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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re C.C.,

A Person Coming Under the
Juvenile Court Law,

THE PEOPLE,

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

B251982

(Los Angeles County
Super. Ct. No. MJ21895)

APPEAL from orders of the Superior Court of Los Angeles County. Nancy S. Pogue, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) One order affirmed; one order vacated in part and remanded with directions.

Bruce G. Finebaum for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

C.C. appeals from orders sustaining a petition under Welfare and Institutions Code section 602 and placing him in a camp-community placement program for six months, with a maximum period of confinement of five years. We reject C.C.'s argument that the order sustaining the petition is not supported by substantial evidence, but we agree with his argument that the juvenile court erred in calculating the maximum period of confinement.

BACKGROUND

The petition under Welfare and Institutions Code section 602 alleged that C.C. committed assault with a deadly weapon (a skateboard) in violation of Penal Code section 245, subdivision (a)(1) (count 1) and battery with serious bodily injury in violation of Penal Code section 243, subdivision (d) (count 2), both felonies. C.C. denied the allegations.

The parties stipulated to have the matter heard by a commissioner sitting as a temporary judge. Following an adjudication hearing, the court found the allegations true and sustained the petition. At the disposition hearing, the court ordered C.C. placed in a camp-community placement program for six months, with a maximum term of confinement not to exceed five years. The court also credited C.C. with 43 days of predisposition custody.

The evidence introduced at the adjudication hearing was as follows: At approximately 11:00 p.m. on October 20, 2012, Manuel Aguilar was at his home in Lancaster. His wife asked him to check on their 15-year-old daughter, B., because a dog was barking in B.'s bedroom. Aguilar found the window in B.'s bedroom open and found C.C. hiding under a blanket on B.'s bed.

Aguilar shut the window and told B. to call the police. When B. reported that the police said they would not come because she had allowed C.C. into the home, Aguilar pulled the blanket off of C.C., opened the window, and told C.C. to leave.

C.C. initially remained on the bed, talking on his cell phone. He then got up but just stood there, continuing to talk on the phone. Aguilar kicked him in the back and in

the “butt” and again told him to leave, but C.C. “still remained there . . . speaking very calmly on the phone.”

Aguilar again told C.C. to leave and punched him on the side of the neck. C.C. then left the room through the window but remained just outside the window, tugging on something at ground level near the sprinkler valves, but Aguilar initially could not see what it was. Aguilar leaned out the window to see what C.C. was tugging on, and Aguilar grabbed hold of the object, still not knowing what it was. It turned out to be a skateboard. C.C. managed to free the skateboard from Aguilar’s grasp and from the sprinkler valves and then swung it, “like he was swinging a bat,” at Aguilar’s face.

The blow caused Aguilar to lose his balance, and he fell backward onto the bed. The blow also caused him to suffer a cut on the left side of his face, from below his left eye down to his mouth. The cut required “9 to 11 stitches” and left him with a “very light scar” that is about one and one-quarter inches long.

C.C. testified that the sprinklers came on while he was inside the house, causing his skateboard to get stuck in the mud. He further testified that when he and Aguilar were struggling over the skateboard, each of them had one hand on the skateboard but Aguilar’s other hand was holding C.C.’s arm. C.C. thought Aguilar was trying to pull him back inside, and C.C. feared for his life. C.C. managed to pull the skateboard free and then tried to swing it at Aguilar’s hand or arm to make him let go. C.C. did not learn until weeks later that he had hit Aguilar in the face.

DISCUSSION

I. Substantial Evidence.

C.C. argues that his convictions are not supported by substantial evidence because the evidence shows that he swung the skateboard at Aguilar in self-defense. We are not persuaded.

“Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “[I]t 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.” [Citation.]” (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

Aguilar’s testimony was not physically impossible or inherently improbable. He testified that he was holding the skateboard, not C.C.’s arm. The juvenile court was free to believe that testimony and to disbelieve C.C.’s testimony that Aguilar was holding C.C.’s arm and that C.C. feared for his life. Substantial evidence therefore supports the juvenile court’s rejection of C.C.’s self-defense theory.

II. Maximum Period of Confinement.

The juvenile court determined C.C.’s maximum period of confinement on the basis of both counts alleged in the petition. C.C. argues that the court thereby erred, because Penal Code section 654 prohibits multiple punishment for a single act. Respondent concedes the point, and we agree.

When a minor is removed from the physical custody of parents or guardians under an order of wardship pursuant to Welfare and Institutions Code section 602, “the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” (Welf. & Inst. Code, § 726, subd. (d).) “If the court elects to aggregate the period of physical confinement on multiple counts or multiple

petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.” (*Ibid.*) Under Penal Code section 1170.1, subdivision (a), the aggregate term consists of the “principal term,” the “subordinate term,” and any applicable enhancements. The principal term is “the greatest term of imprisonment imposed by the court for any of the crimes,” and the subordinate term “for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed,” plus one-third of applicable enhancements. (Pen. Code, § 1170.1, subd. (a).) But the prohibition against multiple punishment for a single act under Penal Code section 654 applies to a juvenile court’s aggregation of periods of confinement on multiple counts. (*In re Billy M.* (1983) 139 Cal.App.3d 973, 978.)

Assault with a deadly weapon is punishable by imprisonment for two, three, or four years. (Pen. Code, § 245, subd. (a)(1).) Battery with serious bodily injury is punishable by imprisonment for two, three, or four years. (*Id.*, § 243, subd. (d).) Thus, the juvenile court must have aggregated the periods of confinement on the two counts when it imposed a maximum period of confinement of five years. That was error, because the record does not contain substantial evidence that C.C. committed the assault and the battery with more than one intent and objective. (See *People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) We therefore remand for the juvenile court to recalculate C.C.’s maximum period of confinement.

DISPOSITION

The adjudication order of October 1, 2013, is affirmed. The maximum period of confinement in the disposition order of October 10, 2013, is vacated, and the matter is remanded for the juvenile court to recalculate C.C.'s maximum period of confinement.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.