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

In re GREGORY O., a Person Coming
Under the Juvenile Court Law.

H037181
(Santa Clara County
Super. Ct. No. JV36570)

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY O.,

Defendant and Appellant.

The juvenile court sustained two petitions brought in regard to appellant Gregory O. One alleged that he committed conduct that, if committed by an adult, would constitute forcible rape (Pen. Code, § 261, subd. (a)(2)). The second alleged that he possessed marijuana for sale, which conduct, if committed by an adult, would violate Health and Safety Code section 11359.

The juvenile court held a contested jurisdiction hearing on the forcible rape petition; appellant admitted the marijuana petition's allegations. After receiving the probation department's recommendation and psychological evaluations of appellant, the court declared appellant to be a ward of the court and ordered him placed in a group home that could provide specialized psychological treatment for his sexually assaultive

conduct. It set his confinement time to a maximum of eight years and eight months and imposed numerous other requirements, including payment by appellant and his parents, jointly and severally, of \$12,612.95 in direct restitution to the victim.

Appellant appeals from the dispositional judgment.¹ All of his contentions pertain to the first petition. He contends that the juvenile court erred by failing to find whether he knew the wrongfulness of his act under subdivision 1 of Penal Code section 26, which requires “clear proof” with regard to children under the age of 14 “that at the time of committing the act charged against them, they knew its wrongfulness.” He argues that under *Apprendi v. New Jersey* (2000) 530 U.S. 466, knowledge of wrongfulness must be found beyond a reasonable doubt, rather than by the clear and convincing standard set forth in *In re Manuel L.* (1994) 7 Cal.4th 229, 231. And he submits that the evidence is insufficient to prove that he knew the wrongfulness of his act under either the beyond-a-reasonable-doubt standard he prefers or the clear-and-convincing-evidence standard announced in *Manuel L.*

We find no merit to these claims. Appellant is correct, however, that one probation condition must be modified. We will affirm the judgment but modify the challenged probation condition.

¹ “The disposition order is the final step in a Welfare and Institutions Code section 602 proceeding, and constitutes an appealable judgment. [Citations.] While an adjudication order sustaining a Welfare and Institutions Code section 602 petition is not itself independently appealable, the propriety of the adjudication order is subject to review on appeal from the dispositional judgment. [Citation.] A notice of appeal is to be construed liberally, in favor of its sufficiency.” (*In re Z.A.* (2012) 207 Cal.App.4th 1401, 1404, fn. 2.) Appellant’s notice of appeal meets this requirement.

FACTS

I. *Prosecution Case*

The prosecution presented the following facts at the contested hearing.

In June of 2009, Rebecca Doe was 14 years old and appellant was 13—eight months shy of his fourteenth birthday. They were students at the same school. Rebecca testified that during the previous school year, they had had a romantic relationship that lasted two to four months. Ultimately they decided, Rebecca testified, that “we would be better [as] just friends.” They did not have a sexual relationship while they were dating.

After the end of the school day on June 8, 2009, Rebecca left the library where she had gathered with friends and walked to appellant’s home at his invitation. Appellant lived with his father and a roommate. When Rebecca arrived, she hugged appellant, who responded by kissing her on the mouth. She pushed him away, testifying “I told him that I didn’t want him like that.” “[H]e said to me[,] why don’t you want me like that? You wanted me like that last year when we were dating.” She replied that she had a new boyfriend and that was the reason for her lack of interest in being anything more than friends.

This exchange occurred outside the house. Rebecca went to appellant’s bedroom. She was followed by appellant a minute or two later. On her way to his bedroom, she heard people talking in the backyard. She sat on appellant’s bed. Appellant kissed her on the lips. Rebecca stood up and tried to push him away, telling him that she wanted to be faithful to her boyfriend. Appellant then kissed Rebecca on the cheek. She reiterated that she “didn’t want to do anything with him like that.”

Appellant, who was taller than Rebecca and weighed about 50 pounds more than her, pushed Rebecca against the wall next to the bed. He placed his hand over her mouth and started removing her clothing. She again resisted, still trying to push him away, but she did not succeed.

Appellant pushed Rebecca to the bed. She demanded he desist, saying “stop” and “no,” but he did not respond. He thrust his penis into her vagina. She complained that it hurt, but, she testified, he said “it’s always going to hurt the first time.” He continued for 10 or 15 minutes before withdrawing. Rebecca did not call for help because she was scared.

