



In re Joe F.

2007 | Cited 0 times | California Court of Appeal | December 20, 2007

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Joe F. appeals from an order declaring him a ward of the court under Welfare and Institutions Code section 602. We modify one condition of probation to reflect the condition imposed in the court's oral pronouncement of the conditions. As modified, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In a petition under Welfare and Institutions Code section 602, it was alleged appellant made criminal threats in violation of Penal Code section 422. There was evidence that appellant's neighbor called the police after appellant was smoking marijuana. In response, appellant threatened to hurt his neighbor. He said something like, "I'm going to beat your ass. Don't let me catch you out on the street. I'll hurt you." The neighbor was afraid for his life.

The court sustained the petition and ordered probation. Probation condition 16 provided as follows: "Do not have any dangerous or deadly weapon in your possession, nor remain in the presence of any unlawfully armed person." Appellant timely appealed, and on appeal, challenges only the foregoing probation condition.

DISCUSSION

Appellant argues, and the Attorney General agrees, that the minute order as quoted above does not accurately reflect the juvenile court's verbal imposition of a knowledge requirement in probation condition 16. The court stated that appellant "is to have no dangerous or deadly weapons in his possession, nor remain in the presence of anybody that he knows is unlawfully armed." "As a general rule, a record that is in conflict will be harmonized if possible. [Citation.] If it cannot be harmonized, whether one portion of the record should prevail as against contrary statements in another portion of the record will depend on the circumstances of each particular case." (People v. Harrison (2005) 35 Cal.4th 208, 237.) Here, the trial court's oral pronouncement of the judgment is clear and, it appears, the minute order simply fails to include the scienter requirement. We agree with the parties that the minute order should be amended to accurately reflect the court's oral pronouncement.



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Appellant also argues that probation condition 16 violates the state and federal constitution. According to him, it is unconstitutionally vague because the meaning of the phrase "dangerous and deadly weapon" is not clear since it could include any household object such as a razor, nail clipper, or screwdriver. The issue of whether the probation condition is unconstitutionally vague is not forfeited even though it was not raised in the trial court. (In re Sheena K. (2007) 40 Cal.4th 875, 889 (Sheena K.).)

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.] The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation], protections that are 'embodied in the due process clauses of the federal and California Constitutions.' [Citations.]" (Sheena K., supra, 40 Cal.4th at p. 890.) "The vagueness doctrine bars enforcement of 'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.' [Citations.]" (Ibid.) "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated" (Ibid.)

We agree with the parties that sound legal authority has defined deadly weapon in the context of assault as follows: "'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.' [Citation.] Some few objects, such as dirks and blackjacks, have been held to be deadly weapons as a matter of law; the ordinary use for which they are designed establishes their character as such. [Citations.] Other objects, while not deadly per se, may be used, under certain circumstances, in a manner likely to produce death or great bodily injury." (People v. Aguilar (1997) 16 Cal.4th 1023, 1028-1029 (Aguilar).)

The new CALCRIM instructions similarly defines a deadly weapon as "any object, instrument, or weapon that is inherently deadly or dangerous or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury."

(CALCRIM No. 875.) As appellant points out, the same definition is included in CALCRIM No. 3130, which concerns the enhancement under Penal Code section 12022.3, where it is alleged someone is personally armed with a deadly weapon.

Appellant, however, argues, that the fact legal research was required indicates that the condition is not clear to a person of common intelligence, a requirement of Sheena K. (In re Sheena K., supra, 40 Cal.4th at p. 890.) The fact that a trial court is required to instruct the jury with the meaning of each element of a crime, (People v. Flood (1998) 18 Cal.4th 470, 481), does not show that the definition of dangerous weapon is unclear as appellant argues. "If the terms 'deadly' and 'weapon' are examined in the various dictionaries, a plain, commonsense definition of 'deadly weapon' appears: an instrument capable of being used offensively or defensively and likely to cause death or destruction." (People v.



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Rodriguez (1975) 50 Cal.App.3d 389, 398.) Probation condition 16 has a plain commonsense meaning sufficient to give appellant notice of the meaning of "dangerous or deadly weapon."

DISPOSITION

The trial court is directed to modify the minute order to reflect the following probation condition 16: "Do not have any dangerous or deadly weapons in your possession, nor remain in the presence of any person known to you to be unlawfully armed." In all other respects, the order declaring appellant a ward of the court under Welfare and Institutions Code section 602 is affirmed.

We concur: FLIER, J., EGERTON, J.¹

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

