Filed 12/2/19 In re I.D. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re I.D., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B292912 (Super. Ct. No. PJ52918) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. I.D., Defendant and Appellant.	

The juvenile court sustained allegations that I.D. committed two counts of assault with a deadly weapon (Pen. Code,[1] § 245, subd. (a)(1)), and found true allegations that she inflicted great bodily injury on her victims (§ 12022.7, subd. (a)). The court deemed both assaults felonies. It declared I.D. a ward

[1] All further unlabeled statutory references are to the Penal Code.

of the court, and ordered her committed to the Division of Juvenile Justice for a maximum term of 11 years. It also ordered her to pay a $100 restitution fine (Welf. & Inst. Code, § 730.6, subds. (a)(2)(A) & (b)(1)). The court did not award I.D. predisposition credits.

I.D. contends: (1) the prosecution presented insufficient evidence that she did not act in self-defense, (2) the juvenile court erred when it failed to award predisposition credits, (3) the court erroneously calculated her maximum term of confinement, and (4) the restitution fine should be stayed because the prosecution did not show she had the ability to pay it. We correct I.D.'s predisposition credits and maximum term of confinement, and otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

I.D. went to high school with A.R. A.R. was 5'10" or 5'11" tall and "a lot bigger" than I.D. The two had "bad blood" between them, and had had previous physical altercations.

On August 24, 2018, A.R. went to a football game with G.D. and K.N. The three saw I.D. in the parking lot. A.R. attempted to initiate a fight with I.D., but I.D. ignored her and walked away with a friend.

After the game, A.R. saw I.D. and her boyfriend standing on a street corner. A.R. ran across the street to fight I.D. I.D.'s boyfriend tried to stand between the two girls, but was attacked by two men. I.D. dug into her backpack as A.R. approached. The two punched each other. K.N. also punched I.D.

A.R. knocked I.D. to the ground, and saw that she was holding a knife. A.R. continued to fight. G.D. tried unsuccessfully to separate A.R. and I.D. A.R. stopped fighting

when she began to feel lightheaded. G.D. and I.D. then fought. G.D. backed away when she felt a pain in her back. She left with A.R. and K.N.[2]

A.R. and G.D. went to a nearby hospital. A.R. had been stabbed twice in the stomach and twice in the back, and had several lacerations on her arm. Each wound required stitches. G.D. had been stabbed once in the back, and suffered a punctured lung. I.D. had a contusion on her forehead and two lacerations on her arm. One of the lacerations could be classified as a defensive wound.

DISCUSSION

Self-defense

I.D. contends the juvenile court's commitment order should be reversed because the prosecution presented insufficient evidence that she did not act in self-defense. We disagree.

Minors may act in self-defense if they: (1) reasonably believe that they are in imminent danger of harm, (2) reasonably believe that the immediate use of force is necessary to defend themselves, and (3) use no more force than reasonably necessary to defend against the threat. (*People v. Hernandez* (2011) 51 Cal.4th 733, 747.) The prosecution bears the burden of proving beyond a reasonable doubt that the minor did not act in self-defense. (*People v. Lloyd* (2015) 236 Cal.App.4th 49, 63.)

To evaluate I.D.'s contention that the prosecution did not carry that burden here, we "'review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence [that] is reasonable, credible, and of solid value—such that'" the juvenile

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[2] The prosecution played video clips of the fight at the jurisdictional hearing.

court could have found that I.D. did not act in self-defense. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) We presume in support of the court's findings the existence of every fact it could reasonably deduce from the evidence. (*Ibid.*) If the circumstances "reasonably justify" the court's findings, reversal is not warranted "simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) This court has no power to reweigh evidence. (*Ibid.*)

Substantial evidence supports the juvenile court's finding that I.D. used more force than reasonably necessary to defend herself. A.R., G.D., and K.N. were unarmed. Though all three were present at the fight, they did not all join forces against I.D., as she contends: A.R. and K.N. teamed up against her for just a few seconds. G.D. arrived after K.N. had left the fight—while A.R. alone was fighting I.D.—and joined in only after A.R. had stopped. Thus, while A.R. and her compatriots clearly intended to "engage [I.D.] in fisticuffs," their unarmed, individual use of force was not "so physically overwhelming that [I.D.] had reason to fear great bodily injury from such an encounter." (*People v. Clark* (1982) 130 Cal.App.3d 371, 380-381, abrogated on another ground by *People v. Blakeley* (2000) 23 Cal.4th 82, 85, 92.) The court could thus properly conclude that I.D.'s use of the knife was more force than was reasonably necessary. (*Id.* at p. 380 [no right to defend against nonlethal attack with force likely to cause great bodily injury or death]; see also *People v. Enriquez* (1977) 19 Cal.3d 221, 228 [assault with fists generally does not justify use of a deadly weapon in self-defense], disapproved on another ground by *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3.)

Predisposition credits

I.D. contends, and the Attorney General concedes, the juvenile court erred when it failed to award predisposition custody credits. They are correct.