Rebecca realized that she was suffering from vaginal bleeding. She dressed quickly and left, returning to the library where she had been visiting with friends before going to appellant’s house. She reencountered her friends but initially did not tell them what had happened, even though one saw blood on her pants.

A friend of Rebecca’s mother arrived at the library to drive Rebecca to his residence. She did not tell him what happened either. She asked, however, to go to a store, where she bought sanitary napkins. They drove to her house, where she changed and placed her blood-stained garments to soak in water. Then they went to his home and she went to sleep. Her mother arrived two hours later.

Rebecca further testified that when her mother Michelle arrived to take her home, she told her she was bleeding copiously. Michelle would later testify that her daughter told her that “she was having a heavy period,” although Rebecca did not remember saying this. At home, Rebecca showed her mother the pants that were soaking in water.

When Rebecca emerged from having taken a shower, her mother saw blood running down her leg and again questioned her. This time Rebecca relented and told her that appellant had raped her. Michelle called the police.

Emily Trenado, a registered nurse assigned to the sexual assault response team (SART) at the Santa Clara County Valley Medical Center, examined Rebecca that night, i.e., on June 8, 2009. Rebecca tearfully told Trenado that she had been sexually assaulted by a former boyfriend in his bedroom during the afternoon. Trenado’s testimony regarding Rebecca’s description of the course of events was consistent with Rebecca’s testimony.

Trenado examined Rebecca's genital area. She had lacerations on her posterior fourchette and in her vagina. Her minor labium was red and tender and her vagina had a number of blood clots. She was in pain and bleeding. A vaginal examination in the emergency room had to be stopped because the pain was too great, and it resumed only when Rebecca was given intravenous morphine and a tranquilizer. Rebecca's vaginal injuries were sufficiently serious to require surgery under general anesthetic, and she had difficulty walking or sitting for five weeks. Her pain also forced Trenado to limit the scope of the SART examination.

The juvenile court had qualified Trenado as an expert in (1) examining a patient following a sexual assault complaint, (2) collecting and preserving evidence from the patient, and (3) determining whether any injuries revealed by the examination were consistent with such an assault. She testified that the injuries to Rebecca's genitalia were consistent with her story. They showed evidence "consistent with a significant trauma with penetration."

On July 3, 2009, police helped Michelle place a phone call to appellant to obtain information. The call was recorded and the recording played in court.

In the call, Michelle claimed, among other things, that Rebecca was pregnant by appellant. This putative pregnancy was a pretext used to prompt appellant to admit that he had had sex with Rebecca. Michelle also accused appellant of raping her daughter.

Appellant emphatically denied Michelle's accusations. He called Rebecca a liar and a "slut," insisted that he had been nowhere near her in June of 2009, and proposed that Michelle was ignorant about her daughter's promiscuity and dishonesty. He told Michelle that the two had had a consensual sexual relationship, which had ended a year ago, but which Rebecca was trying to rekindle. They tried to have intercourse one other time, about three months ago (i.e., around April of 2009), but it was an attempt that "didn't work." On that occasion, Rebecca asked to have intercourse with him. Appellant penetrated Rebecca "for about 2 seconds; she said it hurt to[o] much, . . . and then I

pulled it out” Appellant denied abusing Rebecca in any way and, toward the end of the conversation, called Rebecca a “compulsive liar [who] . . . is still madly in love with me and won’t leave me alone.” “We were alone in my room,” appellant told Michelle regarding their last, unsuccessful attempt at intercourse, and “she said, well, in exact terms, she said, ‘[expletive] me,’ and I said, ‘Uh, Becky, that’s not a good idea.’ And she said, ‘I don’t care, I want you to do it anyway.’ And so as soon as I tried, she said ‘No,’ and I pulled out [I]t couldn’t have been rape.”

Appellant underwent an interview with police that was recorded. The recording was played in court. Appellant’s statements during the interview were consistent with those he made to Michelle. He said that Rebecca asked if she could go to his house. Once they arrived there, she started to kiss him. *He* responded by telling *her* that he was not interested in her; “I don’t like you like that,” he said, and he told her “it would never work out again.”

