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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

G.W.,

Defendant and Appellant.

E052295

(Super.Ct.No. J235218)

OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S.

Garza, Judge. Affirmed as modified.

Beth Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Steve Oetting,

Collette C. Cavalier and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court found that defendant and appellant G.W. (minor) had committed arson of forest land (Pen. Code, § 451, subd. (c)), placed him on probation, and revoked his privilege to operate a motor vehicle pursuant to Vehicle Code section 13550. Defendant contends there was insufficient evidence that he burned forest land and that the juvenile court was not authorized to revoke his driving privileges pursuant to Vehicle Code section 13550. We modify the judgment to strike the revocation of driving privileges and otherwise affirm.

BACKGROUND

On October 1, 2010, minor set fire to a small pile of trash and debris in the Lytle Creek wash. The wash area contains a lot of dry brush. The fire was set near power lines and adjacent to a sandy, vegetation-free path. While large weeds, small shrubs, bushes, and other vegetation that may be described as brush are in the wash, the fire was set on ground that was not near any substantial vegetation. Indeed, a close up of the ground on which the fire occurred shows that a couple of uncharred small weeds are the only living vegetation in close proximity to where the fire occurred. Nonetheless, the area in which the fire occurred contains a small amount of scattered dried grasses and small twigs.

After the juvenile court found that defendant had committed the offense, the probation department submitted a report recommending probation, terms of that probation, and ancillary recommendations. Among the ancillary recommendations

are: “CVC 13550 RECOMMENDATION: It is respectfully recommended that the court find that a motor vehicle was not used in the commission of this offense. It is further recommended that the court order the Department of Motor Vehicles to revoke the defendant’s privilege to operate a motor vehicle. It is further recommended that the defendant surrender his\her driver’s license to the court pursuant to 13550 CVC.” At the dispositional hearing, the juvenile court stated, “The Court notes that a motor vehicle was not used or incidental to the commission of this offense, however, the recommendation is that the Department of Motor Vehicles have your privilege to operate a motor vehicle revoked, and you will be required to surrender your driver’s license if you do have one, pursuant to California Vehicle Code [section] 13550.” The dispositional minute order states, “the court orders that the minor’s drivers license or the privilege to obtain their drivers license . . . will be delayed for a period of one year pursuant to vc13350 [¶] The court orders the clerk to notify the department of motor vehicles.”

SUBSTANTIAL EVIDENCE OF BURNING FOREST LAND

Defendant contends there was insufficient evidence that he burned forest land because “the evidence shows that the items that were burned in the fire were trash.” The People note the descriptions of the area as “having a lot of dry brush” and cite the photographic exhibits as evidence that the area was brush covered. Defendant responds by asserting that only trash was actually burned and not any brush or other forest land.

We review claims of insufficiency of evidence by examining “ ‘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.’ ” (*People v. Story* (2009) 45 Cal.4th 1282, 1296.) The standard is the same even if circumstantial evidence was relied upon. (*Ibid.*) Because it is the trier of fact, and not the appellate court that must be convinced, “ ‘ ‘ ‘ ‘ ‘[i]f the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.’ ” ’ ’ ’ ’ ’ (*Ibid.*) In examining the evidence, we focus on the evidence that did exist rather than on the evidence that did not. (*Id.* at p. 1299.) The scope of the evidence includes both the evidence in the record as well as “reasonable inferences to be drawn therefrom.” (*People v. Coffman & Marlow* (2004) 34 Cal.4th 1, 89.) In deciding whether substantial evidence supports the decision of the trier of fact, we do not resolve issues of credibility or evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Resolution of conflicting evidence and credibility issues is for the trier of fact to decide. (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1331.) “Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient” (*Young*, at p. 1181.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

“A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of . . . forest land.” (Pen. Code, § 451.) “ ‘Forest land’ means any brush covered land, cut-over land, forest, grasslands, or woods.” (Pen. Code, § 450, subd. (b).)

Defendant set a fire in a creek wash that was generally brush covered. While the fire was set in a comparatively brush free area of the wash and was composed of trash and other debris, the land upon which the fire burned was land in a brush covered area. Thus, minor burnt brush covered land.

The premise underlying defendant’s interpretation of Penal Code sections 450 and 451 is that a fire set in a comparatively vegetation free clearing between brush, trees, grass, or cut-over remnants of vegetation, which does not burn any vegetation, does not amount to the burning of forest land. We reject this premise because the statute refers to land and not merely vegetation. Moreover, in this case, a small amount of brush, in the form of dried grass and small twigs, was scattered about the actual land upon which the fire occurred.

DRIVING PRIVILEGES

Minor contends his driving privileges should not have been revoked or delayed because he did not use a motor vehicle while committing the arson and, thus, the juvenile court was not authorized to revoke or delay his privileges. The People contend defendant has forfeited the claim, acknowledge that neither Vehicle Code section 13350 nor 13550 requires the restriction, but assert that the restriction is a valid condition of probation. We hold that the restriction was not authorized.

Vehicle Code section 13350 requires the Department of Motor Vehicles to revoke driving privileges, and not reinstate them for at least one year, when it receives an abstract showing that a person was convicted of: (1) violating Vehicle Code section 20001; (2) any felony in which a motor vehicle was used (with exceptions); or (3) reckless driving causing bodily injury. Under Vehicle Code section 13550, whenever the Department of Motor Vehicles is required to revoke or suspend driving privileges, the privileges are deemed suspended or revoked until the department takes the required action and courts are required to compel the surrender of any licenses or temporary permits and then forward them to the department of motor vehicles.

The trial court was not authorized to revoke or delay minor's driving privileges under either Vehicle Code sections 13350 or 13550. We are aware of no other provision, nor have the People cited any, authorizing the juvenile court's order. Furthermore, contrary to the People's assertion, the revocation or delay was not imposed as a condition of probation. It was recommended in the probation report as an ancillary order, was orally pronounced separately from the discussion of the terms of probation, and was recited in the minute order separate from the terms of probation that were imposed by reference to the probation report.

Additionally, forfeiture does not apply. This is because the juvenile court was not authorized to revoke or delay minor's driving privileges; thus, the order was subject to correction at any time. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 1044-1045.) Accordingly, we shall reverse the order.

DISPOSITION

The judgment is modified to remove the restriction or delay of minor's privilege to operate a motor vehicle. The superior court clerk is directed to prepare a new minute order reflecting the modification and then forward a certified copy of the minute order to the Department of Motor Vehicles. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

RICHLI
J.