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

In re A.V., a Person Coming Under the
Juvenile Court Law.

H037375
(Monterey County
Super. Ct. No. J45728)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.V.,

Defendant and Appellant.

The juvenile court sustained a petition that the minor, A.V., stabbed a man and thereby engaged in conduct constituting aggravated assault. It placed her on juvenile probation and sent her to a group home with her baby. On appeal, she claims that there was no substantial evidence to sustain the petition and that the court misunderstood certain legal principles and did not apply them correctly to the facts. She also claims that the court should have considered declaring her to be a juvenile dependent rather than a juvenile delinquent.

We find no merits to these claims and will affirm the order.

PROCEDURAL BACKGROUND

The juvenile court sustained a petition adjudicating the minor as committing conduct that, if committed by an adult, would constitute assault with a deadly weapon and assault by means of force likely to produce great bodily injury (Pen. Code, former § 245, subd. (a)(1); Stats. 2004, ch. 494, § 1, p. 4040)¹ and the infliction of great bodily injury (§ 12022.7, subd. (a)). After a contested hearing, the court declared the minor to be a ward of the court, ordered her to be removed from the home (she had already spent 73 days in juvenile hall at this time), and placed her on probation subject to various conditions. The minor was sent to a group home in Visalia (Tulare County) that could accommodate her and her baby.

FACTS

I. *Prosecution Case*

The minor, A.V., was 17 years old at the time of the incident. She lived in crowded quarters in King City. Among the two-story apartment's 10 residents was the victim, a 28-year-old named, according to differing accounts in the record, Adrián de Jesús Ramírez or Adrián Ramírez de Jesús. The minor was four feet eight inches tall but, at 158 pounds, outweighed the five-foot-tall Ramírez by 18 pounds.

Most of the prosecution's case rested on the testimony of Ramírez's wife, Ramírez himself being outside the court's jurisdiction in Mexico at the time of the juvenile delinquency hearing.

Ramírez's wife was upstairs when she heard a scream coming from the first story. She ran downstairs and found the minor rummaging through a kitchen drawer. She was complaining that Ramírez had hit her. Ramírez was standing nearby.

Ramírez's wife agreed with the prosecutor that, in the prosecutor's words, the minor said, "[w]ait until you see what I'm going to do to you." She continued by asking,

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

“Why did you hit me?” She had a cut on the interior of her lip and two scratches on one arm, one of which was two inches long.

The two then charged toward each other and Ramírez grabbed the minor’s shoulders. Against the wife’s urging “not to do anything,” the minor wriggled out of Ramírez’s grip and stabbed him with a steak knife. The knife had a serrated four and a half-inch-long blade.

Ramírez yelled in pain, lifted his shirt to examine his wounds, and retreated to the front door, which he struggled to open. The minor followed him, knife in hand, saying, “I’m tired of you.” Ramírez’s wife dissuaded her from continuing the attack. She agreed with the prosecutor that the minor said, in the prosecutor’s words, “you’ve already stabbed him. What are you trying to do, kill him?”

Ramírez managed to open the door. A King City police officer, responding to a report of a man down, found him lying in the street. An ambulance transported him to a local hospital, which airlifted him to a hospital in Fresno, where he was hospitalized for about five days and underwent surgery.

Ramírez’s wife also testified that the minor had once encountered her in a distressed state after Ramírez had attacked her while drunk, kicking her and pulling her hair. The minor falsely told Ramírez that the neighbors had called the police to report that his wife was crying.

II. *Defense Case*

The minor testified on her own behalf. Ramírez was drunk on the day of the incident, although her testimony was unclear whether he was drunk at the time of the incident. As the minor was cleaning her daughter’s baby bottles, Ramírez “said that I was a slut just like my sister.” “I ignored him and he grabbed my arm and threw me to the ground.” Then he punched her twice, once in the mouth and once on her head. She screamed. Her sister arrived in the kitchen as she was stabbing Ramírez.

“I just got the knife and I stuck it in him,” the minor testified. “First I stabbed him . . . just one time. That is when my sister came in. That is when I gave him another one, I think.” He was able to make minor physical contact with the minor—“[j]ust a little because my sister got in between [us].” Despite her sister’s intervention, the minor feared that Ramírez might continue to hit her. Instead, however, Ramírez fled the house.

