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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B233659
(Los Angeles County
Super. Ct. No. FJ48980)

THE PEOPLE,

Plaintiff and Respondent,

v.

BILL P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Shep Zebberman, Juvenile Court Referee. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Shawn McGahey Webb, Deputy Attorneys General, for Plaintiff and Respondent.

Bill P., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered as a result of the juvenile court's finding he committed assault with a deadly weapon. Bill contends the evidence was insufficient to support the juvenile court's finding. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *People's evidence.*

On the afternoon of May 6, 2011, security guard Andrew Burrell was patrolling his employer's parking garage located at the corner of Vermont and Browning Streets in Los Angeles. Burrell heard "a lot of noise" and went outside to investigate. He observed 17-year-old Bill and an older, bigger man, later identified as Heriberto Zapien, surrounded by a "crowd of kids." Bill and Zapien were facing each other and were about three feet apart. Bill had a knife and was slashing at Zapien. Zapien, who was not armed, was backing away, and Bill was following him. Zapien picked up a skateboard from the sidewalk, held it across the front of his body as a shield, and backed up. Bill slashed at Zapien with the knife approximately 10 times, inflicting a shallow four-inch laceration and several minor scratches on Zapien's arm. Bill kept "hollering" during the incident, but Zapien did not say anything. During the approximately 10-minute period Burrell observed the fight, Zapien did nothing to attack the minor. Neither he nor Bill threw any punches. Zapien did not swing the skateboard at Bill or anyone else; he only used it to block Bill's slashes. During the incident, some of the spectators attempted to kick Zapien. A girl in the crowd, identified in other testimony as Bill's younger sister's friend, Flor G., yelled at Burrell to do something to stop the fight. Burrell replied that it was not his responsibility to patrol the sidewalk. However, Burrell subsequently yelled to the combatants to stop fighting, accurately advising that "someone was going to get hurt and somebody was going to go to jail." He flagged down a passing Los Angeles Police Department (L.A.P.D.) officer. Just before the officer arrived on the scene, Bill handed the knife to a female companion, who passed it to a boy who fled, along with most of the crowd. When the officer approached him, Bill yelled at the officer in a

hostile manner and refused a command to get against the wall. He was handcuffed after the officer drew his weapon.

L.A.P.D. Officer Christopher Jones subsequently arrived on the scene and interviewed Burrell. Contrary to Burrell's eventual testimony at the adjudication, Burrell told Officer Jones that during the fight there were "several punches being thrown."

Officer Jones also interviewed Zapien. Zapien stated that he had been walking southbound on Vermont when he passed Bill and "words were exchanged." Zapien refused to elaborate on what was said. Shortly thereafter "the altercation turned physical." Bill produced a switchblade knife, exposed the blade, and lunged toward Zapien while making a slashing motion. The knife cut Zapien's arm. Zapien grabbed a skateboard that was on the ground nearby and swung it at Bill in an effort to protect himself. Police arrived.¹

L.A.P.D. Officer Crystal Garcia interviewed Bill at the police station, and he provided the following written statement: " 'Me and my friends and my little sister were walking at Browning and Vermont at 3:50 p.m. when the school came out. I walked to Browning Street. This big guy came asking my friends about if we had weed, and I was like "no." So then he said, "Forget you," which meant me, so I told him, "All right." Then, "Fucker." Why? Because he got me mad, so I told him that. He came right at me, hit me with his right hand on my jaw. I backed away, dropped all my things. I was holding my [iPod], then my friend was carrying his skateboard, so he got the skateboard and hit me in my arm because I was trying to dodge the skateboard hit. So that's when I

¹ Zapien testified at the adjudication, but his testimony was evasive and confused. He initially denied being stabbed or arguing with Bill. He at one point admitted he had been stabbed, but then declared that he had cut himself jumping a gate. He claimed he had no memory of getting into a fight with Bill because he was "slow" and forgetful, the result of smoking "too much weed." He repeatedly stated that he did not wish to testify. At the time of the adjudication he was serving a one-year jail term for committing assault with a deadly or dangerous weapon in an unrelated incident. He had also suffered numerous convictions for possession of marijuana and had previously given false information to a police officer in an unrelated incident.

took my knife out and cut him in his arm, and after that, I was just telling him to back up. I was walking home and he kept following me with the skateboard in his hand, while my little sister was behind both of us. He tried to hit her, too. So I got mad. I ran to him, got him in a headlock, and that's when the officer came and arrested both of us[.]' ”

Police found the switchblade knife on the ground 50 to 75 feet away from the scene. Both Zapien and Bill identified it to police as the knife Bill used.

b. *Defense evidence.*

Four juvenile witnesses testified for the defense: Bill's friend Robert R.; Bill's younger sister Daniela P.; and Daniela's two friends, Elias O. and Flor G.

