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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re K.B., a Person Coming Under the
Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

K.B.,

Defendant and Appellant.

A131953

**(Alameda County
Super. Ct. No. OJ050023363)**

K.B. (appellant), born in March 1993, appeals the juvenile court’s jurisdictional and dispositional orders. We affirm.

PROCEDURAL BACKGROUND

In October 2010, pursuant to a petition filed under section 602 of the Welfare and Institutions Code, appellant admitted one misdemeanor count of infliction of corporal injury (Pen. Code, § 273.5, subd. (a)) on R.S., the mother of his child, and five other counts were dismissed.

The present appeal relates to a subsequent petition (originally filed in November 2010 and amended several times thereafter) alleging appellant committed against the victim, J.N., four counts of oral copulation by force (Pen. Code, § 288a, subd. (c)(2)) (counts 1, 6, 7, and 8), one count of oral copulation with a minor (*id.*, § 288a, subd. (b)(1)) (count 2), one count of false imprisonment by force (*id.*, § 236) (count 3), four

counts of misdemeanor battery on a person in a dating relationship (*id.*, § 243, subd. (e)(1)) (counts 4, 9, 10, and 12), five counts of making criminal threats (*id.*, § 422) (counts 5, 13, 14, 15, and 16), and one count of robbery (*id.*, § 211) (count 11).

In March 2011, after a contested jurisdictional hearing, the juvenile court sustained counts 1, 2, 4, 5, 7, 10, and 12. The sustained counts related to alleged incidents on various dates in 2010: Counts 1 and 7 alleged forcible oral copulation on or about October 29 and 30 and July 16, respectively; count 2 alleged oral copulation with a minor on or about October 29 and 30; counts 4, 10, and 12 alleged battery on a person in a dating relationship on or about October 29 and 30, July 16, and April 12, respectively; and count 5 alleged a criminal threat on or about October 29 and 30.

In April 2011, the court adjudged appellant a ward of the court and committed him to the Division of Juvenile Justice for a maximum term of seven years. This appeal followed.

FACTUAL BACKGROUND¹

Appellant and J.N., the victim in the counts in the subsequent petition, began a dating relationship around April 2006, when she was about 12 years old. They dated until December 2008, but they did not engage in sexual activity.

In May 2009, J.N. learned appellant had been dating someone named R.S., who was pregnant with his child. On December 2, 2009, around 5:00 p.m., J.N. met appellant at the Fremont Bay Area Rapid Transit (BART) station. They walked to a dentist's office where J.N. had an appointment. After intense pressure from appellant, they had vaginal intercourse in the parking lot.

J.N. saw appellant again in December 2009, but they had "a lot of problems" because he was concerned she was "cheating on him." In a January 2010 meeting, they argued about a boy named Bobby and appellant forced J.N. to call Bobby to ask if Bobby

¹ On appeal we are obligated to view the evidence in the light most favorable to the juvenile court's orders and to presume in their support the existence of every fact the court could reasonably deduce from the evidence. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) Our factual summary reflects this standard of review. (See *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1056, fn. 1.)

“loved her.” Appellant threatened to slap her if she refused, and he continued to yell at her after she made the phone call. Later, while sitting in a van parked in a driveway, appellant threatened to slap or beat J.N. if she did not perform oral sex on him, so she did.

J.N. testified that appellant frequently asked her for money, and sometimes he would threaten her if she failed to give him the money he asked for. On March 30, 2010, J.N. contacted a Fremont Police Department school resource officer because she had received threatening voicemail messages from appellant. In those messages, appellant threatened to inflict serious harm on and kill J.N. A recording of one of the messages, as follows, was played in court: “Man where are you you really pissing me off right now dog you acting like you can’t answer your motherfucking phone man. You ain’t responding to my texts man. But don’t even trip though man I already (unintelligible) tomorrow I’m coming out there blood and then tomorrow when I come out there nigger if you ain’t answering your phone (unintelligible) I swear to god blood it’s going to be way worse than me socking you in your motherfucking face blood. And that’s the (unintelligible) thing I love man. (Unintelligible.) I’m telling you blood you’re forcing me into a real bad situation that I don’t want to be in. I’m telling you man if you—if you got that money blood—if you can’t get that money blood—you playing this bullshit with my mind blood you playing with my money then I’m telling you [J.N.] blood I will really beat the fuck out you. I will put your ass in the hospital. So anyway blood tomorrow blood we better be talking on the phone bitch. You better fucking call me ASAP. (Unintelligible.)”² J.N. received two other similar voicemail messages around the same day. The messages were played in court but not transcribed.

