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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.B.,

Defendant and Appellant.

E055081

(Super.Ct.No. J236478)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed.

Renée Paradis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael T. Murphy, and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

On October 14, 2011, a first amended petition charged defendant and minor E.B. (minor) with misdemeanor battery on a school employee under Penal Code¹ section 243.6 (count 1); and residential burglary under section 459 (count 2). On November 7, 2011, after a jurisdictional hearing, the juvenile court found the allegations in counts 1 and 2 to be true. At the disposition hearing on November 22, 2011, the juvenile court declared minor a ward of the court and placed him on probation. On November 23, 2011, minor filed a notice of appeal.

On appeal, minor contends that there is insufficient evidence that minor knew of the wrongfulness of his conduct as to count 1 and that the juvenile court erred in denying his motion to dismiss count 2. For the reasons set forth below, we shall affirm the judgment.

FACTUAL BACKGROUND

I. The Prosecution's Case

A. Battery on School Employee

On November 18, 2010, around 1:25 p.m., James Espinoza, a vice principal of Del Vallejo Middle School, went to the school's detention room with Officer McCrystal, to assist the discipline clerk because some students were misbehaving. One of these students was minor; he was alleged to have thrown milk at another student. Minor was

¹ All statutory references are to the Penal Code unless otherwise indicated.

sitting at a desk waiting to be seen. The chair and desk were attached, and a person had to slide into the desk chair from the side.

Espinoza, standing within a couple of feet of minor, spoke to minor about his behavior. Espinoza found out that minor played football, and football was important to him. Espinoza and minor were talking in an “even” tone of voice. Espinoza asked minor if Espinoza needed to talk to minor’s football coach. As soon as Espinoza mentioned the coach, minor jumped up or stood up and balled his fists. Espinoza backed up, and minor took one or two steps towards Espinoza, and swung his closed right fist at Espinoza, hitting him on the top of his left hand. Espinoza’s left hand was by his sternum. Minor came toward Espinoza with the intention of hitting him. Espinoza had not raised his hands to defend himself; he was assessing the situation when he was hit. After striking Espinoza, minor continued to swing violently. Espinoza and the officer grabbed minor, and the officer handcuffed minor.

Previous to this incident, the discipline clerk had been threatened by minor when he “balled” up his fists. Minor was suspended over this incident.

B. Residential Burglary

On October 16, 2011, Natasha Bolton lived in the City of Highland. She left around 8:40 a.m. to take her son to school, and returned around 9:10 a.m. When she left her home, no one else was inside the home and she locked the doors. When she returned, she noticed that her rear sliding glass door was open; it was not open when she left. In the living room, two video game consoles, a digital camera, an MP3 player, a cell phone,

and a plastic drum set in a box were missing. Bolton's gold bracelet and earrings were also missing from her jewelry box located upstairs.

Around 9:17 a.m., San Bernardino County Deputy Sheriff Jason Fortier was dispatched to Bolton's residence. Deputy Fortier also spoke with Trivia Wright, a neighbor and cousin of Bolton's. Wright said that she saw Earl B. running south from the back area of the apartment complex where Bolton's apartment was located; he was carrying a chocolate cake and a white box. Earl then turned west by the pool area, and Wright lost sight of him.

Deputy Fortier went to Serrano Middle School about an hour after contacting Bolton, and asked for Earl B., a student at the school. Minor was about three feet from the deputy when the deputy made the request; minor immediately looked at the deputy with a shocked, surprised look. Deputy Fortier talked to minor and learned that minor lived one street west of the street where the burglary occurred. Minor said that Earl B. was his cousin. When asked where minor was at the time of the burglary, minor said he was on probation, does not "mess" around, and showed the deputy a GPS tracking device on his belt.

Later that day, Deputy Fortier called minor's probation officer and was told that minor's tracking device indicated that minor was around the area of the victim's residence at the time of the burglary. San Bernardino County Probation Officer Crystal Harris testified that minor was part of the county's house arrest program as of October 6, 2011, and he had a monitor that tracked his location. Minor started school on October 6,

2011, at 9:40 a.m., and the tracking device showed that minor was out of his home around 7:50 a.m. and traveled all over the place. The tracking device showed minor in the area of the burglarized apartment at approximately 7:50 a.m. and 8:24 a.m. About 9:20 a.m., he was at the bus stop.

Minor called Probation Officer Harris later and stated that he and a friend, Earl B., went inside a lady's house, without permission. Minor, however, stated that he did not take anything.

After Deputy Fortier spoke to Officer Harris, he interviewed minor at the police station. Minor told the deputy that he was at the bus stop at the time of the burglary. The deputy responded that he knew that minor was lying because of the GPS. Minor then changed his story and said that Earl told minor to come with him because he wanted to show minor something; it turned out to be Bolton's open sliding door. Minor entered the residence willingly, knowing he was not supposed to be there, and knew that the purpose of entering was to take things because Earl wanted something from the residence. Minor told the deputy that he attempted to stop Earl. Minor stated that he walked out of the residence first, then Earl followed with items in his hands. Then Earl ran off in a different direction. Later, they both ended up at the bus stop, and they both got on the bus together.

