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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re VICTOR M, a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR M.,

Defendant and Appellant.

A142300

(Contra Costa County  
Super. Ct. No. J12-00308)

Victor M. appeals from juvenile court orders finding he committed second degree robbery and made a criminal threat. He contends the court erred in finding he aided and abetted the robbery when all he did was drive the perpetrator away from the scene. We affirm.

**STATEMENT OF THE CASE**

On April 8, 2014, a supplemental juvenile wardship petition<sup>1</sup> was filed alleging that appellant, 17 years of age, committed two felony offenses, second degree robbery (Pen. Code, §§ 211/212.5) and making a criminal threat (§ 422). After a contested jurisdictional hearing, the juvenile court sustained the petition.<sup>2</sup> On May 27, 2014, the

<sup>1</sup> Appellant had previously been adjudged a ward of the court in 2012, after having been found to have committed a residential burglary.

<sup>2</sup> This was a joint jurisdictional hearing for appellant and another minor, Isaiah Z., who was alleged to have committed second degree robbery and assault by means of force

court continued appellant's wardship, reduced the criminal threat count to a misdemeanor (§ 17, subd. (b)) and committed appellant to the Orrin Allen Youth Reformation Facility for six months. Appellant filed a timely notice of appeal on June 25, 2014.

### STATEMENT OF FACTS

Carlos D. testified that he, appellant, and Isaiah Z. were in the same class at school. He had known appellant for about four years and used to hang out with him. He had known Isaiah longer, but they were "not really" friends and did not hang out together. On April 4, Carlos got out of school about 1:00 p.m. and was waiting for appellant to pick him up, having previously asked appellant for a ride home. Appellant had given Carlos rides home almost every day for the prior several weeks. Carlos was carrying a pair of True Religion jeans inside his jacket; he had traded his iphone for the jeans at lunchtime.<sup>3</sup> He was wearing Timber Lake boots he had borrowed from a friend.

Appellant arrived with a girl in the front seat of his car and Carlos got into the driver's side back seat; Isaiah came up, asked for a ride, and got into the back seat behind the front passenger. As they were driving, Isaiah took out a white powder substance and showed it to appellant, who asked where he had gotten it, then Isaiah put the powder in his hand, sniffed it, and put the bag back in his pocket.

Appellant dropped the girl off first and Isaiah moved into the front seat. Instead of driving straight to Carlos's house, Victor turned into an alley behind some stores. Carlos had driven through the alley with appellant before, but this time, at the end of the alley, appellant made a U-turn and parked. Isaiah got out, told Carlos to get out, and came around and opened Carlos's door. Carlos testified that Isaiah said he wanted to fight him, although at another point he testified that he asked why Isaiah was telling him to get out

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likely to produce great bodily injury in the same incident. Both counts against Isaiah were sustained.

<sup>3</sup> Carlos initially testified that the iphone he traded was one he had purchased from a friend. He acknowledged on cross examination that he had falsely told the police that his friend had given him the jeans and then, when they did not believe him, that he traded his father's old iphone for the jeans. He lied because he did not want his mother to know he had traded his father's iphone, which his father had given to him.

of the car and Isaiah just said, “You know exactly why.” Isaiah punched Carlos in the face repeatedly, as Carlos continued to ask “why?” Isaiah told Carlos to take off his clothes and snatched the jeans from under Carlos’s jacket, punching Carlos again. Isaiah threw the pants into the front seat and told Carlos, “Give me your boots or I’m going to stab you.” Carlos let Isaiah pull off the boots, which Isaiah also threw into the front seat. Isaiah grabbed Carlos’s jacket and pulled him out of the car, then got back in himself, and appellant and Isaiah drove off. As they were driving away, Isaiah said, “You told this one nigga about the Instagram account.” About a minute after appellant and Isaiah drove away, Carlos saw them pull back up, look at him, and then drive off. Carlos later told the police that during the episode with Isaiah, appellant sat in the front seat using his cell phone.

