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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re I.Q., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.Q.,

Defendant and Appellant.

E078374

(Super.Ct.No. J281478)

OPINION

APPEAL from the Superior Court of San Bernardino County. Charles J. Umeda,  
Judge. Reversed.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney  
General, Charles C. Ragland, Assistant Attorney General, Laura Baggett and Robin  
Urbanski, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to Welfare and Institutions Code<sup>1</sup> section 801, subdivision (a), defendant and appellant I.Q. (minor) appeals from an order transferring the matter from juvenile to adult criminal court. For the reasons set forth *post*, we reverse the transfer order and remand the matter for a new transfer hearing.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. PROCEDURAL HISTORY**

On June 24, 2019, a wardship petition under Welfare and Institutions Code section 602, subdivision (a), alleged that minor committed misdemeanor vandalism under Penal Code section 594, subdivision (b)(2)(A) (count 1); misdemeanor criminal threats under Penal Code section 422, subdivision (a) (count 2); and misdemeanor battery on school property under Penal Code section 243.2, subdivision (a)(1) (count 3). On July 22, 2019, minor entered into a stipulated agreement for informal probation under Welfare and Institutions Code section 654.2.

On September 24, 2019, a first amended wardship petition added count 4, carrying a concealed firearm under Penal Code section 25400; count 5, possession of a firearm by a minor under Penal Code section 29610; and count 6, receiving stolen property, a handgun, under Penal Code section 496, subdivision (b). On October 10, 2019, minor admitted count 4 (carrying a concealed firearm), and the juvenile court placed him on formal probation. The People dismissed the remaining counts.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On August 11, 2020, a subsequent wardship petition alleged that minor committed one count of felony vandalism under Penal Code 594, subdivision (b)(1). Minor failed to appear on this petition several times. On February 3, 2021, minor was arrested. At the time of his arrest, minor was the passenger in a car that had been involved in a car-to-car shooting where the driver of minor's car died. As to his wardship petition, on February 5, 2021, minor admitted the allegation as a misdemeanor and the juvenile court placed him on formal probation.

On May 13, 2021, another subsequent wardship petition, the current matter, charged minor with one count of murder under Penal Code section 187, subdivision (a) (count 1). The petition also alleged that (1) minor personally and intentionally discharged a firearm under Penal Code section 12022.53, subdivisions (d), and (e)(1); and (2) the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang under Penal Code section 186.22, subdivision (b)(1)(C).

In the petition, the People requested a transfer hearing to determine whether minor should be transferred to a court of criminal jurisdiction pursuant to section 707, subdivision (a)(1). The transfer hearing commenced on December 13, 2021. On January 4, 2022, the juvenile court ordered the matter transferred to adult criminal court.

On January 14, 2022, minor filed a timely notice of appeal. In an unpublished opinion filed on September 30, 2022, we affirmed the juvenile court's transfer order.

Minor filed a petition for review, which was granted. On December 14, 2022, the California Supreme Court transferred the matter back to this court with directions to

vacate our decision and reconsider the cause in light of Assembly Bill No. 2361 (Stats. 2022, ch. 330) (AB 2361).

We vacated our previous opinion and requested that minor and the People file supplemental briefs. In his supplemental brief, minor requests that we remand the case for a new transfer hearing pursuant to AB 2361. In their supplemental brief, the People agree with minor and concede that remand to the trial court for further proceedings is required. We will remand the matter to the trial court for further proceedings in light of AB 2361.

B. FACTUAL HISTORY

On April 27, 2021, minor and two friends were in a parked van; they were all juveniles. Isaac R. was in the driver's seat, Christopher R. was in the rear passenger seat, and minor was in the front passenger seat. Minor and Christopher were both members of the 10th Street Mellow Mafia Bloods criminal street gang. They, however, were not engaged in a gang activity that evening. They were in the neighborhood to meet some girls; they parked their van to wait for the girls to finish getting ready.

After seeing the van parked outside, the fiancé of the victim called the police to report that they suspected people were stealing catalytic converters.

After watching the van for approximately 10 minutes, the victim got into his vehicle and drove past the van. The victim stared at the minors as he slowly drove past them. Minor described the victim as an adult Mexican who was "all tatted up." A subsequent toxicology report indicated that the victim had a high level of methamphetamine in his system.

After the victim drove by, minor told Isaac to drive away. The victim proceeded to follow the van.

The victim followed the van for about 30 minutes—from Rialto to San Bernardino. The vehicles traveled on and off the freeway, with speeds up to 120 miles an hour at times. Minor called another Mellow Mafia member, Exaviear Bradford.<sup>2</sup> Isaac heard minor tell Bradford that they were being followed so they were going to shoot at the vehicle. Minor directed Isaac to go to a particular intersection. When they first arrived at the intersection, Bradford was not there. Minor told Isaac to drive away and then return to the intersection. When they returned, Bradford was at the intersection. There, both minor and Bradford started to shoot at the victim's vehicle; minor shot from the van and Bradford shot from the sidewalk at the intersection.

One of the shots hit the victim in the heart and killed him. There were 11 bullet strikes to the victim's vehicle as follows: six bullet strikes to the hood, three to the left front quarter panel, one to the left headlight, and one to the lower left portion of the windshield.