Subsequently, appellant sent J.N. threatening text messages. She testified the messages contained threats about appellant “beating me, saying . . . I can run but I can’t hide; that my future ain’t looking too bright; he gave me so many chances and I ‘striked’ out; that he really don’t want the money no more . . . but he still gon’ get me; he still gonna find me and he’s going to murder me; he’s going to kill me.”

² There are some discrepancies between this transcription and the recorded message itself, but the discrepancies are not material.

J.N. next saw appellant on April 12, 2010. She gave him money that he had demanded from her. He apologized for his texts and messages, but he also told her, “Oh, I should cut off your legs or something because you been running from me. You been hiding from me.” Later that day they had vaginal and oral sex. J.N. did not want to but she felt she did not have any choice, “[b]ecause every single time I said no, it was, like, a yes to him, and he just don’t hear it.”

The next time J.N. saw appellant they got into an argument when he looked at her cell phone and accused her of cheating on him. He accused her of lying and started to choke her while calling a boy who had sent a text to J.N. He removed his hand from her throat during the phone call, but he subsequently choked her again. On May 11, 2010, appellant slapped J.N.; her face felt “hot” after he hit her. About three days later she told him the relationship was over. Around that time, she tried to get a restraining order against appellant.

On July 16, 2010, appellant sent J.N. text messages wishing her a happy birthday, saying that he loved her, referring to “birthday sex,” and stating he was coming over to her house.³ She did not want him to come, “[b]ut it didn’t really matter ‘cause he’s gon’ do what he want to do.” When he arrived, appellant grabbed J.N.’s phone and looked through it. In response to seeing a boy’s name, appellant started yelling and “cussing,” and he then slapped J.N. in the face. They argued and he slapped her several times and choked her. Subsequently, appellant demanded oral sex from J.N., but she refused. Appellant responded, “What? I want to ask you again.” He appeared to be surprised she would refuse him. She told him he was not her boyfriend and said, “I’m not about to do that. I don’t want to do it, so . . . ‘No.’ ” When she tried to leave, appellant closed the bedroom door and tried to lock it. He blocked the door with his body and hit her in the chest with both fists four or five times. He also threatened her, stating, “I’ll whoop you like you’re a child.” He started to remove his belt and told her, “I’m going to ask you

³ The events on July 16, 2010, relate to the count 7 forcible oral copulation charge, for which appellant contends there is insufficient evidence to sustain the juvenile court’s jurisdictional finding.

again. So are you going to do it?" She responded, "You really about to whoop me?" He responded, "Yes. So I'm going to ask you again. Give me an answer. You gon' change your answer? So are you going to give me oral sex?" She agreed to do it because he was about to beat her and she was "not about to be in that situation and have bruises and all that." She performed oral sex on appellant. He then pressured her to take a shower with him and vaginally penetrated her twice in the bathroom and then in the bedroom.

On October 11, 2010, J.N. saw appellant; they argued and he slapped her twice. Afterwards, she sent him a message saying she hated him and did not want to see him again. He contacted her later that month and told her he had just gotten out of jail. He said he and R.S. "got into it and he beat her up."