Carlos testified that he had had a “bad feeling” during the car ride because of issues he had had with Isaiah. A few days before, Carlos had found out about an Instagram account Isaiah had set up on which photographs of naked girls were posted. On April 4, people had been talking about the account and Carlos knew there might be “some bad feelings” about that. The Friday before, at school, Isaiah had looked at Carlos “with a mug,” an angry face indicating a challenge to fight. Also, on April 4, Carlos thought Isaiah was still angry with him about an incident in late February, when Isaiah had asked him why he was “throwing up Midtown”—using The Midtown gang sign—at a party.<sup>4</sup> Carlos had asked what party he was talking about and Isaiah did not want to tell him, just said “[y]ou know what party I’m talking about” and “[y]ou’re lucky I don’t beat your ass right there,” then “flinched” at him and walked away. Carlos testified that in one of Isaiah’s photographs on Facebook he was making the Midtown sign, and that he

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<sup>4</sup> On cross examination, Carlos testified that Isaiah did not have any bandages at the time, nor a cast on his foot or arm. Probation Officer Nancy Fite testified that Isaiah had been at “the ranch” from February 12 until March 11, 2014, and had a cast on his arm until February. Isaiah’s attorney used the probation officer’s testimony to argue that Carlos’s testimony was not credible.

had heard appellant claim to be a Midtown member; Carlos did not associate with the Midtown gang.

Carlos went to a nearby store, where the clerk called his mother and, when his mother arrived, the police. Officer Barkzi testified that she arrived at the store to find Carlos upset and crying, his face red and swollen, without shoes. Barkzi asked Carlos repeatedly why Isaiah and appellant had done this to him; Carlos initially denied knowing and eventually mentioned the Instagram issue. He did not mention the Midtown issue. Carlos gave the officer a phone number for appellant; she called and asked about the incident, and appellant said he did not know what she was talking about, he did not know Carlos and Isaiah, and they were not his friends.

When Carlos got home, around 3:00 or 4:00 p.m., he turned on his phone and saw a message from appellant on his Facebook account asking why the police were calling him. Carlos replied and the two exchanged a number of messages. One of appellant's messages said, "I ain't set you up, bro. The police just called me nigga. If they say you told them some bullshit, I'm on your head. Best believe that." Carlos interpreted the "on your head" as meaning "[t]hey're going to try to jump me or something." Another message from appellant said, "They better not show up to my house my nigga. If they do, you know what's up because you involving me in some BS ass shit." Carlos thought this meant appellant was going to try to fight him.

Around 4:30 p.m., Carlos got a message through Facebook from Isaiah, although they were not Facebook friends. Isaiah asked why the police were at his house, gave Carlos a phone number and told him to call.<sup>5</sup> In the phone call, Isaiah asked why the police were at his house and Carlos said it was because of what had happened. Isaiah told Carlos he "better tell them that it wasn't him."

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<sup>5</sup> Officer Barkzi testified that Carlos told her he received a phone call from a number he did not recognize, called that number back and spoke with Isaiah; he did not tell her he had been communicating with Isaiah on Facebook and, if he had, she would have documented the conversation as she did the conversation between Carlos and appellant.

The police came to Carlos's house about 5:00 p.m., after Carlos called to report he was receiving threatening messages on Facebook. Carlos said appellant had been threatening him and showed the Facebook messages to Officer Barkzi, who photographed them. Carlos gave the officer a phone number for Isaiah, which Barkzi later gave to Officer Elmore.

