Filed 4/30/18 In re Juan R. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JUAN R., a Person Coming Under the Juvenile Court Law.	B275826 (Los Angeles County Super. Ct. No. KJ39562)
THE PEOPLE, Plaintiff and Respondent, v. JUAN R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Morton Rochman, Judge. Affirmed with directions.

Steven A. Torres, 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, Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court declared Juan R. a ward of the court pursuant to Welfare and Institutions Code section 602,[1] after finding Juan committed an assault with a deadly weapon, a knife (Pen. Code, § 245, subd. (a)(1); count 2). The court made an oral finding that the offense was a felony, and ordered Juan to be suitably placed with a maximum period of confinement of four years two months, subject to specified probation conditions.

Juan contends the evidence is insufficient to establish he did not act in self-defense. Juan also contends the juvenile court failed to exercise its discretion to determine whether the offense should be treated as a felony or a misdemeanor. Finally, he claims the probation conditions in the minute order do not reflect the juvenile court's oral pronouncement. We order the juvenile court to correct the minute order to reflect the court's oral pronouncement of the probation conditions. As modified, we affirm.

---

[1] All undesignated references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petitions*

On November 17, 2015 the People filed a petition under section 602, alleging Juan committed a misdemeanor battery (Pen. Code, § 242). On June 9, 2016 Juan admitted the allegations of the petition. The juvenile court found the allegations to be true and sustained the petition.

On May 20, 2016 the People filed a second petition, alleging that on May 18, 2016 Juan committed attempted voluntary manslaughter (Pen. Code, §§ 192, subd. (a), 667; count 1) and assault with a deadly weapon, a knife (*id*., § 245, subd. (a)(1); count 2). The petition also alleged as to count 1 that Juan personally inflicted great bodily injury (*id*., § 12022.7, subd. (a)).[2]

B. *The Jurisdictional Hearing*

1. *The People's Evidence*

Diana Lopez testified about the events of May 18, 2016. As of that date, Juan was 17 years old; Roger Cayetano was 24 years old.[3] Juan had been a close friend of Lopez and Cayetano for about six months. Lopez had been dating Cayetano for six years.

Lopez and Cayetano had a fight over money, and were both upset. Cayetano was also upset with Juan because Juan was spending time with Lopez, and Cayetano believed Juan was "talking bad" about him to Lopez. Cayetano went with Lopez to

---

[2] The juvenile court at the dispositional hearing sentenced Juan on both petitions.

[3] Cayetano invoked his Fifth Amendment privilege against self-incrimination, and did not testify.

Tony Cerda Park in Pomona to confront Juan. Juan was five feet, four inches tall and weighed 118 pounds. Cayetano was six feet tall and weighed 200 pounds.[4]

At about 12:15 p.m. Juan was sitting in the park talking on his cell phone. Lopez and Cayetano approached him from behind. Juan turned and saw them, began to stand up, and Cayetano kicked him in his left eye. Juan fell to the ground. Juan became angry, stood up, and pulled out a pocket knife with a three-inch blade. A homeless man in the park told Juan to put the knife away, and to fight. Juan put the knife away, and "went after [Cayetano] after that and tried to attack him."

Because Cayetano was much bigger than Juan, however, Cayetano pushed Juan back on the ground, and started kicking and punching him. Cayetano "was beating him pretty bad." There was not much Juan could do. The beating lasted about two minutes. While Cayetano and Juan were on the ground, Juan took out his knife a second time. Cayetano struggled to keep the knife away from him, but Juan scraped Cayetano's left arm with the knife.

During the fight, Juan's hat flew off his head and his cell phone fell out of his pocket. Lopez picked the phone up off the ground. Once the fighting stopped, Lopez tossed Juan's phone to him, but it fell on the ground. Cayetano picked the phone up, and threw it to the ground, breaking it. When Cayetano broke his phone, Juan became "angry"; he was "furious."