When the deputy asked minor if he knew where any of the stolen items were located, minor responded no. When the deputy said that he was going to arrest minor, minor said that he would tell the deputy where one of the video game consoles was.

Minor said that it was just inside a fence of his neighbor's adjoining yard. Deputy Fortier recovered the console in a white plastic bag, tucked in a broken fence, concealed, at minor's home. Bolton identified the video game console as belonging to her.

II. *Minor's Case*

Minor testified solely to the charge of battery. A teacher saw minor throw an apple across the lunch room and took minor to the office. Espinoza came to the office and talked to minor, saying that he would talk to minor's football coach. Minor got up from sitting in his seat, and Espinoza grabbed minor's right wrist with his left hand. Minor moved his arm down from palm down to palm up to try to get Espinoza to let go of him. Minor did not hit Espinoza, did not swing at him, and did not hit or touch him.

Minor told a police officer, after the incident, that he hit Espinoza because he was angry.

ANALYSIS

I. *Sufficient Evidence Supports an Implied Finding That Minor Knew His Action Was Wrong*

Minor contends that there was insufficient evidence that he knew committing a battery against a school employee was wrong. We disagree.

At the time of the incident, minor was 13 years six months old. Section 26 presumes a minor under age 14 is incapable of committing a crime unless there is clear proof the minor understood the wrongfulness of the charged act. "Clear proof" means clear and convincing evidence. (*In re Manuel L.* (1994) 7 Cal.4th 229, 239 & fn. 5.)

Here the court did not make an express finding on whether minor knew his conduct was wrongful. A finding, however, may be implied and is reviewed according to the standard of substantial evidence. (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52; *People v. Lewis* (2001) 26 Cal.4th 334, 378-379.)

“In determining whether a minor would be capable of committing a crime under section 26, the juvenile court must consider the child’s age, experience, and understanding. [Citation.] A minor’s knowledge of his act’s wrongfulness may be inferred from the circumstances, such as the method of its commission or its concealment.” (*In re Paul C.*, *supra*, 221 Cal.App.3d at p. 52, citing *In re Gladys R.* (1970) 1 Cal.3d 855, 864; and *In re Tony C.* (1978) 21 Cal.3d 888, 900.)

Here, minor was shy of age 14 by only six months. The closer the child is to age 14, the more likely he appreciates the wrongfulness of his conduct. (*In re Paul C.*, *supra*, 221 Cal.App.3d at p. 53.) Previous misconduct can also support an inference that a minor appreciated his present conduct was wrong. (*In re Carl L.* (1978) 82 Cal.App.3d 423, 424-425.) Here, minor was already on probation and being monitored by a GPS attached to his belt. Moreover, minor was well aware of the wrongfulness of similar conduct. He had previously threatened a disciplinary clerk of the school, with fists balled, which resulted in minor being suspended from school. In fact, to say that a middle school boy, who is almost 14 years old, would not know that hitting his vice principal is wrong, borders on frivolous. Substantial evidence supports the juvenile court’s implied finding that minor knew his conduct was wrongful.

Nevertheless, minor argues that “[i]t is inappropriate to imply a finding where there is no indication the court was even aware of the issue in question.” In support, minor cites to *People v. Sotelo* (1996) 47 Cal.App.4th 264, 272 (*Sotelo*). *Sotelo*, however, does not apply.

In *Sotelo*, a trial judge denied the defendant’s first motion to suppress under section 1538.5. (*Sotelo, supra*, 47 Cal.App.4th at p. 266.) A second judge, however, granted a second motion by the defendant to suppress. (*Ibid.*) Thereafter, the trial court dismissed several drug-related charges after the prosecution admitted it could not proceed to trial after the second judge’s ruling on the suppression motion. The People appealed. (*Ibid.*)

In ruling on the second motion to suppress, the trial court concluded that the defendant had received ineffective assistance of counsel from his first counsel because he failed to challenge the validity of the search warrant. The second judge then concluded “that the defendant was entitled to ‘raise the additional issue or the 1538 again.’” (*Sotelo, supra*, 47 Cal.App.4th at p. 268.) The second judge then declared the search warrant valid. “However, he then ruled . . . that the police had not complied with the knock-notice requirements of section 1531.” (*Id.* at pp. 268-269.)

On appeal, the issue was whether a trial court could rule on the same issue twice. The defendant argued that, in ruling on his second suppression motion, the second judge “made ‘an implied finding that incompetence of counsel colored all aspects of the [first] suppression hearing[,]’” not just the validity of the search warrant. (*Sotelo, supra*, 47

Cal.App.4th at p. 272.) The Court of Appeal did not agree. It stated, “[t]here is simply nothing in the record to support the existence of any such ‘implied finding.’ To the contrary, defendant’s second counsel made no argument at all, either in his several briefs to the trial court on the second motion or at oral argument, that there was any such broader manifestation of ineffective assistance of counsel.” The court noted that the argument in favor of the suppression motion was limited to the validity of the search warrant. “Similarly, his assertion of ineffective assistance of counsel, and his predecessor counsel’s exquisitely careful declaration in support of that assertion, was also explicitly so limited.” (*Sotelo*, at p. 272.) Therefore, no implied finding as to ineffective assistance of counsel as to all aspects of the first suppression motion could be found.