On October 29, 2010, appellant contacted J.N. and told her to meet him at his house and bring some money.⁴ He threatened to harm her if she did not meet him. She did not want to meet him, but she did so because he would have gotten angry and found her anyway, "and it would have been way worse . . . than me just going to see him . . . and waiting for the consequences, not knowing what the consequences is going to be later on." J.N. went to appellant's house around 3:45 p.m. Appellant started to look through her phone; he got angry, accused her of cheating, and slapped her in the face. Later, J.N. told appellant she had to go home, and he responded that she could not leave until she performed oral sex. She told him she would get in trouble if she were late getting home. He said, "Oh, well, you better . . . start it and hurry up and get done." He threatened to slap her unless she performed oral sex. She performed oral sex on appellant and he again threatened to slap her, expressing dissatisfaction with her performance of the act.

Appellant slapped J.N. later that evening and she cried. At one point, J.N. was crying and appellant told her she was "lucky" because she "only got a slap" whereas R.S. "gets black eyes and busted lips" and gets "hit or beat up every day."

⁴ The events on October 29 and 30, 2010, relate to the count 1 forcible oral copulation charge and the count 5 criminal threats charge, for which appellant contends there is insufficient evidence to sustain the juvenile court's jurisdictional findings.

Eventually appellant told J.N. she could leave, but by that time it was too late to go because BART was about to stop running. Appellant got his sister's permission for J.N. to spend the night with him at his sister's house. In the morning on October 30, 2010, appellant woke up J.N. and pressured her into performing oral sex. J.N. remained with appellant that day and called her sister around 7:00 p.m. Appellant hung up the phone while J.N. was speaking to her sister. He threw the phone and slapped J.N. in the face. Around 10:15 p.m., the Hayward police arrived and picked up J.N. J.N. told the police appellant did not hold her there against her will and she was not the victim of domestic violence or other criminal activity. She testified, however, "But before I asked them if I did have confessed to anything would they do anything to him, 'cause I didn't want nothing to happen to [appellant] That's how the guy knew that I was lying about any physical and sexual abuse."

On the People's request, the juvenile court took judicial notice of appellant's admission of misdemeanor battery on R.S.

Defense Witnesses

Appellant testified he and J.N. regularly met to have sex. He denied threatening J.N., expressing jealousy about other boys, choking her, or demanding money from her. He denied that she ever indicated reluctance to have sex and said he never did anything that would cause her to believe that if she refused to have sex with him he would harm her. He admitted leaving the threatening voice messages for J.N. that were played in court. He said he was angry at that time because she was talking to a "30-year-old-guy." He did not "seriously mean[] anything that [he] was saying" in the messages.

Appellant's sister testified J.N. appeared to be happy and talkative when J.N. visited appellant, including on October 29 and 30, 2010. Appellant's mother and grandmother provided similar testimony.

DISCUSSION

Appellant asserts several claims of error, all of which are without merit.

I. Judicial Notice of Appellant's Admission to Misdemeanor Domestic Violence

Appellant contends the trial court erred in taking judicial notice under Evidence Code section 1109 of his October 2010 admission of misdemeanor infliction of corporal injury on R.S. (Pen. Code, § 273.5, subd. (a)).⁵ He argues he received no notice of the People's intention to offer that evidence, and the juvenile court failed to exercise its discretion under Evidence Code section 352.

On the notice issue, Evidence Code section 1109, subdivision (b) provides, "In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code." Penal Code section 1054.7 normally requires disclosures to be made at least 30 days prior to the trial. In the present case, although references to appellant's abuse of R.S. were made earlier in the jurisdictional hearing, there is no indication the People provided notice to appellant before the hearing and the People do not argue there was good cause for their failure to do so. Accordingly, appellant did not receive the notice he was due under Evidence Code section 1109, subdivision (b). Nevertheless, as the People argue on appeal, appellant has not shown how he was prejudiced by the absence of timely notice. Although appellant's counsel objected to the request for judicial notice on the ground that he did not receive notice the evidence would be offered under Evidence Code section 1109, he did not assert that he was actually surprised by the request, did not assert any prejudice from lack of notice, and did not request an opportunity to rebut the evidence. On appeal, appellant does not argue he suffered prejudice in his opening brief, and he fails to address the People's argument on prejudice in his reply brief. The claim fails.

⁵ Evidence Code section 1109, subdivision (a)(1) provides, "Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352."