What happened next is in dispute. On direct examination, Lopez was asked, "And so from that point when he breaks the cell

---

[4] The police officer who responded to the scene estimated Cayetano's weight at 180 to 190 pounds.

phone or when he throws the cell phone [down], from that moment to the moment he got stabbed, what was happening between [Juan] and [Cayetano]?" Lopez responded, "They were separated at that time." Lopez described them as being five feet apart. This was followed by the following questions by the prosecutor and Lopez's responses:

"Q From the moment [Cayetano] threw the phone to the moment [Juan] stabbed [Cayetano] in the face, did you see them interacting with each other?

"A I think they were separated at that time before he grabbed the phone.

"Q . . . So were they still fighting when [Juan] stabbed [Cayetano] in the face?

"A Before that, a couple minutes earlier, yes.

"Q Not a couple minutes earlier. At that moment, were they still fighting?

"A At that moment, no."

On cross-examination, however, Lopez gave a different account of what happened, stating that after Cayetano threw down the phone, Cayetano came toward Juan and they started fighting a second time, and were "struggling" when Juan pulled out the knife a second time. The following exchange occurred between defense counsel and Lopez:

"Q [Cayetano], as he threw the phone . . . on the ground, he was also going towards [Juan]; would that be fair to say?

"A I think he wanted to fight him again.

"Q That means he was going towards [Juan] as he threw the phone on the ground?

"A Yes.

"Q Right?

"A Yes.

"Q At that point, that's when you saw [Cayetano] and [Juan] fight again? They were struggling, would that be fair to say?

"A Yes.

"Q And then [Juan] took out the knife?

"A Yes."

After the fighting stopped, a woman walked over and said, "why is he beating on that little boy." Lopez turned away when the woman approached, and Lopez did not see Juan stab Cayetano. When Lopez turned back around, she saw Cayetano bleeding from his face by his left ear, and Cayetano was holding his face. Lopez called the police, and at some point Juan fled. Cayetano was taken to the hospital. He was treated for stab wounds to his ear and back and a "scratch" on his stomach.

Pomona Police Department Detective Jonathan Edson responded with his partner to a report of a stabbing at the park. Edson interviewed Juan at the park. Edson advised Juan of his *Miranda* rights, and Juan agreed to speak with him.[5] Edson asked Juan if he got upset when Cayetano broke his phone, and Juan answered, "I kinda did." Edson asked Juan, "Is that when you stabbed him in the face?" Juan responded, "Something like that." Juan told Edson that Cayetano had previously intimidated him and picked on him. Cayetano attacked him, and he stabbed Cayetano three times to defend himself. When asked whether he did anything wrong, Juan "said he should have left when he saw Roger and when he stabbed Roger . . . ."

---

[5] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S .Ct. 1602, 16 L.Ed.2d 694]. Juan does not assert any error as to admission of Juan's statements to Edson.

Lopez testified that Cayetano had been physically abusive toward her before, and there was a protective order stating that he should not come near her.

2. *The Defense Evidence*

Juan also called Lopez as a witness. Cayetano told Lopez that a friend of his had asked if he wanted the friend to "take care of" Juan for him. Cayetano told his friend, "Go for it." Lopez did not know whether Juan was aware of this threat.

Juan testified that he arrived at the park on May 18 at around 10:00 a.m. He was talking on his phone when Lopez and Cayetano appeared next to him. Juan turned, and heard Cayetano say, "You talking shit" and "[l]et's get down," meaning they should fight. Cayetano then kicked him in the eye, and Juan fell to the ground.

Juan got up quickly to avoid Cayetano beating him on the ground. Juan took out his knife, and he and Cayetano began to argue. The homeless man came over, and told Juan to put the knife away and to fight Cayetano. As Juan put the knife away, Cayetano pushed him to the ground. Cayetano got on top of him, and kicked and punched him. Juan was unable to punch Cayetano back because of Cayetano's larger size.

After one or two minutes, Cayetano stopped hitting Juan, and backed off. Juan stood up, and looked for his hat and phone. Lopez tossed his phone to him, but it landed on the ground. Cayetano picked it up and threw it to the ground, breaking it.

