

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

In re CARLOS U., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS U.,

Defendant and Appellant.

G051683

(Super. Ct. No. DL048370)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Cheryl L. Leininger, Judge. Affirmed as modified.

Stephanie M. Adraktas, 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 and Joy
Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

*

*

*

INTRODUCTION

The juvenile court found that Carlos U. was guilty of committing graffiti vandalism. The court orally imposed a probation condition precluding him from knowingly using or possessing any items for the purpose of defacing property. Carlos contends insufficient evidence supports the court's finding that he aided and abetted graffiti vandalism. He also argues the court's minute order is inconsistent with the court's oral pronouncement because the minute order states he is prohibited from possessing any implement *capable* of defacing property. In any event, Carlos argues each version of the probation condition, whether as orally pronounced or as set forth in the minute order, is unconstitutionally overbroad and vague, and must be struck.

We modify the juvenile court's minute order as to the probation condition to accurately reflect the court's oral pronouncement, thereby precluding Carlos from *knowingly* using or possessing any items *for the purpose of* defacing property. We affirm the order as so modified. The probation condition, as orally pronounced by the court, is neither overbroad nor vague. Sufficient evidence supports the juvenile court's finding that Carlos aided and abetted graffiti vandalism.

FACTS

In the late afternoon of February 22, 2015, Monica Robinson was at her home, across the street from George Washington Park in Anaheim (the park), when she saw a group of young people in the park's gazebo. She saw two young men working together to spray-paint the top of the park's gazebo, two young men "watching out," and a young woman "just sitting there."

Carlos was one of the two young men, whose body language suggested he was acting as a lookout. He stood on the left side of the gazebo, while still under its roof, facing toward the street. He looked around the park in different directions; he also faced the young men working to spray-paint the gazebo. Another young man stood on the right

side of the gazebo, also facing away from the gazebo. Meanwhile, inside the gazebo, Robinson saw one young man hand a spray paint can to another young man who spray-painted the top of the gazebo. All the members of the group were in “very close proximity” to each other.

Robinson yelled. Robinson’s husband and a neighbor walked toward the gazebo. Robinson’s husband said something to the group like, “what were you doing,” “[k]nock that off,” and “[d]on’t do that in your neighborhood where we live.” Robinson testified, “they were yelling things back to [her] husband and [her] neighbor to intimidate them” but then they quickly walked away. The neighbor heard someone in the group say, “hey, let’s get out of here.”

About an hour later, Robinson saw the group, including Carlos, sitting on circular benches on a planter near the gazebo. Robinson also saw Carlos spray gold-colored paint on a wall “[f]urther on down the block.”

Robinson called the police. When they arrived, she pointed out the group she had seen in the gazebo. Officer Todd Martin of the Anaheim Police Department told the group to stop walking away, but they continued to walk quickly away from him, acting as if they had not heard him. Martin saw the young man, whom Robinson identified as the one who had handed the spray paint can to the person who spray-painted the gazebo, throw what appeared to be a spray paint can in a trash can. Martin recovered a spray paint can containing tan-colored spray paint from the trash can. Martin caught up to the group, which included Carlos, and had them sit down on the curb. Martin saw that a three-foot by three-foot marking, in the same tan-colored paint as the spray paint can he had found, had been made on the inside awning of the gazebo.

PROCEDURAL HISTORY

A juvenile delinquency petition was filed in the Orange County Juvenile Court, which alleged that on February 22, 2015, Carlos committed one count of

misdemeanor vandalism of the gazebo in violation of Penal Code section 594, subdivisions (a) and (b)(2)(A). Following trial, the juvenile court found the allegations of the petition true beyond a reasonable doubt. The court declared Carlos a ward of the court under Welfare and Institutions Code section 602, and ordered him to abide by the terms and conditions of probation, including that he serve 60 days in juvenile hall or an appropriate facility. Carlos appealed.

DISCUSSION

I.

Substantial Evidence Showed Carlos Aided and Abetted Graffiti Vandalism.

Carlos contends the juvenile court erred by finding that he committed one count of aiding and abetting graffiti vandalism of a gazebo. Carlos argues insufficient evidence supported the findings that he (1) knew of the unlawful purpose of those who physically spray-painted the gazebo, (2) had the specific intent to encourage, assist, or facilitate the vandalism of the gazebo, and (3) “by act or advice” aided, promoted, encouraged, or instigated the commission of the vandalism. Carlos’s arguments lack merit.