Appellant initially told police that “[n]ever in my life did I have sex with that girl.” He asked his interrogator, “do you have any genetic proof that I did?” But confronted with his recorded telephone conversation with Michelle, he admitted that they had had a sexual encounter.² Appellant agreed to it as long as it was “casual” and not part of a

² The juvenile court found that this encounter occurred on June 8, 2009, the day that Rebecca went to the hospital, and, as we describe in part III of the case summary, *post*, the court stated that appellant had admitted that the encounter occurred on June 8. In fact, however, appellant did not do so, but maintained in his July 30, 2009, interview with the police that the encounter occurred about four months before, i.e., perhaps late March or early April. Even if the court misunderstood appellant’s statement to police, however, it clearly accepted that the incident occurred on June 8, based on other evidence, including the testimony of Trenado, who examined Rebecca on June 8. Thus, even if the court misunderstood appellant’s testimony about the date of the sexual encounter, its misunderstanding did not have an effect on its decision to sustain the petition.

“relationship.” They had sex briefly, and it was consensual, but appellant withdrew when Rebecca complained that it hurt.

Rebecca testified that she received a voicemail message and two text messages from appellant after his telephone conversation with her mother. In the voicemail, appellant said that if Rebecca was pregnant, he was not “going to be around.” He told her that she was lying and should desist because “he knows people, and he could have me out in an instant.”³

II. *Defense Case*

The defense identified inconsistencies in Rebecca’s accounts of events. She told responding police, for example, that appellant initially penetrated her while she was standing against the wall. On the other hand, she was unequivocal in her testimony at the hearing that she was lying on the bed when he initially penetrated her. She testified, however, that her memory of events was poor at the time of her testimony and her contemporaneous statement to police was likely more accurate. These and other inconsistencies are described in the court’s statement of decision in part III below.

Two friends of Rebecca testified that she was affectionate toward appellant in their presence and appellant did not reciprocate, often fending Rebecca off. One, agreeing with the words of the prosecutor on cross-examination, testified that appellant was a “cool guy,” and before this on direct examination, testified that Rebecca would call attention to her breasts in appellant’s presence and otherwise flirt with him. However, it

³ Appellant admitted the allegations of the other petition, which, although it is a pro forma part of the appeal, is not the subject of any claims on appeal. That petition was based on a police officer’s responding to appellant’s high school on February 15, 2011, to investigate a report that he was selling or attempting to sell alcoholic beverages and marijuana to other students. The officer watched as a school official pulled three marijuana baggies out of appellant’s pocket. Text messages from appellant’s cellular telephone suggested that the substance was for sale.

is unclear from the record whether the witnesses were talking about the year before the incident, at a time when the evidence was that Rebecca was interested in appellant, or about a time closer to the incident. Rebecca told one of the two friend witnesses that when appellant was carrying out the sexual assault, it was occurring in the living room and she was screaming but no one came to her aid.⁴ Rebecca also told this witness that appellant had raped other girls. A housemate in the house of appellant and his father, an adult woman who lived in the bedroom next to appellant's bedroom, testified that she commonly stayed in her room watching television and that would have been true in June of 2009. The housemate did not hear anyone cry for help in appellant's room in that month.

Rebecca testified that she received a voicemail from appellant following her mother's pretext call to him, but Rebecca's telephone records did not show that she received a call from appellant that day.

III. *The Court's Statement of Reasons for Its Decision*

The juvenile court had before it two irreconcilable versions of the encounter. According to appellant, he and Rebecca had a consensual sexual encounter that lasted two seconds, ending when she complained of pain. According to Rebecca, appellant penetrated her against her will and continued the conduct amounting to forcible rape for 10 to 15 minutes.

Faced with these diametrically opposed accounts, the juvenile court found aspects of both appellant's and Rebecca's statements to be questionable, but Rebecca's essential account of being forcibly penetrated by appellant was corroborated by medical records and the testimony of the SART nurse who examined Rebecca at the hospital on the night

⁴ Called as a prosecution rebuttal witness, Rebecca would later deny calling for help.

of the incident. On this basis of this evidence, the court sustained the petition, explaining its reasons for doing so in a statement of reasons, as quoted below.

