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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re WILLIAM C., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
WILLIAM C.,
Defendant and Appellant.

B268809

(Los Angeles County
Super. Ct. No. MJ23270)

APPEAL from a judgment of the Superior Court of Los Angeles County, J. Christopher Smith, Commissioner. Reversed.

Torres & Torres and Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Amanda V. Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

After 11-year-old William C. kicked and hit his mother (H.C.), he was alleged in a juvenile wardship petition to have violated Penal Code section 245, subdivision (a)(4), assault by means of force likely to produce great bodily injury. The juvenile court found the allegation true, declared him to be a ward of the court, and placed him on home probation for a maximum period of confinement of one year. On appeal, William contends there was no substantial evidence he did not act in self-defense. We agree and conclude the prosecution did not meet its burden of negating William's claim of self-defense. On this ground, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On June 29, 2015, William, who was 11 years old at the time, kicked and hit his mother, H.C. She called 911, and when a police officer responded she said she wanted to press charges. On June 30, 2015, William was charged with assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)). He was detained in juvenile hall. H.C. told the public defender she "w[as] reluctant to take William back."

The adjudication hearing was held on September 22, 2015. H.C. testified that, on June 29, 2015, she asked William to clean his bedroom. He began cleaning it but then asked for her help. He continued to ask for help for "about an hour." H.C. felt "[a] little frustrated" and told him to go back to his room. He "cuss[ed]" at her and his seven-year-old sister. He called his sister a "nigger" and a "black bitch."

H.C. testified that she felt "upset," angry, and frustrated. William was sitting on the bed in his room when H.C. approached him from the doorway intending to "smack him and pop him in

the mouth for the comments that he made.” She then “popped him in the mouth” with an open hand “maybe a little hard.” “[H]e tried to block [her] from doing it.” William began “screaming” and his nose started to bleed, the blood dripping on the bed and ground.

H.C. went to the bathroom to get a paper towel. When she returned one minute later, William was still sitting on the bed. She started “cleaning up” for “maybe two, three minutes.” William “did not want [her] to touch him.” He then kicked her with his bare feet six to eight times in the ribs “pretty hard” while he was still sitting on the bed. H.C. “stumble[d] back” “against his book shelf” and then “c[a]me back towards him” again. In response, William punched her on her left temple “pretty hard.” At that point, she left to get her husband. H.C. testified that she was “sore” after the incident and the soreness “ke[pt] [her] from going to the gym.”

William testified that on the day of the incident, he needed help cleaning his room. H.C. seemed angry when she came into his room and then punched him “in the nose” with a closed fist. William’s nose started to bleed, and he thought it was broken. The blood fell on the bed and on the ground. H.C. tried to “clean the blood up” but he did not want her to touch him because “[he] thought she was going to hit [him] again.” He felt scared and was crying.

“She was trying to clean [his] face and [he] said don’t touch me.” H.C. appeared “angry and frustrated,” “came back toward” him, and William kicked her with one foot because “[he] thought she was going to hit [him] and [he] was trying to push her off [him].” After she came back toward him again, he punched her

“in the glasses” while he was still sitting on the bed. She then left and went into her room.

Deputy Sheriff Brian Canela testified that he responded to a family disturbance call on the day of the incident. He spoke with H.C. and then found William hiding behind a wall and crying. When the deputy asked him “why he . . . hit and assault[ed] his mother,” William said “he was angry.”

In closing argument, William’s counsel argued that he had acted in self-defense. The court sustained the petition, finding that “[H.C.] got frustrated and . . . she hit him in the face and whether it was closed or open, I don’t think it’s significant for this court’s perspective at the time. Nonetheless, there was sufficient enough force that caused his nose to bleed. Had the kicking started at that point, then, I would think he would have clearly ha[d] a self-defense argument. [¶] I believe that or reasonably believe that he might have been in imminent danger of being touched. But the part when she goes to the bathroom to get the towels and she is coming back, . . . from William’s testimony is that she came back to help . . . clean up the blood. At some point I think William was frustrated because she is trying to wipe the blood off his face. And I think that he then kicked her. And I think at that point she either is trying to stop the kicking, he may have been of a reasonable belief that she was going to hit him again, and he hit her one time in the side of the face.” The court found true that William committed a misdemeanor violation of Penal Code, section 245, subdivision (a)(4).

At the disposition hearing on October 21, 2015, the court declared William a ward of the court, placed him on probation, and released him to his parents’ care. The court declared a

maximum confinement time of one year and awarded 115 days of predisposition custody credit. William timely appealed.

DISCUSSION

William contends the evidence was insufficient to support the juvenile court's assault finding because the evidence established he acted in self-defense. We agree the prosecution did not meet its burden of showing beyond a reasonable doubt that William did not act in self-defense.

