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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.C., a Person Coming Under the Juvenile Court Law.	B290206 (Los Angeles County Super. Ct. No. YJ39326)
THE PEOPLE, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. J. Christopher Smith, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, Supervising Deputy Attorney General, and John Yang, Deputy Attorney General, for Plaintiff and Respondent.

J.C. appeals from an order of the juvenile court sustaining a delinquency petition pursuant to Welfare and Institutions Code section 602 following a contested adjudication. The three-count petition filed against appellant, a 17-year-old minor, alleged two counts of assault with a deadly weapon (Pen. Code,[1] § 245, subd. (a)(1); counts 1 and 3) and one count of making a criminal threat (§ 422, subd. (a); count 2). Appellant contends the juvenile court's true finding on count 1 based on appellant's use of a baseball bat as a deadly weapon lacks substantial evidentiary support. We disagree and affirm.

FACTUAL BACKGROUND

Shortly after 3:20 p.m. on August 25, 2017, Brian O. and his sister Johanna were walking home from school. In the area of 51st Street and Normandie Avenue, appellant and three other boys ran up behind them. Brian and Johanna recognized appellant from school.

Appellant, who was carrying a baseball bat, called Brian a "punk." Appellant asked Brian if he was from a gang and if he was friends with "Damian." When Brian acknowledged he was friends with Damian, appellant accused Brian of being in a gang based on the friendship with Damian. Appellant and his companions made some reference to the 18th Street gang and made hand signs that Brian believed signified the 18th Street gang. They told Brian "they were going to get [him]" and "stab" him.

Appellant struck Brian with the bat, swinging it from his right shoulder downward across his body. The blow hit Brian on

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[1] Undesignated statutory references are to the Penal Code.

the back of his left leg just below his buttocks, knocking him to the ground. As Brian fell, he grabbed Johanna's arm causing her to fall with him. Appellant and his cohort then ran away, jumping into a car and driving away.

Brian went to the hospital. His leg was swollen, purple and bruised.

Brian and Johanna's descriptions of the bat differed as to its size. According to Brian, the bat was smaller than a normal bat used in a baseball game. Made of wood, it was approximately two to three feet long, and two to three inches in diameter. Johanna described the bat as "[a] normal bat," and estimated it to be three to four feet long.

The same afternoon, appellant and several companions assaulted Damian B. as he was walking home from school. Near the intersection of 53rd Street and Vermont Avenue Damian saw appellant and several other boys exit a parked car and walk toward him. Appellant and one of the other boys said, " 'Now you're going to see what's going to happen to you.' " Damian was afraid and began to run away, but appellant and the others followed in their car and caught up to Damian when he fell. From about 20 feet away, one of appellant's companions threw a knife at Damian, missing him by a foot. At the same time, one of the car's other occupants took a gray revolver out of his waistband, "[a]cting like he wanted to shoot it." Damian ran into a market for safety and called the police and his aunt.

DISCUSSION

1. Standard of review

The standard of appellate review for determining the sufficiency of the evidence supporting a juvenile court criminal judgment is the same as in an adult criminal proceeding. (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1518; *In re Matthew A.* (2008)

165 Cal.App.4th 537, 540.) " 'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains 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.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*People v. Maciel* (2013) 57 Cal.4th 482, 514–515.)

It is not the role of the appellate court to reweigh the evidence or reevaluate witnesses' credibility. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 200; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Indeed, "[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

Appellant contends there is "no evidence" the bat was used in a manner that would qualify it as a deadly weapon under section 245, subdivision (a)(1). We are guided in our consideration of this issue by the recent opinion of our Supreme Court in *In re B.M.* (2018) 6 Cal.5th 528 (*B.M.*). Applying the court's analysis in *B.M.* to the facts of this case, we conclude substantial evidence supports the juvenile court's finding.

2. In re B.M.

The 17-year-old minor, B.M., found herself locked out of her family's home after a night away. B.M. climbed in through a window and went to her sister Sophia's room to confront her about why the locks had been changed. After yelling and throwing a phone at Sophia, B.M. grabbed a butter knife[2] from the kitchen and returned to Sophia's bedroom. Sophia was lying on top of her bed wearing only a towel. When she saw B.M. approach with the knife she covered herself with a blanket. From a distance of about three feet B.M. made several downward slicing motions with the knife near Sophia's legs. Although the knife hit Sophia's legs a few times, it did not pierce the blanket and she suffered no injury. (*B.M.*, *supra*, 6 Cal.5th at p. 531.)

