

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

F.B.,

Defendant and Appellant.

E058725

(Super.Ct.No. J248518)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A. Buchholz, Judge. Affirmed.

Paul Stubb, Jr., 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, Charles C. Ragland and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Following a jurisdictional hearing, the juvenile court found true that defendant and appellant F.B. (minor) committed misdemeanor vandalism. (Pen. Code, § 594, subd. (b)(2)(A).)¹ Minor was thereafter declared a ward of the court and placed on probation in the custody of his parents with various terms and conditions. Minor's sole contention on appeal is that there was insufficient evidence to support the juvenile court's finding that he committed misdemeanor vandalism. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND

On March 18, 2013, about 11:15 p.m., security officers Croke and Goodman were patrolling the San Bernardino Community Hospital when they received a call from dispatch to respond to the medical office pharmacy building. Because the security officers were on the opposite corner of the hospital, it took them between seven to 10 minutes to respond to the scene.

When they arrived at the dispatched location, they saw minor standing about 15 to 20 feet from the pharmacy door, holding a can of spray paint and a black ski mask. The security officers did not see anyone else near the pharmacy building or in the parking lot. The security officers noticed that the glass portion of the pharmacy door had been shattered with a rock.

¹ The court found not true the allegation that minor committed an attempted second degree burglary. (Pen. Code, §§ 664, 459.)

As the security officers approached the pharmacy building, minor dropped the ski mask and can of spray paint that he had been holding. He then began walking away from the building, through the parking lot. The security officers contacted minor and asked him what he was doing. He stated that he was on his way to his girlfriend's house. Minor was argumentative with the security officers. Croke then asked minor to sit on the curb and told him that they were going to have the police respond. Minor complied but appeared very fidgety and anxious as he tied his shoes. At one point, minor sprang up and appeared as if he was going to run. Croke grabbed minor's arm and shoulder and placed him back on the ground.

San Bernardino County Police Officer Hanes and his partner responded to the scene and arrested minor. Minor continued to be argumentative with the officers. Officer Hanes inspected the pharmacy door and concluded that no one could have entered the pharmacy, based on the way the glass door had been broken. Officer Hanes attempted to obtain relevant video surveillance but was unable to; however, he found a rock inside the pharmacy. Officer Hanes did not see any items disturbed inside the pharmacy and later confirmed with the owner that nothing had been taken.

Croke admitted that he did not see or hear the pharmacy's glass door break. He also admitted that he never saw minor directly in front of the door and that the pharmacy had been closed since 6:00 p.m.

Minor’s girlfriend testified that she had planned to see minor on the evening of the incident and that the hospital was located between minor’s home and her home. While they were talking on the telephone, around 11:00 p.m., she heard “a male voice out of nowhere [and] then the call just ended.”

II

DISCUSSION

Minor contends there was insufficient evidence to support the juvenile court’s finding that he committed misdemeanor vandalism.

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 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.]” (*Young*, 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 the present matter, minor contends that the judgment must be reversed because there was no evidence, including any circumstantial evidence, to show that minor was the person who had broken the glass door. We disagree.

Penal Code section 594 provides that every person who maliciously damages or destroys any real or personal property not his own is guilty of vandalism. (See also *In re Nicholas Y.* (2000) 85 Cal.App.4th 941, 943.) Contrary to minor’s protestations, substantial circumstantial evidence linked minor to the vandalism in question. Although the pharmacy building closed at 6:00 p.m., when the security officers were dispatched to the building at 11:15 p.m., they saw minor standing about 15 to 20 feet from the vandalized glass door, holding a ski mask in one hand and a can of spray paint in the other. The security officers arrived between seven to 10 minutes after being dispatched, and they did not see anyone else, except for minor, in the area. In addition, when minor saw the security officers, he quickly dropped the ski mask and can of spray paint and began walking away from the pharmacy, through the parking lot. Under these circumstances, the perpetrator’s unlawful purpose would have been readily apparent. The circumstances also support a compelling inference that minor was not simply an innocent passer-by at that hour, but a participant in the crime. When confronted by the security officers, minor appeared very fidgety and anxious, and acted in a manner suggesting that he was going to flee, reflecting a consciousness of guilt. This consciousness of guilt evidence, when combined with the other circumstantial evidence

tending to show minor vandalized the glass door, was sufficient to prove the offense. (See, e.g., *People v. Redrick* (1961) 55 Cal.2d 282, 287-288 [where sufficiency of evidence to prove illegal drug possession (i.e., dominion and control with knowledge of its presence and narcotic character) “might otherwise have been doubtful, it was strengthened by a showing of consciousness of guilt”].)

Although no one saw minor throw the rock to break the glass door, minor could have successfully thrown the rock prior to the security officers’ arrival. Furthermore, minor’s proposed exculpatory explanation for being at the scene, i.e., that he had merely been walking toward his girlfriend’s house, does not help him because it is no less speculative than the inculpatory inferences flowing from the undisputed evidence. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 12.) Moreover, the juvenile court was not required to believe minor’s girlfriend’s testimony. (*People v. Thomas* (1951) 103 Cal.App.2d 669, 672.) Notwithstanding the lack of direct evidence linking minor to the crime or evidence of a specific admission or motive, the juvenile court could reasonably infer that minor committed the vandalism.

Minor’s reliance on *In re Leanna W.* (2004) 120 Cal.App.4th 735 (*Leanna W.*) to show insufficient evidence is misplaced. *Leanna W.* involved a minor who hosted a party at her grandmother’s home while her grandmother was away. (*Id.* at p. 737.) “The juvenile court found true the allegations of burglary and vandalism, citing the fact that ‘utilities were used,’ and alcohol was consumed in [the minor’s] presence. However, the court found the allegation of grand theft not true on the ground that it was not proven beyond a reasonable doubt that [the minor], as opposed to another person at the house at

the time, had stolen the property from the home.” (*Id.* at p. 738.) The juvenile court stated it had a reasonable doubt as to what the minor herself actually did while in the house. (*Id.* at p. 740.) The Court of Appeal found the evidence was insufficient to support the juvenile court’s findings of burglary and vandalism (*id.* at p. 738) based on the “critical deficiency [of] the lack of evidence of what [the minor herself] did while she was in her grandmother’s home.” (*Id.* at p. 740.)

In *Leanna W.*, it was undisputed that there were other people in the house with the minor at the time the theft and vandalism occurred. Here, the only person in the vicinity of the crime was minor, and there was no evidence suggesting other people had been around minor at that time of day. Additionally, minor was found holding a ski mask and a can of spray paint, and acted in a manner indicating consciousness of guilt. Here, it cannot be said that “*every* fact proven is consistent with the reasonable conclusion that [minor] did not participate” in the vandalism. (*People v. Flores* (1943) 58 Cal.App.2d 764, 769, italics added.)

Based on our review of the record here, and viewing the evidence in the light most favorable to the prosecution, we find that the juvenile court’s true finding that minor committed misdemeanor vandalism is supported by substantial evidence.

III
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

RICHLI
J.

CODRINGTON
J.