"[A] minor is entitled to credit against [their] maximum term of confinement for the time spent in custody before the disposition hearing" (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067), including the day the minor was detained and the day of the final disposition hearing (see *People v. King* (1992) 3 Cal.App.4th 882, 886). I.D. was detained on August 25, 2018. She remained in custody until September 25. She is entitled to 32 days of predisposition credits.

Maximum term of confinement

Next, I.D. contends, and the Attorney General concedes, the juvenile court erred when it set her maximum term of confinement at 11 years. We agree.

A juvenile offender's maximum term of confinement is the maximum term of imprisonment that could be imposed on an adult who committed the same offenses, plus any sentence enhancements that were pled and proven. (*In re Jovan B.* (1993) 6 Cal.4th 801, 809-810; see Welf. & Inst. Code, § 726, subd. (d).) When computing the maximum term of confinement, the juvenile court has discretion to aggregate terms based on: (1) the charges sustained at the disposition hearing, and (2) any charges sustained previously. (*In re David H.* (2003) 106 Cal.App.4th 1131, 1133.) The maximum term of confinement is: (1) the upper term on the principal felony offense, plus (2) the full terms on any sentence enhancements attached to that offense, plus (3) one-third the middle term on any subordinate felony offenses, plus (4) one-third the term for any enhancements attached to those

offenses, plus (5) one-third the term on any misdemeanor offenses. (*Id.* at pp. 1133-1134; *In re Eric J.* (1979) 25 Cal.3d 522, 536-538.)

Here, the juvenile court imposed an aggregate term based on the two assaults I.D. committed, the attached great bodily injury sentence enhancements, and a previously sustained allegation that I.D. committed misdemeanor battery (§ 243.2, subd. (a)). Properly calculated, the maximum term of confinement is nine years four months: The upper term of four years on the principal assault, plus three years on the attached great bodily injury enhancement, plus one year on the second assault (one-third the middle term of three years), plus one year on that assault's great bodily injury enhancement (one-third of three years), plus four months on the misdemeanor battery (one-third of one year). The commitment order must be modified accordingly. (*In re Eric J.*, *supra*, 25 Cal.3d at p. 538.)

Restitution fine

Finally, I.D. contends her $100 restitution fine must be stayed because the prosecution did not prove that she had the ability to pay it. (See *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1164.) The Attorney General argues I.D. forfeited her contention because she did not object to the fine at the disposition hearing. (See *People v. Nelson* (2011) 51 Cal.4th 198, 227 (*Nelson*).) The Attorney General is correct.

Whenever the juvenile court sustains a wardship petition, it must order the minor to pay a restitution fine unless there are "compelling and extraordinary reasons" for not doing so. (Welf. & Inst. Code, § 730.6, subds. (a)(2)(A) & (g)(1).) If the minor has committed one or more felony offenses, the fine shall be no less than $100. (*Id.*, subd. (b)(1).) The court must consider

the minor's ability to pay when setting the amount of the fine. (*Id*., subd. (d)(1).) The minor bears the burden of showing a lack of that ability. (*Id*., subd. (d)(2).)

Here, I.D. committed two felony offenses. The juvenile court was thus required to order her to pay a restitution fine. And it was required to consider her ability to pay when it set the amount of that fine. That gave I.D. the ability to bring to the court's attention any "compelling and extraordinary reasons" for waiving the fine or setting it below the statutory minimum. Because she did not do so, she forfeited her challenge to the restitution fine. (*Nelson*, *supra*, 51 Cal.4th at p. 227.)

This case is unlike those that have excused parties for failing to raise *Dueñas* issues in the trial court. In *People v. Santos* (2019) 38 Cal.App.5th 923, for example, the defendant did not forfeit his *Dueñas* challenge to a court operations assessment and court facilities assessment because the assessments were imposed without regard to his ability to pay. Similarly, in *People v. Jones* (2019) 36 Cal.App.5th 1028, *People v. Johnson* (2019) 35 Cal.App.5th 134, and *People v. Castellano* (2019) 33 Cal.App.5th 485, the defendants did not forfeit their challenges to restitution fines set at the statutory minimum because the minimum fines, like the assessments imposed in *Santos*, did not allow for ability-to-pay considerations. Finally, in *People v. Kopp* (2019) 38 Cal.App.5th 47, the defendant did not forfeit her *Dueñas* challenge because her codefendant objected based on an inability to pay.

Unlike the court assessments and minimum restitution fines imposed in *Dueñas* and those cases on which I.D. relies, the statute authorizing restitution fine imposed here *required* the juvenile court to consider I.D.'s ability to pay. I.D.

thus had the opportunity to object based on an inability to pay. Because she failed to object despite the opportunity to do so, her challenge is forfeited.

DISPOSITION

The juvenile court shall modify the commitment order to reflect that I.D. has 32 days of predisposition custody credits, and that her maximum term of confinement is nine years four months. The clerk of the court shall prepare an amended commitment order and forward a certified copy to the Division of Juvenile Justice. In all other respects, the order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Morton Rochman, Judge

Superior Court County of Los Angeles

Elana Goldstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.