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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

E063097

(Super.Ct.No. J257991)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,
Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C.
Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

A petition (Welf. & Inst. Code, § 602) was filed against defendant and appellant A.B. (minor) alleging he committed one count of arson of a structure (Pen. Code¹ § 451, subd. (c), count 1) and one count of arson of property (Pen. Code, § 457, subd. (d), count 2). The juvenile court found true the allegations on both counts and declared minor fell within the provisions of Welfare and Institutions Code section 602. At a dispositional hearing, minor was declared a ward of the court and released to his father's custody under terms and conditions of probation.

On appeal, minor argues insufficient evidence supports the true findings with respect to counts 1 and 2. We disagree and affirm both true findings.

I

FACTUAL BACKGROUND

A. Count 1, Arson of a Structure: The School Building Fire

On the afternoon of December 19, 2014, an officer of the Barstow Police Department received a call regarding a fire at the abandoned Barstow Intermediate School. The origin of the fire was traced to the inside of classroom No. 7, where trash, filing cabinets, and desks had been piled up. A basketball court was also on the school property, separated from classroom No. 7 by various buildings. In his testimony, the officer described how he spoke to a teenage boy who was a witness to some of the events surrounding the fire. The witness was hearing impaired, but he appeared to understand everything the officer said to him. The officer testified that the witness reported he saw

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

smoke and four young men running on the rooftop of the school building. One of those young men was white, wearing a red T-shirt and blue jeans, about six feet tall, and thin. The witness thought he could identify that young man if the witness were to see him again.

B. Count 2, Arson of Property: The Parking Lot Asphalt Fire

On the following afternoon, December 20, 2014, the same officer received a call about two men lighting a fire in the parking lot of a Barstow restaurant. The caller was an employee of the restaurant who described one of the men as wearing a red shirt and blue jeans. At trial, the employee identified the man as minor. According to the employee, minor poured a puddle of gasoline on the asphalt of the restaurant's parking lot and lit a fire on it. The employee estimated the fire to be one foot wide and about one to two feet high. The fire left what was described as a "discoloration" or "burn mark" on the asphalt of the restaurant's parking lot, and the area did not have to be repaired.

Photographs of the asphalt were introduced into evidence.

The officer saw minor, who matched the employee's description, and took him to the police station. The officer retrieved the young hearing-impaired witness with whom he had spoken the day before about the school building fire. The officer admonished the witness that the witness was under no legal obligation to identify anyone, and that he should not identify anyone if uncertain. The officer then asked the witness whether minor was one of the individuals he had seen the day before leaving the scene of the fire at the school building. The witness positively identified minor and said he had seen minor running away from the school building. The officer asked the witness the same

question “several times” to be sure of the identification, and the witness replied, “yes,” each time.

At trial, the witness failed to identify minor in court. The witness stated he identified minor at the police station because one of the people he saw running from the school was wearing a red shirt, and minor also was wearing a red shirt. The juvenile court expressed concern with the clarity of the witness’ testimony, and considered the testimony insofar as it corroborated some details in the minor’s statements to police, described *post*.

C. Minor’s Interview With Police

Minor was questioned at the police station, first by the officer, and then later by a detective.² The officer first spoke to minor about the asphalt fire at the restaurant. After telling more than one version of events, minor told the officer that he lit the gasoline puddle with a cigarette lighter because he liked fire and wanted to watch the gasoline burn. The officer then asked minor about the school building fire the day before. Minor told the officer that he did not know anything about that particular fire and that he had not been present at the school. After further questioning, minor stated that he was walking through the school building property when he saw flames, smoke, and “three kids”

² The juvenile court excluded about half of minor’s statements to the detective under *Miranda v. Arizona* (1966) 384 U.S. 436, after finding the detective did not “scrupulously honor[.]” (*id.* at p. 479) minor’s clear invocation of counsel and his right to remain silent. The juvenile court admitted only the statements minor made prior to the invocation, and those are the only statements we consider here on appeal.

running from the school. Minor also ran away because he did not want to get into trouble.