Robert testified that he, Bill, and a youth identified in other testimony as Joshua, who was carrying a skateboard, walked home from school together on May 6, 2011. On the way, Bill stopped to purchase some T-shirts from a nearby store. Shortly thereafter, the group encountered Zapien on the corner. Zapien asked if they had marijuana. Bill said no. Zapien rudely replied, “ ‘I wasn't talking to you.’ ” Bill responded, “ ‘All right then, homie.’ ” Zapien asked, “ ‘What did you say?’ ” or similar words, and approached Bill. They “exchanged words.” Zapien took a swing at Bill, but missed because Bill backed up. Bill took off his headphones and gave them to Robert for safekeeping. Bill and Zapien then began throwing punches at each other. Initially the fight appeared equal, but Bill rapidly got the upper hand. After approximately 15 seconds, Zapien “started putting his hands up above his head, wasn't really fighting, tired, it was more like swinging” his arms above his head. Bill continued punching Zapien. At some point Bill dropped the package of T-shirts. Robert bent down to pick it up. Zapien faked a punch at Joshua and grabbed the skateboard from him. Zapien picked up the T-shirts and stated, “ ‘This is my stuff.’ ” Zapien hit Robert on the head with the skateboard; he also swung it at Bill three or four times, but Bill blocked the blows. Bill kept trying to grab the T-shirts. In response to Zapien's use of the skateboard, Bill pulled out a knife. Zapien told Bill, “ ‘I see you everyday. You [fucked] up now[,] motherfucker.’ ” Bill angrily called Zapien a motherfucker in response. Robert observed security guard Burrell appear on the

scene just after Zapien hit Robert in the head with the skateboard. Robert left before Bill cut Zapien and before police arrived.

Daniela, Elias, and Flor corroborated Robert's account in many respects. The trio had been walking home from school behind Bill, Robert, and Joshua. None of them heard what Zapien and Bill initially said to each other, but all three confirmed that Zapien threw the first punch at Bill. Daniela, Elias, and Flor all stated that after Bill and Zapien exchanged blows, Zapien snatched a skateboard from Joshua and hit, or attempted to hit, Bill with it; Bill pulled out the knife in an effort to defend himself against the skateboard attack; Zapien took possession of Bill's dropped T-shirts; and Zapien threatened Bill after Bill pulled the knife, stating that he would get back at Bill or similar words. It appeared to Flor and Daniela that before Bill pulled the knife, Zapien was winning the fight. Both girls also confirmed that security guard Burrell did not arrive until the middle of the fight.

c. The juvenile court's ruling.

The juvenile court sustained the petition. It reasoned that the evidence clearly showed an assault, and the key issue was whether Bill acted in self-defense. On that point, the court found Bill unlawfully escalated the fight by using the knife. The court indicated it found Burrell credible. It also referenced CALCRIM No. 3471 (Right to Self-Defense: Mutual Combat or Initial Aggressor), which had been mentioned by the defense during argument. The court stated: "I . . . don't think that the elements of CALCRIM [No.] 3471 have been met in order to establish a self-defense under the facts of this case given this was at one time, at least, a mutual-type combat."

2. Procedure.

After sustaining the petition, the juvenile court declared Bill a ward of the court under Welfare and Institutions Code section 602, declared the offense a felony, and ordered Bill placed in the Camp Community Placement Program for a period not exceeding four years. Bill appeals.

DISCUSSION

The evidence was sufficient to support the juvenile court's finding that the minor committed assault with a deadly weapon.

Bill contends the evidence was insufficient to meet the People's burden to disprove self-defense.

When determining whether the evidence was sufficient to sustain a petition brought under Welfare and Institutions Code section 602, we apply the standard used in criminal cases. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026; *In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) We review the entire record in the light most favorable to the judgment to determine “whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Snow* (2003) 30 Cal.4th 43, 66; *In re V.V.*, *supra*, at p. 1026; *People v. Carrington* (2009) 47 Cal.4th 145, 186-187.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*In re V.V.*, *supra*, at p. 1026; *People v. Medina* (2009) 46 Cal.4th 913, 919.) Reversal is not warranted unless it appears “ ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “ ‘ “[W]hen two or more inferences can reasonably be deduced from the facts,’ either deduction will be supported by substantial evidence, and ‘a reviewing court is without power to substitute its deductions for those of the trial court.’ [Citations.]” ’ ” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) “Issues arising out of self-defense, including . . . 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.)