“[M]e and my sister went outside,” the minor continued. “We went to chase him. We saw that many people were gathering” where Ramírez lay on the ground.

The minor further testified that she had seen Ramírez attempt to assault his wife once before. “I got between the two of them” to stop him, she explained.

On cross-examination, the minor testified that Ramírez did not knock her down with his punches. She denied rummaging through the kitchen drawer for a knife; instead, she grabbed one that was handy, “next to the sink.” “The truth is that I was not very, very angry” at the time, but only “a little angry about what he had said to me.” Ramírez had no weapon.

III. *Prosecution Rebuttal Case*

Contrary to the minor’s testimony that Ramírez threw her to the ground, a police officer testified that the minor told him she fell after Ramírez punched her.²

IV. *The Court’s Statement of Reasons for Its Decision*

The juvenile court explained its reasons for sustaining the petition, declaring the minor to be a ward of the court, and ordering her to remain detained. It stated that Ramírez’s wife “was a very credible witness.” Conversely, it found the minor’s testimony about the incident largely not credible.

² The hearing produced evidence that Ramírez picked up a chair at some point and either he threw it to the floor or the minor’s sister pushed it away from him. It does not appear that Ramírez used the chair to attack the minor, but she testified that she was afraid he might and so stabbed him.

The juvenile court further stated that it “truly believes” Ramírez’s wife’s testimony that the minor said to Ramírez, “wait until you see what I’m going to do to you. [¶] And so it indicates that some preplanning as to what was going to occur here, and this was after [A.V.] had armed herself with the knife.” The court found “that [A.V.] had a right to respond somehow.” It determined, however, that she “didn’t reasonably believe that she was in immediate danger of being touched again unlawfully, [and] secondly, the actions and the statement prove beyond a reasonable doubt that she did use more force than was necessary to defend against the danger.”

The juvenile court believed that the minor had demanded of Ramírez, “why did you hit me?” but stated that only “if that statement had been why did you swing the knife at me or why did you use some other object or some deadly or dangerous weapon against me, the Court might have a different finding. [¶] But it’s clear that there was no use of a dangerous or deadly weapon by the alleged victim and [A.V.] escalated things”

Finally, the juvenile court found sufficient evidence to find that the minor inflicted great bodily injury within the meaning of subdivision (a) of section 12022.7.

DISCUSSION

I. Sufficiency of the Evidence

The minor claims that the evidence was insufficient to sustain the juvenile delinquency petition.

In considering this claim, we incorporate the minor’s second claim on appeal, i.e., that the juvenile court did not understand or misapplied the law of self-defense and mutual combat and did not give sufficient weight to Ramírez’s prior assaultive conduct involving third parties. The two claims are best considered in tandem.

This is a close case, but after giving careful consideration to all of the circumstances set forth in the record, we conclude that the minor’s various assertions lack merit.

“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.* (1972) 7 Cal.3d 801, 809.)

The elements of the charged conduct are self-defining and do not require explication (see *People v. Herd* (1963) 220 Cal.App.2d 847, 849-850): the minor must have “commit[ted] an assault . . . with a deadly weapon or instrument other than a firearm” (§ 245, former subd. (a)(1); Stats. 2004, ch. 494, § 1, p. 4040) and “commit[ted] an assault . . . by any means of force likely to produce great bodily injury” (*ibid.*).

A knife is not a dangerous or deadly weapon as a matter of law (see *People v. Herd, supra*, 220 Cal.App.2d at p. 850), but it becomes “an inherently deadly weapon” “when used in such a manner as to cause severe bodily injury” (*ibid.*). “ “ “ ‘There are, first, those instrumentalities which are weapons in the strict sense of the word, and, second, those instrumentalities which are not weapons in the strict sense of the word, but which may be used as such. The instrumentalities falling in the first class, such as guns, dirks and blackjacks, which are weapons in the strict sense of the word and are “dangerous or deadly” or others in the ordinary use for which they are designed, may be said as a matter of law to be “dangerous or deadly weapons.” This is true as the ordinary use for which they are designed establishes their character as such. The instrumentalities falling into the second class, such as ordinary . . . objects [that] are not weapons in the strict sense of the word and are not “dangerous or deadly” to others in the ordinary use for which they are designed, may not be said as a matter of law to be “dangerous or deadly weapons.” When it appears, however, that an instrumentality other than one falling within the first class is capable of being used in a “dangerous or deadly” manner,

and it may be fairly inferred from the evidence that its possessor intended on a particular occasion to use it as a weapon should the circumstances require, we believe that its character as a “dangerous or deadly weapon” may be thus established, at least for the purposes of that occasion.’ ” [Citations.]’ ” (*People v. Henderson* (1999) 76 Cal.App.4th 453, 467-468.)