After Cayetano broke the phone, he started to move closer to Juan. Cayetano looked angry, and it appeared he wanted to fight. Juan took his knife out again. Juan testified, "And then I went toward him too, and then I just try [*sic*] to stab him." When

asked why he went toward Cayetano, Juan responded, "[b]ecause if not he would have just dropped me with his weight. He could have dropped me and took the knife."

On cross-examination, Juan testified that Cayetano was coming toward him when he stabbed Cayetano in the face. He conceded that Cayetano was not attacking him at that moment, but "he was about to." Juan testified, "He was coming towards me, so I had no option." Juan was angry at Cayetano for breaking his phone and beating him up. He admitted he told his friend that he stabbed Cayetano because he was mad Cayetano broke his phone. He also admitted he told the police he knew he should not have stabbed Cayetano. Finally, Juan testified that prior to May 18 Cayetano made threats to him that he was going to beat him up and steal his phone.

3. *The Juvenile Court's Findings and Disposition*

Following the hearing on the second petition, on June 23, 2016 the juvenile court dismissed the involuntary manslaughter charge, and found the allegation in count 2 that Juan committed an assault with a deadly weapon, a knife, to be true. The court stated, "Count 2 is a felony and carries up to four years confinement time." The court declared Juan to be a ward of the court pursuant to section 602. The court ordered Juan suitably placed with a maximum period of confinement of four years two months, subject to specified probation conditions.

Juan timely appealed from the judgment and disposition.

DISCUSSION

A. *Substantial Evidence Supports the Juvenile Court's Finding That Juan Committed Assault with a Deadly Weapon*

Juan contends there is insufficient evidence to support the finding he committed an assault with a deadly weapon because the prosecution failed to prove he did not act in self-defense when he stabbed Cayetano. We disagree.

1. *Standard of Review*

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.] 'In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court "must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]'" [Citation.]" (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080; see *People v. Weidert* (1985) 39 Cal.3d 836, 845, fn. 7 [same standard of proof applies in a juvenile proceeding as in an adult criminal trial]; see also *People v. Casares* (2016) 62 Cal.4th 808, 823 ["'"[t]he 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"""].)

We apply the same standard of review in cases in which the People rely primarily on circumstantial evidence. (*People v. Casares*, *supra*, 62 Cal.4th at p. 823.) """If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment."" [Citations.]" (*Id.* at pp. 823-824.)

2. *Governing Law on Self-defense*

A defendant acts in lawful self-defense if (1) he reasonably believed he was in imminent danger of suffering bodily injury; (2) he reasonably believed the immediate use of force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. (*People v. Hernandez* (2011) 51 Cal.4th 733, 747; *People v. Clark* (2011) 201 Cal.App.4th 235, 250; see also CALCRIM No. 3470.) "[T]he defendant must actually and reasonably believe in the need to defend." (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; accord, *People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744 [defendant must "actually and reasonably believe[]" the use of force was necessary].) The prosecution has the burden of proving beyond a reasonable doubt the defendant's use of force was not in lawful self-defense. (*People v. Tully* (2012) 54 Cal.4th 952, 1028; *People v. Lloyd* (2015) 236 Cal.App.4th 49, 63.)

Self-defense "'is limited to the use of such force as is reasonable under the circumstances.'" (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065; see also *People v. Casares*, *supra*, 62 Cal.4th at p. 846 [finding it was a jury question whether the

defendant did not use force "greater than that reasonable under the circumstances"].) Although the test is objective, "reasonableness is determined from the point of view of a reasonable person in the defendant's position." (*Minifie*, *supra*, at p. 1065.)

Because a defendant may use no more force than is necessary, "deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury." (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630; see also *People v. Pinholster* (1992) 1 Cal.4th 865, 966 ["right of self-defense did not provide defendant with any justification or excuse for using deadly force to repel a nonlethal attack"], disapproved on another ground in *People v. Williams* (2010) 49 Cal.4th 405, 459.)