Appellant also contends the trial court failed to exercise its discretion to exclude the propensity evidence under Evidence Code section 352. Under that section, “the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.]” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) “Although the record must ‘affirmatively show that the trial court weighed prejudice against probative value’ [citation], the necessary showing can be inferred from the record despite the absence of an express statement by the trial court. [Citation.]” (*People v. Prince* (2007) 40 Cal.4th 1179, 1237; see also *People v. Padilla* (1995) 11 Cal.4th 891, 924 (*Padilla*) [“[W]e are willing to infer an implicit weighing by the trial court on the basis of record indications well short of an express statement.”], disapproved on another point in *People v. Hill* (1998) 17 Cal.4th 800, 822-823, fn. 1.) In the present case, appellant’s counsel objected that taking judicial notice of appellant’s admission would be “prejudicial,” the prosecutor responded “[t]hat’s what [Evidence Code section] 1109 is, your honor,” and the trial court ruled “[y]es, I think it’s admissible.”

Even if the record shows the court erred by failing to exercise its discretion under Evidence Code section 352, this error would not be a basis to reverse the court’s jurisdictional findings because it is clear that *had* the court evaluated the evidence under Evidence Code section 352, it would have concluded the probative value outweighed the risk of undue prejudice. (*Padilla, supra*, 11 Cal.4th at p. 925; see also *People v. Villatoro* (2012) 54 Cal.4th 1152, 1168.) “The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. ‘[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant’s case. The stronger the evidence, the more it is ‘prejudicial.’ The ‘prejudice’ referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.” (*People v. Karis* (1988) 46 Cal.3d 612, 638.) In the present case, although the acts of violence underlying the admitted misdemeanor charge were arguably more inflammatory

than the acts of violence inflicted on J.N., evidence of those underlying acts was not admitted under Evidence Code section 1109. Instead, the trial court took judicial notice only of the fact of appellant's admission to a violation of Penal Code section 273.5, subdivision (a). Moreover, appellant's statement to J.N. that he beat R.S. was already before the court through J.N.'s testimony. In particular, J.N. testified appellant told her R.S. gets "black eyes and busted lips" and "hit or beat up every day." Even though that was not admitted as propensity evidence, the risk of undue prejudice was stronger from that testimony than from judicial notice of the bare fact of appellant's admission. Thus, granting the request for judicial notice presented little risk of undue prejudice. On the other hand, the evidence was strongly probative of appellant's propensity to commit domestic violence. (*People v. Cabrera* (2007) 152 Cal.App.4th 695, 705 ["[I]n enacting Evidence Code section 1109, the Legislature found that in domestic violence cases evidence of prior acts is particularly probative in demonstrating the propensity of the defendant."].) Accordingly, it is clear the trial court would not have excluded appellant's admission to the Penal Code section 273.5, subdivision (a) charge under Evidence Code section 352. (See *Padilla*, at p. 925.)⁶

II. *Substantial Evidence Supports the Juvenile Court's Jurisdictional Findings*

Appellant contends there is insufficient evidence to support the juvenile court's findings that he made a criminal threat (count 5) on October 29 and 30, 2010, and that he committed oral copulation by force on those same dates, as well as on July 16 (counts 1 and 7). The contention is without merit.

"Our review of [appellant's] substantial evidence claim is governed by the same standard applicable to adult criminal cases. [Citation.] 'In reviewing the sufficiency of the evidence, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" [Citation.]' [Citation.] ' "[O]ur role

⁶ In his reply brief, appellant drops his claim of error based on *People v. Quintanilla* (2005) 132 Cal.App.4th 572, in light of the Supreme Court's recent decision in *People v. Villatoro*, *supra*, 54 Cal.4th 1152.

on appeal is a limited one.” [Citation.] Under the substantial evidence rule, we must presume in support of the judgment the existence of every fact that the trier of fact could reasonably have deduced from the evidence. [Citation.] Thus, if the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.] [Citation.]” (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) “[T]he direct testimony of a single witness is sufficient to support a finding unless the testimony is physically impossible or its falsity is apparent ‘without resorting to inferences or deductions.’ [Citations.]” (*People v. Cudjo* (1994) 6 Cal.4th 585, 608-609.)