The juvenile court found that B.M.'s use of the butter knife violated section 245, subdivision (a)(1), and the Court of Appeal rejected B.M.'s substantial evidence challenge to the juvenile court's finding. Concluding that the evidence was insufficient to sustain a finding that the butter knife was used as a deadly weapon, the Supreme Court reversed the judgment. The court held, "for an object to qualify as a deadly weapon based on how it was used, the defendant must have used the object in a manner not only capable of producing but also *likely to produce* death or great bodily injury. The extent of any damage done to the object and the extent of any bodily injuries caused by the object are appropriate considerations in the fact-specific inquiry required by

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[2] The knife was about six inches long with a three-inch blade, a dull tip, and a slightly serrated edge. Both B.M. and Sophia described it as a "butter knife." (*B.M.*, *supra*, 6 Cal.5th at pp. 530–531.)

section 245(a)(1). But speculation without record support as to how the object could have been used or what injury might have been inflicted if the object had been used differently is not appropriate." (*B.M.*, *supra*, 6 Cal.5th at p. 530.)

3. General principles

" 'As used in section 245, subdivision (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 likely to produce, death or great bodily injury." ' " (*B.M.*, *supra*, 6 Cal.5th at pp. 532–533; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 (*Aguilar*).) Whether an object is a deadly weapon is a question of fact. (*People v. Moran* (1973) 33 Cal.App.3d 724, 730.) "In determining whether an object not inherently deadly or dangerous is used as such, the trier of fact may consider the nature of the object, the manner in which it is used, and all other facts relevant to the issue." (*Aguilar*, at p. 1029.)

In *B.M.* the court laid out several principles underlying its analysis. First, the court declared, "the object alleged to be a deadly weapon must be used in a manner that is not only 'capable of producing' but also ' "*likely to produce* death or great bodily injury." ' " (*B.M.*, *supra*, 6 Cal.5th at p. 533.) The high court explained that "likely" in this context "refers to situations in which ' " 'the probability of serious injury is great.' " ' " (*Ibid.*; *People v. Valdez* (2002) 27 Cal.4th 778, 784; *People v. Sargent* (1999) 19 Cal.4th 1206, 1223.) "An increase in likelihood from impossible to unlikely, for example, does not show that the object was likely to cause serious harm. The use of an object in a manner 'likely to produce' death or great bodily injury [citation] requires more than a mere possibility that serious injury could have resulted from the way the object was used." (*B.M.*, at p. 534; *Aguilar, supra*, 16 Cal.4th at p. 1029.)

The second principle observed by the court in *B.M.* is that "the determination of whether an object is a deadly weapon under section 245(a)(1) must rest on evidence of how the defendant actually 'used' the object" rather than conjecture as to how the object could have been used. (*B.M.*, *supra*, 6 Cal.5th at p. 534; *Aguilar, supra*, 16 Cal.4th at p. 1029.) The court must consider the potential harm in light of the evidence of the way the object was actually used. And while a mere possibility of serious injury will not suffice, "the evidence may show that serious injury was likely, even if it did not come to pass." (*B.M.*, at p. 535.) Third, the high court noted that the extent of actual injury or the lack of injury may be considered as well. " '[A] conviction for assault with a deadly weapon does not require proof of an injury or even physical contact' [citation], but limited injury or lack of injury may suggest that the nature of the object or the way it was used was not capable of producing or likely to produce death or serious harm." (*Ibid.*)

Applying these principles to the case before us, we conclude the juvenile court's finding that J.C. used the bat as a deadly weapon is supported by substantial evidence; that is, " 'evidence which is reasonable, credible, and of solid value.' " (*In re I.C.* (2018) 4 Cal.5th 869, 892.)

4. Substantial evidence supports the juvenile court's finding

There is no question that a baseball bat, even a small one, is capable of producing death or great bodily injury, and therefore may qualify as a deadly weapon. (See *People v. Baugh* (2018) 20 Cal.App.5th 438, 447 [small wooden bat constituted an " 'impact weapon' " for purposes of section 22210]; *People v. Moye* (2009) 47 Cal.4th 537, 540 [defendant committed murder by bludgeoning victim to death with a baseball bat]; *People v. Loeun* (1997) 17 Cal.4th 1, 6–7 [defendant charged and convicted of assault with a

deadly weapon and personal infliction of great bodily injury based on use of a baseball bat to attack victim]; *People v. Grubb* (1965) 63 Cal.2d 614, 621 ["concomitant circumstances may well proclaim the danger of even the innocent-appearing utensil. The Legislature thus decrees as criminal the possession of ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger"].) Applying the first of the three relevant considerations identified by the court in *Aguilar*—"the nature of the object"—it thus appears that the three-to-four-foot long, two-to-three-inch diameter wooden baseball bat appellant used would be capable of causing great bodily injury, and would likely do so when swung hard enough to knock a person to the ground.

Appellant asserts that because he did not intend to inflict serious injury, and did not, in fact, inflict such injury, his use of the bat cannot be deemed to have been in a manner "likely to produce" death or great bodily injury. However, "[w]hether an object is a deadly weapon under section 245 does not turn on whether the defendant intended it to be used as a deadly weapon; a finding that he or she willfully used the object in a manner that he or she knew would probably and directly result in physical force against another is sufficient to establish the required mens rea" for assault with a deadly weapon. (*People v. Perez* (2018) 4 Cal.5th 1055, 1066; *People v. Williams* (2001) 26 Cal.4th 779, 790 [required mens rea for the general intent crime of aggravated assault is "an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another"].) Moreover, an object may qualify as a deadly weapon even without contact or injury, and even if it is not actually used with deadly force. (*In re D.T.* (2015) 237 Cal.App.4th 693, 699.)