(Ibid.)

This case is different. When a child under the age of 14 years is charged with a crime, section 26 provides that the child may not be found guilty of that offense unless the People present “clear proof that at the time of committing the act charged against them, they knew its wrongfulness.” This is an issue that is present in all juvenile cases involving children under the age of 14. Based on the facts of the case presented, an implied finding under section 26 can be made.

Under the circumstances of this case, there was overwhelming evidence that minor was aware of the wrongfulness of his conduct.

II. *Sufficient Evidence Supports the Juvenile Court’s Denial of Minor’s Motion to Dismiss the Burglary Count*

Minor contends that the juvenile court erred in denying his motion to dismiss count 2, under Welfare and Institutions Code section 701.1, because there was insufficient evidence to prove every element of the crime of residential burglary. We disagree.

Welfare and Institutions Code section 701.1 provides that an accused minor may move to dismiss at the close of the prosecution’s case. This section parallels Penal Code section 1118. The rules and procedures applicable to Penal Code section 1118 thus apply to Welfare and Institutions Code section 701.1. (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.) The reviewing court determines whether there was substantial evidence of each element of the charge in the People’s case. (*People v. Moody* (1976) 59 Cal.App.3d 357, 363.)

Our review of any claim of insufficiency of the evidence is limited. “““When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence—i.e., evidence that is credible and of solid value—from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.””” (*People v. Hill* (1998) 17 Cal.4th 800, 848-849.) We must presume in support of the judgment the existence of every fact the trier of fact could have reasonably deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “““The standard of proof in

juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]’ [Citation.]” (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088.)

Further, before we may set aside a judgment for insufficiency of evidence, it must clearly appear that there is no hypothesis under which we could find sufficient evidence. (*People v. Rehmeier* (1993) 19 Cal.App.4th 1758, 1765.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ [Citation.]” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1141, disapproved of on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) “Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young, supra*, at p. 1181.)

Given this court’s limited role on appeal, minor bears an enormous burden in claiming there was insufficient evidence to sustain his conviction for vandalism. “Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court which

must be convinced of the defendant's guilt beyond a reasonable doubt. "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment." (People v. Bean (1988) 46 Cal.3d 919, 932-933.)

In this case, the court found true that minor committed residential burglary. To secure a conviction of residential burglary, the prosecutor must prove beyond a reasonable doubt that the perpetrator unlawfully entered the residence with the intent to commit a theft or any felony. (*In re Leanna W.* (2004) 120 Cal.App.4th 735, 741.) The requisite intent of the perpetrator is rarely shown by direct evidence; it is usually inferred from the facts and circumstances. (*Ibid.*)

Minor does not dispute that there was an unlawful entry. Minor, however, contends that the juvenile court erred in denying his motion to dismiss count 2 because there was "simply *no* evidence in the record that . . . support[ed] the court's conclusion that the minor 'alone' knew where the [video game console] was to be found." Minor is mistaken.

At the hearing on the motion to dismiss, the court, in denying the motion, stated:

"It does appear to me that the weight of the evidence and the reasonable inference that can be made through the minor's location, through his minimizing statements, the fact that he alone knew where the [video game console] was found, it was hidden away,

all of those combined lead me to believe the People have proven each element of the residential burglary beyond a reasonable doubt. The motion to dismiss is denied.”

Here, sufficient evidence supports the court’s finding about minor’s actions. The burglary occurred between approximately 8:40 a.m. and 9:10 a.m. Numerous items were stolen from the living room area, including two video game consoles, a camera, an MP3 player, a cell phone, and a drum set in a box. Jewelry was also stolen from a jewelry box upstairs. Moreover, minor’s GPS monitor had him in the location of the victim’s apartment for approximately 30 minutes, although the tracking device records, as testified to by the probation officer, seemed to be off by an hour. From these facts and minor’s admission that he was inside the victim’s residence, it is reasonable to infer that both minor and his cousin, Earl B., were in the residence for some time, and each made multiple trips to carry the items out of the residence.

During minor’s interview with the police, he initially denied knowing anything about the burglary. When Deputy Fortier stated that he knew minor was lying because of the tracking device, minor admitted to entering the victim’s residence. Minor, however, stated that he only went in because his cousin wanted to show minor something, and did not take anything. Minor went on to state that he did not know where any of the stolen items were located. When the deputy indicated that minor would be arrested, minor described the location of one of the video game consoles; it was buried by the fence in his adjoining neighbor’s yard.

Evidence of theft of property following entry may create a reasonable inference that the intent to steal existed at the moment of entry. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) Here, the video game console was discovered hidden near minor's fence shortly after the burglary and after minor had informed the detective where it could be found.

Based on the above, overwhelming evidence supports the court's true finding of residential burglary. The court properly denied minor's motion to dismiss.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.