The same substantial evidence standard of review that is applicable in adult criminal cases is applicable in juvenile delinquency proceedings. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) “In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]’” (*In re Babak S.*

(1993) 18 Cal.App.4th 1077, 1088-1089; accord, *People v. Thomas* (1992) 2 Cal.4th 489, 514; *People v. Barnes* (1986) 42 Cal.3d 284, 303.)

Penal Code section 594, subdivision (a)(1) defines the crime of vandalism as maliciously defacing the real or personal property of another “with graffiti or other inscribed material.” One who aids and abets the commission of a crime shares the guilt of the actual perpetrator. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1122.) “[A]n accomplice is one who aids or promotes the perpetrator’s crime with knowledge of the perpetrator’s unlawful purpose *and* an intent to assist in the commission of the target crime.” (*People v. Williams* (2008) 43 Cal.4th 584, 637; see Pen. Code, § 31.)

Eyewitnesses identified Carlos as belonging to a group of five young people who were all in “very close proximity” under the park’s gazebo roof. Carlos stood on the left side of the gazebo, while another young man stood on the right side. Carlos looked around to where two of his companions worked to spray-paint the top of the gazebo; he primarily looked away from their activity in different directions. Sufficient evidence therefore supported the finding that Carlos knew his companions’ unlawful purpose of vandalizing the gazebo. His conduct of standing near his companions, but facing away from them while they did their work, and looking out in various directions, is sufficient to show that Carlos not only intended to aid them in vandalizing the gazebo, he did in fact so assist them by acting as a lookout. (See *People v. Swanson-Birabent* (2003) 114 Cal.App.4th 733, 743-744 [“It has been held, therefore, that one who is present for the purpose of diverting suspicion, or to serve as a lookout, . . . is a principal in the crime committed.”].)

Carlos’s conduct after the gazebo was vandalized further supported a finding that he aided and abetted that crime. He remained in the vicinity of the park with the group involved in applying the graffiti an hour after the gazebo was vandalized. Robinson also saw Carlos spray-painting a wall a short distance away from the park, using spray paint of a similar, if not the same, color. This is not, therefore, a case in

which the evidence reflected Carlos's "[m]ere presence at the scene of a crime." (*People v. Allen* (1985) 165 Cal.App.3d 616, 625.) Sufficient evidence supported the juvenile court's findings.

II.

The Juvenile Court's Orally Pronounced Probation Condition Precluding Carlos from Knowingly Using or Possessing Any Items for the Purpose of Defacing Property Is Not Unconstitutionally Vague or Overbroad.

At the disposition hearing, the juvenile court orally imposed the following probation condition, instructing Carlos: "You are also ordered not to knowingly use or possess any items for the purpose of defacing any property which includes but is not limited to spray paint, felt tip pen and scribing devices." However, the minute order from the hearing stated that probation condition as follows: "Minor not to use or possess any incendiary devices/any aerosol container/felt tip marker, or any other implement that is capable of defacing property." The Attorney General argues, and we agree, the minute order should be amended to accurately set forth the court's oral pronouncement of that probation condition. (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345 [oral pronouncement of probation conditions controls]; *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073 [same].)

Carlos argues that the probation condition as orally pronounced by the juvenile court, like its minute order counterpart, is unconstitutional because it "prohibit[s] the minor, without limitation, from using or possessing items that are capable of defacing property." Not true. The court's oral pronouncement of the probation condition is limited to restricting Carlos from *knowingly* using or possessing any items *for the purpose of* defacing any property. The condition is narrowly tailored and not overbroad. We therefore reject Carlos's constitutional challenge to it.

DISPOSITION

The March 19, 2015, minute order is modified by revising the probation condition that “Minor not to use or possess any incendiary devices/any aerosol container/felt tip marker, or any other implement that is capable of defacing property” to read “Minor not to knowingly use or possess any items for the purpose of defacing any property, which includes, but is not limited to, spray paint, felt tip pen, and scribing devices.” The order is affirmed as modified.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.