As the juvenile court found, the undisputed evidence showed that if Bill was not acting in self-defense, he committed assault with a deadly weapon in violation of Penal

Code section 245, subdivision (a)(1). To establish assault with a deadly weapon, the People must prove: (1) the defendant committed an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person; (2) the defendant did the act willfully; (3) the defendant was aware of facts that would lead a reasonable person to realize that his act would directly and probably result in the application of force to someone; and (4) when the defendant acted, he had the present ability to apply force with a deadly weapon. (*People v. Golde* (2008) 163 Cal.App.4th 101, 108-109; CALCRIM No. 875; § 245, subd. (a)(1).) A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, and is likely to produce, death or great bodily injury. (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275-276.) It is undisputed that these elements were met. Thus, we turn to the issue of self-defense.

Preliminarily, we observe that CALCRIM No. 3471, referenced by the juvenile court, has no application here. That instruction concerns application of the right to self-defense when the defendant is the initial aggressor, or when the parties have engaged in mutual combat. There is insufficient evidence of either circumstance here. Bill was not the initial aggressor. It was undisputed that Burrell did not witness the start of the argument. Bill's written statement, and the testimony of all the defense witnesses, established that Zapien threw the first punch. Zapien's statement to police at the scene did not contradict this account; Zapien vaguely told the officer that after he and Bill exchanged unspecified words, "the altercation turned physical." Thus, all the evidence established that Zapien, not Bill, was the initial aggressor.

Nor was there evidence of mutual combat. For purposes of the law of self-defense, " 'mutual combat' " is "a violent confrontation conducted pursuant to prearrangement, mutual consent, or an express or implied agreement to fight." (*People v. Ross* (2007) 155 Cal.App.4th 1033, 1036.) "The mutuality triggering the doctrine inheres not in the combat but in the *preexisting intent to engage in it.*" (*Id.* at p. 1045.) Mutual combat "means not merely a reciprocal exchange of blows but one *pursuant to mutual intention, consent, or agreement preceding the initiation of hostilities.*" (*Ibid.*; *People v.*

Valenzuela (2011) 199 Cal.App.4th 1214, 1234.) While Bill and Zapien both engaged in the fistfight—conduct which may be considered “mutual combat” in common parlance—it was not mutual combat as that term is legally understood. There was no prearranged agreement to fight prior to the initiation of hostilities.

Instead, the pertinent principles are set forth in CALCRIM No. 3470. The victim of an assault is under no obligation to retreat before exercising the right of self-defense, but may stand his ground and, if reasonably necessary, pursue the assailant until the danger of bodily injury has passed. (*People v. Clark* (2011) 201 Cal.App.4th 235, 250; *People v. Ross, supra*, 155 Cal.App.4th at p. 1044, fn. 13; CALCRIM No. 3470.) A defendant acts in lawful self-defense if (1) he actually and reasonably believes he, or someone else, is in imminent danger of suffering bodily injury; (2) he reasonably believes the immediate use of force is necessary to defend against that danger; and (3) he uses no more force than is reasonably necessary to defend against that danger. (CALCRIM No. 3470; *People v. Lee* (2005) 131 Cal.App.4th 1413, 1427; *People v. Clark, supra*, at p. 250.) The defendant is only entitled to use the amount of force that a reasonable person would believe is necessary in the same situation. “If the defendant used more force than was reasonable, the defendant did not act in lawful (self-defense/ [or] defense of another).” (CALCRIM No. 3470; 1 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Defenses, § 75, p. 517 [force which is excessive, i.e., unreasonable under the circumstances, is not justified].) The right to use force continues only as long as the danger reasonably appears to exist. (*People v. Clark, supra*, at p. 250; CALCRIM No. 3474.) Where the defendant presents substantial evidence supporting a self-defense theory, the People have the burden to prove he did not act in lawful self-defense. (*People v. Lee, supra*, at p. 1429; CALCRIM No. 3470.)