A defendant can claim self-defense even though he feels anger or even hatred toward the person he assaults. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1045.) As our Supreme Court held in *Nguyen* in the context of a homicide, "'[I]t would be unreasonable to require an absence of any feeling other than fear, before the homicide could be considered justifiable. Such a requirement is not a part of the law . . . . Instead, the law requires that the party killing *act* out of fear alone. . . . The party killing is not precluded from feeling anger or other emotions save and except fear; however, those other emotions cannot be causal factors in his decision to use deadly force.'" (*Ibid*.) The court in *Nguyen* concluded there was sufficient evidence to support the jury's finding that the defendant did not act in self-defense because "he did not act on the basis of fear alone but also on a desire to kill his rival," based on evidence that the defendant held

a gun to the victim's chest and smiled as the victim approached his car. (*Id*. at p. 1044.)

3. *The Juvenile Court's Finding That Juan Did Not Act in Self-defense Is Supported by Substantial Evidence*

Juan contends he acted in self-defense because after Cayetano broke his phone, Cayetano came toward him, and as Juan testified, he "had no option" other than to use his knife to stab Cayetano because otherwise "[h]e could have dropped me and took the knife." Juan also points to Lopez's testimony on cross-examination that after Cayetano broke Juan's phone, Cayetano started advancing toward Juan, appearing angry, and wanting to fight again.

However, according to Lopez's testimony on direct examination, from the moment Cayetano threw down Juan's cell phone to the time he got stabbed, the fighting had stopped and Juan and Cayetano were "separated," standing about five feet apart. Cayetano was unarmed. Juan was "furious" that Cayetano had broken his phone. While this testimony was inconsistent with Lopez's later testimony that Cayetano was coming toward Juan when Juan pulled out his knife and that at the time they were "struggling" with each other, the trial court reasonably could have relied on Lopez's earlier account that Juan and Cayetano were separated by five feet and the fighting had stopped when Juan pulled out his knife and stabbed Cayetano.

This is more than the """"mere scintilla of evidence""" the dissent suggests supported the juvenile court's conclusion that Juan acted in self-defense. (*In re Carlos J.* (Apr. 10, 2018, A151369) ___ Cal.App.5th ___, ___ [2018 WL 1725454 at p. 3].) Although the juvenile court could have found the evidence

supported a finding that "Juan was at all times in imminent danger of suffering great bodily injury from the extended beating (the much larger) Cayetano inflicted," as persuasively argued by the dissent, it did not. (Dis. opn. *post*, at p. 1.) Where the ""'"circumstances might also be reasonably reconciled with a contrary finding[, this] does not warrant a reversal of the judgment."'" [Citations.]" (*People v. Casares*, *supra*, 62 Cal.4th at pp. 823-824.)

In addition, Lopez's initial testimony painted a picture of Juan from early in the fight being angry at Cayetano, not fearful of him. After Cayetano kicked Juan in the head, Juan became angry and pulled out his knife. After he put his knife away at the suggestion of the homeless man, Juan "went after" Cayetano and "tried to attack" him. Yet there was no evidence that Juan reasonably believed at this point "he was in imminent danger of suffering bodily injury" from a further attack by Cayetano (*People v. Hernandez*, *supra*, 51 Cal.4th at p. 747); rather, Juan was angry that Cayetano had kicked him. This testimony was consistent with Lopez's initial testimony that after Cayetano broke his phone, Juan was "furious," and pulled out his knife and stabbed Cayetano, even though he and Cayetano were separated by five feet and the fighting had stopped. This testimony was also consistent with Juan's admission that he told a friend that he stabbed Cayetano because he was mad he broke his phone and that he told Edson he knew he should not have stabbed Cayetano.

Accordingly, there was substantial evidence from which the juvenile court, as the trier of fact, could have concluded that Juan stabbed Cayetano because he was angry with him, not because he

actually and reasonably believed he needed to stab him to defend himself. (*People v. Nguyen*, *supra*, 61 Cal.4th at p. 1045.)