Later, when the detective questioned minor in greater detail about the school building fire, minor first told the detective much the same version of events he had told the officer, with a few more details. Minor went to the apartment of his “big sister,” to whom he said, “Somebody just lit a fire down at the school . . . I just ran from there The police might be looking everywhere.” After further questions from the detective, minor changed his story. This time, minor said he and three friends went to the school to play basketball. The friends grew bored, and one of them said, “Hey, you want to do something dumb?” The friends then decided to light a “trash can” on fire. Minor said he went with at least one of the friends from the basketball court to a receptacle located outside and against the back of one of the buildings. The friend lit a piece of paper (all the friends had lighters) and threw the paper into the receptacle. When he saw the contents of the receptacle ignite, minor said to the friends, “Y’all are dumb, I’m not going to jail for some stupid shit like this,” and then ran. Minor consistently denied both personally setting the fire and telling his friends to do so.

Based on minor’s statements, the juvenile court found true the allegations as to count 1 based on the theory the minor did not set the fire himself, but rather aided and abetted the friends who did set the school building fire.

II

DISCUSSION

Minor first argues insufficient evidence supports the true finding he aided and abetted the friend (or friends) who committed the arson of a structure in count 1. We disagree.

When a minor challenges the sufficiency of the evidence supporting the juvenile court's true finding of the criminal allegations contained in a Welfare and Institutions Code section 602 petition, we apply the same standard of review that applies to any claim made by a criminal defendant challenging the sufficiency of the evidence on appeal. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371; see *In re Y.R.* (2014) 226 Cal.App.4th 1114, 1118.) We review the entire record in the light most favorable to the judgment to determine whether it contains reasonable, solid, credible evidence from which a reasonable trier of fact could find the criminal allegations against the minor true beyond a reasonable doubt. (*People v. Johnson* (2015) 60 Cal.4th 966, 988.) We do not invade the province of the trier of fact by reweighing the evidence, or by reconciling competing circumstances and redrawing competing inferences from those circumstances; it is the trier of fact—not the appellate court—which must be convinced beyond a reasonable doubt of the truth of the allegations against the minor. (*People v. Alexander* (2010) 49 Cal.4th 846, 917; *People v. Bradford* (1997) 15 Cal.4th 1229, 1329.) Even the testimony of a single witness may provide the trier of fact with sufficient evidence to support a true finding. (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) To succeed under this review, then, a minor bears the heavy burden of establishing that no reasonable trier of fact could

have found the criminal allegations true beyond a reasonable doubt. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290.)

A. Aiding and Abetting Arson of a Structure

Minor does not dispute that the arson at the abandoned school building took place. Rather, his argument centers on the nature of his involvement in that arson, as he claims he was merely present and passively accompanied his friends throughout the arson—nothing more.

A person aids and abets the commission of a crime when he or she “acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080.) In determining whether the People have proven these elements beyond a reasonable doubt, the juvenile court may also consider the minor’s “presence at the scene of the crime, companionship, and conduct before and after the offense.” (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095; see *People v. Nguyen* (2015) 61 Cal.4th 1015, 1054.) Though the general rule is that “neither presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting” liability (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409 (*Campbell*)), a minor’s on-scene presence *coupled with* the minor’s voluntary accompaniment of the perpetrator before and during the offense nevertheless serves as strong evidence of aiding and abetting liability (*Id.* at pp. 409-410). A minor’s flight also is “one of the factors which is relevant in determining consciousness of guilt” for

purposes of establishing aiding and abetting liability. (*Lynette G.*, at p. 1095.) Finally, a minor's inconsistent stories may also serve as evidence reflecting consciousness of guilt. (*People v. Benson* (1989) 210 Cal.App.3d 1223, 1233.)

Here, minor's statements, together with other circumstantial evidence of consciousness of guilt, provided sufficient evidence to support a reasonable inference that minor aided and abetted the arson of the abandoned school building. Initially, we note minor's inconsistent versions of events that he told the detective eventually placed him at the abandoned school property and the site of the fire in the company of his friends.

As to the first element of aiding and abetting liability, minor's statements eventually showed that the friends, who were with minor playing basketball on the court of the abandoned school, talked amongst themselves about doing "something dumb," like lighting a "trash can on fire" (though the physical evidence showed the fire had actually been set in a classroom). This would have made minor aware of the unlawful purpose of the perpetrator (or perpetrators) of the arson.

As to the second element, the basketball court lay at some distance from classroom No. 7, where the fire had been set. Minor and the friends together had to cross roughly to the other side of the school property by going through or around a collection of buildings. Minor voluntarily crossed this distance with his friends with the knowledge that they intended to set a fire when they all reached their destination. Their concerted action reasonably implied a common purpose. (*Campbell, supra*, 25 Cal.App.4th at p. 409.)