A. The Count 5 Criminal Threats Charge

The elements of a criminal threats charge are “(1) the defendant willfully threatens to kill or seriously injure another person; (2) the defendant has the specific intent that the listener understands the statement to be a threat; (3) the threat and the circumstances under which it was made lead the listener to believe the defendant would immediately carry through on the threat; and (4) the threat causes the listener to suffer sustained fear based upon a reasonable belief the threat would be carried out.” (*People v. Solis* (2001) 90 Cal.App.4th 1002, 1023-1024.)

In closing argument regarding count 5, the prosecutor emphasized J.N.’s testimony that, in the early morning hours on October 30, 2010, appellant told her he had been beating R.S. and J.N. was “lucky” because she “only got a slap” whereas R.S. “gets black eyes and busted lips” and gets “hit or beat up every day.” Appellant told J.N. she was “lucky that [she] don’t get half of what [R.S.] got; and [J.N.] pine over just a slap when [R.S.] get beat up worse than [J.N.] do, and [R.S.] doesn’t even do nothing.” Appellant argues his words “were not so unequivocal, unconditional, immediate, and specific that they conveyed a gravity of purpose and an immediate prospect of execution of the threat.” However, earlier that night appellant threatened to slap J.N. and in fact slapped her. In explaining why she went to appellant’s home in the first place, J.N. testified, “[I]f you getting threatened and you know the person and you know that if you

don't go that day that he can find a way or have someone do something to you, which one would be your best bet? Just doing what he told you or just waiting until something happens and you don't know what the outcome of that situation will be?" Viewing the evidence in light of "all the surrounding circumstances" and the history of the relationship between J.N. and appellant (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340), the juvenile court could reasonably infer that appellant's statements were a credible threat to increase the level of his violence and inflict serious injury on J.N. if she continued to resist appellant's demands.

Appellant also argues the evidence is insufficient to show J.N. suffered sustained fear because she spent the night in the apartment and remained with appellant the next day. However, the evidence supports a conclusion that J.N. remained because she had acquiesced to defendant's threats and remained under his control. She testified that, in the evening on October 30, 2010, appellant hung up the phone while J.N. was speaking to her sister. He threw the phone and slapped J.N. in the face, leaving a mark and giving her a swollen lip. Thus, the evidence supports an inference that J.N. was subject to implied or express threats of violence, as well as actual violence, virtually the entire time she was with appellant on October 29 and 30.

Viewing J.N.'s testimony in the light most favorable to the prosecution, there is substantial evidence satisfying each of the elements of the criminal threats charge.

B. The Count 1 and Count 7 Oral Copulation by Force Charges

Penal Code section 288a, subdivision (c)(2)(A) provides, "Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years." Count 1 relates to the events on October 29 and 30, 2010, and count 7 relates to the events on July 16, 2010.

Appellant contends the juvenile court erred in sustaining the two counts of forcible oral copulation because he reasonably and in good faith believed that J.N. consented to the acts. (See *People v. Mayberry* (1975) 15 Cal.3d 143, 155.) We disagree. J.N.

testified that, on both July 16 and October 29 and 30, 2010, she expressly communicated to appellant that she did not want to perform oral sex, and appellant overcame her resistance with threats. The evidence did not compel the juvenile court to conclude there was reasonable doubt as to whether appellant reasonably and in good faith believed J.N. consented. (See *Mayberry*, at p. 157 [the burden is on the defendant “to raise a reasonable doubt as to whether he had” “a bona fide and reasonable belief” that the victim consented].) Appellant also contends the juvenile court erred because there was insufficient evidence the acts were accomplished by means of force or duress. J.N.’s testimony describing appellant’s threats of violence, which threats immediately preceded the acts of oral copulation on the dates in question, constitute substantial evidence supporting the court’s findings.