It said, “Both minors . . . had inconsistencies or actual lies in their statements, and I have considered them. The minor’s [appellant’s] inconsistencies consisted of the fact that he said he never had sex with Rebecca. Then he changed that he had when he was talking to Rebecca’s mother on the pretext call that they did have sex a year ago, and then he said maybe three or four months prior. Finally admitting to sex on the day in question, which is June 8, 2009.^[5]”

“Rebecca had several inconsistencies also[,] starting with the text or phone calls from the defendant after the pretext call. I have reviewed the telephone records[,] which show that the phone calls or texts were before the pretext call. Rebecca indicated that they dated two to four months prior versus four months. She said the breakup was good when her mother indicated that it was not good. Rebecca also said that she and the minor never had intercourse before June 8th, and she had no sexual interest in him.

“Another is whether or not she had a shirt and bra on at the time of the incident versus having only a bra on at the time. Also Rebecca testified that she sat on the bed. The defendant or the minor stood in front of her, then she stood. The minor pushed her against the wall and pulled her over to the bed, and then pushed her onto the bed, and that was changed to indicate that they had sex first standing up. Then she was picked up and put on the bed and sex was continued there.

“So despite the inconsistencies, the weight was given more to the testimony of the sexual assault response team nurse She was qualified as an expert and there was no contradiction of her testimony or her opinions. She testified that in her opinion . . . there

⁵ But see *ante*, page 6, footnote 2.

was significant trauma with penetration, blunt force injury or injury consistent with blunt force. The tears were from lack of lubrication.

“The history provided by the patient in her opinion is consistent with her findings from the physical examination, specifically, the type of injuries, the location of the injuries, and the extent of the injuries. And she stated that her findings were consistent with significant trauma and penetration and blunt force injury.

“I went through all of the medical records in detail. I examined the entries . . . from the pelvic exam. [The examining physician] indicated that there were small lacerations at the left lateral vaginal wall, and that laceration was many [*sic*: probably maybe] two centimeters and then a large laceration at the right lateral vaginal wall which was three centimeters. The vagina was actually full of blood but there was little active bleeding after the matter was sent back to emergency from the SART nurse and both wounds were sutured.

“The bottom line is that both Rebecca and the minor indicated that they did have sex on the day in question, which was June 8, 2009,^[6] and the medical records and the testimony of the SART nurse are uncontradicted, so that the inconsistencies in Rebecca’s testimony do not outweigh her basic testimony of what happened. Those are the reasons for my decision, and as I said I did consider that both had many inconsistencies.”

The juvenile court declared appellant to be a ward of the court and ordered him to remain detained.

⁶ But see *ante*, page 6, footnote 2.

DISCUSSION

I. *Claims Arising out of Juvenile Court's Failure to Declare That Appellant Knew the Wrongfulness of His Act*

Appellant claims that the juvenile court erred by failing to find that he knew the wrongfulness of his act within the meaning of Penal Code section 26, that such wrongfulness must be found beyond a reasonable doubt, and that the evidence is insufficient to establish his knowledge that he was acting wrongfully.

A. *Juvenile Court's Failure to Make the Required Finding Expressly*

A person under age 14 is presumed to be unaware of the wrongfulness of his or her act. (Pen. Code, § 26, subd. 1.)⁷ “Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated the criminal law should he be declared a ward of the court under [Welfare and Institutions Code] section 602.” (*In re Gladys R.* (1970) 1 Cal.3d 855, 867.) This is a rebuttable presumption; it may be rebutted by clear and convincing evidence that the minor appreciated the wrongfulness of his act. (*In re Manuel L., supra*, 7 Cal.4th at pp. 233-234, 238.)⁸

“In determining whether the minor knows of the wrongfulness of his conduct, the court must often rely on circumstantial evidence such as the minor’s age, experience, and understanding, as well as the circumstances of the offense, including its method of commission and concealment.” (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

⁷ Penal Code section 26 provides in pertinent part:

“All persons are capable of committing crimes except those belonging to the following classes:

“One—Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.”

⁸ Appellant disagrees that this evidentiary standard remains valid following later United States Supreme Court decisions; we will discuss that claim below.

The record bears out appellant's contention that the juvenile court failed to record an express finding that he knew the wrongfulness of his act within the meaning of Penal Code section 26. The court failed to check a box on the form sustaining the petition that would confirm a finding that appellant knew his act was wrongful. Nor did the court say anything about the topic at the hearing at which it sustained the petition.