Here, there is no indication whatsoever that the bat itself was incapable of producing great bodily injury. Even if it was smaller than a normal bat used in a baseball game, it was solid wood, at least two to three feet long, and two to three inches in diameter. In this regard, *B.M.* and *In re Brandon T.* (2011) 191 Cal.App.4th 1491 stand in stark contrast to the instant case. In *Brandon T.* the Court of Appeal reversed the juvenile court's adjudication under section 245, subdivision (a)(1), finding that the butter knife wielded by the minor, which produced only welts and a small cut before it broke, was incapable of causing great bodily injury. (*Id.* at p. 1497 ["The pressure that Brandon applied was not enough to cause death or great bodily injury to [the victim]. Yet it was too much pressure for the knife to bear, and the handle broke off"].)

Similarly, in *B.M.*, the court declared that "[u]nder any plausible interpretation of the term 'likely,' the evidence was insufficient to establish that B.M.'s use of a butter knife against her sister's blanketed legs was ' "likely to produce . . . death or great bodily injury." ' " (*B.M.*, *supra*, 6 Cal.5th at p. 536; *Aguilar*, *supra*, 16 Cal.4th at p. 1029.) The court explained that three factors compelled this conclusion: First, the knife B.M. wielded was the sort used to butter toast, and was not sharp; second, B.M. used the knife only on her sister's legs, which were covered with a blanket; and third, "the moderate pressure that B.M. applied with the knife was insufficient to pierce the blanket, much less cause serious bodily injury to Sophia." (*B.M.*, at p. 536.)

The evidence in this case also showed that appellant *used* the bat in a manner likely to produce serious harm. Appellant swung the bat downward from his right shoulder across his body and struck Brian in the back of his left leg "just below his buttocks." The force of the blow caused Brian to fall to the

ground and he pulled his sister down with him. Brian went to the hospital for medical treatment and sustained swelling and bruising where the bat had struck him. The fact that appellant was unsuccessful in causing a deadly or more serious injury appears entirely fortuitous: If the blow had landed just ten to twelve inches higher or lower, it could have caused serious damage to Brian's kidney or shattered his knee.

The "other facts relevant to the issue" also support the juvenile court's finding that appellant used the bat in a manner likely to cause great bodily injury. (See *Aguilar*, *supra*, 16 Cal.4th at p. 1029.) Appellant was accompanied by three other boys when he confronted Brian and threatened to stab him after accusing him of being in a gang. Appellant and his companions mentioned the 18th Street gang and made hand signs Brian believed were associated with that gang. Just a few minutes after assaulting Brian with the bat, appellant and his cohort threatened Damian with a gun and threw a knife at him.

Citing *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1087–1088 (*Beasley*), appellant asserts that "[s]imply beating someone and producing bruises has been deemed not to constitute great bodily injury." In *Beasley*, the defendant beat the victim about the arms and shoulders with a broomstick, leaving bruises. (*Id.* at p. 1087.) Reducing the conviction from aggravated to simple assault, the appellate court determined there was insufficient evidence that the broomstick, as used by the defendant, was capable of causing great bodily injury. (*Id.* at pp. 1087–1088.) Specifically, *Beasley* found it "conceivable that a sufficiently strong and/or heavy broomstick might be wielded in a manner capable of producing, and likely to produce, great bodily injury," but no such finding was possible where the record revealed no evidence of the degree of force with which the broomstick was

used, nor any indication of the broomstick's composition, weight, or rigidity. (*Ibid*.) Without evidence regarding the manner in which the defendant used the object, evidence of bruising alone was insufficient to sustain the conviction for aggravated assault.

In contrast to *Beasley*, the evidence before the juvenile court in this case established the bat's size and composition. There was also substantial evidence regarding the manner in which appellant used the bat: Swinging the bat downward from above his right shoulder, appellant struck Brian in the back of the leg with sufficient force to knock Brian to the ground and pull his sister down with him. Appellant did not need to use the bat any differently to cause greater injury; had the bat struck Brian a few inches higher or lower on his body, great bodily injury would have been a virtual certainty.

Finally, we reject appellant's nonsensical claim that he "broke off the attack" by running away after only one blow, "indicating that this was not an assault by means of force likely to cause great bodily injury." The number of blows appellant attempted or landed before fleeing is simply irrelevant to the determination of whether the bat was used "in such a manner as to be capable of producing and likely to produce, death or great bodily injury." (*Aguilar*, *supra*, 16 Cal.4th at pp. 1028–1029.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.