III. *The Juvenile Court Did Not Err in Denying a Continuance*

Appellant claims the juvenile court abused its discretion by denying a verbal request for a three-week continuance, made the day of the dispositional hearing, to allow the defense to obtain a new Screening for Out-of-Home Services Committee (S.O.S. Committee) recommendation.

A continuance in juvenile court “shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on the motion. Neither stipulation of the parties nor convenience of the parties is, in and of itself, good cause. Whenever any continuance is granted, the facts which require the continuance shall be entered into the minutes.” (Welf. & Inst. Code, § 682, subd. (b); see also *In re Chuong D.* (2006) 135 Cal.App.4th 1303, 1312-1313.) The standard for “good cause” in a juvenile case is essentially the same as in an adult criminal court. (*In re Maurice E.* (2005) 132 Cal.App.4th 474, 480-481.)

“[T]he trial court has broad discretion to determine whether good cause exists to grant a continuance of the trial. [Citations.] A showing of good cause requires a demonstration that counsel and the defendant have prepared for trial with due diligence. [Citations.]” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037.) “The trial court’s denial of a motion for continuance is reviewed for abuse of discretion. [Citation.]” (*Ibid.*)

On the day set for the dispositional hearing, appellant's counsel requested a three-week continuance so that he could provide additional information to the S.O.S. Committee regarding the October 29 and 30, 2010 incidents. Counsel stated that he got the dispositional report the previous afternoon. Counsel opined the S.O.S. Committee "got a very misleading picture of the incident" based on information provided by the probation officer. He requested a three-week continuance to provide the S.O.S. Committee with "an accurate picture of" appellant and the "circumstances" of the case.

Appellant has not shown error. Appellant's counsel did not show good cause for the requested continuance because he did not show he had exercised due diligence in seeing that the S.O.S. Committee was provided the information at issue in a timely fashion. Although the brevity of the incident summary in the dispositional report may have caused counsel to be concerned about the nature of the information provided to the committee, appellant has not shown anything prevented counsel from ensuring the original committee recommendation was made based on complete information. In fact, counsel presented appellant's version of the incident in a letter to the probation department prepared especially for the dispositional report. Counsel could have taken steps to ensure the letter was provided to the S.O.S. Committee. Indeed, appellant has not shown the S.O.S. Committee *lacked* access to that letter when it made its recommendation. The juvenile court did not abuse its discretion.⁷

⁷ Appellant argues that, under rule 5.785(a)(2) of the California Rules of Court, he was entitled to a continuance of up to 48 hours because his counsel was not provided the dispositional report in a timely fashion. However, appellant's counsel did not request such an extension; he asked for a three-week continuance and never suggested a 48-hour extension would be helpful. Also, because we conclude appellant failed to show good cause for a continuance, we need not address the People's arguments the juvenile court properly concluded another S.O.S. Committee evaluation would not be helpful and appellant was not prejudiced by denial of the continuance.

IV. *The Juvenile Court Did Not Err in Its Disposition*

Appellant contends the juvenile court abused its discretion in committing him to the Division of Juvenile Justice (DJJ)⁸ because the court failed to consider whether there was an appropriate less restrictive alternative and because the court did not consider the long-term consequences of a DJJ placement.

In reviewing a DJJ commitment decision for abuse of discretion (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396), we must indulge all reasonable inferences to support the juvenile court's decision and will not disturb its findings if they are supported by substantial evidence. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330). The record must demonstrate both a probable benefit to the minor by a DJJ commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. (*In re Angela M.*, at p. 1396.) These criteria must be considered in conjunction with the purposes underlying the juvenile court law, including the "protection and safety of the public" (Welf. & Inst. Code, § 202, subd. (a)) and "care, treatment and guidance [that] is consistent with [the minors'] best interest . . . , that holds them accountable for their behavior, and that is appropriate for their circumstances" (*id.*, § 202, subd. (b)). (See *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) "Although the DJJ is normally a placement of last resort, there is no absolute rule that a DJJ commitment cannot be ordered unless less restrictive placements have been attempted. [Citations.] A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate. [Citation.]" (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.) "[I]t is not merely the programs at DJJ which provide a benefit to [a] minor, but the secure setting as well." (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

⁸ The California Youth Authority (CYA) was renamed the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, effective July 1, 2005. The Division of Juvenile Facilities is part of the DJJ. (Gov. Code, §§ 12838, 12838.5, 12838.13; *In re Jose T.* (2010) 191 Cal.App.4th 1142, 1145, fn. 1.)