An implied finding will, however, satisfy the section 26 requirement if supported by substantial evidence. (*In re Terry M.* (1997) 59 Cal.App.4th 289, 297-298; see *In re Cindy E.* (1978) 83 Cal.App.3d 393, 399.) The juvenile court stated during the hearing at which it sustained the petition that it was finding beyond a reasonable doubt that appellant committed an act that, if committed by an adult, would constitute felonious (see Pen. Code, §§ 17, subd. (a), 264, subd. (c)(2)) forcible rape.

"It is difficult to conceive how the court could be convinced beyond a reasonable doubt that appellant actually had criminal intent, if the court was not also equally convinced that appellant had the capacity to have such intent" (*In re Cindy E.*, *supra*, at p. 399), i.e., knew the wrongfulness of his acts. That observation applies here. The court heard different versions of the incident from appellant and Rebecca. Both had questionable aspects, but Rebecca testified that she resisted physically and ordered appellant to stop his assault, and it is inconceivable that she could have engaged in this sexual encounter without protest, giving appellant notice that his acts were wrongful, in light of objective evidence that it caused pain, left her visibly bleeding and seriously injured, and required that she undergo surgery. In addition, she testified that the assault left her unable to walk or sit comfortably for five weeks.

Appellant acknowledges that the medical evidence and SART nurse's testimony could show a "general intent to use force" to have intercourse with Rebecca, but maintains it "is not probative of appellant's knowledge of wrongdoing."

With regard to acts of forcible intercourse, forcible rape committed by an adult is a general intent crime. (*People v. Warner* (2006) 39 Cal.4th 548, 557.) It is one of "certain

sexually based offenses” that “require a showing of only general intent, that is, the intent to commit an act ‘without reference to intent to do a further act or achieve a future consequence.’” (*Ibid.*) “[T]he intent to sexually penetrate the victim and the intent to accomplish that act by force or fear” (*People v. Burnham* (1986) 176 Cal.App.3d 1134, 1140) are all that would be required in the case of an adult offender, regardless of whether the actor had “the intention to violate the law.” (*Ibid.*)

Two considerations arise from these principles. First, knowledge of illegality is not required of an adult, so it was not required to sustain the petition against appellant either. Second, regarding the separate requirement of Penal Code section 26 about knowledge of wrongfulness, appellant insists that the juvenile court “discounted Rebecca’s inconsistent testimony regarding how she was raped,” but to the extent this may be true, evidence of the manner of the assault came not only from Rebecca herself but from her mother Michelle and the SART nurse, Trenado. Trenado testified that Rebecca told her, while in extremis in the hospital, “that she had been held down” by appellant. Michelle testified that Rebecca “told me that she had sex against her will.” Thus, appellant’s argument about discounting Rebecca’s inconsistent testimony fails to persuade.

Also unavailing is appellant’s argument that “[i]t would manifestly frustrate the intent of [the knowledge-of-wrongfulness requirement of subdivision 1 of] Penal Code section 26 to infer such knowledge from the bare commission of the act itself.” (*In re Tony C.* (1978) 21 Cal.3d 888, 900.) But the next sentence of *Tony C.* qualifies its predecessor: “Yet for this purpose reference may properly be made to the attendant circumstances of the crime, such as its preparation, the particular method of its commission, and its concealment.” (*Ibid.*) Rebecca testified that appellant physically subdued her, pushing her against a wall, placing his hand over her mouth, and removing her clothing before engaging in forcible intercourse. The record offers no reason to doubt the veracity of that part of her testimony, whatever may be said about other parts.

Appellant would not have subdued Rebecca against her will if he thought he was doing no wrong.

B. *Evidentiary Standard Required for Knowledge-of-Wrongfulness Finding*

As noted, appellant argues that under *Apprendi v. New Jersey*, *supra*, 530 U.S. 466, knowledge of wrongfulness must be found beyond a reasonable doubt, rather than by the clear and convincing standard the court would have applied under the holding of *In re Manuel L.*, *supra*, 7 Cal.4th 229. This argument lacks merit.

First, it appears to us that the juvenile court’s implicit finding was made under the beyond-a-reasonable-doubt standard. Here, as in *Cindy E.*, “[a]lthough the court did not separately state the measure of proof applied to this issue”—or make an express finding on Penal Code section 26 at all—“the record reveals that the court found the allegations in the petitions, which included allegations that appellant had the requisite criminal intent, to be proved beyond a reasonable doubt.” (*In re Cindy E.*, *supra*, 83 Cal.App.3d at p. 399.) *Cindy E.* concludes that by making a finding on intent under the beyond-a-reasonable-doubt standard, the juvenile court was making the implied wrongfulness–section 26 finding under the same standard. That is our view in this case.

