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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

B.A.,

Defendant and Appellant.

G047410

(Super. Ct. No. DL042205)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Reversed.

Alan S. Yockelson, 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, Randall Einhorn and
Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition under Welfare and Institutions Code section 602 (all further statutory references are to this code unless otherwise indicated) against the minor, B.A., alleging he threw a rock at a vehicle in violation of Vehicle Code section 23110, subdivision (a). It declared the minor a ward of the court and placed him on unsupervised probation. The minor contends the court erred in denying his section 701.1 motion to dismiss. We agree and thus need not address his alternative argument substantial evidence does not support the court's true finding.

FACTS

One afternoon, Janet Skogen was driving home in her white Toyota Sequoia after having just picked up her daughter and a friend from school, which had just let out. She was stopped at a light when she suddenly "heard a big boom" and felt something hit her vehicle. She looked up and "saw a group of kids laughing and pointing and that is when [she] knew something had hit [her] car." Skogen's daughter and friend got out of the vehicle and chased after some boys who were running away. Upon examining her vehicle, Skogen found "a huge dent" that was not there before.

Around the time Skogen realized something had struck her vehicle, V.D. was on the sidewalk throwing berries at C.H. when he saw the minor, who was next to C.H., throw a rock across the street and hit a big white vehicle. According to V.D., the minor appeared to be "[j]ust throwing it randomly" instead of at the vehicle and seemed surprised when he hit it. The minor ran away after realizing he had hit Skogen's vehicle. The next day, V.D. told the principal and a police officer what had happened.

DISCUSSION

At the close of the prosecution's case, the minor moved to dismiss the action under section 701.1 on the ground the prosecution's evidence failed to prove his guilt beyond a reasonable doubt. The court denied the motion, finding the crime to be

one of general intent that was supported by Skogen's testimony she discovered a fresh dent underneath her driver's side window after hearing a boom as she was driving along the street where the minor was walking, combined with V.D.'s testimony that he saw the minor throw a rock and hit the vehicle. The minor contends this was error. We agree.

Section 701.1 requires dismissal of a petition "if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602." "[T]he standard for review of the juvenile court's denial of a motion to dismiss is whether there is substantial evidence to support the offense charged in the petition," assuming the existence of all facts and reasonably deduced inferences in favor of the court's order. (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.) We may not reverse on this ground "unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reached by the court below." (*Ibid.*)

Vehicle Code section 23110, subdivision (a) provides: "Any person who throws any substance at a vehicle or any occupant thereof on a highway is guilty of a misdemeanor." The parties agree, as do we, this statute sets forth a general intent crime because the crime's description "consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence" (*People v. Atkins* (2001) 25 Cal.4th 76, 82.) As such, it "requires no further mental state beyond willing commission of the act proscribed by law" (*People v. Sargent* (1999) 19 Cal.4th 1206, 1215), which, in this case, is throwing something "at a vehicle."

The evidence presented by the prosecution failed to show the minor intended to throw the rock "at" Skogen's vehicle. V.D. testified he and C.H. were throwing berries at each other when the minor picked up a rock and threw it across the street. According to V.D., the minor appeared to be "[j]ust throwing it randomly" rather than at the vehicle and seemed surprised when it hit it. As for Skogen, she did not see the object that hit her vehicle nor who threw it. The only thing she saw after her vehicle was

hit was a group of kids pointing and laughing. But that does not demonstrate the minor intended to throw the rock at Skogen's vehicle; nor does the mere fact the rock hit her vehicle.

The Attorney General argues Vehicle Code section 23110, subdivision (a) only requires "the intent to willfully or purposely throw the rock toward a car on the street." Assuming without deciding that is the correct standard, the record does not show the minor did that. He might have purposely thrown the rock across the street as the Attorney General argues, but there is nothing in the evidence demonstrating he intentionally threw it "toward" or "at" anyone or anything, much less Skogen's vehicle. The only testimony as to the rock's direction was that the minor threw it "randomly" across the street. Even if the court disregarded V.D.'s testimony the minor threw it randomly, that leaves only the minor threw the rock across the street. That does not constitute substantial evidence the minor intentionally threw the rock toward or at Skogen's vehicle in violation of Vehicle Code section 23110, subdivision (a). The court erred in denying the minor's motion to dismiss.

DISPOSITION

The judgment is reversed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.