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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B230652

(Los Angeles County
Super. Ct. No. TJ16663)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Morton
Rochman, Judge; Catherine J. Pratt, Juvenile Court Referee. Affirmed.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Kenneth C. Byrne and Julie A. Harris, Deputy Attorneys General, for Plaintiff
and Respondent.

D.M. appeals from the order declaring him a ward of the juvenile court and directing him to camp placement based on true findings that he committed the offenses of attempted first degree burglary and giving false information to a police officer. D.M. contends that the evidence is insufficient to support the finding that he committed an attempted first degree burglary. We disagree and thus affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Welfare and Institutions Code Section 602 Petition*

A petition filed on December 30, 2010, pursuant to Welfare and Institutions Code section 602, alleged that, on or about December 28, 2010, D.M. committed the crimes of attempted first degree burglary (Pen. Code, §§ 664, 459, 460, subd. (a)) and giving false information to a police officer (Pen. Code, § 148.9, subd. (a)). D.M. denied the allegations.

2. *The Evidentiary Hearing*

At a hearing on January 20, 2011, Los Angeles Police Department Officer Raul Martinez testified that, on the afternoon of December 28, 2010, he was wearing plain clothes and driving an unmarked vehicle on Devonshire Street in the San Fernando Valley when he observed D.M. standing outside a residence. D.M. jumped over the steel and concrete fence, approximately five feet high, surrounding that residence, and walked through the front yard. D.M. knocked on the front door of the house and, when he did not receive a response, looked through the front windows, leaning in and shading his eyes as though he were watching to see if someone was inside. He remained there for about two minutes, while talking on his cellular telephone. No one answered the door or came to the window. D.M. then proceeded to the rear area of the house, still talking on his telephone.

Officer Martinez parked his vehicle and observed another car parked behind him. Two male occupants were in the car, and the driver was talking on a cellular telephone. The occupants of the car looked at Officer Martinez and at the residence. Tracing the

license plate of the car, Officer Martinez learned that the car had been rented near the Los Angeles International Airport.

After 30 seconds to a minute, D.M. returned from the rear area of the house and, now appearing to be in a hurry, went to the front door and knocked on it again. Without waiting for a response, D.M. continued to hurry, jumping over the fence to exit the property and proceeding to the alley behind the house. The car that was parked behind Officer Martinez pulled away and entered the same alley. Officer Martinez drove on Devonshire Street to the next intersection and observed the car exit the alley behind the house. D.M. was in the rear passenger seat of the car.

Another police unit stopped the car and detained the three occupants, including D.M. Officer Martinez arrived at the scene of the detention. D.M. told Officer Martinez that his name was Aaron Scott and gave him an inaccurate birthdate. Through a fingerprint analysis, Officer Martinez determined D.M.'s identity and his correct birthdate.

Officer Cesar Corona searched the car and found an open backpack, which was within reach of the rear passenger seat of the car where D.M. had been seated. A pair of gloves, vise grips, a roll of duct tape and a screwdriver with a bent end were in the backpack. A pocket on the back of the front passenger seat contained another roll of duct tape. A postal carrier uniform also was in the car, and it was a small size, which, Officer Corona opined, was not large enough to fit the occupants in the car other than D.M. According to Officer Corona, duct tape often is used in home burglaries to help remove smashed glass from a window pane without setting off a burglar alarm. Officer Corona testified that it is known intelligence within the police department that burglars often use uniforms of postal carriers and delivery personnel as a decoy and rental cars, which are "hard to detect." He also stated that houses with rear alleys are common targets because they provide an easy getaway and help obscure a burglar's presence. Based on Officer Martinez's observations of D.M., Officer Corona said that "a group or numerous groups . . . are burglarizing the San Fernando Valley using this method of time

of day, no one is around, rear alleys, knock, notice, have somebody across the street . . . keeping eyes on both sides of the corners. This house is a perfect place to hit”

The People and D.M., through his counsel, stipulated that the residents of the house on Devonshire Street do not know D.M. and did not give him permission to jump the fence and enter the property.

D.M. presented no evidence in defense.

3. *The Juvenile Court’s Findings and Disposition*

After hearing the evidence, the juvenile court (Judge Rochman) found true the allegations that D.M. had committed the offenses of attempted first degree burglary, a felony, and giving false information to a police officer, a misdemeanor, and declared D.M. a ward of the court. It continued the matter to January 26, 2011 for disposition. At disposition, the court (Juvenile Court Referee Pratt) ordered D.M. to a camp-community placement program for six months. D.M. filed a notice of appeal.

DISCUSSION

D.M. contends the evidence is insufficient to support the finding that he committed the offense of attempted first degree burglary. We disagree.