Second, even if *Apprendi* raises the possibility that the section 26 wrongfulness finding must be made under the beyond-a-reasonable-doubt standard, *Manuel L.* held that the applicable evidentiary gauge is the clear and convincing evidence standard. Applying *In re Winship* (1970) 397 U.S. 358, whose holding is one piling of the *Apprendi* legal foundation (see *Apprendi*, *supra*, 530 U.S. at pp. 477 & fn. 3, 484-485), *In re Jerry M.* (1997) 59 Cal.App.4th 289 rejected an argument similar to appellant’s. In *Jerry M.*, the appellant argued that “section 26 adds an element to the offense which must be proved beyond a reasonable doubt as required by *In re Winship* (1970) 397 U.S. 358, 364. The identical argument was made to and rejected by the *Manuel L.* court [citation], and we may not disregard controlling authority from our Supreme Court.” (*Id.* at p. 298, fn. 7.)

Since the time *Jerry M.* was decided, our Supreme Court has limited the scope of the rule of *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, which requires us to follow our high court's decisions, by stating: "Lower courts may decide questions of first impression, including the effect that subsequent events, such as a United States Supreme Court decision, have on decisions from a higher court, including this one." (*People v. Johnson* (2012) 53 Cal.4th 519, 528.) But we should not depart from California Supreme Court precedent lightly. The following statement in *In re Manuel L.*, *supra*, 7 Cal.4th at page 238, appears to us to remain valid following *Apprendi*: "[C]riminal capacity is not an element of the offense and thus is not the type of fact of which *In re Winship* requires proof beyond a reasonable doubt. Rather, it is akin to the question of sanity, which due process does not require the prosecution to prove beyond a reasonable doubt." Far from any such requirement, the entire burden of persuasion regarding sanity may, consistent with the due process guaranties of the Fifth and Fourteenth Amendments, rest with a criminal defendant rather than the state (*Clark v. Arizona* (2006) 548 U.S. 735, 771 ["a State may place a burden of persuasion on a defendant claiming insanity"]) and this is the rule in California (*People v. Hernandez* (2000) 22 Cal.4th 512, 521). Given that it appears that the juvenile court had in mind the beyond-a-reasonable-doubt standard for its implicit section 26 finding, we need not question the teaching of *Manuel L.*

C. *Weighing the Evidence*

Appellant argues that the juvenile court improperly applied a standard akin to preponderance of the evidence in finding the petition's allegations true, rather than the required beyond-a-reasonable-doubt standard (Welf. & Inst. Code, § 701; *In re Roderick P.* (1972) 7 Cal.3d 801, 809). "Specifically," he argues, the court "considered the inconsistencies in Rebecca's testimony and 'weighed' [*sic*: the court said it gave "weight" to] it against the uncontradicted evidence of the SART nurse's testimony and medical records. In the end, the court found the allegations true because it gave 'more'

weight to the medical evidence than Rebecca's inconsistent testimony. This weighing process, however, is 'wholly foreign to the concept of proof beyond a reasonable doubt.' (*People v. Garcia* (1975) 54 Cal.App.3d 61, 69 (*Garcia*)."

The juvenile court expressly stated that it found beyond a reasonable doubt that appellant had committed the conduct that justified sustaining the petition. Weighing the evidence by considering the credibility of witness accounts in the course of reaching that conclusion, as any trier of fact must do, did not deviate from the beyond-a-reasonable-doubt standard. As the People observe, the reasonable doubt standard is "not pertinent to the appraisal of the testimony of a witness." (*People v. Shannon* (1956) 147 Cal.App.2d 300, 306.)

The People argue that *Garcia*, *supra*, 54 Cal.App.3d 61, is distinguishable, but we think it suffers from more fundamental problems and find it unpersuasive. The trial court in that case erred by announcing a nonstandard definition of the meaning of reasonable doubt in a jury instruction. It told the jury, " 'In other words, reasonable doubt means just what the term implies, doubt based upon reason, doubt that presents itself in the minds of reasonable people who are weighing the evidence in the scales, one side against the other, in a logical manner in an effort to determine wherein lies the truth.' " (*Id.* at p. 68; see *People v. Rodgers* (1940) 38 Cal.App.2d 360, 364-365 [approving of this language].)