As to the third element, the minor's statements show that he did not attempt to disassociate himself with the friends until *after* the fire had been set. It was only then that

minor said, “Y’all are dumb, I’m not going to jail for some stupid shit like this.” Coupled with the distance minor had traveled across the abandoned school property with the friends, this statement permits the inference that minor through his companionship actually encouraged the commission of the arson. Also, the witness’ testimony indicated minor fled with his friends, despite minor’s statements to the contrary.

Additionally, there is the further corroborating evidence of consciousness of guilt in the forms of minor’s flight and his conflicting statements to the police. As to flight, minor described to the detective how he ran away from the school to the apartment of his “big sister” because he was afraid of going to jail. Minor also described an agitated conversation he had with this sister, after he ran from the school, in which he expressed concern the fire would bring him to the attention of the police. Finally, the young hearing-impaired witness’ statements to the officer to the effect he saw someone who looked like minor running away from the school building also corroborated the flight revealed in the minor’s statements.

As to minor’s inconsistent statements, minor began by telling the officer that he was not at the school. Then minor said he saw smoke, fire, and three “kids” running from the school, and also ran so he would not get into trouble. Later, minor told the detective he was with his friends when one or more of them set the fire. These inconsistent statements supported the inference that minor was attempting to shift suspicion away from himself because he was conscious of his guilt in the offense.

Minor contends the record does not support the finding that he was an aider and abettor, because no evidence shows he undertook any affirmative act that in fact assisted

the commission of the crime. Instead, minor argues, the evidence shows he was more of a neutral companion rather than an active encourager who intended to offer support to the perpetrator-friend. Minor relies on the cases *In re Gary F.*, *supra*, 226 Cal.App.4th 1076 and *People v. Hoang* (2006) 145 Cal.App.4th 264 to support this contention. We disagree.

As our discussion *ante* illustrates, minor's statements show that he did not decide to distance himself from the friends (if indeed he distanced himself from them at all) until only *after* the fire had already been set. Such voluntary accompaniment on the part of the nonperpetrator can, under the circumstances, reasonably be viewed as imparting silent, affirmative encouragement to the perpetrator by giving the perpetrator the impression that he or she is not alone in the criminal venture. (*Campbell*, *supra*, 25 Cal.App.4th at pp. 409-410 [noting that the defendant was present at the scene of the crime and had accompanied the codefendant before, during, and after the offense].)

The cases minor cites do not support his contention. First, *In re Gary F.* involved a minor who acted as a lookout while another minor committed a residential burglary. (*In re Gary F.*, *supra*, 226 Cal.App.4th at pp. 1080-1081.) Although acting as a lookout may be a "textbook example" (*id.* at p. 1081) of aiding and abetting liability, that does not mean it is the *only* way in which a minor may aid and abet an offense.

Turning to *Hoang*, the defendant there was found guilty of attempted premeditated murder through aiding and abetting an assault with a deadly weapon. (*People v. Hoang*, *supra*, 145 Cal.App.4th at pp. 266-267.) The record in *Hoang*, in contrast to the record here, showed the defendant there played a more active role in facilitating the underlying

offense by bringing two carloads of gang members to the rival gang member victim's location, where one of them stabbed and nearly killed the victim. (*Id.* at pp. 268, 275) Nevertheless, *Hoang* upheld the jury's conviction on an aiding and abetting theory based on the same factors the juvenile court considered in this case. In particular, the *Hoang* court found persuasive the following observation gleaned from the record: "As the standoff intensified, defendant made no move either to defuse the situation or to leave." (*Id.* at p. 276.)

Here, the juvenile court found similar circumstances, as revealed in minor's admissible statements, persuasive. Like the defendant in *Hoang*, minor made no move to "defuse the situation or to leave" until after he had voluntarily accompanied his friends with knowledge of their intent and the fire already had been set. Although minor did not have a duty to prevent the offense from occurring, these circumstances, in conjunction with the others we discussed *ante*, tended to show minor had knowledge of the perpetrator-friend's criminal purpose, intended to encourage it and, in fact, did encourage it. Based on the facts and reasoning of *Hoang*, the juvenile court reasonably drew the inferences it did.

In sum, sufficient evidence supports the juvenile court's true finding with respect to the allegations of arson of a structure contained in count 1 based on an aiding and abetting theory of liability.

B. Arson of Property

Minor next argues insufficient evidence supports the true finding he committed arson of property in count 2 because he failed to “burn” the asphalt on which the fire was set. We disagree.