Here, substantial evidence existed to support the juvenile court’s conclusion that Bill did not act in lawful self-defense. Confronted with an older, larger assailant, Bill was entitled to stand his ground and return Zapien’s punch. (See *People v. Ross, supra*, 155 Cal.App.4th at p. 1044.) But, viewing the evidence in the light most favorable to the judgment, Bill unlawfully escalated the fight by pulling out a switchblade knife and

slashing Zapien with it. Generally, an assault with fists does not justify the person being assaulted in using a deadly weapon in self-defense, unless the person reasonably believes the assault is likely to inflict great bodily injury. (See *People v. Enriquez* (1977) 19 Cal.3d 221, 228, disapproved on other grounds in *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3; 1 Witkin & Epstein, Cal. Criminal Law, *supra*, § 75, p. 517.)

The court could have inferred that Bill did not reasonably believe Zapien was likely to inflict great bodily injury upon him. It was undisputed that Zapien was not in possession of a weapon when the fight began. According to Burrell, whose testimony the court expressly credited, Zapien did not pick up the skateboard until *after* Bill pulled out the switchblade.² The court was not obliged to credit the testimony of the defense witnesses that Zapien was using the skateboard as a weapon, and Bill used the knife in defense. To the contrary, Burrell testified that Zapien used the skateboard only as a shield against Bill's slashes with the knife and did not strike, or attempt to strike, Bill or Robert with it.

Moreover, the right to use force lasts only as long as the danger appears to exist. (*People v. Clark, supra*, 201 Cal.App.4th at p. 250.) Here, Burrell testified that during the 10-minute period he observed the fight, Bill repeatedly slashed at Zapien, whereas Zapien was backing up and shielding himself with the skateboard, not attacking. Zapien was not saying anything and was not taking any aggressive action towards Bill. Defense witness Robert R. testified that within a half minute of the initial fistfight, Bill got the upper hand in the fight. Zapien "started putting his hands up above his head, wasn't really fighting, tired." Bill was not outnumbered; Zapien was alone, surrounded by a crowd of youths, some of whom were trying to kick him. From this evidence the court

² Burrell admittedly did not see the beginning of the fight. However, the juvenile court could reasonably have concluded that Burrell witnessed the entire portion of the fight involving Zapien's use of the skateboard. The defense witnesses consistently stated that once Zapien picked up the skateboard, he did not put it down until police came. Burrell testified that when he saw Zapien pick up the skateboard, Bill already had the knife out. From this, the court could logically deduce that Burrell saw the entire portion of the fight involving the skateboard.

could reasonably conclude that Bill used more force than was necessary, at a point at which an imminent danger no longer existed.

Bill makes a variety of arguments in support of his contention that his conduct was reasonable and amounted to lawful self-defense. He urges that use of the knife was reasonable, because his witnesses testified that they had seen Zapien, a marijuana user, loitering in the neighborhood; Zapien's overreaction to Bill's answer to his question demonstrated Zapien was unstable, volatile, and violent; Zapien threatened Bill after Bill pulled out the knife; Zapien was older and bigger than Bill; Bill was walking away after the initial fistfight, and only returned to retrieve his bag of T-shirts, which Zapien had wrongfully picked up; Burrell's testimony contained inconsistencies and was unreliable; Burrell was biased; Burrell admittedly did not see the entire fight; and the police were biased against Bill, as demonstrated by Officer Jones's unilateral decision to exclude from his report statements made to him at the scene by Bill's companions.

These arguments amount to a request that this court reweigh the evidence. “ ‘[I]t is not a proper appellate function to reassess the credibility of the witnesses.’ [Citation.]” (*People v. Friend* (2009) 47 Cal.4th 1, 41; *People v. Cortes* (1999) 71 Cal.App.4th 62, 81 [where an appellant “merely reargues the evidence in a way more appropriate for trial than for appeal,” we are bound by the trier of fact's determination].) It is the exclusive province of the trier of fact to determine the truth or falsity of the facts upon which a determination of guilt depends, and we resolve neither credibility issues nor evidentiary conflicts. (*People v. Maury* (2003) 30 Cal.4th 342, 403; *People v. Mejia* (2007) 155 Cal.App.4th 86, 98.) Because substantial evidence supported the juvenile court's verdict, the fact the evidence might have been reconciled with a contrary finding does not warrant a reversal. (*People v. Livingston* (2012) 53 Cal.4th 1145, 1170; *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1331.)

DISPOSITION

The order of wardship is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.