In finding the DJJ is the most appropriate placement for appellant, the juvenile court noted that appellant was unsuccessfully tried on probation in the custody of his parents. Indeed, appellant committed some of the forcible sex offenses charged in this case while on electronic monitoring. The court also noted that appellant was an adult (he was over 18 years old at the time of disposition) and that the offenses were very serious. Finally, the court found appellant would benefit from a DJJ commitment, explaining as follows: “I’ll find under [section] 734 of the Welfare and Institutions Code that his mental and physical conditions and qualifications are such that would render it probable he’d benefit from the reformatory educational discipline and other programs provided by the [DJJ]. The specifics of that are that the anger that I’ve seen in this case is profound as shown by the evidence that has been introduced. The other incidents that are recorded concerning how he acted when he was with police, how he acted in the other arrest and everything else here shows that he needs a tremendous amount of influence from other people as to how to control himself, but that isn’t even as profound as the sexual behavior and the influence that he’s tried to place on people. Both of his victims are young women. Things that he’s done over the years require intensive sexual counseling which I think he can receive at the [DJJ], and since he is an adult, the option of sending him to a county facility or something would not give him that at all. So I believe . . . we are required to do a [DJJ] commitment based upon that.”⁹

Appellant argues the court failed to consider whether an appropriate less restrictive alternative was available. However, the court stated that the circumstances of appellant’s offenses required that he receive intensive sexual counseling available at the DJJ but not at a county facility. The dispositional report also stated that several alternatives were presented to the S.O.S. Committee. The report concluded, “Given the danger this young man presents to the community, particularly to women, and his need

⁹ The court’s reference to “how [appellant] acted when he was with the police” is apparently a reference to appellant’s belligerence when police responded to a report of domestic violence involving R.S.

for sexual offender treatment, a commitment to the [DJJ] is the most appropriate disposition to protect public safety while providing treatment.”

Appellant also points out that, because he was committed to the DJJ for violation of Penal Code section 288a, he will be required to register as a sexual offender for the rest of his life (see Pen. Code, § 290.008); he argues the juvenile court abused its discretion because it failed to consider the long term negative consequences of such a requirement. However, appellant fails to cite any authority that the juvenile court was required to expressly consider such consequences. In the present case, the court reasonably could have concluded that the need for immediate and secure rehabilitation and treatment outweighed, in the overall assessment of appellant’s best interests, any potential for negative consequences due to his status as a sexual offender.

V. Appellant’s Claim Regarding Registration and Residency Restrictions Is Not Ripe

Appellant contends he was constitutionally entitled to be tried by a jury regarding the potential imposition of a life-time sex offender registration requirement and residency restrictions. (See Pen. Code, §§ 290.008, 3003.5, subd. (b).) That issue is currently pending in the California Supreme Court. In *In re S.W.* (rev. granted Jan. 26, 2011, S187897), the court is considering the following question: “Could the juvenile court constitutionally impose on petitioner the requirements set forth in The Sexual Predator Punishment and Control Act: Jessica’s Law (Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006)) without giving petitioner the right to a jury trial on the underlying facts? (See *Apprendi v. New Jersey* (2000) 530 U.S. 466; *McKeiver v. Pennsylvania* (1971) 403 U.S. 528; *People v. Nguyen* (2009) 46 Cal.4th 1007.)” Another case, *People v. Mosley* (rev. granted Jan. 26, 2011, S187965), presents the following question: “Does the discretionary imposition of lifetime sex offender registration, which includes residency restrictions that prohibit registered sex offenders from living ‘within 2000 feet of any public or private school, or park where children regularly gather’ (Pen. Code, § 3003.5, subd. (b)), increase the ‘penalty’ for the offense within the meaning of *Apprendi v. New Jersey* (2000) 530 U.S. 466, and require that the facts supporting the trial court’s

imposition of the registration requirement be found true by a jury beyond a reasonable doubt?”