To sustain a true finding for arson of property, the People must prove beyond a reasonable doubt that the minor, in relevant part, “sets fire to” or “burns” the property of another. (§ 451, subd. (d); see CALCRIM No. 1515).

The “burn” element of arson is satisfied if the fire “damage[s] or destroy[s] . . . either all or part of [the property], no matter how small the part.” (CALCRIM No. 1515.) As has been held in a case involving wood, if the wood “is charred in a single place, so as to destroy any of the fibers of the wood, this is a sufficient burning.” (*People v. Haggerty* (1873) 46 Cal. 354, 355.) As has been held in a case involving marble, if the marble is spawled—that is “disintegrat[ed]” or “buckled,” “cracked,” or “chipped” by the heat of a fire—that is sufficient to fulfill the burn element. (*People v. Mentzer* (1985) 163 Cal.App.3d 482, 484-485.) Mere singeing, smoking, scorching, or heat discoloration does not satisfy the “burn” element. (*Haggerty*, at pp. 354-355.) Rather, the property, even the smallest part of it, must be “ ‘ravaged or ruined by the fire,’ ” though it is not required to be “ ‘reduced to ashes.’ ” (*In re Jesse L.* (1990) 221 Cal.App.3d 161, 166.) In short, to satisfy the “burn” element, the fire must compromise, even very slightly, the physical integrity of even the smallest part of the material at issue.

Here, photographic exhibits showed what the restaurant employee and the responding officer described as a darkened “burn mark” on the asphalt. Minor permitted

the fire to burn until the gasoline on which it was set became extinguished, leaving a dark mark or a “burn mark.” The fire was therefore permitted to burn for a somewhat protracted amount of time, and the fire itself was “one foot wide” and “one to two feet high.” The juvenile court reasonably inferred from the photographs, as well as from the restaurant employee’s and the officer’s descriptions of the fire itself and what it left behind, that the physical integrity of even the “smallest” part of asphalt was compromised or “destroyed” by minor’s fire.

Minor argues that the parking lot was not damaged in a manner necessary to satisfy the “burn” element of arson. In support, minor cites the “undisputed testimony” of the restaurant employee that the asphalt did not have to be repaired. He also cites the cases of *Haggerty* and *Mentzer*, for the proposition that the fire caused superficial blackening of the asphalt rather than physical damage to it.

While it is true that the restaurant employee testified that the portion of asphalt in question did not require repairs and did not break apart, the juvenile court also had available photographic exhibits of the burn mark on the asphalt in question and heard the restaurant employee describe the size of the fire. Moreover, the burn element of the offense does not necessarily require repairs to the burned area, though such a fact serves as telling evidence the element was indeed satisfied. Viewing the evidence in the light most favorable to the judgment, the evidence adduced was sufficient to show the burn element was satisfied.

Minor’s case law does not alter our conclusion. In *Haggerty*, the California Supreme Court considered whether a brief fire set on the wood floor of a house caused

enough damage for purposes of arson. (*Haggerty, supra*, 46 Cal. at pp. 354-355.) The court held there was evidence that the fire not only blackened the wood on the floor, but also charred the wood by destroying at least some of its “fibers.” (*Id.* at p. 355.) Despite the fact that some of the witnesses thought the spot on the floor “only appeared to be blackened” (*ibid.*), the court nevertheless concluded the verdict of guilt was not “so contrary to the evidence as to justify us in reversing the judgment on that account.” (*Ibid.*) Given the duration and the size of the fire here, as well as the evidence of the photographs of the burn mark, the juvenile court’s determination that at least some “smallest” part of the asphalt was damaged by the fire was not contrary to the evidence.

Turning to *Mentzer*, the defendant there set fire to a couch in a cemetery mausoleum. The fire caused the marble of the mausoleum to spawl, that is, to buckle, crack, and chip. (*People v. Mentzer, supra*, 163 Cal.App.3d at p. 484.) The defendant argued he could not be convicted of arson of a structure because marble could not be “ ‘consumed’ ” or “ ‘burned’ ” by fire. (*Ibid.*) The court rejected the argument, noting the evidence of the spawling was sufficient for purposes of arson. (*Ibid.*) As our discussion in the paragraph *ante* illustrates, the juvenile court had similar sufficient evidence before it in the form of the photographs in this case, which showed a darkened and burned area on the asphalt.

In sum, sufficient evidence supports the juvenile court’s true finding with respect to the allegations of arson of property contained in count two.

III

DISPOSITION

The judgment of the juvenile court is affirmed.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

MILLER

J.