Officers Elmore and Barkzi went to Isaiah's home and told him they wanted to look for things that had been stolen from a minor who had been beaten up. Isaiah let the officers into the house. The officers asked Isaiah if he had a cell phone and he said he did not know what they were talking about. Elmore dialed the number appellant had given Barkzi for Isaiah, blocking the number he was calling from, and a cell phone that Isaiah's brother took from his jacket pocket displayed an incoming call from a blocked number. Isaiah repeated that he did not have a cell phone and did not know the victim. While Elmore was holding the phone he had gotten from Isaiah's brother, it began to vibrate, indicating a call from "Vic." Elmore, posing as Isaiah, asked, "Hey, do you got those pants still?" The caller said, "Nah, nah, I thought you had them." Elmore replied, "Nah, I don't have them. I don't know where they're at. I was hoping you could tell me because I really want them." The caller responded, "Yeah, yeah, I feel that, bro." Elmore testified that the voice of the caller was the same as that attributed to appellant on a recording of appellant's interview with police officers.

Officer Barkzi and Sergeant Gayler went to appellant's home. When Barkzi said she was investigating the incident involving Carlos, appellant said he did not know what she was talking about and did not know Carlos.

After April 4, Carlos deleted his Facebook account to avoid receiving more messages. At the time of the jurisdictional hearing, he was being home schooled because he and his mother were worried about his safety. The night before the jurisdictional hearing, Carlos received threatening messages from an associate of appellant's on Kik, a messaging service.

Isaiah, also a subject of the joint jurisdictional hearing, admitted assaulting Carlos and taking his belongings. Isaiah testified that he made up an excuse to get appellant to

pull over, then got out, hit Carlos, took his jeans and boots, and threw them in the front seat, and pulled Carlos out of the car, ignoring Carlos repeatedly asking, “why?” When Isaiah got back into the car, appellant said, “That’s messed up. You should never have done that.” Isaiah had not talked to appellant about doing this to Carlos, and appellant was surprised and unhappy about it. Isaiah denied that he and appellant came back and looked at Carlos before driving away again. He testified that appellant dropped him off at the corner by the Bank of America near where the incident occurred. He took the pants and boots with him when he left appellant’s car and threw them by a tree as he walked home.

Isaiah testified that he did not know why he hit Carlos. He denied confronting Carlos about Midtown signs and denied being a member of the Midtown gang. He testified that the assault occurred where Carlos said it did, but the car never made the U-turn in the alley that Carlos described.

### **DISCUSSION**

Appellant contends that because all he did was drive Isaiah away from the scene, there was insufficient evidence he intended to assist the robbery to support the finding that he aided and abetted the offense.

“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.) “[T]he reviewing court’s task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

“ ‘Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.’ ” (*People v. Clark* (2011) 52 Cal.4th 856, 943, quoting *People v. Davis* (1995) 10 Cal.4th 463, 509.)

As appellant recognizes, *People v. Cooper* (1991) 53 Cal.3d 1158 (*Cooper*) is controlling. In that case, the defendant drove two companions to a shopping center parking lot where he parked and the three conversed outside the car. The companions ran across the parking lot, bumped into an elderly shopper and stole his wallet, then jumped into the defendant's car, which was moving with its two right-side doors open. Once the two were in the car, the defendant drove away. (*Id.* at p. 1161.) The question presented was the propriety of a jury instruction that permitted finding a getaway driver who had no prior knowledge of the robbery liable as an aider and abettor even if the robbers were not carrying the loot during their escape. (*Ibid.*)

Summarizing its decision, the *Cooper* court stated, "As our cases recognize, the prosecution must show an aider and abettor intended to facilitate or encourage the principal offense prior to or during its commission. The main issue here, therefore, is the duration of the commission of a robbery for purposes of determining whether a getaway driver is liable as an aider and abettor rather than an accessory. [¶] We conclude that the commission of a robbery for purposes of determining aider and abettor liability continues until all acts constituting the robbery have ceased. The asportation, the final element of the offense of robbery, continues so long as the stolen property is being carried away to a place of temporary safety. Accordingly, in order to be held liable as an aider and abettor, the requisite intent to aid and abet must be formed *before or during such carrying away of the loot to a place of temporary safety*. Therefore, a getaway driver who has no prior knowledge of a robbery, but who forms the intent to aid in carrying away the loot during such asportation, may properly be found liable as an aider and abettor of the robbery." (*Cooper, supra*, 53 Cal.3d at pp. 1160-1161.)

