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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re SHAWN G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN G.,

Defendant and Appellant.

G047317

(Super. Ct. No. DL042150)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Maria D. Hernandez, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Shawn G. on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against her client but advised the court no issues were found to argue on his behalf. We gave Shawn 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from him.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, to assist the court in conducting its independent review appellate counsel provided the court with information as to issues that might arguably support an appeal. Counsel listed as possible, but not arguable issues: (1) whether the juvenile court abused its discretion when it denied Shawn's motion to exclude the victim's mother from the courtroom during the adjudication; (2) if the court did err when it denied the motion to exclude, was the error prejudicial; and (3) whether the court abused its discretion when it ordered Shawn to serve 540 days in juvenile hall.

We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS

Shawn G. attacked Jessie Monter as she walked home from work. Shawn grabbed Monter from behind and placed his arm around her neck. He struck her in the head five to 10 times with a foot-long piece of wood. When Shawn struck Monter on the nose, she fell to the ground. While she was on the ground, Shawn continued to strike her with the wood.

Chona Verlinden was sitting in her parked car when she heard a female cry. At first, Verlinden saw Shawn and Monter facing each other. But when Verlinden heard a female scream, she turned around again and saw Shawn and Monter on the ground while Shawn struck her. Verlinden saw Monter's face covered in blood and Shawn running away.

Verlinden stopped a passing motorist who gave chase but ultimately lost sight of Shawn. Monter called her mother, Cynthia Peerson, on her cellular telephone and walked to the manager's office at her apartment complex. While the manager, Linda Stone (Linda)¹, provided Monter with medical assistance, her husband, Frank Stone (Frank), pursued Shawn in his car. Monter described her assailant as a male black with short hair, approximately 5' 6" tall, thin, in his late teens, carrying a black backpack, and wearing a dark "hoodie" and dark jeans.

After speaking with her daughter on the telephone about the attack, Peerson drove home. Just as Frank was leaving to search for Shawn, Peerson arrived. Peerson saw her daughter outside the Stones' apartment with the Stones and Verlinden. Peerson got out of her car and spoke with her daughter. Verlinden approached Monter and asked her to speak with the police on the telephone. As Verlinden was handing the telephone to the victim, Verlinden pointed and said, "There he is." Monter agreed. Verlinden recognized Shawn's jacket and backpack.

Peerson looked across the street and observed the person running. Peerson pursued Shawn in her car. Peerson encountered Shawn as he was walking down the street. She pulled her car next to Shawn and accused him of attacking her daughter. She told him to stay there until the police arrived. Frank arrived and saw Shawn sitting on the curb and Peerson in her car. Shawn was breathing heavily and talking on his cellular telephone. Frank heard Shawn say, "I didn't do it."

Police took Verlinden to a location where she observed Shawn in a police vehicle. After seeing Shawn, she identified him as the assailant.

¹ Unless the context indicates otherwise, we refer to the Stones by their first names to avoid confusion and mean no disrespect.

The police responded, and Monter was taken to the hospital. At the hospital, Monter was treated for a cut above her eye requiring four stitches, three cuts on her head, and numerous bruises. The police recovered a blood-stained two-by-four piece of wood approximately one foot long in the area where the assault occurred. The blood on the piece of wood was later compared with Monter's and found to be a match.

Several days later, police showed Monter a photographic line-up at the police station. Shawn's photo was included in the group, but Monter was only able to identify two of the photos as possibly being her assailant. She described Shawn's photo as being more likely her assailant, but admitted she "only saw a glimpse of [her assailant's] face."

A first amended petition alleged Shawn committed the following offenses: (1) assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))² (count 1); (2) assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)) (count 2); and (3) battery with serious bodily injury (§ 243, subd. (d)) (count 3). The amended petition alleged Shawn inflicted great bodily injury (§ 12022.7, subd. (a)), as to all counts, and personally used a deadly weapon (§ 12022, subd. (b)(1)), as to count 3.

Prior to trial, the prosecution moved to exclude Shawn's mother from the courtroom because she was listed as a witness. The court indicated it would take this witness out of order or exclude her as necessary during portions of the testimony. When Shawn moved to exclude Monter's mother, the prosecutor requested "under Marsy's Law" that Monter's mother be allowed to remain. The court denied the motion to exclude Monter's mother. At trial, Shawn denied any involvement in the attack.

The matter was adjudicated and the juvenile court sustained all the allegations and found all the enhancements to be true with the exception of count 2. At the dispositional hearing, the court acknowledged its duty to balance the importance of

² All further statutory references are to the Penal Code, unless otherwise indicated.

redressing Monter's injuries with Shawn's best interests. The court noted Shawn had numerous reported incidents of assaultive behavior dating back to age five. It found Shawn's lengthy history of explosive, aggressive behavior very disturbing. The court noted the psychiatric report submitted to the court recommended Shawn be confined in a locked secure facility where he could receive intensive therapeutic treatment. The court noted that despite her best efforts, Shawn's mother was unable to control his behavior.

The court declared Shawn a ward of the court and committed him to the Juvenile Hall or an appropriate facility for 540 days with credit for 170 days served. After termination of the commitment, the court ordered Shawn released to his parents on probation with various terms and conditions. The court found the maximum term of confinement to be five years.

DISCUSSION

Appellate counsel listed three possible but not arguable issues. We will discuss each in turn.

