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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re J.G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J. G., Defendant and Appellant.	A153825 (Napa County Super. Ct. No. JV 18605-A)

J.G. (minor) appeals from the juvenile court's orders sustaining a charge of felony vandalism and placing him on formal probation for six months without wardship. Evidence showed that minor and two other boys threw rocks at passing cars, and the victim's car was damaged. Minor contends he was entitled to dismissal of the wardship petition at the close of the prosecution's evidence because there was insufficient evidence establishing either that he was the one who threw the rock that damaged the victim's car or that he was responsible for the damage as an aider and abettor. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Around 12:30 p.m. on June 16, 2017, Wendy Lombardi made a right turn onto California Boulevard from Lincoln Avenue near Little Caesar's Pizza and heard a loud bang on the passenger side of her car. After she arrived at work, she found damage to the

passenger-side rear door of her car and called the police. An auto body shop estimated repairing the damage would cost over $1,500. Lombardi did not know what happened to her car, but there had been no other vehicles around her at the time she heard the loud bang.

Around the same time that day, Jon Walker was driving northbound on California Boulevard near Little Caesar's when a rock hit the front fender on the passenger side of his car. Walker had observed "two kids" behind him; one of the boys threw something "[l]ike he was a center fielder throwing home" and "about five seconds later [Walker] heard a thud." Walker turned around and stopped the boys. He told them he was going to call the police, and the boys scattered on foot. Walker followed one of the boys—the one he thought had thrown the rock at his car—to a Boys and Girls Club.

The Napa Police Department received Lombardi's call at 12:55 p.m. and Walker's call eight minutes later. Officer Marcus Martinez responded to Walker first because he was with a possible suspect. When Martinez arrived at the Boys and Girls Club, Walker pointed out the boy he believed threw the rock at his car. While Martinez was questioning the boy, minor approached and told the officer that the boy was his younger brother. Minor said that he (minor) had thrown rocks for approximately five minutes at 10 different vehicles along with two others, his younger brother and Jaxon O. Minor told Martinez he was throwing rocks in front of Lucky's grocery store on California Boulevard (near Little Caesar's). Minor said he initiated throwing the rocks at cars, and he, his younger brother, and Jaxon all threw rocks. Specifically as to Walker's car (a Dodge Challenger), minor reported it was Jaxon who threw the rock that hit the car. Minor said that he thought it was a bad idea to throw rocks at Walker's car because it was expensive, and that he told Jaxon not to throw the rock but he did so anyway. Martinez never asked minor whether he had thrown a rock at Lombardi's car, a white Ford Escape.

The Napa County District Attorney filed a wardship petition under Welfare and Institutions Code[1] section 602, charging minor with two counts of felony vandalism (Pen. Code, § 594, subd. (b)(1)), with count 1 related to Lombardi's car and count 2 related to Walker's car. After Lombardi, Walker, and Martinez testified at the jurisdictional hearing, minor's counsel moved to dismiss the petition pursuant to section 701.1. As to count 1, he argued there was no direct evidence minor was involved in the damage to Lombardi's car. As to count 2, he argued the evidence showed that Walker believed minor's brother threw the rock that hit his car, and minor could not be held liable as an accomplice since he expressly counseled his companion not to throw a rock at Walker's car.

The juvenile court granted the motion as to count 2, finding credible minor's statement to the officer that he told Jaxon not to throw at the expensive car. The court denied the motion as to count 1. Minor then testified, admitting that he was the first one to throw rocks at cars, but denying that he told the others to throw rocks and denying that he threw the rock that hit Lombardi's white Ford Escape.

The juvenile court sustained the petition as to count 1. The court reasoned that J.G. was the one who started throwing rocks and even if he did not throw the rock that hit Lombardi's car, he was still responsible as an aider and abettor because he initiated the conduct and made no attempt to stop it.