"A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime. (*People v. Beeman* [(1984)] 35 Cal.3d 547, 561.)" (*Cooper, supra*, 53 Cal.4th at p. 1164.) "*Beeman* presupposes that, if a person in fact aids, promotes, encourages or instigates commission

of a crime, the requisite intent to render such aid must be formed *prior to or during* ‘commission’ of that offense. ([*Beeman*, at p.] 558.)” (*Cooper*, at p. 1164.)

*Cooper* explained that although a robbery has been “*initially committed*” for purposes of determining guilt of the completed offense rather than an attempt once all elements of robbery are satisfied, “[f]or purposes of determining aider and abettor liability, the commission of a robbery continues until all acts constituting the offense have *ceased*.” (*Cooper, supra*, 53 Cal.4th at p. 1164.) Robbery consists of “gaining possession of the victim’s property and asporting or carrying away the loot.” (*Id.* at p. 1165.) The final element is satisfied, for purposes of establishing guilt, “by evidence of slight movement[,]” but “asportation continues thereafter as long as the loot is being carried away to a place of temporary safety. Therefore, in order to fulfill the requirements of *Beeman, supra*, 35 Cal.3d 547, for conviction of the more serious offense of aiding and abetting a robbery, a getaway driver must form the intent to facilitate or encourage commission of the robbery *prior to or during the carrying away of the loot to a place of temporary safety*.” (*Ibid.*)

The determinative factor, under *Cooper*, was whether the getaway driver’s intent was formed while the loot was being transported to a place of temporary safety (so that the offense was on-going) or after this asportation of the loot had occurred (in which case the offense was already complete). The court declined to base aider and abettor liability on the “escape rule,” applicable to felony-murder and other “ancillary consequences of robbery,” under which “commission of the robbery continues through *the escape* to a place of temporary safety, regardless of whether or not the loot is being carried away simultaneously.” (*Cooper, supra*, 53 Cal.3d at p. 1166.) Once asportation of the loot ceased, *Cooper* reasoned, the getaway driver could neither prevent the robbery nor stop it in progress, but could only help the robbers escape. (*Ibid.*) Therefore, in this situation, imposing liability would not serve a “primary rationale for punishing aiders and abettors as principals—to deter them from aiding or encouraging the commission of offenses.” (*Id.* at p. 1168.)

As appellant drove Isaiah away from the scene of the crime while Isaiah was in possession of the items he had taken from Carlos, the present case squarely fits the scenario under which, if he had the requisite intent to aid the robbery, appellant would be liable as an aider and abettor under *Cooper*. The juvenile court found the evidence “ambiguous” as to whether appellant knew Isaiah was going to commit the robbery but, “[i]n any event, [Isaiah] committed the robbery in front of [appellant], and the testimony was that Isaiah threw the loot of the robbery into the front passenger compartment where [appellant] was seated. [Appellant] chose to drive away with Isaiah with full knowledge that Isaiah had committed a robbery and an assault. There is no evidence of duress or threats of any kind or by Isaiah threatens [appellant]. The evidence was that he chose to help Isaiah. [¶] There’s also evidence in the testimony given by Isaiah that [appellant] is angry with him, saying that he should not have done what he did, but by his actions, he still did aid . . . Isaiah. He chose to leave the shoeless Carlos at the robbery scene.” The court then discussed the distinction between aiding and abetting robbery and acting as an accessory after the fact, noting that the relevant jury instruction, CALCRIM No. 1603, “provides that to be guilty of a robbery as an aider and abettor, defendant *must have formed the intent to aid and abet in the commission of the robbery* before or while a perpetrator carried away the property to a place of temporary safety.” (Italics added.) The court stated that “by his actions during the crime of asportation of the loot, clearly [appellant] knew of the robbery and knew what he was doing in driving the robber and the loot away. The court does not find that he knew the robbery was going to occur. There’s no evidence to prove that he knew it was going to occur, but once he saw it occur, his actions show that he intended to assist [Isaiah] even though he may have disapproved of what [Isaiah] had done, which is what [Isaiah] said. [Isaiah] still had not reached a place of temporary safety. The robbery was not complete, and [appellant] aided and abetted the robbery. He was the getaway driver. [¶] His intent is also shown by his mean-mugging the victim near the robbery . . . scene.” Thus, in full recognition of the distinction between aiding and abetting and acting as an accessory described in *Cooper*, the juvenile court concluded that appellant’s intent was to assist in the robbery.

