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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

G.M.,

Defendant and Appellant.

A133792

(Alameda County
Super. Ct. No. SJ11016730)

The trial court adjudged defendant a ward of the court pursuant to Welfare and Institutions Code section 602, subdivision (a), after it found true allegations that defendant committed assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))¹ with a great bodily injury enhancement (§ 12022.7, subd. (a)) and that defendant committed a battery causing serious bodily injury (§ 243, subd. (d)). Defendant contends on appeal that substantial evidence did not support the court’s findings because his actions against the victim were in self-defense. We conclude that substantial evidence supported the juvenile court’s findings.

BACKGROUND

On April 12, 2011, a wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a) was filed charging defendant in count 1 with felony assault

¹ All further unspecified code sections refer to the Penal Code.

by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)), and in count 2 with felony battery causing serious bodily injury (§ 12022.7, subd. (a)). On June 30, 2011, the juvenile court adjudged defendant a ward of the court and ordered him to remain detained. Subsequently, on July 6, 2011, the petition was amended to add a great bodily injury enhancement to count 1 (§ 12022.7, subd. (a)).

The contested jurisdictional hearing began on August 5, 2011. On September 23, 2011, during the contested jurisdictional hearing, the Alameda County Juvenile Court accepted transfer of an original wardship petition filed on June 7, 2011, from Contra Costa County. In the transferred matter, defendant admitted being a minor in possession of a firearm (§ 12101, subd. (a)).

The victim, U.D., testified at the jurisdictional hearing. He reported that defendant and he both attended Berkeley High School at the time of the incident. At that time, U.D. was a 15-year-old freshman. The day before the incident, on April 30, 2011, U.D. reported that defendant called him “a sucka, which is the term for loser.” U.D. responded by calling defendant a “sucka.”

On March 1, U.D. stated that he and his friend Reginald left campus to go get lunch. Reginald, who testified that he was a good friend of U.D. and defendant’s friend, confirmed that he left campus to go to lunch with U.D. and another friend. At some point, U.D., Reginald, and their other friend were standing on the corner of Shattuck Avenue. U.D. went by himself to talk to some girls.

As U.D. walked back to school, he spotted defendant; defendant again called him a “sucka.” This angered U.D., and he told defendant, “You’re not worth it.” The boys faced each other and called each other “disrespectful” names. U.D. testified that as he turned to walk away, defendant hit him behind his right ear. U.D. turned around.

According to Reginald, he saw U.D. remove his shirt and face defendant. He described defendant and U.D. as looking like they were about to fight. Reginald said that defendant made the first movement towards U.D. and then “socked” or punched U.D. He reported that the punch hit U.D.’s face, just below his left eye. The boys then engaged in

punching and each hit the other more than 10 times. Reginald stated that about 20 people were standing around and watching the fight.

During the fight, Reginald observed that U.D. had his back to the glass of a restaurant and he hit his head on the glass. At some point, U.D. fell on his back after slipping on a bottle. When testifying, Reginald first suggested that the two boys continued to fight while U.D. was on the ground and defendant's friend, R.G., went over to defendant and started to hold defendant's arms. Subsequently, Reginald stated that he was unclear what defendant was doing while on the ground. As U.D. was starting to get up, defendant, according to Reginald, stomped on U.D.'s head. Reginald heard a "thud."

U.D. testified that R.J. was not holding defendant but was holding U.D. by the arms while he was on the ground. U.D. recalled that defendant stomped on him three times. He stated that he was knocked unconscious with the third stomp.

After defendant had "stomped" on U.D.'s face, Reginald saw U.D. fall "asleep for a minute" and then his eyes rolled back. U.D. remained on the ground. Defendant ran off and Reginald chased after him. A girl told Reginald not to chase after defendant but to return to U.D. Reginald returned and saw U.D. shaking on the ground; his hand was in the air. U.D., according to Reginald, was having a seizure. U.D.'s eyes were rolled back and Reginald saw the whites of his eyes. U.D. had a red mark on the left side of his face, left of the eye. The mark went from his forehead to his lower cheek. Reginald called U.D.'s mother.