Thus, there is substantial evidence to support the juvenile court's finding that Juan did not act in self-defense, and that he committed the offense of assault with a deadly weapon.

B. *The Juvenile Court Properly Declared the Offense To Be a Felony*

Section 702 requires that if a "minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or a felony." (Accord, *In re Manzy W.* (1997) 14 Cal.4th 1199, 1201, 1210 (*Manzy W.*); *In re Cesar V.* (2011) 192 Cal.App.4th 989, 1000 [remanding to juvenile court to make an express declaration whether the offense was a felony or a misdemeanor where the juvenile court's finding the gang allegation to be true made the offense punishable as a misdemeanor or a felony]; *In re Nancy C.* (2005) 133 Cal.App.4th 508, 512 [remanding to juvenile court, finding the minor's admission of a "wobbler" offense charged as a felony did not satisfy the juvenile court's obligation to determine whether the offense was a felony or a misdemeanor].)

Assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1), is a "wobbler" offense punishable as a felony or misdemeanor in that it is punishable by imprisonment in state prison or in a county jail for up to one year, or by a fine of up to $10,000. (*People v. Park* (2013) 56 Cal.4th 782, 790.)

"[T]he requirement that the juvenile court declare whether a so-called 'wobbler' offense was a misdemeanor or felony . . .

serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under . . . section 702." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1207.) The finding under section 702 that an offense is a felony or misdemeanor is significant because a prior felony adjudication can be used for impeachment or enhancement of a sentence in a subsequent criminal proceeding. (*Id*. at pp. 1208-1209; *In re Kenneth H.* (1983) 33 Cal.3d 616, 619, fn. 3.) In addition, an adjudication of an offense that is a felony ""'is a blight upon the character of and is a serious impediment to the future of such minor.'" [Citation.]" (*Manzy W.*, *supra*, at p. 1209.)

In *Manzy W.*, the court considered whether the juvenile court committed error in failing to declare whether the offense of possession of a controlled substance was a felony or a misdemeanor where the petition referred to the offense as a felony, the minor admitted the allegations of the petition, and the juvenile court found the allegations true. (*Manzy W.*, *supra*, 14 Cal.4th at p. 1202.) The probation department's dispositional report stated the maximum period of confinement for the offense was three years, and did not indicate that the offense was a wobbler. (*Id*. at pp. 1202-1203.) The juvenile court in sentencing the minor stated that it had considered lesser alternative placements, but committed the minor to the Youth Authority for the maximum confinement period of three years. (*Id*. at p. 1203.)

Our Supreme Court, in finding error, made clear that section 702 "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1204.) The court rejected the People's argument that the court should presume the juvenile court performed its official duty when it sentenced the

minor to a felony-length term of confinement, holding, "Nothing in the record establishes that the juvenile court was aware of its discretion to sentence the offense as a misdemeanor rather than a felony . . . . [T]he juvenile court did not at any time refer to its discretion to declare the offense a misdemeanor. Nor did the prosecution or [the minor's] counsel point out to the juvenile court that it had such discretion. Significantly, moreover, although the dispositional report prepared by the probation department recommended that [the minor] be given a 75-day *term of probation*, it consistently referred to the possession offense as 'a felony.'" (*Id.* at p. 1210.) The court reasoned, "Under these circumstances, as the Court of Appeal concluded, it would be mere speculation to conclude that the juvenile court was actually aware of its discretion in sentencing [the minor]." (*Ibid.*)

Our Supreme Court in two decisions predating *Manzy W.* similarly found that the fact that the petition charged an offense as a felony, the juvenile court found the allegations were true, and the court then sentenced the minor to a felony-length sentence, was not sufficient to satisfy the court's obligation to exercise its discretion to declare whether an offense is a felony or a misdemeanor. (*In re Kenneth H.*, *supra*, 33 Cal.3d at pp. 619-620; *In re Ricky H.* (1981) 30 Cal.3d 176, 191.)