In evaluating whether the evidence is sufficient to support a conviction, we “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.) We draw all reasonable inferences in favor of the factfinder’s conclusions, whether based on direct or circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “[T]he same principles are applicable to a review on appeal of the sufficiency of the evidence to support a finding in a juvenile proceeding that the minor violated a criminal statute.” (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

The offense of first degree burglary includes the entry into an inhabited dwelling house “with intent to commit grand or petit larceny or any felony[.]” (§§ 459, 460, subd. (a).) “An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (§ 21a.)

According to the evidence, D.M. entered the yard of the residence by jumping an approximately five-foot fence. He proceeded to the front door, knocked on it and, when no one answered, peered through the front windows while leaning in to see if anyone was in the residence, all the while talking on his cellular telephone. During this time, which lasted about two minutes, two males were in a rental car parked outside the residence, one of whom also was talking on his cellular telephone. The males in the car looked at Officer Martinez and at the residence. D.M. went to the rear of the house, but within a minute returned to the front, now hurrying, knocked on the door again and without waiting for a response quickly jumped back over the fence and proceeded to the alley behind the house. The car parked outside the house then entered the alley, picked up D.M. and exited the alley. Items often used in residential burglaries, particularly those occurring in the San Fernando Valley at the time, including duct tape and a postal carrier uniform, which was a size that would fit D.M. and not the other occupants of the car, were found inside the car. An open backpack with duct tape, vise grips and a screwdriver with a bent end was in reach of where D.M. was seated in the car. The actions of D.M. in knocking at a front door in a residence with a rear alley in the afternoon with a “lookout” rental vehicle waiting outside the house also fit the pattern of San Fernando Valley burglaries. Viewing this evidence and all reasonable inferences therefrom in the light most favorable to the juvenile court’s findings, we conclude it is sufficient to support the conclusion that D.M. attempted to enter the Devonshire Street residence with an intent to commit grand or petit larceny or any felony and that his acts at that house were directed at entry but thwarted by Officer Martinez’s presence, which was noticed by D.M.’s companions waiting outside the house and communicated to D.M.

D.M. contends that the evidence supports only a finding of mere preparation, which is insufficient to support an attempt to commit a crime. (See *People v. Jones* (1999) 75 Cal.App.4th 616, 627 [mere preparation such as planning or mere intention to commit a crime is insufficient to constitute an attempt].) In making this contention, however, D.M. draws his own inferences from the evidence, such as that he and his companions were merely deciding whether to commit a burglary at the Devonshire Street residence. But we must draw inferences in favor of the juvenile court's findings. (*People v. Kraft, supra*, 23 Cal.4th at p. 1053.) Given that D.M. jumped over a five-foot fence of concrete and steel, proceeded to the front door, looked in the front windows and went to the rear of the house, only to hurry off the property into the rear alley when his companions noticed Officer Martinez and that tools to commit the crime were within his reach, the evidence supports the juvenile court's conclusion that D.M. was engaged in more than mere preparation. "[A]cts [that] indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design will be sufficient" to support an attempt to commit a crime. (*Jones*, at p. 627.) D.M.'s acts at the Devonshire Street residence reasonably could be construed as immediate steps in the present execution of a burglary, which was thwarted by an observer of those acts.

D.M. also suggests that a defendant must take a "step to enter or penetrate the target building" in order for an attempted burglary to occur. But the Supreme Court has held that "penetration into the area behind a window screen amounts to an entry of a building within the meaning of the burglary statute even when the window itself is closed and is not penetrated." (*People v. Valencia* (2002) 28 Cal.4th 1, 13.) Given the slight penetration necessary to constitute a completed burglary, D.M.'s contention that taking a step to enter or penetrate the dwelling is essential to convert mere preparation into an attempt is not persuasive. Indeed, courts have upheld attempted burglary convictions without evidence of penetration or entry into the target location. (See, e.g., *People v. Prince* (2007) 40 Cal.4th 1179, 1257-1258 [defendant's examination of backyards,

approach of one residence through side gate after following victim home, knock on door and request for person who did not reside there were activities that “went beyond mere preparation but were frustrated by the vigilance of the victim’s neighbor[,]” just as his following another victim home, entering her backyard and approaching a sliding glass door at the rear of the residence constituted more than mere preparation when his efforts were frustrated by victim’s mother’s screams and the family dog and defendant jumped over the property’s fence and drove away at a high rate of speed]; *People v. Staples* (1970) 6 Cal.App.3d 61, 67-68 [defendant’s drilling from rented space above bank vault that did not penetrate into the bank sufficient to constitute attempted burglary].) The circumstances of the defendant’s acts demonstrating a direct movement to the commission of the offense after the preparations are made are what constitute an attempt going beyond mere preparation. (*Staples*, at p. 68.) The evidence here is sufficient to support the juvenile court’s conclusion that D.M’s acts at the residence, viewed in conjunction with the presence of his companions and the paraphernalia in the car, were direct movements to the commission of the offense after preparations were made, thwarted by the presence of Officer Martinez.

DISPOSITION

The order is affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.