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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.A.,  
a Person Coming Under the Juvenile Court Law.

B241737  
(Los Angeles County  
Super. Ct. No. VJ36905)

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
C.A.,  
Defendant and Appellant.

APPEAL from a judgment of the Superior Court for Los Angeles County, Heidi W. Shirley, Referee. Affirmed in part, modified in part, and remanded.

Elana Goldstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Minor C.A. appeals from a judgment sustaining a Welfare and Institutions Code section 602 petition alleging two counts of burglary (Pen. Code, § 459). C.A. contends (1) there was insufficient evidence to sustain the first burglary count; (2) as to the second burglary count, the juvenile court erred in finding that the burglary was of the first degree; (3) the juvenile court incorrectly calculated C.A.'s maximum confinement time; and (4) the juvenile court incorrectly calculated C.A.'s predisposition credits. The Attorney General concedes the last three issues, and we conclude there is substantial evidence to find the first burglary count to be true. Accordingly, we affirm the judgment as to count 1, modify the judgment as to count 2, and remand the matter to the juvenile court for recalculation of C.A.'s maximum confinement time and predisposition credits.

## **BACKGROUND**

Ruth Galindo and her uncle, Rolando Flores, live in houses on a duplex lot in Whittier. Galindo lives at 11910 Eagon Drive, which is the front house on the lot, and Flores lives at 11906 Eagon Drive, which is the back house.

At around 8:30 p.m. on March 7, 2012, Galindo opened the door to her locked bedroom. When she walked in, she saw someone wearing what she described as a "gray hoody" jumping out of her window. Her room was a mess, with cabinets open and books all over. She noticed right away that her laptop was missing. Later, she discovered that her camera, Nintendo DS, and some jewelry also were missing.

At around 9:00 that night, Flores heard dogs barking, and went outside. He saw two young men, one of whom he identified in court as C.A., trying to break into a house on the lot next door to him. The house they were trying to get into was on a duplex lot; both houses on the lot were empty, and had been for sale for a while. Flores went inside to call the police. When he came back outside, C.A. was

inside the empty house. Soon thereafter, Flores saw C.A. leave the house and start to run away. He did not see where the other young man went. Galindo, who had come outside, saw the person she had seen jumping out of the window in her room bolting out of the house next door. Flores ran after him, caught him, and brought him back to the house to wait for the police. Flores described the clothing C.A. was wearing as a “gray hoody” and shorts.

Deputy Sheriff Paul Buckley responded to the burglary call. When he arrived, the residents at the address had an individual, identified as C.A., detained. Deputy Buckley wrote down in his report that C.A. was wearing a gray sweater. C.A. did not have anything in his possession that did not belong to him. Deputy Buckley spoke to Galindo, who told him that she could not identify the person she saw jumping out of her window. He also searched the empty house that had been broken into, and did not find any of Galindo’s missing items.

The clothing that C.A. was wearing when he was detained was brought into court. The clothing included a gray sweatshirt without a hood.

The juvenile court found the allegations as to both counts to be true beyond a reasonable doubt, and sustained the petition. The court found both counts to be burglary in the first degree, and computed C.A.’s maximum confinement time to be seven years and ten months, and awarded 43 days of predisposition credits. C.A. timely filed a notice of appeal from the judgment.

## **DISCUSSION**

### *A. Sufficiency of the Evidence as to Count 1*

C.A. contends there was insufficient evidence to support the true finding as to count 1 because Galindo, the only witness to the burglary, testified that she only saw a “gray hoody” jumping out of her window, and did not see the perpetrator’s face. We disagree.

“The law regarding appellate review of claims challenging the sufficiency of the evidence in the juvenile context is the same as that governing review of sufficiency claims generally. [Citation.] In determining the sufficiency of the evidence, ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.] ‘[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*In re Z.A.* (2012) 207 Cal.App.4th 1401, 1424-1425.)

In this case, although Galindo testified that she did not see the perpetrator’s face when he jumped out of her window, she also testified that she saw a person wearing the same sweatshirt a short time later, bolting out of the house next door, and saw her uncle chase that person and bring him back to her location. She identified that person in court as C.A.

The fact that C.A. did not have in his possession any of the items that were missing from Galindo’s room does not raise a reasonable doubt as to the truth of the allegations of burglary. First, Flores testified that C.A. was with another person when he broke into the second house; that second person, who was not found, could have had possession of the stolen items. In addition, there was a half-hour period between the time Galindo saw C.A. jump from her window and Flores saw C.A. and the other person trying to break into the house next door; C.A. could have dropped off the stolen items at another location before returning to burglarize the second house.

In short, the juvenile court reasonably could conclude, based upon the substantial evidence presented, that C.A. committed the burglary of Galindo's room.

*B. The Burglary Alleged in Count 2 is of the Second Degree*

C.A. contends the juvenile court erred in declaring the burglary alleged in count 2 to be first degree burglary, because the house that C.A. burglarized was vacant and for sale. The Attorney General agrees that the burglary was of the second degree. C.A. and the Attorney General are correct. Burglary of a house that has been vacated by the tenants, who had no intent to return, is second degree burglary. (See *People v. Burkett* (Oct. 15, 2013, C070257) \_\_\_ Cal.App.4th \_\_\_.) Therefore, we order that the judgment be modified to reflect that C.A. was found to have committed second degree burglary. (*People v. Navarro* (2007) 40 Cal.4th 668, 679; Pen. Code, § 1181, subd. 6 [appellate court may modify judgment “if the evidence shows the defendant to be not guilty of the degree of the crime of which he was convicted, but guilty of a lesser degree thereof”].)

*C. Remand is Required*

As C.A. argues, and the Attorney General concedes, this matter must be remanded to the juvenile court to (1) declare whether the burglary alleged in count 2 was a felony or a misdemeanor; (2) recalculate C.A.'s maximum confinement time in light of the modification of the judgment and the felony/misdemeanor determination; and (3) recalculate C.A.'s predisposition credits.

**DISPOSITION**

The judgment is modified to reflect that the burglary allegation found to be true in count 2 is second degree burglary. The matter is remanded to the juvenile court for further proceedings as set forth in section C., *ante*.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.