The juvenile court thus properly found the steak knife to be a deadly weapon in light of the evidence adduced during the hearing, and as stated, although the case is close, there was sufficient evidence of the other elements of the crimes as well.

Citing *People v. Banks* (1976) 67 Cal.App.3d 379, 383-384, the People state on appeal that the government must prove beyond a reasonable doubt that an actor does not act in lawful self-defense. We note that *Banks* is a homicide case, not one concerning any form of assaultive conduct. Nevertheless, assuming for purposes of argument that the government had the burden to prove beyond a reasonable doubt that the minor did not act in self-defense, it did so here to the satisfaction of constitutional due process requirements.

Self-defense is, as the juvenile court alluded to, an available complete defense if the actor “ ‘actually and reasonably believe[s] in the necessity of defending oneself from imminent danger of death or great bodily injury. [Citation.]’ [Citation.] The danger must be imminent; mere fear that it will become imminent is not enough.” (*People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305, italics deleted [considering a claim that the actor killed in self-defense].) Significant here, although an actor “is not required to retreat and may in fact pursue the assailant until the danger of injury or unlawful touching has passed [citations], [the actor] may use force only as long at the danger exists or reasonably appears to exist.” (*People v. Clark* (2011) 201 Cal.App.4th 235, 250.) In other words, when an actor cannot reasonably or does not actually continue to “entertain the belief that [the victim] constituted an *imminent* and *deadly* peril to him,” the actor’s

“right to use deadly force in self-defense end[s] at that moment.” (*People v. Hardin* (2000) 85 Cal.App.4th 625, 634, fn. 7.)

Ramírez had slightly injured the minor and when she grabbed a knife and said she would show him the consequences of his conduct, a rational trier of fact could conclude that she was bent on revenge, not self-defense, which the juvenile court apparently did with its reference to the minor’s “preplanning.” In fact, under the principles described above, once the minor had the knife and said in effect that Ramírez could expect to pay for his conduct, *he* was “not required to retreat and [could] in fact pursue the assailant until the danger of injury or unlawful touching has passed” (*People v. Clark, supra*, 201 Cal.App.4th at p. 250.) That a rational trier of fact could find that the minor was bent on revenge, not self-defense, is buttressed by the fact that she pursued him to the front door after he had ceased to be any threat to her, causing her sister to feel the need to talk her out of continuing the attack.

Our Supreme Court recently made some observations that we find apt. An actor’s “persistence in pursuing a violent confrontation . . . is significant. The decision to abandon a conflict is an important one in the law. Doing so may indicate a lack of criminal intent. A refusal to do so may reflect the required mens rea. Here, [the actor] had many opportunities to walk away from the conflict but relentlessly refused to do so.” (*People v. Gonzalez* (2012) 54 Cal.4th 643, 659, fn. omitted.) A rational trier of fact could so note here too. Ramírez was not attempting to reengage the minor when she grabbed the knife. We note her argument that she was cornered in the kitchen with no means of escape before she knifed Ramírez. Accepting the truth of that assertion—the augmented clerk’s transcript and other portions of the record seem to establish its accuracy—it remains that with knife in hand she moved toward Ramírez as he moved toward her and he placed his hands on her shoulders, but before she stabbed him she had managed to wriggle out of his apparently feeble hold. (It may be recalled that he was barely taller than her and weighed less, although as a male he could be expected to be

stronger per unit of body weight.) Even if she was initially cornered in some sense, she appeared to be both sufficiently lacking in fear and sufficiently strong to announce her intentions, move toward him, elude his grasp, stab him, and then pursue him out of the kitchen in what a rational trier of fact could interpret as a desire to keep stabbing him despite injuries serious enough that he could not manage at first to open the front door. As the juvenile court hinted at in announcing its ruling, the case is close, but the evidence does suffice to protect the adjudication from the minor's due process challenge.³

II. *Cumulative Error*

The minor claims that her due process right to a fair trial under the Fifth and Fourteenth Amendments to the United States Constitution was violated because of the cumulative effect of the juvenile court's errors.

