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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re U. C., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

U. C.,

Defendant and Appellant.

F068495

(Super. Ct. No. 13CEJ600850-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Kimberly A. Gaab, Judge.

Linda K. Harvie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Levy, Acting P.J., Detjen, J. and Peña, J.

INTRODUCTION

On appeal following adjudication of a Welfare and Institutions Code section 602, subdivision (a) petition, U. C. contends the court misunderstood and misapplied the law of self-defense by improperly shifting the burden of proof to him to establish he acted in self-defense. Further, U. argues the prosecution presented insufficient evidence to rebut his claim of self-defense. We affirm.

PROCEDURAL BACKGROUND

In a petition filed October 16, 2013, the Fresno County District Attorney alleged U. committed battery with serious bodily injury (Pen. Code,¹ § 243, subd. (d); count 1) and second degree robbery (§ 211; count 2)).

Following contested proceedings held November 12 and 14, 2013, the juvenile court found the battery with serious bodily injury as alleged in the petition to be true beyond a reasonable doubt; the robbery count was dismissed.

At the disposition on December 2, 2013, the court ordered, inter alia, U. be committed to the preadolescent program for a period not to exceed 63 days. He was given credit for 50 days already spent in custody as against a maximum confinement period of four years. This appeal followed.

RELEVANT FACTUAL BACKGROUND

The People's Case

On the bus ride home from middle school, Ronaldo R. let U. listen to music on his iPod. However, when Ronaldo asked U. to return his iPod, U. would not do so. Ronaldo asked for its return four or five times. Instead, U. exited the bus with Ronaldo's iPod, running toward his house. Ronaldo gave chase and grabbed U.'s backpack. He asked for his iPod back. At about this same time, Ronaldo was joined by his friend David D. David tried getting the iPod from U. by grabbing U.'s wrist and reaching for it. U.

¹All further statutory references are to the Penal Code unless otherwise indicated.

initially refused to return the iPod to Ronaldo, but finally did so. Ronaldo let go of U.'s backpack and began walking toward home. David let go of U.'s wrist.

According to David, U. then began walking to his own home, but stopped after about 10 feet and turned to curse at David. David walked up to U. and told him he was stupid for stealing Ronaldo's belongings all the time. U. kept yelling and was in David's face. David then shoved U. in the chest or midsection with two hands. U. responded in kind. But as David turned to walk home, U. struck David in the neck and head or face three times with a closed fist. Specifically, U. first struck David below his right ear at the base of his skull. The second blow struck below that and to the left. The last blow was to David's right lower jaw. David denied threatening or striking out at U.

David suffered a fractured jaw. Surgery was necessary and a metal plate was installed. As a result, David's jaw was wired closed for three weeks and he was restricted to a liquid diet.

About four days after the incident, Fresno Police Officer Sheila Chandler interviewed Ronaldo, David, and U. After advising U. of his *Miranda* (*Miranda v. Arizona* (1966) 384 U.S. 436) rights, the officer asked him if he wanted to talk about the incident involving the iPod. U. said there was ““nothing to talk about. [David] put his hands on me, so I fought him.”” U. claimed he was not going to “wait and see what happened next” after the shoving, so he socked David once, causing David's head to turn, then socked him twice more in the head.

The Defense Case

Adrian R. had known U. for about three weeks when the incident occurred. He, too, had taken the bus, exiting at the same stop. He saw David grabbing at U., and saw U. give Ronaldo the iPod. Adrian observed David get in U.'s face and shove him. U. responded with his fists.

U. testified that Ronaldo let him use his iPod to listen to music on the bus. Ronaldo did not ask for the return of the iPod before the two exited the bus, and U. was still listening to it when he got off the bus. When Ronaldo first asked U. to return the

iPod, U. did not do so, telling Ronaldo he was still listening. Ronaldo told U. he could listen to one more song, but then Ronaldo grabbed U. by the backpack from behind. And David grabbed his wrist. U. was afraid they were going to “jump” him. David shoved him, then U. “socked” David. U. hit David twice, then David swung at him, and U. hit David for a third time. The last punch struck David’s jaw. After that punch, U. felt that he “had gotten out of the circumstances” he found himself in.