Garcia accurately noted that "[w]ell intentioned efforts to 'clarify' and 'explain' these criteria have had the result of creating confusion and uncertainty, and have repeatedly been struck down by the courts of review of this state." (*Garcia*, *supra*, 54 Cal.App.3d at p. 63.) But in our view, *Garcia* overreacted to these errors by stating that it disapproved of the clause " 'weighing the evidence in the scales, one side against the other, in a logical manner in an effort to determine wherein lies the truth.' " (*Id.* at p. 68.) As appellant notes, *Garcia* concluded that "This 'weighing' process, where a tipping of the scales determines the 'truth,' is wholly foreign to the concept of proof beyond a reasonable doubt." (*Id.* at p. 69.) But in fact, and as noted, weighing the evidence is

what triers of fact are called upon to do in deciding whether the prosecution has established every element of a charged crime (or an allegation in a delinquency petition) beyond a reasonable doubt to the trier of fact's satisfaction. We agree with *Garcia* that tinkering with the definition of reasonable doubt is likely to cause problems, but disagree with its discussion regarding the weighing of evidence.

For the foregoing reasons, appellant's claim is without merit.

D. *Sufficiency of the Evidence*

Appellant claims there was insufficient evidence to sustain the petition and, we discern from his argument, he also claims that the adjudication violates his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

“In reviewing a criminal conviction challenged as lacking evidentiary support, ‘the 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.’ [Citation.]” (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) These principles apply to a juvenile adjudication. (*In re Roderick P.*, *supra*, 7 Cal.3d at p. 809.)

The juvenile court's largely accurate⁹ summation of the evidence suffices to dispense with appellant's claim. As stated, the court considered two irreconcilable versions of the encounter. In appellant's version, he and Rebecca had a consensual sexual encounter that lasted two seconds, ending when she complained of pain. In her version, appellant penetrated her against her will and continued the conduct amounting to forcible rape for 10 to 15 minutes. The medical evidence, combined with major aspects of the victim's statements about the sexual encounter that took place, constitutes substantial

⁹ But see *ante*, page 6, footnote 2.

evidence in support of the court's determination that the latter version occurred and suffices to sustain the adjudication against appellant's due process challenge.

II. *Missing Knowledge Element in Probation Condition*

Appellant contends that one of the probation conditions imposed by the juvenile court was unconstitutionally vague and overbroad because it lacks a knowledge requirement. The People agree that the condition should be modified.

The juvenile court imposed the following requirement in probation condition No. 24: "That said minor not be within his arm's reach of any minor twelve years of age or under in any non-public place unless he is under competent adult supervision and is within the sight or hearing range of that adult." Appellant argues that this provision, strictly followed, could sanction him for associating with someone whose age he does not know.

" 'A probation condition is subject to the "void for vagueness" doctrine'" (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1070.) " 'The underlying concern' " of the void for vagueness doctrine " 'is the core due process requirement of adequate *notice*: [¶] " 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.' [Citations.]" ' " (*Ibid.*, quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115; accord, *In re Sheena K.* (2007) 40 Cal.4th 875, 890.) In sum, "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*In re Sheena K.*, *supra*, at p. 890.)

As for overbreadth, "[a] probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Appellant argues that the constitutional right violated here is what he

discerns to be his constitutionally protected freedom of association. (See *People v. Kim* (2011) 193 Cal.App.4th 836, 843.)

Without necessarily agreeing with appellant that any constitutionally protected associational rights extend to situations that this probation condition seeks to avoid, we conclude that it is constitutionally dubious to subject him to a probation condition that he could unwittingly violate by associating with someone without knowing that the person is 12 years old or younger. We will modify the condition to read: “That the minor not be within his arm’s reach of any other minor he knows or reasonably should know is 12 years old or younger in any nonpublic place unless he is under competent adult supervision and is within the sight or hearing range of that adult.”

DISPOSITION

The part of the juvenile court’s judgment that reflects probation condition No. 24 is modified to read as follows: “24. That the minor not be within his arm’s reach of any other minor he knows or reasonably should know is 12 years old or younger in any nonpublic place unless he is under competent adult supervision and is within the sight or hearing range of that adult.”

With the foregoing modification of the probation condition, we affirm the judgment.

Márquez, J.

WE CONCUR:

Premo, Acting P. J.

Mihara, J.