In *In re Kenneth H.* the court concluded that "the crucial fact is that the court did not state at any of the hearings that it found the burglary to be a felony." (*In re Kenneth H.*, *supra*, 33 Cal.3d at p. 620.) The court contrasted this absence of any statement by the juvenile court that the offense was a felony with the facts in *In re Robert V.* (1982) 132 Cal.App.3d 815, 823, in which the "'Findings and Order' [signed by the juvenile court] stated that the charged Vehicle Code *felony* was to run

concurrent with a prior commitment was held in compliance with section 702 in that it was an 'explicit finding' of felony status." (*In re Kenneth H.*, *supra*, at p. 620, fn. 6; *In re Robert V.*, *supra*, at p. 823; see also *Manzy W.*, *supra*, 14 Cal.4th at p. 1208, fn. 6 [reaffirming its approval of the holding in *In re Robert V.*].)

In *In re Ricky H.*, the court noted that the minutes of the dispositional hearing recited that the minor was committed to the Youth Authority "'for conviction of felony, to wit: Vio. 245a PC,'" but found that this was insufficient under section 702 because the transcript of the dispositional hearing did "'not support this notation.'" (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 191.) The courts in both *Kenneth H.* and *Ricky H.* remanded the cases to the juvenile courts to declare whether the offenses were misdemeanors or felonies. (*In re Kenneth H.*, *supra*, 33 Cal.3d at p. 620; *In re Ricky H.*, *supra*, at p. 192.)

Here, the petition alleged that Juan committed the offense of assault with a deadly weapon "in violation of PENAL CODE [section] 245[, subdivision] (a)(1), a Felony . . . ." The probation report similarly described the offense as "felony assault with a deadly weapon," and stated that "[d]ue to the seriousness of the instant matter, the recommendation of camp community placement is being made at this time . . . ." The report did not state that the offense was a wobbler. After the juvenile court found the allegations in the petition as to the assault with a deadly weapon charge to be true, the juvenile court stated, "I am making further findings as follows. Notice has been given as required by law. . . . Petition filed May 20, 2016, is true and sustained as to count 2. Count 2 is a felony and carries up to four

years confinement time." The court then ordered suitable placement for Juan, with specified probation conditions.[6]

Juan contends that while the juvenile court stated the offense was a felony, it failed to comply with section 702 because it did not specifically "declare" that the offense was a felony, and further, nothing in the record shows that the juvenile court was aware of its discretion to treat the offense as a felony or a misdemeanor.

We disagree. In contrast to *Manzy W.*, *In re Kenneth H.*, and *In re Ricky H.*, the juvenile court here orally stated its "findings" that the assault with a deadly weapon "is a felony and carries up to four years confinement time." The facts would be different if the court simply sentenced Juan to suitable placement for up to four years maximum commitment time; instead, the court specifically stated as its finding that the offense was a felony. Thus, the facts before us are similar to those in *In re Robert V.*, in which the Court of Appeal found sufficient under section 702 the juvenile court's signing of the "'Findings and Order'" stating that the charged Vehicle Code felony was to run concurrent with a prior commitment. (*In re Robert V.*, *supra*, 132 Cal.App.3d at p. 823.)

Juan seeks to impose an additional requirement on the juvenile court that the trial court must use specific language stating that it is exercising its discretion under section 702 to designate the offense as a felony instead of a misdemeanor. But no such requirement can be found in section 702 or our Supreme

---

6 The juvenile court sentenced Juan to suitable placement on both the assault with a deadly weapon charge and the misdemeanor battery charge alleged in the first petition.

Court's opinions in *Manzy W.*, *In re Kenneth H.* and *In re Ricky H.* Rather, the juvenile court must make "an explicit declaration . . . whether an offense would be a felony or misdemeanor in the case of an adult." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1204.) That is what the juvenile court did here in its findings.