After the shooting, minor told Isaac to drive to a residence, which was later determined to be minor's residence. When they arrived, minor collected Bradford's gun, left the van and approached the house through an alleyway. Minor then returned to the

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<sup>2</sup> Exaviear is also referred to in the record as Xavier.

van without any guns.<sup>3</sup> They went to Isaac's residence. Thereafter, minor left with Bradford and Christopher in Christopher's vehicle.

When law enforcement searched minor's residence, they found a .22-caliber handgun and methamphetamine. The weapons used in the murder were not found. The victim was not armed with a firearm and there was no gun in his vehicle. After the murder, minor left San Bernardino and went to Arizona.

Minor, Bradford, and Christopher were all members of the 10th Street Mellow Mafia Bloods; Bradford was the leader.

Minor had an Instagram account. The account contained numerous messages related to guns and gun sales. The day after the shooting, minor posted the following on his account: "IM fin go down for murder."

About three months prior to the shooting, minor had been in a similar situation where his friend Leonardo had been shot. Leonardo had picked up minor to go for a ride in Leonardo's new car; a car followed them, then pulled up next to them at a red light. A person in the back of the car started shooting at minor and Leonardo. One of the shots hit Leonardo in the head. Minor stayed with Leonardo until paramedics arrived. The responding officers arrested minor at the scene for a probation violation.

## **DISCUSSION**

Minor contends that his case "must be remanded for a new juvenile transfer hearing to be held in accord with the version of section 707 that is effective January 1,

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<sup>3</sup> Bradford told a detective that he threw his gun into a field.

2023.” The People agree “that the new law applies to [minor] retroactively under *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).” We agree with the parties and reverse the transfer order and remand this matter for a new transfer hearing.

A. LEGAL BACKGROUND

Section 707 governs the procedures for transferring a minor from juvenile court to a court of criminal jurisdiction. In September 2022 the Governor signed AB 2361, effective January 1, 2023. AB 2361 amends section 707 in order to, in part, increase the prosecution’s burden to prove that such a transfer is appropriate. Pursuant to AB 2361, amended section 707 requires that “[i]n order to find that the minor should be transferred to a court of criminal jurisdiction, the court shall find by *clear and convincing evidence* that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.” (Stats. 2022, ch. 330, § 1, italics added.) Prior to the amendment under AB 2361, the prosecution had the burden of establishing by a *preponderance of the evidence* that the minor was not suitable for rehabilitation under the juvenile court system. (*Kevin P. v. Superior Court* (2020) 57 Cal.App.5th 173, 186.)

Moreover, AB 2361 also requires that a juvenile court’s explanation, on the record, for any decision to transfer “include the reasons supporting the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.” (AB 2361.)

In general, ameliorative criminal legislation applies to all nonfinal judgments. (See *Estrada, supra*, 63 Cal.2d 740.) In *Estrada*, the California Supreme Court held that, absent evidence of a contrary legislative intent, an amendment to a statute that reduces

the punishment for a crime applies retroactively to any case where the judgment is not final before the amendment's operative date. (*Estrada*, at p. 742; see *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 306-308.)

In *People v. Lara*, *supra*, 4 Cal.5th 299, the California Supreme Court considered whether this general principle applied to Proposition 57, which prohibited prosecutors from charging juveniles with crimes directly in adult court and placed the burden of proof on prosecutors at transfer hearings. (*Id.* at p. 303.) The Supreme Court concluded that although “*Estrada* is not directly on point” its rationale does apply. (*Ibid.*) The court reasoned that “[t]he possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment,” and concluded “[f]or this reason, *Estrada*'s inference of retroactivity applies.” (*Ibid.*) As such, *Lara* concluded that Proposition 57 “applies to all juveniles charged directly in adult court whose judgment was not final at the time it was enacted.” (*Id.* at p. 304.)

The reasonings in *Estrada* and *Lara* similarly apply here. Like Proposition 57, AB 2361 raises the burden of proof for transferring a juvenile to adult criminal court. Although AB 2361 does not reduce the punishment for a crime, it does heighten the prosecution's burden of proof at a transfer hearing, thereby increasing the possibility of treatment in the juvenile court and reducing the possible punishment for juveniles. Therefore, AB 2361, similar to Proposition 57, “reduces the possible punishment for a class of persons, namely juveniles.” (*Lara, supra*, 4 Cal.5th at p. 303.) The presumption of retroactivity “ “applies to any such proceeding which, at the time of the supervening



legislation, has not yet reached final disposition in the highest court authorized to review it.” ’ ’ (People v. McKenzie (2020) 9 Cal.5th 40, 45.)

Accordingly, under *Lara*, AB 2361 applies to all juveniles transferred to adult court whose judgment was not yet final at the time the new law became operative on January 1, 2023.

Hence, we reverse the juvenile court’s order transferring this case to a court of criminal jurisdiction and remand so the juvenile court can give minor the benefit of the ameliorative changes in AB 2361.

**DISPOSITION**

We reverse the juvenile court’s order transferring minor to a court of criminal jurisdiction. We remand with directions to hold a new transfer hearing under section 707 as amended by AB 2361.

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MILLER  
Acting P. J.

We concur:

SLOUGH  
J.

MENETREZ  
J.