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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re D.H., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
D.H.,  
Defendant and Appellant.

A139703  
  
(Solano County  
Super. Ct. No. J41998)

After finding that appellant D.H. had committed acts constituting the felony offense of first degree residential burglary (Pen. Code, § 459), the juvenile court declared him a ward of the court, placed him on probation for three years and released him to his mother’s custody. D.H.’s appellate counsel has briefed no issues and asks us to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appellate counsel has informed D.H. of his right to file a supplemental brief and he has not filed such a brief. We have examined the entire record in accordance with *Wende*. Because we find no issues that require further briefing, we affirm the dispositional order of August 7, 2013.

The district attorney filed a Welfare and Institutions Code<sup>1</sup> section 602, subdivision (a), petition alleging that on or about May 15, 2013, D.H. had committed acts constituting the felony offense of first degree residential burglary in violation of Penal Code section 459. D.H. was detained pending a jurisdictional hearing. Before the jurisdictional hearing, D.H.'s counsel argued that the prosecutor had not complied with his responsibilities to disclose exculpatory evidence. The prosecutor ultimately provided the purportedly outstanding exculpatory material to the satisfaction of defense counsel. Because of the belated disclosure, the court granted defense counsel's motion to continue the case and released D.H. to the custody of his mother.

At the contested jurisdictional hearing, the burglary victim testified that he lived in the downstairs unit of a duplex. On the morning of the burglary, he had locked his residence including his daughter's bedroom window, which overlooked the rear yard area. When the victim returned home he saw that the front door was open and a man was leaving through the door with a bag of "stuff" belonging to the victim's daughter. The victim also saw a gold Honda Accord parked in front of his home; there were two males "around like twenty" in the car. According to the victim, the Honda took off and left the burglar "running, trying to get away." The victim, still in his car, unsuccessfully attempted to pursue the man fleeing on foot. During the pursuit, the fleeing man dropped the bag that he had taken from the victim's home and the victim recovered the bag. When the victim returned home he discovered that the window in his daughter's bedroom had been forced open with what "had to be a screwdriver." The window screen was off standing up against the wall but the glass was not broken.

About 15 minutes later, the victim got into his car to attempt to locate the Honda. About a block away from his home, the victim saw the same Honda that was parked outside his home. During the pursuit, the victim saw three people in the car; they looked back at the victim's car and then began "ducking down." The victim followed the Honda

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<sup>1</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

for several minutes before calling the police. In his 911 call, the victim told the police his house had been broken into and gave a description of the Honda and its location. The victim then returned to his home.

City of Vallejo Police Officer Jim Melville testified that he responded to the 911 call. About three or four miles from the victim's home, the officer saw a gold Honda Accord. Before the officer could put on his car siren or lights, the Honda immediately pulled to the curb and three men got out of the car. The officer left his car, drew his service revolver, and all three men put their hands up. Two of the men were adults and D.H was a minor. The three men were handcuffed and detained pending an infield show-up identification by the victim. The victim identified the Honda as the same car that had been parked outside his home. The victim identified one adult male as "the guy that was coming out [of] my house." The victim did not get a good look at the other men in the car and he did not identify D.H. The three men found in the Honda were arrested and taken to the Vallejo Police Department.

Officer Melville testified that he questioned D.H. about the burglary. After D.H. waived his *Miranda* rights, D.H. said he had committed the burglary, and his two friends had nothing to do with it. According to D.H., he had "forced entry through a lower window" of a "lower unit." He started to grab items from inside the residence, but the homeowner came home and D. H. fled before stealing anything. After D.H. ran out of the apartment, he called his two friends to pick him up and they arrived a short time later and picked him up. The officer did not believe D.H.'s statement that his two friends were not involved because the victim had identified one of the adults at the in-field identification and D.H. did not know about the property that had been taken from the residence. The officer acknowledged that he had encountered the situation where an adult asks a juvenile to take responsibility for something that the adult did in the belief that the juvenile would get into less trouble.

At the conclusion of the jurisdictional hearing, counsel's arguments focused on the sufficiency of the evidence to sustain the burglary charge. After finding all the witnesses credible, the juvenile court made the following findings: "The evidence, essentially, is

that two people were sitting in that car outside, while one person's coming out the door. The back window was broken into. [¶] It seems to me the people sitting in the car were acting as lookouts, because clearly there's no reason to be sitting there, with an obvious burglary going on, unless you're either acting as a lookout or directly responsible going in and out of the house. [¶] And . . . either you could see the window being broken into, or the evidence that I heard was that you couldn't see it being broken into, which meant you have to be involved in it. [¶] The argument . . . that [D.H.] was told about it after the fact. That doesn't make sense to me based on everything that I heard. It sounds like a pretty obvious burglary the minute the victim rolled up, and the people in the car went around trying to help him get away. [¶] [The] argument was made that there wasn't any intent; you have to show the intent prior to the act. That's all true. An aider and abettor has to have the specific intent to commit the crime, and help somebody do it prior to the act actually occurring, but as far as anybody can tell, these three people had no business being in there, . . . and the minor is clearly involved. He also admitted to that much. [¶] It's unclear to me how much was actually asked of what [D.H.] would know about it, and it sounds like he gave a sort of cursory description of what happened. [¶] So with all that, I'll find beyond a reasonable doubt that Count One is true. I'll sustain it on that."

At the dispositional hearing, D.H.'s counsel asked the juvenile court to follow the recommendations of the probation department. The juvenile court agreed, declaring D.H. to be a ward of the court and placing him in the custody of his mother under the supervision of the probation department. D.H. was also committed to juvenile hall for four "[m]andatory weekends," which could "be excused by [the ] Probation Officer if minor is in compliance." The court deemed the offense to be a felony and set the maximum period of confinement at three years, which did not exceed the time prescribed by law, and awarded 27 days credit for time served in custody. (§ 731, subd. (c).) The court imposed probationary conditions including that D.H. shall abstain from the use of alcohol/drugs (including marijuana); not possess any weapons/ ammunition; submit to searches and seizures of his home, person, and effects, at any time, with or without probable cause by any peace officer; have no contact with the victim and co-participants

in the incident; and stay away from the victim's residence. D.H. was ordered to pay the statutorily-mandated minimum restitution fine of \$100. (§ 730.6, subd. (b).) The court reserved jurisdiction over the amount of any victim restitution.

We agree with appellate counsel that there are no issues requiring further briefing. D.H. was represented by counsel and received fair hearings. Substantial evidence supports the court's finding that D.H. committed the felony offense of residential burglary, either as a principal or an aider and abettor.

**DISPOSITION**

The juvenile court's dispositional order is affirmed.

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Pollak, J.