Failure to Exclude Monter's Mother

Evidence Code section 777³ provides in pertinent part that "the court may exclude from the courtroom any witness not at the time under examination so that such witness cannot hear the testimony of other witnesses." We review the juvenile court's ruling for an abuse of discretion. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1053.)

Our Supreme Court has observed "Marsy's Law" (Proposition 9, the Victims' Bill of Rights Act of 2008"; Pen. Code, § 3041.5; Cal. Const., art. I, § 28), "amended the California Constitution to guarantee crime victims a number of rights."

³ Evidence Code section 777 provides: "(a) Subject to subdivisions (b) and (c), the court may exclude from the courtroom any witness not at the time under examination so that such witness cannot hear the testimony of other witnesses. [¶] (b) A party to the action cannot be excluded under this section. [¶] (c) If a person other than a natural person is a party to the action, an officer or employee designated by its attorney is entitled to be present."

(*Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1080.) One of those rights is to be present in the courtroom (§ 1102.6), but nothing in Marsy's Law precludes a motion to exclude witnesses under Evidence Code section 777. The purpose of excluding witnesses is to prevent tailored testimony and aid in the detection of less than candid testimony. (*Geders v. United States* (1976) 425 U.S. 80, 87.) Prosecutors generally call victim witnesses to testify first so they can remain in the courtroom for the entire trial. The procedure of taking witnesses out of order in response to a motion to exclude witnesses appears to have been followed with respect to Shawn's family members. It is not clear from the record why this procedure was not followed with respect to Peerson, who was the subject of Shawn's motion to exclude. Had Peerson been called as the first prosecution witness, the problem could have been avoided for the most part.

Here, Peerson was present when her daughter, Verlinden, Linda, and Frank testified. The issue then is whether allowing Peerson to hear the testimony of these witnesses influenced her testimony. We conclude it did not.

We begin our discussion by noting the pertinent parts of the testimony of the various witnesses. Monter testified how while sitting with her mother trying to clean up her face, she saw Verlinden point and heard her say, "There he is." Monter explained she looked at the person and recognized him as her assailant based on his clothing and backpack.

Verlinden testified that after observing Shawn, she lost sight of him, and went to look for Monter. She located Monter talking with neighbors, the Stones. While standing near Monter, Verlinden saw Shawn running on the street and identified him as Monter's attacker.

Linda testified Monter knocked on her door the afternoon of the incident screaming and asking for help. Monter appeared beaten up and was bloody. While Linda was tending to Monter's wound, Monter's mother, Peerson, arrived. After a few minutes of conversation with her daughter, Peerson searched for her daughter's assailant.

Frank testified that on the afternoon of the incident, he heard his wife yell loudly to him to get a towel. After throwing the towel down to his wife, Frank went downstairs and observed Monter with her face all bloody. The only description Monter gave him of her assailant was that he was “a black guy.” With that limited description, Frank got in his car and searched for the assailant. Having been unsuccessful, Frank returned to the apartments. When he returned, Monter and Peerson were still there. Linda then redirected him, and he left again in pursuit of the assailant.

Frank located Shawn a few blocks away. Shawn was on the sidewalk leaning against a stop sign. Peerson was also in her car. Frank observed Shawn to be on a cellular telephone and overheard him to say, “I didn’t do it. I didn’t do it. I didn’t do anything.” Frank also heard him describe Monter in great detail.

After these witnesses had testified, the prosecutor called Peerson to testify. Peerson described how her daughter called her and said she had been assaulted. She immediately went to the location of her daughter and found her holding a towel to the front of her head. After removing the towel from her daughter’s face, Peerson observed Monter had an inch long gash underneath her left eyebrow, and blood was coming down from the top and back of her head. Within just a few minutes, she heard Verlinden say, “There he goes,” and heard her daughter say, “Yes, that’s him.” Peerson then jumped in her car and began to pursue the person identified by her daughter and Verlinden. Peerson ultimately caught up with Shawn, who was on the sidewalk. She pulled up next to him, accused him of attacking her daughter, and told him he needed to stay until the police arrived. Shawn claimed to have no idea what Peerson was talking about.

There was some overlap among the testimony of various witnesses, and no significant inconsistencies. Although it would have been a better practice to have called Peerson out of order as the prosecution’s first witness, nothing in the record suggests her presence in the courtroom caused her to tailor her testimony. We conclude the trial court did not abuse its discretion in denying Shawn’s motion to exclude Peerson.

Prejudice

Although we determine no error occurred, in the event it was error for Peerson to have been allowed to remain in the courtroom, we discern no prejudice. There was overwhelming evidence of Shawn's guilt.

Abuse of discretion in ordering Shawn to serve 540 days in juvenile hall

Welfare and Institutions Code section 202 provides in relevant part:

“Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.”

Section 202, subdivision (e)(4), provides for “[c]ommitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.” In determining whether substantial evidence supports a commitment order, the court examines the record presented at the dispositional hearing in light of the purposes of juvenile law.

(Welf. & Inst. Code, § 202; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395 (*Michael D.*.) Substantial evidence is evidence that is “reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 942.)

In 1984, the Legislature amended Welfare and Institutions Code section 202 to make punishment and public safety appropriate considerations in determining the disposition of juvenile offenders. The amendments “shifted its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express ‘protection and safety of the public’ [citation], where care, treatment, and guidance shall conform to the interests of public safety and protection.” (*Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.)

It is clear from the record the juvenile court considered all the appropriate factors. Given the serious nature of this attack, the lack of remorse on Shawn's part, and his lengthy violent history, we find no abuse of discretion in the court's imposition of a 540 day commitment.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.