C. *The Probation Conditions Should Be Corrected To Reflect the Juvenile Court's Oral Pronouncement*

It is well established that, "[a]s a general rule, when there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls. [Citation.]" (*People v. Contreras* (2015) 237 Cal.App.4th 868, 880; accord, *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) This rule applies to probation conditions. (*Contreras*, *supra*, at pp. 880-881.)

Here, Juan complains of discrepancies between the juvenile court's oral and written orders as to probation term Nos. 9, 14, and 15. In the minute order, term No. 9 requires Juan to "go to school every day." The juvenile court orally stated, "when your school is in session, you must go to your school every day . . . ." Although it is unlikely Juan would be found in violation of his probation by not attending school during breaks or on weekends, we direct the juvenile court to correct the minute order to reflect the court's oral pronouncement.

As to term No. 14, the juvenile court orally ordered Juan to "not have, possess, or act like you possess a gun or knife, or possess any other object you know is a dangerous or deadly weapon." The minute order adds, "You also cannot have or possess anything you know that looks like a gun. You must not

be around anyone you know to be unlawfully armed." The additional written conditions should be stricken.

For term No. 15, the juvenile court orally ordered Juan not to have any contact with the victim, Cayetano. The minute order states more broadly that Juan "must not have any contact with or have someone else contact the victims or witnesses of any offense against you." The language "or witnesses" should be stricken to conform to the oral pronouncement.

DISPOSITION

The juvenile court is directed to correct the minute order to reflect its oral pronouncement of probation conditions consistent with this opinion. The judgment is affirmed, as modified.

FEUER, J.*

I concur:

PERLUSS, P. J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

SEGAL, J., Dissenting.

I respectfully dissent from the majority's well-reasoned and well-written opinion because, in my view, the majority asks the wrong question. To me, the question is not whether "the fighting had stopped" (maj. opn., p. 12) and then started again, but whether the "imminent danger of suffering bodily injury" (maj. opn., p. 10; see *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Chavez* (Mar. 28, 2018, D069533) 21 Cal.App.5th 971, ___, [2018 WL 1516873, at p. 14]) had passed. And my answer to that question is "no." My review of the testimony leads to only one conclusion: From the moment (the much larger) Cayetano came up behind Juan and kicked him in the head, to the moment Juan used the knife, Juan was at all times in imminent danger of suffering great bodily injury from the extended beating Cayetano inflicted, and made clear he intended to continue inflicting, on the smaller boy.

The testimony at trial was that Cayetano—who had threatened Juan in the past, had "anger issues," and became violent when he was angry—approached Juan from behind while Juan was on his phone and kicked Juan in the face. Juan never saw Cayetano coming. After that, Cayetano wanted to fight, and Juan, who did not want to fight, had no choice. Cayetano began kicking and punching Juan in the face while Juan was on the ground, "show[ing] no mercy." According to Lopez, Cayetano was much "bigger than [Juan], so he was beating him pretty bad. He got him again on the ground. He was kicking him, punching him, and so [Juan] really couldn't do much."

Even after Cayetano had beaten up Juan "for like a minute or two" and thrown Juan's cell phone on the ground, Cayetano

"still wanted to hurt" Juan. Cayetano paused to take "a quick break" because he "got tired" of whaling on Juan, "backed up," but "was still angry" and "still wanted to fight." It was at this point, as Cayetano was "going toward" Juan to beat him up again, that Juan used the knife. Both Lopez and Juan testified Cayetano was approaching Juan to attack him again. Juan had his knife out because otherwise Cayetano "would have just dropped [him] with his weight" again. Juan did state he was angry Cayetano broke his phone, but he said he stabbed Cayetano because Cayetano had beat him up and was about to attack him again. Juan stated, "He was coming towards me, so I had no option." This evidence presents a classic case of self-defense, and I do not see any substantial evidence to the contrary.

True, Lopez stated on direct examination that "at that point" Cayetano and Juan were not fighting anymore, but "that point" refers to *after* Juan had stabbed Cayetano. And Lopez did testify on direct examination that, from the moment Cayetano threw and broke Juan's phone to the moment Juan stabbed Cayetano, the two "were separated." But that does not mean the fight had ended or the imminent danger to Juan had passed. To the contrary, the evidence shows the fight was continuing and Juan was still in imminent danger. Even the prosecutor referred to the stabbing as occurring during "that portion of the fight."