DISCUSSION

Minor contends the juvenile court erred in denying his section 701.1 motion to dismiss at the close of the prosecution's evidence for insufficiency of the evidence.[2]

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

[2] Section 701.1 provides, "At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a

"[T]he standard for review of the juvenile court's denial of a motion to dismiss is whether there is substantial evidence to support the offense charged in the petition." (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.) "In applying the substantial evidence rule, we must 'assume in favor of [the court's] order the existence of every fact from which the [court] could have reasonably deduced from the evidence whether the offense charged was committed and if it was perpetrated by the person or persons accused of the offense. [Citations.] Accordingly, we may not set aside the trial court's denial of the motion on the ground of the insufficiency of the evidence unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reached by the court below.' " (*Ibid.*)

To commit felony vandalism, a person must maliciously deface, damage, or destroy any real or personal property not his or her own, causing damage of $400 or more. (Pen. Code, § 594, subds. (a) and (b)(1).) Here, the prosecution's evidence showed that soon after Lombardi reported she sustained damage to her car on California Boulevard, minor admitted to the police that he initiated the throwing of rocks at cars on California Boulevard and that he and his companions hit about 10 cars over about five minutes. This was sufficient evidence for the juvenile court to infer that one of the three boys had thrown the rock that damaged Lombardi's car and, further, that minor committed vandalism either by throwing that rock himself or by aiding and abetting his two companions in throwing the rock that hit Lombardi's car. " '[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages, or instigates, the commission of the crime.' " (*People v. Johnson* (2016) 62 Cal.4th 600, 630.) In this case, it reasonably could be inferred that by initiating

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motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right."

the conduct of throwing rocks at cars, minor encouraged and instigated his companions to do the same thing.

Minor's arguments to the contrary are unavailing. He relies on *In re Leanna W.* (2004) 120 Cal.App.4th 735 to support his position that there was insufficient evidence that he committed vandalism as the direct perpetrator, but the case is inapposite. In *Leanna W.*, 17-year-old ward Leanna hosted an unauthorized party at her grandmother's house while the grandmother was away for the weekend. (*Id*. at pp. 738–739.) When the grandmother returned home, she found damage to her home and personal property including broken glass and missing stemware, a stain on the carpet, a chipped floor tile, and damaged window screens. (*Id*. at p. 740.) The juvenile court sustained a charge of vandalism against Leanna, but the appellate court reversed because no evidence was presented that Leanna herself damaged or destroyed her grandmother's property. (*Id*. at p. 744.) In *Leanna W.*, the damage could have been caused by any of the 30 to 40 party guests, and it is not surprising that Leanna could not be held liable for the damage without any additional evidence about her own conduct. (See *ibid*. [there were 30 to 40 partygoers].) But the facts of *Leanna W.* are far different from minor's case. Here, minor admitted he initiated the criminal conduct of throwing rocks at passing cars and then his companions began throwing rocks at cars, too. This was sufficient evidence for the juvenile court to hold minor liable for vandalism based on both his own conduct as a direct perpetrator and the subsequent imitative conduct of his companions under an aider-and-abettor theory. Nothing in *Leanna W.* suggests otherwise.

We also reject minor's argument that no substantial evidence supports his liability for his companions' conduct on an aider-and-abettor theory. "Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment. Among the factors which may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense." (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5, fns. omitted.) In *Juan G.*, cited by minor, the minor and the direct perpetrator approached the victim together, the

perpetrator demanded money at knifepoint with the minor standing beside him, the minor fled with the perpetrator, and the minor was later found with the perpetrator; this evidence was held sufficient to support a finding that the minor aided and abetted robbery. (*Id*. at pp. 5–6.)

Here, the prosecution's evidence showed minor was with his younger brother and Jaxon when minor started throwing rocks at passing cars. Together, they threw rocks at about 10 cars before they were confronted by one of their victims, Walker. After Walker told the boys he was going to call the police, the boys scattered, apparently trying to evade the police. Soon after, when minor's younger brother was apprehended by Officer Martinez, minor intervened, stating that all three boys threw rocks at cars but he was the one who had initiated the activity. Minor's presence at the crime scene, his companionship with the other two rock-throwers, his initial attempt to evade the police, and his later admission to the officer that he instigated the vandalizing conduct are more than sufficient evidence to support a finding that minor aided and abetted his younger brother and Jaxon in committing vandalism resulting in damage to Lombardi's car.

DISPOSITION

The judgment is affirmed.

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Miller, J.

We concur:

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Richman, Acting P.J.

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Stewart, J.

A153825, *People v. J.G.*