggests the record fails to establish a sufficient factual basis

for the “traumatic condition” requirement of section 273.5.² Defendant’s argument overlooks the detention report which reveals he hit the victim a few times in the head with a closed fist and choked her leaving red marks on her neck. Likewise, at the January 30, 2013, detention hearing, the probation officer informed the juvenile court that according to police reports, “the minor is alleged to have hit his girlfriend a couple of times and began to choke her resulting in red marks being left on her throat.” The injuries described in the detention report and at the detention hearing provided a sufficient factual basis for the traumatic condition element. (See *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771 [redness about the face and nose].)

DISPOSITION

The judgment is affirmed.

² Section 273.5 provides, in pertinent part: “(a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony [¶] (b) Subdivision (a) shall apply if the victim is or was one or more of the following: [¶] ... [¶] (2) The offender’s cohabitant or former cohabitant. [¶] ... [¶] (4) The mother ... of the offender’s child. [¶] ... [¶] (d) As used in this section, ‘traumatic condition’ means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, ‘strangulation’ and ‘suffocation’ include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.”