On cross-examination, U. denied running away as he exited the bus. Rather, he was “back pedaling in circles and was still listening to the song” on Ronaldo’s iPod. He also denied shoving David back. U. testified he did tell Officer Chandler that David took a swing at him between his second and third punch. U. explained he did not include the fact David swung at him in his written statement to school officials because he “wasn’t thinking right on that day,” but it did happen.

On redirect, U. testified Officer Chandler showed him a picture of David, yelling, “Look what you done to this kid.” She was angry and told U. that whatever he put in his statement she would not believe, and that she was “going to take [him] to juvenile anyway.”

DISCUSSION

The Burden of Proof Did Not Shift to U.

Pointing to a brief passage of the court’s findings following adjudication, U. argues the juvenile court improperly shifted the burden of proving self-defense to him. We find no error.

The Findings

Following contested proceedings, the juvenile court ruled, in pertinent part, as follows:

“THE COURT: By a juvenile wardship petition that was filed October 16th, 2013, the minor has been charged with two counts. Count I alleges that on or about October 10th ... the minor committed the crime of battery with serious bodily injury The minor has entered a denial. The minor had his adjudication. The Court recognizes the burden of proof in

this case is beyond a reasonable doubt and the People are required to meet that burden of proof [¶] ... [¶]

“With respect to Count I, the violation of ... Section 243(d), the Court has considered the evidence, the testimony, the credibility of the witnesses, and the Court finds that the People have met their burden of proof with respect to Count I and finds that that count is true.

“The Court does not find that the evidence supports a finding that the minor was acting in self-defense with respect to that count and rejects that argument.”

Analysis

“Ordinarily statements made by the trial court as to its reasoning are not reviewable. An exception to this general rule exists when the court’s comments unambiguously disclose that its basic ruling embodied or was based on a misunderstanding of the relevant law.” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1440, citing *People v. Butcher* (1986) 185 Cal.App.3d 929, 936–937; see *People v. Tessman* (2014) 223 Cal.App.4th 1293, 1302 [same].) A juvenile wardship order based on such a misunderstanding must be reversed. (*In re Jerry R.*, *supra*, at pp. 1434, 1440–1441.)

A battery is “any willful and unlawful use of force or violence upon the person of another.” (§ 242.) To justify a battery based on self-defense, the defendant generally must have an actual, honest, and reasonable belief that bodily injury is about to be inflicted on him. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064.) Additionally, the right of self-defense is limited to the use of reasonable force. (*Id.* at pp. 1064–1065; *People v. Clark* (2011) 201 Cal.App.4th 235, 250.) The defendant’s use of force must be proportionate to the threat faced. (See *People v. Pinholster* (1992) 1 Cal.4th 865, 966, overruled on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459.) The use of excessive force destroys the justification of self-defense. (See *People v. Hardin* (2000) 85 Cal.App.4th 625, 629.) Moreover, the right to use force continues only as long as the danger exists or reasonably appears to exist. (*People v. Clark*, *supra*, at p. 250; *People v. Martin* (1980) 101 Cal.App.3d 1000, 1010.)

“As a matter of constitutional due process, the defendant need only raise a reasonable doubt regarding a defense that negates an element of the crime, and in this situation the burden of persuasion is on the People to show the nonexistence of the defense beyond a reasonable doubt. [Citations.] ... Typically, the prosecution has the burden to prove a defendant did not act in self-defense, because self-defense negates an element of the offense. [Citations.]” (*People v. Saavedra* (2007) 156 Cal.App.4th 561, 570-571.)

CALCRIM No. 3470 provides in relevant part:

“Self-defense is a defense to _____ <insert list of pertinent crimes charged>. The defendant is not guilty of (that/those crime[s]) if (he/she) used force against the other person in lawful (self-defense/[or] defense of another). The defendant acted in lawful (self-defense/[or] defense of another) if:

“1. The defendant reasonably believed that (he/she/[or] someone else/ [or] _____ <insert name of third party>) was in imminent danger of suffering bodily injury [or was in imminent danger of being touched unlawfully];

“2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger;

“AND

“3. The defendant used no more force than was reasonably necessary to defend against that danger.

“Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was (imminent danger of bodily injury to (himself/herself/[or] someone else)/[or] an imminent danger that (he/she/[or] someone else) would be touched unlawfully). Defendant’s belief must have been reasonable and (he/she) must have acted because of that belief. The defendant is only entitled to use that 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).

“When deciding whether the defendant’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant’s beliefs were reasonable, the danger does not need to have actually existed. [¶] ... [¶]

“The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful (self-defense/[or] defense of another). If the People have not met this burden, you must find the defendant not guilty of _____ <insert crime(s) charged>.”

Here, the court stated the People had met their burden of proving a battery with serious bodily injury beyond a reasonable doubt, then stated it found the evidence lacking with regard to U.’s claim of a need for self-defense. Read in context, it is plain the juvenile court understood and properly applied the law: that the People had the burden of proving U. did not act in self-defense. The juvenile court’s comments do not unambiguously disclose that it misunderstood or misapplied the law of self-defense. (*In re Jerry R.*, *supra*, 29 Cal.App.4th at p. 1440.)

The People did present sufficient evidence to prove a battery with serious bodily injury (see further discussion, *post*), as well as evidence negating any justification for the minor’s claim of self-defense. There was no question U. struck the blow that fractured David’s jaw. And Ronaldo, David, and Officer Chandler all presented credible testimony that stood in contradiction to U.’s claim to self-defense. More particularly, that evidence established U. could not have had a reasonable belief that David presented an imminent danger, that the danger had passed when U. struck David, and that U.’s use of force against David was excessive.

In sum, the People met their burdens, and there is no evidence in the record to support U.’s argument that the juvenile court misapplied or misunderstood the law of self-defense.

The Evidence Was Sufficient to Support the Finding

U. complains the evidence is insufficient to support his conviction because the prosecution did not present sufficient evidence to negate his claim of self defense.

“As a preliminary matter, we note that on this appeal challenging the sufficiency of the evidence to support a juvenile court judgment sustaining the criminal allegations of a petition made under the provisions of section 602 ..., we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal. Under this standard, the

critical inquiry is ‘whether, after reviewing 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.’ (*Jackson v. Virginia* (1979) 443 U.S. 307, 318–319.) An appellate court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *People v. Jones* (1990) 51 Cal.3d 294, 314.)

“In reviewing the evidence adduced at trial, our perspective must favor the judgment. [Citations.] ‘This court must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify the trial court’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.] [¶] Before the judgment of the trial court can be set aside for insufficiency of the evidence . . . , it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it. [Citation.]’ (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371–1372.)

Here, a review of the record in accordance with the foregoing standards establishes U. did not have an actual, honest, and reasonable belief that bodily injury was about to be inflicted upon him. Despite U.’s testimony that he was afraid Ronaldo and David would jump him, other testimony reveals no injury was about to occur. U. struck David after David turned away to head home following their verbal altercation and shoving match. David’s testimony in this regard was supported by the testimony of Ronaldo, as well as another student, Serenity C. Further, David’s statement to school officials supports his testimony at the hearing. It reads, in relevant part, “I turned to walk home and [U.] came behind me [and] hit me in the back of the head twice and in the jaw once.” Additionally, before U. even struck David, testimony offered by those present established Ronaldo had already walked away. U. was not in imminent danger when he

struck at David. Rather, Ronaldo had already left the area and David had begun to leave the area, turning away from U. (*People v. Minifie, supra*, 13 Cal.4th at p. 1064.) Any danger had passed. (*People v. Clark, supra*, 201 Cal.App.4th at p. 250.)

Other evidence also tends to negate U.'s claim of fearing imminent danger. For example, there was evidence U. and David challenged one another: Ronaldo testified the two exchanged words and David said, "Do something"; David testified U. was cursing and calling him out, and David admitted approaching U. and telling him he was stupid; Serenity testified U. and David were yelling at one another, and she heard U. say, "Step up. You always say I don't handle my shit." Furthermore, U. did not express his fear of an imminent danger to Officer Chandler, nor did he mention such a fear in his statement provided to school officials.