Officer Ethell Wilson, the school resource officer at Berkeley High School, received a dispatch on March 1 about a fight between two students. Wilson and another officer responded. When Wilson arrived, the fire department was there and two or three paramedics were treating U.D. There were about 100 to 150 people surrounding U.D. She saw U.D. on the ground; he was in a semiconscious state. He was screaming that he could not breathe and she believed he was going into shock. His left eye was swollen and he had a shoeprint on the right side of his face.

The paramedics had planned to take U.D. to Children's Hospital, but redirected him to Highland Hospital because of the nature of his injuries. The following day, U.D.

was transferred to Children's Hospital, where he remained for one to two months. U.D. testified that after the fight he had headaches and threw up every day. His entire head and face were swollen and he could not see out of his left eye due to a burst blood vessel. At the time of the jurisdictional hearing, U.D. was still getting headaches and was still experiencing difficulties with short-term memory. Reginald observed that U.D.'s behavior changed after the fight and he would now, unlike before, occasionally get mad "for no reason."

Wilson arranged a meeting with defendant and his grandmother and defendant provided her with a statement. He reported that U.D. and he did not get along. He indicated that on the day of the fight he was with friends and returning to campus when U.D. blocked his path and challenged him to a fight. He said that they punched each other and each boy was on top of the other at different times. Defendant said that people were telling them "to break it up" and U.D. told defendant that he was going to murder him. Defendant admitted stomping on U.D. while U.D. was on the ground. Defendant said that he was sorry that it had happened and that he was not trying to hurt U.D. seriously or to kill him. Defendant acknowledged that he did not sustain any serious injuries.

Defendant testified on his own behalf at the jurisdictional hearing and said that he was 17 years old on the day of the incident and was a football player at Berkeley High School. He stated that he had "plenty" of confrontations with U.D. prior to the incident on March 1, 2011. Two of the incidents involved U.D. calling him a "sucka" and another incident involved U.D. calling him a nerd.

Defendant said that he went to lunch on March 1, 2011, with R.J. Defendant waited for R.J. at the corner, and U.D. was also standing at the corner. Defendant talked to some girls and U.D. gave him a stare, which was similar to the one that U.D. had given him earlier that day. R.J. joined defendant and the two of them started to return to school but U.D. blocked defendant's path. U.D. stood directly in front of defendant and said, "Fuck that. I'm tired of this shit. You got to see me in the street, or you going to have to

see me right here.” Defendant responded, “Man, I ain’t even trying to fight.” Defendant attempted to walk away but U.D. removed his shirt and U.D. threw the first punch.

Defendant claimed that at some point, U.D. “dipped” him, causing him to fall and hit his head on the cement. Defendant stated that U.D. threatened that he was going to murder him. Defendant pushed U.D. off of him and U.D. fell backward and, as he fell, defendant stomped him on the head. Defendant was wearing tennis shoes.

R.K. testified on behalf of defendant. She said that she did not see the beginning of the fight. She reported that everybody told her that defendant was walking away prior to the fight and that defendant did not want to fight.

C.C. also testified on behalf of defendant. She had not seen U.D. before the fight on March 1, but considered defendant to be an “associate” of hers. She said that at lunchtime she heard a commotion on the street as she was returning to school with her lunch. She heard people yelling at defendant that, if he wanted to fight him, that he should fight him and not be a “punk.” She saw U.D. remove his shirt. Prior to the actual fight starting, C.C. described the situation as “[k]ind of like the environment of a fight about to break off. Just that tension about a fight about to break out. No one was swinging yet or anything.”

C.C. stated that she saw U.D. swing the first punch at defendant and, at some point, she saw U.D. on top of defendant. She heard U.D. tell defendant that he was going to murder him and defendant pushed U.D. off of him and U.D. fell back. Subsequently, counsel read to her the statement she made to the police that she did not know which boy said he was going to murder the other, C.C. admitted that her statement to the police was accurate.

While U.D. was falling to the ground, C.C. saw defendant’s foot came down on U.D.’s head. C.C. said that defendant raised his foot about knee-level and then brought it down on U.D.’s face. She explained that she saw defendant “stomp [U.D.’s] head” but she “just didn’t believe it was his head, because the sound was so nonhuman” She said the sound as U.D.’s head hit the ground was “[l]ike a crunch.” She initially told the police that she did not see the stomp because she could not believe it and she had never

heard a sound like that in her entire life. She said that she believed U.D. was having a seizure because he started to shake and his eyes rolled back. After the fight, C.C. saw defendant run away.

