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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

V.G.,

Defendant and Appellant.

G051277

(Super. Ct. No. DL050118)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Julian W.
Bailey, Judge. Affirmed.

Lindsey M. Ball, 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, Eric A. Swenson, Lynne
G. McGinnis and Felicity Senoski, Deputy Attorneys General, for Plaintiff and
Respondent.

Minor V.G. appeals from an order denying his motion for dismissal (Welf. & Inst. Code, § 701.1 (section 701.1)), and from a subsequent order declaring him to be a ward of the court (Welf. & Inst. Code, § 602 (section 602)). He contends the court erred because the evidence was insufficient to show he understood the wrongfulness of his conduct (Pen. Code, § 26 (section 26)). We disagree and affirm.

FACTS AND PROCEDURAL HISTORY

The section 602 petition alleged V.G. committed a petty theft (Pen. Code, §§ 484, subd, (a), 488) and unlawfully tampered with a vehicle (Veh. Code, § 10852). The case was tried to the juvenile court, and these facts are taken from the evidence introduced during the prosecution's case-in-chief.

Late one night, as Mariana Ramirez and Diana Rodriguez were leaving a residence in Garden Grove, they observed three unfamiliar male juveniles in around Ramirez's godfather's car across the street. The car door was open, two males were standing next to it, and another was sitting in the driver's seat. Ramirez yelled "hey!" The three ran off, leaving behind a skateboard.

Ramirez and Rodriguez went back to the residence, told Ramirez's godfather, Clemente Alvaro, someone had broken into his car, and called the police. Alvaro went to inspect his car and noticed a cup usually full of change was missing from the glove box, along with some eyeglasses, earphones, photos and other things. He found some of these items in the street a few yards away.

Before the police arrived, Alvaro, Ramirez, and Rodriguez drove around the neighborhood to see if any of the suspects were still in the area. They eventually saw three male juveniles, including V.G. crossing the street. Ramirez recognized V.G. as one of the two males who had been standing next to Alvaro's car. Rodriguez asked them if they had left behind a skateboard. One of V.G.'s companions said "no," but he would take it if she wanted to give it to him. Rodriguez refused. As they drove away, Rodriguez heard him say, "Oh, shit, we just fucked up."

Police Officer Mark Lord responded to the scene. A short distance away another officer detained three males that matched the descriptions of the suspects. Officer Lord brought Ramirez and Rodriguez separately to a curbside lineup. Ramirez and Rodriguez both identified V.G. as one of the two males who had been standing outside Alvaro's car.

After V.G. was arrested, he indicated he understood his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436) and chose to waive them. He told Officer Lord he had been walking home with two friends when they decided to check car door handles. He said they were able to open the car door, and he did not go inside the car, but his friends did. He admitted they had opened the car door in order to get inside and take things, and one his friends had taken some items.

At the close of the prosecution's case-in-chief, V.G. moved for dismissal under section 701.1, on the grounds the prosecution had not shown V.G. understood the wrongfulness of his conduct as required by section 26 and, alternatively, the evidence was insufficient to prove the offenses alleged beyond a reasonable doubt. The court denied the motion.

Regarding whether V.G. understood the wrongfulness of his conduct, the court explained: "As it relates to [V.G.], the court takes into consideration all the evidence that has been presented, including his flight when – I will refer to them as the girls ran out and yelled, 'Hey' and his confession. And so with regard to the . . . section 26 argument, I do believe that there is sufficient evidence and I am personally satisfied by that evidence that he knew what he was doing was wrong. [¶] And based on the totality of the evidence that has been presented [the motion for dismissal] is denied."

Regarding the sufficiency of the evidence to prove the offenses alleged, the court stated: "That is denied. This is typically what we call a 'corpus cop-out' kind of case. And I am satisfied beyond a reasonable doubt from the evidence . . . that [has] been received so far that the petition should be sustained."

DISCUSSION

Section 701.1 provides in relevant part: “[T]he court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged . . . , after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602.” “Courts have held that section 701.1 is substantially similar to Penal Code section 1118 governing motions to acquit in criminal trials and that therefore the ‘rules and procedures applicable to [Penal Code] section 1118 . . . apply with equal force to juvenile proceedings.’ [Citation.]” (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727, fn. omitted.)