Appellant urges that driving away with knowledge of what had just occurred and that the robber was still in possession of the stolen goods cannot automatically satisfy the necessary intent for aiding and abetting liability without making the *Cooper* rule “the escape rule under another name.” (*Cooper, supra*, 53 Cal.3d at p. 1173 (dis. opn. of Kennard, J.))<sup>6</sup> We do not understand the juvenile court to have found that *because* appellant was the getaway driver he *necessarily* had the intent to facilitate the robbery. In explaining its ruling, the court expressly referred to the requirement that an aider and abettor intend to “aid and abet in the commission of the robbery,” as distinguished from an accessory aiding the perpetrator after completion of the crime, then elaborated the conduct from which it inferred appellant’s intent to “aid the robber.” Accordingly, we take the court’s explanation to mean that it found the requisite intent to aid the robbery in the fact that appellant chose to act as the getaway driver with full knowledge of what had occurred and the presence of Carlos’s belongings in his vehicle.<sup>7</sup>

*Cooper*’s rationale for recognizing aiding and abetting liability in the asportation phase of a robbery is clearly satisfied in this case. Appellant did not first learn of the robbery when Isaiah got in the car to be driven away. Although by all accounts he did

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<sup>6</sup> In Justice Kennard’s view, the robbery in *Cooper* was complete upon “slight asportation” of the stolen property, and the getaway driver could be liable only as an accessory after the fact. (*Cooper, supra*, 53 Cal.3d at pp. 1173-1174 (dis. opn. of Kennard, J.))

<sup>7</sup> Appellant challenges the trial court’s statement that his intent was “also shown by his mean-mugging the victim near the robbery . . . scene.” Carlos testified that after appellant and Isaiah drove away, “I saw them pull back up in front of the other side. Like, there was an opening, and I was walking, and I seen them, and they just looked at me, and they hit and turned and drove off.” In argument, the prosecutor characterized this incident as “mean-mugging”: “Before they left, they stopped the car, and mean-mugged Carlos, and then drove off . . .” Arguably, the prosecutor’s description, which the trial court adopted, was a fair characterization of Carlos’s testimony. But if it was not, the point is not of major significance. This was but one of the many factors the trial court relied upon in finding appellant intended to aid the robbery, and it is not clear that stopping to “look” at Carlos would not carry a similar inference. Certainly there is no reason to suspect the court’s conclusion would have been different if it had viewed this aspect of the incident as “just looking” rather than “mean-mugging.”

not participate in the assault or the actual robbery, appellant sat in the front seat of the car he had parked in an alley at Isaiah's request while Isaiah repeatedly hit Carlos and took his belongings *in the back seat of the car immediately behind appellant*, and threw those belongings *into the front seat beside appellant*. As *Cooper* explained, a primary reason for treating aiders and abettors as principals is to deter them from aiding the commission of offenses. (*Cooper, supra*, 53 Cal.3d at p. 1168.) Unlike a getaway driver who was not aware of the offense until after it was complete, appellant was necessarily aware of what was taking place behind him and chose not to intervene to stop it, as well as to drive Isaiah away with the stolen property. These facts amply support the juvenile court's finding that appellant intended to aid the robbery.

#### **DISPOSITION**

The order is affirmed.

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Kline, P.J.

We concur:

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Richman, J.

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Stewart, J.