In any event, the People argue in their brief on appeal that appellant’s claim is not ripe because the registration and residency requirements will only go into effect after appellant is paroled from DJJ. (See *In re Derrick B.* (2006) 39 Cal.4th 535, 539 [registration and residency restrictions apply only to minors convicted of a Pen. Code, § 290.008 crime committed to, and paroled from, DJJ]; see also *U.S. v. W.P.L.* (9th Cir. 2011) 641 F.3d 1036 [defendant’s claim that district court erred in directing him to register as a sex offender “if required by law” not ripe for review].) In *In re Derrick B.*, at page 538, the juvenile court directed the minor to register as a sex offender upon his release from the CYA; in contrast, the dispositional order in the present case is silent on the issue of the registration and residency requirements. Tellingly, appellant asks this court to enjoin enforcement of residency restrictions “*Assuming* that the residency restriction of Jessica’s Law will be applied to him upon his discharge or parole from DJJ” (Italics added.)

Appellant’s reply brief on appeal does not address the People’s argument that his claim is not ripe. Because an appellant’s failure to respond in his or her reply brief to arguments made by the respondent makes it unnecessary for the reviewing court to address the issue (*Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1481), we reject appellant’s claim.

VI. *The Juvenile Court Did Not Fail to Calculate the Maximum Term of Confinement*

Appellant contends the juvenile court erred in failing to calculate the maximum term of confinement under Welfare and Institutions Code section 726, subdivision (c).¹⁰

Section 726, subdivision (c) provides, “If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be

¹⁰ All subsequent undesignated section references are to the Welfare and Institutions Code.

imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” Section 731, subdivision (c) provides that “A ward committed to the Division of Juvenile Facilities may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court. A ward committed to the Division of Juvenile Facilities also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. . . .”

In the present case, the juvenile court did not specify a maximum term of adult imprisonment under section 726, subdivision (c). Instead, the court noted it was imposing a lesser maximum term of seven years under section 731, subdivision (c). On appeal, appellant concedes the maximum term specified under section 731, subdivision (c) was “proper.” That is, he concedes the maximum term set by the court is less than the maximum period of imprisonment that could be imposed upon an adult convicted of the offenses. Nevertheless, appellant argues the court was required to specify a separate maximum term of adult imprisonment under section 726, subdivision (c).

In response, the People argue the juvenile court was not required to specify a maximum term under both sections and point out that appellant has cited no authority to the contrary. In his reply brief, appellant fails to respond to the People’s argument. The court in *In re Carlos E.* (2005) 127 Cal.App.4th 1529 examined the interaction between the two sections and concluded that section 726, subdivision (c) “deals with the maximum period of time any minor could be required to serve in a ‘juvenile hall, ranch, camp, forestry camp or secure juvenile home . . . , or in any institution operated by the Youth Authority.’ Section 731, subdivision (b), governs only minors committed to CYA based on a particular set of facts and circumstances. Thus section 731, subdivision (b), is

a special statute dealing with the maximum confinement of a specific minor in CYA, whereas section 726, subdivision (c), is a general statute, describing the generalized limitations on the aggregate amount of time one might be required to serve at any of the described placement facilities, including confinement in CYA.” (*In re Carlos E.*, at pp. 1540-1541.)¹¹ Under *In re Carlos E.*, the juvenile court properly specified the maximum term of confinement in the DJJ under section 731, subdivision (c).

DISPOSITION

The juvenile court’s orders are affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUNIERS, J.

¹¹ At the time *In re Carlos E.* was decided, the DJJ was called the CYA and the language now in section 731, subdivision (c) was in subdivision (b). (*In re Carlos E.*, *supra*, 127 Cal.App.4th at pp. 1536-1537.)