After the fight, defendant called his grandmother. She left work and picked him up from the school. She noticed that his clothing was torn and he had a bruise on the right side of his face. He appeared anxious. She brought defendant to her friend's home and she returned to work. She did not take him to the police station or to a hospital.

On October 28, 2011, the juvenile court sustained the allegations in the petition against defendant.

On November 14, 2011, at the dispositional hearing, defense counsel asked the court to release defendant. The court responded: "I have great concern. I . . . listened to the evidence in this trial. [Defendant's] behavior in this incident, the one that I presided over, the hearing, was absolutely as hard core, felonious, criminal, dangerous, life-threatening conduct as I've heard in a very, very long time. . . . I view him as incredibly dangerous, dangerous to our society, dangerous to himself. And I frankly don't believe at this point that supervision outside of a totally structured environment is appropriate at this point." The court adjudged defendant a ward of the court, removed him from his parent's home, and committed him to the care of the probation department.

Defendant was 17 years old when the wardship petition was filed but had turned 18 prior to the dispositional hearing. On January 3, 2012, the court gave defendant the option of serving six months in juvenile hall or 60 days in the Santa Rita jail. Defendant selected the option of serving 60 days in jail.

Defendant filed a timely notice of appeal.

DISCUSSION

I. Introduction

Defendant contends insufficient evidence supported the juvenile court's jurisdictional findings that the allegations against him in the petition were true beyond a reasonable doubt. He claims that the court should not have found that he committed an assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) with

an enhancement pursuant to section 12022.7, subdivision (a), or that he committed a battery causing serious bodily injury (§ 243, subd. (d)). He maintains that he was legally justified in stomping on U.D.'s head because this was an act of self-defense.

At the jurisdictional hearing, the People contended that defendant used unlawful force because this was a mutual combat, defendant did not reasonably believe that he was in imminent danger of suffering bodily injury, and defendant used excessive and unreasonable force. For the reasons discussed below, we conclude that the record supported the juvenile court's orders.

II. *Standard of Review and Self-Defense*

The standard of proof in juvenile court proceedings involving criminal activity is the same as in adult criminal trials. (*People v. Nguyen* (2009) 46 Cal.4th 1007, 1022.) The People must prove beyond a reasonable doubt that the minor committed the offenses alleged in the Welfare and Institutions Code section 602 petition. (*Nguyen*, at p. 1022.)

Here, the People argued to the juvenile court that defendant committed an assault and battery and that he did not act in self-defense. "A battery is any willful and unlawful use of force or violence upon the person of another." (§ 242.) "Any harmful or offensive touching constitutes an unlawful use of force or violence. [Citation.]" (*People v. Martinez* (1970) 3 Cal.App.3d 886, 889.) Defendant does not challenge the finding that he stomped on the victim's head and seriously injured the victim. Rather, he claims that the stomping on the head was lawful because it was in self-defense.

"Self-defense negates culpability for assaultive crimes, whether or not the assault results in death." (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340.) More specifically, the defendant must reasonably believe that he or someone else was in imminent danger of suffering bodily injury or of being touched unlawfully and that the immediate use of force was necessary to defend against that danger. (*People v. Myers* (1998) 61 Cal.App.4th 328, 335.) Further, the defense "is limited to the use of such force as is reasonable under the circumstances. [Citation.] [Citations.]" (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) The use of excessive force destroys the justification of self-defense. (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630.) When the defendant

uses force that is excessive to the threatened harm, the third element of self-defense is wanting, and the use of force is not excused. (*Ibid.*)

“Issues arising out of self-defense, including whether the circumstances would cause a reasonable person to perceive the necessity of defense, whether the defendant actually acted out of defense of himself, and whether the force used was excessive, are normally questions of fact for the trier of fact to resolve.” (*People v. Clark* (1982) 130 Cal.App.3d 371, 378, disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 92.) “[W]here the evidence is uncontroverted and establishes all of the elements for a finding of self-defense,” it may be found as a matter of law. (*Clark*, at p. 379.) However, where the evidence tends to show a situation in which the use of force may not be justified, or where the evidence is uncontroverted but reasonable persons could differ on whether the resort to force was justified or whether the force resorted to was excessive, the self-defense issue is a question of fact for the trier of fact. (*Ibid.*)

“In reviewing a claim for 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 or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury [or trier of fact] reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]” (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639.)