A claim of cumulative error is in essence a due process claim and is often presented as such (see, e.g., *People v. Rogers* (2006) 39 Cal.4th 826, 911). “The ‘litmus test’ for cumulative error ‘is whether defendant received due process and a fair trial.’” (*People v. Cuccia* (2002) 97 Cal.App.4th 785, 795.)

Taking all of the minor's claims into account, we are satisfied that she received a fair adjudication. In the adult criminal context, it has been held that “[d]efendant was entitled to a fair trial but not a perfect one.” (*People v. Cunningham* (2001) 25 Cal.4th 926, 1009.) The same may be said of a juvenile disposition that deprives a minor of her liberty. We deny her claim.

³ The minor engages in discussions of such matters as the law of mutual combat and the fact of Ramírez's violent history. She insists that the juvenile court misapplied or misunderstood such legal or factual matters. We do not perceive the court to have misled itself as she argues, but in any event, its disposition was correct. “‘[I]t is axiomatic that we review the trial court's rulings and not its reasoning.’” (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336.) “‘An appellate court reviews judgments, not the reason which may be given in their support.’” (*Continental Ore Co. v. Union Carbide and Carbon Corp.* (9th Cir. 1961) 289 F.2d 86, 89, vacated on other grounds (1962) 370 U.S. 690, 710; see *id.* at p. 696.)

III. Failing to Consider Whether The Minor Should Be Treated as a Dependent

The minor claims that the juvenile court erroneously failed to determine whether her case should have proceeded under dependency or delinquency laws pursuant to Welfare and Institutions Code section 241.1. This contention, too, is without merit.

The minor argues that the juvenile court had a mandatory legal duty to investigate the possibility that she should be treated as a juvenile dependent rather than a juvenile delinquent and seemed to be unaware of its obligation. She argues that although her counsel did not ask the court for such an investigation, she may raise the claim at any time.

The minor bases this claim on assertions that she was sexually abused by Otelio Ramírez, the victim's brother, causing her to give birth at age 15 and placing her within the ambit of the sexual abuse provision contained in subdivision (d) of Welfare and Institutions Code section 300, and that the violent history of the victim, Adrián Ramírez de Jesús, on the premises left her unprotected, placing her within the failure-to-protect provision contained in subdivision (b) of Welfare and Institutions Code section 300. Both of these are protective juvenile dependency provisions.

Subdivision (a) of Welfare and Institutions Code section 241.1 provides in pertinent part:

“Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol . . . , initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor.”

The People do not argue that this claim is forfeited. We shall proceed to the merits. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7.)

Assuming for discussion purposes that the statute imposes a mandatory duty, by its own terms an assessment is required only “[w]henver a minor appears to come within the description of both Section 300 and Section 601 or 602” (Welf. & Inst. Code, § 241.1, subd. (a).) We agree with the People that whatever risks Otelio Ramírez and Adrián Ramírez de Jesús may once have posed, they no longer posed any at the time of the disposition hearing. Otelio Ramírez had been deported to Mexico for violating section 261.5, unlawful sexual intercourse with a minor—the very conduct that led to the minor’s pregnancy. The record discloses no prospect of his return for a long time. As for Adrián Ramírez de Jesús, he had removed himself to Mexico, apparently voluntarily, at the time of the disposition hearing. Although at the disposition hearing counsel for the minor stated that Adrián Ramírez de Jesús might return in “ a couple of months, perhaps,” there was no reliable information regarding his plans—counsel added that “he’s perhaps ill, and her sister might be moving to Mexico instead of him coming back.”

To be sure, and as the minor points out, subdivisions (b) and (d) of Welfare and Institutions Code section 300 both include within their ambit instances of past abuse as well as the risk of current abuse. The practical reality, however, is that the minor, who was born on April 27, 1994, was within eight months of adulthood at the time of the disposition hearing—indeed, she is an adult now—and the two males who could conceivably pose any continued dangers to her had left the country, by personal choice or the actions of the federal government. And she had contemplated and purposefully committed a life-threatening violent act that caused serious injury. It is thus not surprising that neither the juvenile court nor the parties contemplated a Welfare and Institutions Code section 241.1 investigation. The need for it was not apparent. We find no merit in the minor’s claim.

DISPOSITION

The order is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.