“Thus, the requirement in a criminal case that on a motion for acquittal the trial court is required ‘to weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the defendant is “proved beyond a reasonable doubt before [the defendant] is required to put on a defense”’ applies equally well to motions to dismiss brought in juvenile proceedings. [Citation.]” (*In re Anthony J., supra*, 117 Cal.App.4th at p. 727.) Also we independently review the juvenile court’s ruling under section 701.1 that the evidence is sufficient to sustain the petition, like we independently review a trial court’s ruling under Penal Code section 1118.1 that the evidence is sufficient to support a conviction. (Cf. *People v. Cole* (2004) 33 Cal.4th 1158, 1213.)

“[S]ection 26, which applies to proceedings under . . . section 602, articulates a presumption that a minor under the age of 14 is incapable of committing a crime. To defeat this presumption, the prosecution must prove by clear and convincing evidence that at the time the minor committed the charged act he or she knew of its wrongfulness. [Citations.] ‘Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated a criminal law should he be declared a ward of the court under . . . section 602.’ [Citation.]” (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

“On appeal, we must review the whole record in the light most favorable to the judgment and affirm the trial court’s finding that the minor understood the wrongfulness of his conduct if it is supported by ‘substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.]’ [Citations.] The trier of fact, not the appellate court, must be convinced of the minor’s guilt, and if the circumstances and reasonable inferences 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 reversal of the judgment. [Citation.] This standard of review applies with equal force to claims that the evidence does not support the determination that a minor understood the wrongfulness of his conduct. [Citation.]” (*In re James B.*, *supra*, 109 Cal.App.4th at p. 872.)

Furthermore: “In determining whether the minor knows of the wrongfulness of his conduct, the court must often rely on circumstantial evidence such as the minor’s age, experience, and understanding, as well as the circumstances of the offense, including its method of commission and concealment. [Citations.] Generally, the older a child gets and the closer he approaches the age of 14, the more likely it is that he appreciates the wrongfulness of his acts. [Citations.]” (*In re James B.*, *supra*, 109 Cal.App.4th at pp. 872-873.)

With these principles in mind, we consider the facts in this case. V.G. was then 13 and one-half years old, just six months shy of the date on which the section 26 presumption would not apply. He was standing next to the car, while one of his friends was sitting in the driver’s seat. When he was confronted he ran. As the court observed, his flight is one fact which supports an inference he was aware his conduct was wrong. (Cf. *People v. Bradford* (1997) 14 Cal.4th 1005, 1055.) After he was arrested, he told Officer Lord he and his friends had opened the car door in order to get inside and take things, and his friends had actually gotten inside and taken things from the car.

In sum, the circumstances of V.G.'s offenses, including his flight and his age, all support an inference he was aware the specific act of opening the car door in order to help his friends get in and steal things from the car was wrong. This is reasonable, credible, and solid evidence ““from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.”” (*In re James B.*, *supra*, 109 Cal.App.4th at p. 872.) Therefore, we conclude there is sufficient evidence to support the court's finding V.G. understood the wrongfulness of his conduct.

V.G.'s arguments for a contrary conclusion are not persuasive. First, he maintains while a minor might understand breaking into cars and stealing is wrongful, the theory of aiding and abetting liability is more complex, and a 13 and one-half year old might not understand that checking door handles to help his friends steal is wrongful. V.G. cites no authority which supports this argument, and we have found none. In any event, applying the theory of aiding and abetting liability to the facts in this case is not complex. Helping your friends steal is not materially different than stealing yourself.

Second, V.G. asserts the fact he was truthful with Officer Lord supports an inference he did not know his conduct was wrongful. This argument assumes his statements to Officer Lord were truthful, and further assumes that if he had known his conduct was wrongful, he would have lied about it. We question the validity of these assumptions. But even if they are valid, the suggested inference is only one of several reasonable inferences which can be drawn. It is equally reasonable to infer he understood his conduct was wrongful, so he minimized it by pointing the finger at his friends.

DISPOSITION

The orders denying the motion for dismissal and declaring V.G. to be a ward of the juvenile court are affirmed.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.