III. Substantial Evidence Supported a Finding of Mutual Combat

At the jurisdictional hearing, the People maintained that defendant used unlawful force because, among other things, this was a mutual combat situation. Mutual combat is not a defense to battery (*People v. Lucky* (1988) 45 Cal.3d 259, 291) unless that person tries to stop fighting, informs the other person of his intention to stop, informs the other person he has stopped fighting, and gives the opponent the opportunity to stop fighting. (*People v. Quach* (2004) 116 Cal.App.4th, 294, 300, fn. 2, citing CALJIC No. 5.56.)

Mutual combat has been defined as “not merely a reciprocal exchange of blows but one *pursuant to mutual intention, consent, or agreement preceding the initiation of hostilities.*” (*People v. Ross* (2007) 155 Cal.App.4th 1033, 1045.) “Mutual combat” includes an express or implied agreement to fight. (*Id.* at pp. 1046-1047.) “The agreement need not have all the characteristics of a legally binding contract; indeed, it necessarily lacks at least one such characteristic: a lawful object. But there must be evidence from which the jury could reasonably find that *both combatants actually consented or intended to fight before the claimed occasion for self-defense arose.*” (*Id.* at p. 1047.)

Here, the record contains evidence supporting a finding of mutual combat. U.D. testified that there was a history of animosity between defendant and him. The day before the incident, both of them called each other “sucka” while at school. As U.D. was returning to school during the lunch break on March 1, U.D. testified that defendant again called him a “sucka.” U.D. stated that they both faced each other and called each other “disrespectful” names. As U.D. turned away, defendant, according to U.D., hit him behind his right ear.

Reginald’s testimony also supported a finding that this was mutual combat. Reginald saw U.D. remove his shirt and face defendant. Reginald reported that both boys “looked like they were” about to fight. He observed that defendant hit U.D. first. Reginald added that defendant’s punch hit U.D. on his face, just below his left eye. The boys then began hitting and punching each other.

C.C., defendant's witness, also provided testimony supporting a finding of mutual combat. She said that at lunchtime she heard a commotion on the street as she was returning to school with her lunch. She heard people yelling at defendant that, if he wanted to fight him, that he should fight him and not be a "punk." She saw U.D. remove his shirt. Prior to the actual fight starting, C.C. described the situation as "[k]ind of like the environment of a fight about to break off. Just that tension about a fight about to break out. No one was swinging yet or anything."

In light of the evidence of the prior tensions between defendant and U.D. and the context of both boys facing each other in anticipation of a fight with each other, the juvenile court reasonably could conclude that the two boys engaged voluntarily in a mutual fistfight. Furthermore, the record was devoid of any evidence establishing that defendant made any effort to stop the fight until after he had stomped on U.D.'s face and seriously injured him. Although some witnesses testified that defendant initially stated that he did not want to fight, there was no testimony that defendant ever communicated a desire to stop the fight once it started.

Defendant does not argue that he attempted to stop the fight once it started, but maintains that the record did not support a finding of a preexisting agreement or an intention on the part of defendant to fight U.D. Defendant presents his version of the facts and claims that U.D. told an officer that in his previous verbal exchanges with defendant they were joking. He also cites evidence that U.D. and he had interacted for much of the lunch period without engaging in a fight. He claims that U.D. initiated the confrontation by blocking his path and telling defendant that he had to fight him. Defendant proclaims that the evidence showed he had no intention ahead of time to fight, as he testified that he did not want to fight and tried to walk away. Additionally, R.K. testified that everybody told her that defendant was walking away prior to the fight and that defendant did not want to fight. Defendant insists that he was under no obligation to retreat and was entitled to stand his ground. He asserts that, even if he threw the first punch, U.D. initiated the altercation by blocking his path.

Defendant is essentially asking this court to reweigh the facts and accord more credibility to his witnesses. As already noted, it is the exclusive function of the trier of fact to assess the credibility of witnesses (*People v. Alcala* (1984) 36 Cal.3d 604, 623, superseded by statute on other grounds), and it is not our function to reweigh the evidence (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916). Defendant ignores his own testimony that he had “plenty” of confrontations with U.D. prior to the incident on March 1, 2011, or his statement to Wilson that he and U.D. did not get along.

