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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DAVID J., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID J.,

Defendant and Appellant.

D059382

(Super. Ct. No. J227378)

APPEAL from a judgment of the Superior Court of San Diego County,

Dwayne K. Moring, Judge. Affirmed.

David J., a minor, was charged with one misdemeanor count of unlawfully attempting to enter a building with the intent to commit theft (Pen. Code,¹ §§ 459, 664) and one misdemeanor count of unlawfully and maliciously damaging and destroying real

¹ All statutory references are to the Penal Code.

and personal property amounting to less than \$400 (§ 594(a)(b)(2)(A)). The juvenile court dismissed the first count, but adjudged David a ward of the court as to count 2. David appeals, challenging the sufficiency of the evidence to support the court's finding that he unlawfully damaged the front door of Stage Stop Liquor. We affirm the judgment.

FACTS

After midnight on September 17, 2010, Cheryl Day was outside the Ramona Main Stage building with her father-in-law when she heard something being thrown into the dumpster. She looked across the adjacent parking lot and saw "two small men," one of whom was David, at the front door of Stage Stop Liquor. One of the males was lifting a trash can and throwing it into the door and the other was kicking the front door. Although Day was unable to see their faces, she noticed one male wearing jeans and a white t-shirt and the other wearing a darker outfit. Day went inside the Ramona Main Stage building to have someone call 9-1-1 and the facility's two bouncers, including James Murray, ran out in pursuit of the two males. During the chase, the two males split up and Murray and the other bouncer followed only one of the males, without losing sight of him, until he was apprehended by police officers. Around the same time, David was apprehended by another officer who found him on a nearby street behind some bushes. The officer requested a witness for a curbside lineup and Day was brought to the location where David was detained. David got out of the car, turned around, and sat back in the police car. Day identified him as one of the males she saw defacing the front door of the

liquor store. The identification occurred 15 minutes after Day witnessed the two males in front of the liquor store. She identified David by his white shirt, even though he was also wearing gray Dickie shorts unlike the suspect whom Day described to police as wearing jeans. Additionally, Murray identified David, one of the individuals he chased, by his white, baggy t-shirt.

DISCUSSION

David contends there is no substantial evidence to support the court's finding that he unlawfully defaced the front door at Stage Stop Liquor. He argues that the distinction between the description of the suspect in jeans and his gray Dickie shorts is so great that no reasonable person would have made a true finding against him beyond a reasonable doubt. David also contends the single person show-up where Day identified him was unreasonably suggestive and therefore the identification is not substantial, credible evidence to support the court's finding.

When reviewing the sufficiency of the evidence on appeal, we must determine whether substantial evidence supports the trier of fact's findings and we do not consider whether the evidence proves guilt beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We must review the entire record favorably to the judgment to determine whether there is substantial evidence that is reasonable, credible and of solid value to allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. (*Id.* at p. 578.) In this regard, we must accord due deference to the trier of fact and may not substitute our evaluation of a witness's credibility for that of the fact finder.

(*People v. Jones* (1990) 51 Cal.3d 294, 314.) Moreover, the uncorroborated testimony of a single witness is sufficient to sustain a conviction or true finding unless the testimony is physically impossible or inherently improbable. (*People v. Scott* (1978) 21 Cal.3d 284, 296.)

Here, there is evidence that is reasonable, credible and of solid value to support the court's finding that David unlawfully damaged property. Two witnesses, Day and Murray, identified David by his white t-shirt within a short time after Day witnessed two males defacing the front door of the liquor store. The testimony provided by the two witnesses here is neither physically impossible nor inherently improbable, and thus constitutes substantial evidence.

Additionally, the discrepancy between the witness's description of one of the males wearing jeans and David wearing Dickie shorts when he was detained was not developed at trial. There are no factual determinations discussed in the record to allow us to review the discrepancy as either favorable or unfavorable to David. Because we are limited to matters contained in the trial record (*People v. Edgmon* (1968) 267 Cal.App.2d 759, 770), there is no basis in this record for us to analyze the effect of any discrepancies in descriptions of the suspects.

Similarly, David's contention that Day's identification during the single person show-up was unreasonably suggestive was not raised at trial. The record does not contain any instances in which minor's counsel made any motions to exclude evidence regarding Day's identification or proposed a special hearing on the matter because the

identification was unreasonably suggestive. As we previously discussed, we are limited to considering only matters that are contained in the record. (*People v. Edgmon, supra*, 267 Cal.App.2d at p. 770; *People v. Jones, supra*, 51 Cal.3d at p. 314.) Therefore, we cannot determine whether the single person show-up was unreasonably suggestive. Nevertheless, there is substantial evidence in this record which supports the court's true finding that David unlawfully defaced Stage Stop Liquor.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.