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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY M., A Person Coming  
Under the Juvenile Court Law.

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY M.,

Defendant and Appellant.

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B236682

(Los Angeles County  
Super. Ct. No. JJ18673)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Tamara Hall, Judge. Affirmed.

Torres & Torres and Steven A. Torres, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels  
and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

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This appeal comes from a juvenile wardship proceeding. The trial court convicted defendant Anthony M. of one count of misdemeanor vandalism. Defendant was placed home on probation under specified terms and conditions. On appeal, defendant contends that there was insufficient evidence to support his conviction and that certain testimony was inadmissible hearsay. We conclude that the evidence was sufficient and defendant suffered no prejudice from the admission of the purported hearsay. We therefore affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Underlying Facts***

On October 20, 2010, at around 4:30 to 5:00 p.m., approximately seven young Hispanic males, defendant included, were outside Manuel Borjas's office. Borjas called the police, believing the group to be "smoking drugs." Officer Mario Bojorquez responded to the report of drug activity and detained the group. While two members of the group were arrested, defendant and the rest of the group were released.

Approximately two to three hours later, two Hispanic males returned to Borjas's office and approached his car. The first threw a round metal object at Borjas's windshield, breaking it. The second person, alleged to be defendant, picked up the object and smashed it against the hood of Borjas's car. Borjas paid between \$320 and \$350 to get his windshield fixed. He did not fix his hood, but he did obtain a \$2500 written estimate.

Two months after the incident, Detective Steve Thoreson presented Borjas with four photographic arrays containing photographs of the young men who had previously

been detained, but not arrested by Officer Bojorquez, because Borjas had previously indicated that the two vandals were amongst that group. Borjas did not recognize anyone in the first two arrays, but identified a “filler” person in the third array as the person who had hit the windshield, and identified defendant, in the fourth array, as the person who had smashed the hood of his car.

## *2. The Charges*

Pursuant to Welfare and Institutions Code section 602, a petition was filed to declare defendant a ward of the state. The petition alleged that defendant committed one act of vandalism causing over \$400 in damage, a wobbler. (Pen. Code, § 594.)

## *3. The Trial*

At trial, the prosecution introduced testimony from Borjas. He testified that he called the police on the group of boys for smoking drugs. He also testified that he had seen defendant on numerous occasions prior to the incident, so he was familiar with defendant’s appearance. Borjas identified defendant in court as the person who had smashed his car’s hood. From the day he reported the group to the police until the end of trial, Borjas maintained that defendant was the second vandal, who had smashed his car’s hood.

Defendant’s defense was based on mistaken identification. He testified that although he was in the parking lot when the group was first detained, he returned home and did not return to the area after he was detained by Officer Bojorquez. The defense further introduced testimony from Officer Bojorquez, who testified that he responded to both the drug activity and vandalism reports. As to the vandalism incident, he had no

recollection of what Borjas had told him, so he relied on his report. He testified that, according to his report, Borjas had told him that the first vandal threw the metal object, which ricocheted off the windshield and smashed the hood. In other words, Officer Bojorquez's report did not indicate that Borjas had told him that the second vandal had smashed the hood of Borjas's car. Officer Bojorquez also testified that Borjas had originally told him that the second vandal weighed 180 pounds. Defendant, however, testified that he has never weighed more than 135 pounds.

In rebuttal, the prosecution introduced testimony by Detective Thoreson as to statements made by Borjas when viewing the photographic arrays. The defense objected to Detective Thoreson's testimony on the ground that it was inadmissible hearsay. The court overruled the objection. Detective Thoreson then testified that Borjas had told him that *two* of the people initially detained and released returned that evening to vandalize his car: one smashed Borjas's car window and the other smashed the hood.

#### 4. *Conviction and Sentencing*

The court found the allegation of vandalism true as a misdemeanor, but not a felony, concluding there was insufficient evidence that there had been more than \$400 in damage.<sup>1</sup> The court placed defendant home on probation under specified terms and conditions. Defendant filed a timely notice of appeal.

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<sup>1</sup> The trial judge stated that "a written estimate is not sufficient evidence beyond a reasonable doubt of what in fact was the damage."

## ***ISSUES ON APPEAL***

Defendant contends that there was insufficient evidence to uphold his conviction for vandalism and that allowing Detective Thoreson to testify over defendant's hearsay objection constituted reversible error.

## ***DISCUSSION***

### ***1. Standard of Review***

In a sufficiency of the evidence challenge, the appellate court “ ‘must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.]’ ” (*In re V.V.* (2011) 51 Cal.4th 1020, 1026, original italics.) Every fact that could have been reasonably deduced from the evidence in favor of the judgment must be presumed to support the judgment. (*Ibid.*)

### ***2. There Was Sufficient Evidence to Sustain the Conviction***

Defendant contends there was insufficient evidence that he was the individual who damaged the hood of Borjas's car. It has long been established that evidence from a single credible witness is sufficient to support a conviction. (*People v. Wells* (1894) 103 Cal. 631, 632.) Borjas made two identifications of defendant: one in court and the other via the photographic array. Defendant argues that the identification testimony is insufficient to uphold the conviction because Borjas described the vandal as weighing 180 pounds and defendant has never weighed more than 135 pounds. However, defendant made this argument before the trier of fact, which rejected it on the evidence. Borjas had previously interacted with defendant, once telling defendant not to throw

trash, so he was familiar with defendant's appearance, which bolstered the credibility of his identification. Our job is not to evaluate the facts of the case, but to uphold the trial court's determination if it is supported by substantial evidence. We conclude that Borjas's two identifications of defendant are sufficient to uphold the conviction.

3. *Defendant Suffered No Prejudice When Detective Thoreson Testified*

Defendant next argues that Detective Thoreson's testimony that Borjas had told him that two people had vandalized his car (rather than just one, as in Officer Bojorquez's report) constitutes inadmissible hearsay. Apart from whether the Detective Thoreson's testimony was inadmissible hearsay, it is not grounds for reversal as its admission was not prejudicial. (See *People v. Watson* (1956) 46 Cal.2d 818, 836 [requiring that it be reasonably probable that defendant would have obtained a more favorable result had an error not occurred in order to create grounds for reversal]; Evid. Code § 353.) It is clear that, in this case, Detective Thoreson's testimony was not dispositive. Indeed, it was cumulative of earlier testimony and written evidence. In cross-examination of Borjas, defense counsel elicited testimony that Borjas had identified, from the photographic arrays, one person as the one who had struck his car's windshield, and a second, defendant, as the person who had struck the hood of his car. The admonitions/identifications accompanying the photographic arrays, on which Borjas indicated the acts of vandalism he believed each identified person had

committed, were admitted into evidence.<sup>2</sup> Thus, Detective Thoreson's testimony was merely cumulative on the point, and could not have been prejudicial.

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<sup>2</sup> On one, Borjas wrote, "This is the guy who hit my window." The other, in which Borjas identified defendant, reads, "this is the guy who hit my hood."

***DISPOSITION***

The judgment is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.