Defendant argues that the evidence did not show mutual combat because U.D. initiated the altercation by blocking his path and challenging him to a fight. He cites the evidence supporting this claim and ignores the testimony of U.D. and Reginald contradicting his version of events. As already stressed, U.D. claimed defendant initiated the confrontation by calling him a “sucka” as he walked back to school. Furthermore, the evidence was that both boys faced each other with the intent of engaging in a fistfight. C.C. testified that she heard people yelling at defendant that if he wanted to fight U.D., he should fight him and not be a “punk.” Reginald testified that it appeared to him that the boys were going to fight.

Defendant claims that the altercation began when U.D. blocked his path and C.C. merely described the face-off after U.D. had initiated the confrontation but, as already stressed, the juvenile court was not obligated to believe defendant’s version of events. According to U.D., he tried to walk away when defendant hit him. “Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The record contained sufficient evidence to support a finding that prior to the combat there was a mutual preexisting intention to engage in combat. (See *People v. Ross, supra*, 155 Cal.App.4th at p. 1045.)

Accordingly, we conclude that substantial evidence supported the juvenile court’s determination that defendant’s act of stomping on the victim’s face was not justified based on self-defense because the two boys were engaged in mutual combat.

IV. Substantial Evidence Supported a Finding of No Imminent Danger

We conclude that an independent basis for affirming the juvenile court's orders is that substantial evidence supported a finding that defendant did not act in lawful self-defense because he was not in imminent danger at the time he stomped on defendant's head.

The lawfulness of self-defense depends on an objective standard, in which the existence of imminent danger is judged from the point of view of a reasonable person in the defendant's position. (*People v. Minifie, supra*, 13 Cal.4th at p. 1065.) “ ‘To justify an act of self-defense for [an assault . . .], the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him. [Citation.]’ [Citation], italics in original.) The threat of bodily injury must be imminent [citation], and ‘. . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.]’ [Citations.]” (*Id.* at pp. 1064-1065.) Thus, the defendant's conduct must be motivated by an actual fear of imminent danger and must cease once the defendant knows the danger is over. (See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083.)

Here, the record supported a finding that it was not objectively reasonable for someone in defendant's position to stomp on U.D.'s face after U.D. was on the ground. While he was on the ground, R.J., according to U.D., was holding his arms. Defendant admitted stomping on U.D. while U.D. was on the ground. Defendant had not suffered any serious injury during the fistfight and there was no testimony that defendant was afraid of U.D. The evidence in the record did not support any justification for defendant's action of escalating the physical violence from punches to stomping on U.D.'s head so that it would hit the concrete, especially since U.D. was on the ground at the time.

At the jurisdictional hearing, defendant claimed that U.D. said that he was going to murder him, but the court did not have to believe this self-serving testimony. Other than defendant's testimony, there was no other clear testimony that U.D. made such a threatening statement. C.C. initially testified that U.D. said that he was going to murder

defendant but then admitted that she told the police that she did not know who had said he was going to murder the other. She conceded that her statement to the police was accurate.

Defendant contends that he had a reasonable belief of imminent bodily injury once U.D. removed his shirt and “squared up” to fight. The fact that U.D. wanted to fight did not create imminent danger that justified the kick to the head while U.D. was down on the ground. Defendant also claims that defendant caused him to fall to the ground. Both U.D. and Reginald disputed that defendant was on the ground and the juvenile court was entitled to disbelieve defendant’s rendition of what happened. This was especially true given that defendant asserted that U.D. “dipped” him, causing him to fall and hit his head on the cement but defendant did not sustain any serious injury. Indeed, even defendant testified that he pushed U.D. off of him and that he stomped on U.D.’s head as U.D. was falling backward. C.C., defendant’s own witness, stated that at some point, she saw U.D. on top of defendant, but she was clear that defendant was standing when he raised his foot about knee-level and kicked down on U.D.’s face. She then heard U.D.’s head hit the ground “[l]ike a crunch.” Thus, the record amply supported a finding that defendant was standing and stomped on U.D.’s head while U.D. was falling or already on the ground.