Ultimately, my disagreement with the majority may be over the nature of a fight. Unlike a boxing match, where a bell stops and starts the action, or even a fight in a hockey game, where the linesmen eventually intervene to separate the combatants, fights in real life are unstructured and unrefereed, and a brief pause or separation is not a reliable indication of an

intermission, let alone the end of regulation. Cayetano started this fight, and it did not end until Cayetano relented, after Juan had stabbed him in self-defense.

The majority states that, because Lopez gave "inconsistent" testimony and "a different account of what happened" on direct and cross-examination, the trial court could have relied on the former and disregarded the latter. (Maj. opn., pp. 4-5, 12.) I do not think Lopez's accounts were all that different. They were complementary, not contradictory. Lopez testified on direct that Cayetano and Juan were separated and, for a short time, not actually engaged in the (one-sided) physical struggle. But her (consistent) testimony on cross-examination clarified that, despite the pause for Cayetano to catch his breath before continuing to beat on Juan, the fight was not over. And there is no reason Juan or a reasonable person in his position would believe the resumption of the fighting would have any outcome other than additional serious physical harm to Juan.

The majority also states that "Lopez's initial testimony painted a picture of Juan from early in the fight being angry at Cayetano, not fearful of him." (Maj. opn., p. 13.) I do not see that picture. The fight began when Cayetano surprised Juan from behind and kicked him in the head. Juan could not have been angry at Cayetano; he never saw him coming. The majority also states "there was no evidence that Juan reasonably believed at this point 'he was in imminent danger of suffering bodily injury' from a further attack by Cayetano." (Maj. opn., p. 13.) I think there was such evidence, and it came from Lopez, who testified that, after Juan put away the knife the first time, Cayetano "still wanted to fight" Juan.

Finally, in my view whether Juan became angry when Cayetano broke his phone is not really the issue. The majority concludes there was substantial evidence Juan did not stab Cayetano in self-defense because Juan "was 'furious' that Cayetano had broken his phone." (Maj. opn., p. 12.) As counsel for Juan pointed out at oral argument, however, Juan was angry Cayetano broke his phone *and* Juan reasonably believed Cateyano was going to continue inflicting great bodily injury on him. A defendant's reasonable belief he or she is in imminent danger of suffering great bodily injury need not be the sole reason he or she acts in self-defense. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1045.) Indeed, breaking Juan's phone undoubtedly sent the message that Cayetano intended to do to Juan what he did to the phone.

"'"Substantial evidence" is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citations.] "Substantial evidence . . . is not synonymous with 'any' evidence." Instead, it is "'"substantial" proof of the essentials which the law requires."' [Citation.] 'Substantial evidence is . . . not merely an appellate incantation designed to conjure up an affirmance. To the contrary, it is essential to the integrity of the judicial process. . . . "The Court of Appeal 'was not created . . . merely to echo the determinations of the trial court. A decision supported by a mere scintilla of evidence need not be affirmed on review."'" (*In re Carlos J.* (Apr. 10, 2018, A151369) ___ Cal.App.5th ___, ___, [2018 WL 1725454, at p. 3].) Substantial evidence is not speculation (*People v. Waidla* (2000) 22 Cal.4th 690, 735) or "'mere possibility'" (*People v. Brooks* (2017) 3 Cal.5th 1, 120). Substantial evidence is evidence that "'"reasonably inspires confidence."' *(People v. Marshall* (1997)

15 Cal.4th 1, 34; accord, *In re Charles G.* (2017) 14 Cal.App.5th 945, 956.)

The evidence supporting this judgment does not inspire my confidence. There may be a scintilla of evidence that Juan did not act in self-defense, but I am unable to find substantial evidence in this record to support such a finding. Therefore, I would reverse the judgment.

SEGAL, J.