The juvenile court rejected U.'s claim to self-defense based in part on credibility findings. We, of course, defer to the juvenile court's credibility determinations because it, as the trier of fact, "is in a superior position to observe the demeanor of witnesses." (*In re George T.* (2004) 33 Cal.4th 620, 634.) Although the juvenile court did not specifically identify those witnesses it found to be credible versus those it did not, our review of this record supports the court's implied finding that U. was not credible.

The victim and two other witnesses testified the victim had turned away from U. when U. struck his successive blows to the victim's head and face. U.'s testimony was contradicted in other ways as well. For example, David testified U. shoved him back, after David shoved U. in the chest. Serenity testified U. pushed David, then David pushed U.'s hands away. Yet, U. denied pushing or shoving David. U.'s claim was also contradicted by Adrian's testimony on cross-examination. Adrian said David shoved U. in the chest and U. immediately shoved David back. Further, U. claimed David swung at him after U. struck David the second time. Yet no other testimony corroborated U.'s claim in this regard, not even that of U.'s friend, Adrian.

U. complains that although the prosecutor argued he was entitled to meet David's shove or push with a shove or push of his own, and that by punching David three times

U. used unreasonable and excessive force thus negating his claim of self-defense, the facts do not support the prosecutor's claims. We disagree.

U. cites *People v. Ross* (2007) 155 Cal.App.4th 1033 in support of his argument. In *Ross*, the victim slapped the defendant during a confrontation, and the defendant responded by punching the victim in the face. (*Id.* at p. 1036.) On appeal, the court criticized the prosecutor's closing argument for conflating the defendant's conduct with the consequence that conduct produced:

“[P]unching one's assailant in the face is not like shooting him in the head or stabbing him in the heart. The test is not whether the force used appears excessive in hindsight but whether it appeared reasonably necessary to avert threatened harm under the circumstances at the time. The law grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred. A leading forms book makes a similar point in a proposed jury instruction: ‘[I]n using force in self-defense, a person may use only that amount of force, and no more, that is reasonably necessary for that person's protection. However, since in the heat of conflict or in the face of an impending peril a person cannot be expected to measure accurately the exact amount of force necessary to repel an attack, that person will not be deemed to have exceeded his or her rights unless the force used was so excessive as to be clearly vindictive under the circumstances. Thus, a person's right of self-defense is limited by the reasonableness of his or her belief that such force was necessary at that time and under the particular circumstances.’ [Citations.]” (*People v. Ross*, *supra*, 155 Cal.App.4th at p. 1057.)

Ross does not support U.'s claim that the prosecutor wrongly asserted his actions amounted to excessive force. Here, the prosecutor did not conflate U.'s conduct with the consequence it produced. Rather, there was evidence U.'s punching David three times with a closed fist as David turned to leave was so excessive as to be clearly vindictive under these circumstances.

“Force that is excessive, i.e., unreasonable under the circumstances, is not justified.” (1 Witkin & Epstein, *Cal. Criminal Law* (4th ed. 2012) Defenses, § 75, p. 517; see CALCRIM No. 3470.) And “only 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* (1982) 130 Cal.App.3d 371, 380.) Whether the force used was excessive is normally a question for the trier of fact. (*People v. Clark, supra*, at p. 379.) The juvenile court could reasonably conclude that U.’s punching David three times in the head and face exceeded the force necessary to repel David’s earlier shove, and was executed after any danger David presented had passed. (See *People v. Clark, supra*, 201 Cal.App.4th at p. 250; *People v. Martin, supra*, 101 Cal.App.3d at p. 1010; *People v. Perez* (1970) 12 Cal.App.3d 232, 236.)

U.’s sufficiency argument is essentially a request that we reweigh the evidence and find in his favor. This we will not do. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.)

Following a thorough review of the record, we conclude there is sufficient evidence to support the juvenile court’s finding that U. was not acting in self-defense when he committed the crime of battery with serious bodily injury. Consequently, reversal is not required.

DISPOSITION

The judgment is affirmed.