Defendant maintains the evidence showed that U.D. was still fighting while on the ground and trying to get up and that defendant was not required to retreat or give U.D. time to get back on his feet. (See *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22.) In particular, he claims that Reginald testified that U.D. was still fighting while on the ground. The record, however, does not entirely support this characterization of Reginald’s testimony. Reginald first seemed to suggest that the boys were still fighting when U.D. was on the ground. However, subsequently, when specifically asked what U.D. was doing while on the ground, Reginald stated: “He was—he was, like—like, it was, like, they was fighting, and he started him—[defendant] started getting pulled back or whatever, and I was walking over. And then [U.D.] was still on the ground. . . .” Counsel asked again what U.D. was doing on the ground, Reginald replied: “I don’t remember. I wasn’t focused on [U.D.]” Subsequently, Reginald was asked again

whether U.D. was doing anything prior to defendant's stomping on him, and he answered: "No. He was on the ground. He was just on the ground." He stated that U.D. looked like he was about to get up but he could not remember if U.D. was in a fighting position. Thus, Reginald's testimony did not indicate that U.D. posed any threat to defendant while he was on the ground.

Even if the record supported a finding that it was objectively reasonable for defendant to believe U.D. would start to punch him again if defendant were able to regain his balance and stand up, this would not have justified U.D.'s conduct. The present facts are unlike those in *People v. Hatchett, supra*, 56 Cal.App.2d 20, the case cited by defendant. Unlike the situation in *Hatchett*, defendant was not merely standing his ground; he was engaged in mutual combat. In *Hatchett*, there had been a struggle after the drunken decedent pointed a gun at the defendant. (*Id.* at p. 22.) The defendant was able to knock the gun to the floor and retrieve the gun and, as she attempted to get out the door, the drunken decedent came towards her with a metal object in his hand. (*Ibid.*) Thus, unlike the present situation, the defendant in *Hatchett* was responding to an immediate threat of serious bodily injury or death and had not been involved in mutual combat.

Furthermore, as already stressed, here, defendant never expressed any fear of U.D. and was responding to a prone boy who had inflicted nothing more than punches on defendant. U.D. had caused no serious injury to defendant and posed no immediate threat to defendant. " 'Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury.' [Citation.]" (*People v. Humphrey, supra*, 13 Cal.4th at p. 1082.) " ' "[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with.*" ' " (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) Moreover,

Accordingly, we conclude that the record supported a finding that U.D. did not pose an imminent threat at the time defendant stomped on his face.

V. Substantial Evidence Supported a Finding that Defendant Used Excessive Force

The evidence in the record also supported a third independent reason for finding the allegations in the petition against defendant true. Defendant's use of force was excessive and unreasonable.

“[O]nly that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified. [Citation.]” (*People v. Clark, supra*, 130 Cal.App.3d at p. 380.) Similarly, the use of excessive force destroys the justification of self-defense. (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630.)

As already discussed, the record showed that U.D. was on the ground when defendant stomped on his head and therefore the force was not necessary or justified. The force defendant used far exceeded the level of force that had been used by U.D. Defendant claims that any of the punches could have resulted in one of them falling to the ground and receiving an injury similar to that suffered by U.D. The record, however, does not support this argument. Defendant did not suffer any serious injury and U.D. did not suffer any serious injury when he fell to the ground. To the contrary, U.D. became seriously injured only after defendant raised his foot to knee-level and brought it down on U.D.'s face when his head was on the concrete or just above the concrete. It was the stomping with force on U.D.'s head so that his head hit the concrete that caused the extremely serious injury.

Defendant argues that he did not use a gun or a knife and attempts to minimize the dangerousness of his actions. In his reply brief he writes, “It is scary to consider that facing down a bully and standing one's ground can lead to harsh legal consequences.” Not only does defendant ignore or discount the evidence indicating that he was the bully and the aggressor but he minimizes the brutality of stomping on a person's head when the person is on the ground and his head is being smashed into the pavement. Indeed, the juvenile court commented, after hearing all of the evidence, that defendant's action against U.D. “was absolutely as hard core, felonious, criminal, dangerous, life-threatening conduct as I've heard in a very, very long time. . . .”

Finally, defendant argues that he immediately withdrew from the confrontation once U.D. was no longer a threat. Defendant did not withdraw; he fled once he had severely injured U.D. His fleeing supported a finding of a consciousness of guilt.

We therefore conclude that the record amply supported a finding that defendant used excessive and unreasonable force.

DISPOSITION

The juvenile court's orders are affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.