In an appeal challenging the sufficiency of the evidence to support a juvenile court judgment sustaining the criminal allegations of a petition made under section 602 of the Welfare and Institutions Code, "we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371–1372.) " 'Substantial evidence . . . is not synonymous with "any" evidence.' Instead, it is ' " 'substantial' proof of the essentials which the law requires." ' [Citations.] The focus is on the quality, rather than the quantity, of the evidence. 'Very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial." ' [Citation.]" (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

It is the prosecution's burden to negate a claim of self-defense beyond a reasonable doubt. (See *People v. Adrian* (1982) 135 Cal.App.3d 335, 340–341; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1103 ["Defendant does not have to prove the homicide was justified; she merely has to raise a reasonable doubt that it might have been."]) " 'To justify an act of self-defense for [an assault charge under Penal Code section 245], the defendant must have an honest *and reasonable* belief that bodily

injury is about to be inflicted on him. [Citation.]’ [Citation.] The threat of bodily injury must be imminent [citation], and ‘. . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.]’ [Citations.]” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065–1066.)

The court found that when William kicked his mother, he was not acting in self-defense but was “frustrated” “she [wa]s trying to wipe the blood of his face.” However, the court also found that, had William kicked his mother “when she hit him in the face,” “he would have clearly ha[d] a self-defense argument,” and that when H.C. came back toward William after being kicked, “he may have been of a reasonable belief that she was going to hit him again”

Accordingly, the court concluded that H.C.’s actions—getting a paper towel and cleaning up the blood—temporarily removed the threat of imminent harm to William. In other words, while it was reasonable for William to fear his mother was going to inflict bodily injury upon him right after she hit him as well as right after he kicked her, the court found that there was no reasonable belief of imminent harm following the intervening three to four minutes.

The prosecution did not meet its burden of showing that the three to four minutes between H.C.’s blow and William’s kicks removed the threat of imminent harm. H.C. testified that she felt angry and frustrated, and William testified she appeared angry and frustrated. There was no testimony that these feelings had dissipated or that H.C.’s frustrated and angry demeanor had changed after she hit him. Both H.C.’s and William’s testimony established that he was still in pain and upset—H.C. testified that he was screaming after she hit him, and that she had hit

him hard as evidenced by the blood that did not just trickle lightly from his nose but dripped down to the floor. The prosecution did not present evidence that William's pain and distress had waned during the intervening three to four minutes. Both H.C. and William testified that he indicated he did not want her to touch him and that H.C. did not heed that request. There was no evidence H.C. assured William that she only wanted to clean up the blood. In short, the prosecution did not present evidence showing beyond a reasonable doubt that a change in circumstances occurred during those three to four minutes such that the threat of imminent harm had dissipated.

The prosecution also did not meet its burden of showing that William did not perceive this threat and rather kicked his mother out of frustration. Even if the trial court did not credit William's testimony that he kicked H.C. out of fear, H.C.'s testimony suggested that William acted out of fear. H.C. did not testify that William appeared frustrated at her actions. Rather, the circumstances that she testified to—he was screaming and bleeding, he did not move from his bed for several minutes after being hit, and he indicated to her he did not want her to touch him—all suggested that William was upset and in pain rather than frustrated.

We presume the trial court found that the force used by William was unreasonable as such a finding supports the court's conclusion that William's claim of self-defense had no merit. “[O]nly that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified. [Citation.]” (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629.) The trier of fact “judges reasonableness ‘from the point of view of a reasonable person in the position of defendant . . .’

[Citation.] To do this, it must consider all the ‘ “ ‘facts and circumstances . . . in determining whether the defendant acted in a manner in which *a reasonable man* would act in protecting his own life or bodily safety.’ ” ’ [Citation]” (*People v. Humphrey, supra*, 13 Cal.4th at p. 1083, italics added.) Accordingly, the question is whether kicking H.C. hard enough to leave her feeling “sore” would have appeared necessary to a reasonable person in William’s position. We conclude that it would have.

William was 11 years old at the time of the incident. He had just been hit in the face by H.C. with enough force that he bled and screamed. He testified that H.C. appeared “angry and frustrated,” and he felt scared and was crying. He further testified that, after H.C. returned with a paper towel, she “tr[ie]d to clean [his] face and [he] said don’t touch me.” H.C. then “came back toward” him, and William kicked her with one foot because “[he] thought she was going to hit [him] and [he] was trying to push her off [him].” It was reasonable for William to believe he could only repel H.C. by kicking her off of him. We note that William did not stand up and approach H.C. with blows but rather remained in the defensive position of sitting down on his bed. William also did not use enough force to leave a mark on H.C., but rather only left her feeling sore.

Respondent contends that H.C. was engaging in reasonable parental discipline when she hit William in the face. (See *People v. Whitehurst* (1992) 9 Cal.App.4th 1045, 1050 [“A parent has a right to reasonably discipline by punishing a child and may administer reasonable punishment without being liable for a battery. [Citations.]”].) We need not determine whether H.C.’s blow was reasonable corporal punishment. Respondent does not argue that further corporal discipline would have been

reasonable and the issue here is William's fear that H.C. would continue to hit him.

Accordingly, we conclude the true finding on count 1 is not supported by substantial evidence.¹

DISPOSITION

The judgment is reversed.

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EDMON, P. J.

We concur:

LAVIN, J.

STRATTON*

¹ Because we find no substantial evidence in support of the judgment, we do not reach William's argument that the juvenile court erred by setting a maximum term of confinement as he was placed on home probation. However, we note that other courts have addressed this issue. (See *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541 [holding a juvenile court has no authority to specify a term of confinement absent removal].) Nor do we need to address the People's argument that the juvenile court erred in awarding custody credits.

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