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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re RAYMOND B., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND B.,

Defendant and Appellant.

A133365

(Sonoma County
Super. Ct. No. 24875-J)

The minor appeals from a dispositional order placing him in a residential camp program after he was found to have committed robbery and conspiracy to commit robbery. He argues that insufficient evidence supports the finding that he participated in a conspiracy. We disagree and affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Around 8:00 p.m. on August 10, 2011, the victim drove with a female friend to a convenience store in Santa Rosa to buy a pack of cigarettes. He parked his car and left it running because he planned to be in the store for a short time, and his female passenger remained in the car. When the victim got out of the car, a sports utility vehicle (SUV) pulled in “right next” to his vehicle, about three to four feet away, leaving just enough

room to open the victim's car doors. There were five people in the SUV: the driver, a front passenger, the minor (who was seated in the passenger seat behind the driver), and two other rear passengers. The minor rolled down his window and asked the victim if he had any marijuana, but the victim ignored him and walked into the store. No one in the SUV went into the convenience store.

In less than a minute, as the victim was returning to his car after purchasing cigarettes, a person who had been a rear passenger of the SUV walked toward the victim and asked for a cigarette. The victim opened his pack, walked between the car and the SUV toward the passenger, and the passenger grabbed a cigarette out of the victim's hand, causing other cigarettes to fall to the ground. As the victim reached to retrieve a fallen cigarette, he noticed that the person who had been the front passenger of the SUV had gone around to the front of the vehicle, so that there was someone standing both in front of and behind the victim, and "something was not right." The minor, who was still seated in the SUV behind the driver, also asked for a cigarette at that point. The victim reached out to offer a cigarette to the minor, who then snatched the entire pack out of the victim's hand. At the same time that the minor was doing this, the first person to ask the victim for a cigarette punched the victim in the face.

The victim then heard someone say, "give me your whip," which he understood to mean his car. He was concerned, because his car's motor was still running and his friend was inside the vehicle. The victim then saw one of the people from the SUV run away, and he noticed a police car drive by. The victim turned around and was hit again. The people in the SUV then "took off." The victim's female passenger had recognized the minor from encounters in her neighborhood, which helped law enforcement in identifying and apprehending him.

A juvenile wardship petition was filed alleging that the then 17-year-old minor came within the provisions of Welfare and Institutions Code section 602, in that he committed robbery (Pen. Code, § 211—count 1) and conspiracy to commit robbery (Pen.

Code, § 182, subd (a)(1)—count 2).¹ Following a contested jurisdictional hearing, the juvenile court sustained both counts. The minor was adjudged a ward of the court at a dispositional hearing and was committed to the Departmental Commitment Program. This timely appeal followed.

II. DISCUSSION

The minor argues that insufficient evidence supports the juvenile court’s true finding on the petition’s conspiracy count. “ ‘To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Bolden* (2002) 29 Cal.4th 515, 553.) “The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction.” (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605, fn. omitted.)

“The crime of conspiracy is defined in the Penal Code as ‘two or more persons conspir[ing]’ ‘[t]o commit any crime,’ together with proof of the commission of an overt act ‘by one or more of the parties to such agreement’ in furtherance thereof. (Pen. Code, §§ 182, subd. (a)(1), 184.) ‘Conspiracy is a “specific intent” crime. . . . The specific intent required divides logically into two elements: (1) the intent to agree, or conspire, and (b) the intent to commit the offense which is the object of the conspiracy. . . . To sustain a conviction for conspiracy to commit a particular offense, the prosecution must show not only that the conspirators intended to agree but also that they intended to commit the elements of that offense.’ [Citation.]” (*People v. Swain* (1996) 12 Cal.4th

¹ The petition also alleged that the crimes were committed for the benefit of, at the direction of, and in association with a criminal street gang, in violation of Penal Code section 186.22, subdivision (d). The petition later was amended to add additional gang allegations; however, the allegations were dismissed at the jurisdictional hearing because the juvenile court did not find them true beyond a reasonable doubt.

593, 600, italics omitted.) Because the minor was found to have committed conspiracy to commit robbery, we must determine whether substantial evidence supports the finding that the minor and his companions agreed to commit robbery. (*People v. Tran* (1996) 47 Cal.App.4th 759, 772.)

We conclude that sufficient evidence supports the juvenile court’s finding on the conspiracy count. In sustaining the petition, the juvenile court stated, “The whole totality of this behavior—pulling up to the store where none of the people in the second car made any attempt to go buy, you know, a Coke or a newspaper or anything—stayed in the car. One guy gets out and distracts him, walks around this other side of the car. Meanwhile, someone is drawing his attention from the front. And the minor in question here, who’s in the back seat, is also trying to get a cigarette out of him [the victim]. [¶] This is all just—the evidence will support beyond a reasonable doubt that this was a diversionary tactic to set him up for a sucker punch. He can’t go anywhere because his girlfriend, who weighs probably about 94 pounds, is sitting in the car. So he can’t run, and he can’t hide, and he’s outnumbered.” The court also specifically found that at least two overt acts had been proven beyond a reasonable doubt: a co-conspirator punched the victim in the face, and a co-conspirator told the victim to give him “a whip,” a reference to the victim’s car.

Although the minor does not challenge the sustaining of the robbery count against him, for which he was found to be an aider and abettor, he characterizes his participation in the attack on the victim as merely “sit[ting] in the car and ask[ing] to borrow a cigarette.” He ignores the circumstantial evidence, upon which the juvenile court specifically relied when making its ruling, that the minor played a role in a plan to create a diversion to make it easier to rob the victim. (*People v. Manson* (1976) 61 Cal.App.3d 102, 126 [circumstantial evidence may provide proof of conspiracy].)

Pointing to the juvenile court’s observation that the victim appeared fearful while testifying, the minor also claims that the juvenile court merely speculated that the victim was fearful *before the attack*. Contrary to the minor’s assertion, however, the victim specifically testified that “something was not right” before he was hit, supporting an inference of fearfulness.

Because substantial evidence supports the juvenile court's conclusion that the minor was part of a conspiracy to rob the victim, we will not disturb its ruling.

III.
DISPOSITION

The juvenile court's order is affirmed.

Baskin, J.*

We concur:

Reardon, Acting P.J.

Rivera, J.

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