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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re R.P., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B281836
(Super. Ct. No. YJ38298)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.P.,

Defendant and Appellant.

R.P. (minor) appeals from an order adjudging him a ward of the juvenile court. (Welf. & Inst. Code, § 602.) The court sustained a petition for first degree residential burglary. (Pen. Code, §§ 459, 460.) Minor was placed in a camp-community program for seven to nine months. The court set a maximum confinement period of six years.

Minor contends that the evidence is insufficient to show that he aided and abetted or was a direct perpetrator of the burglary. We affirm.

Facts

One night in January 2017 at about 11:35 p.m., Lilly Kakita was awakened by someone banging on the screen door of her home. She pushed a “panic button” near her bed because she “figured that somebody is trying to break in.” But the panic button did not work. Kakita remained in her bedroom.

Steven Uwahori was Kakita’s next-door neighbor. At about 11:37 p.m. he saw a Hyundai Sonata park in front of Kakita’s home and a Hyundai Veloster park in front of his home. Two persons got out of the Sonata. They went to the back of Kakita’s home.

Uwahori called 911. When the police arrived, a third person got out of the Sonata and ran to the back of Kakita’s home. All three persons then ran from the backyard toward the street.

Officer Brian Park saw the Veloster parked in the street with its parking lights on and the engine running. The car was occupied by only one person, who was seated in the driver’s seat. The driver was detained.

The Sonata was parked directly in front of Kakita’s home about 15 to 20 feet away from the Veloster. Its engine was off. A police sergeant informed Park that four persons were lying down inside the Sonata. The sergeant’s out-of-court statement was not offered for the truth of the matter stated. Instead, it was offered to explain Park’s subsequent conduct.

The police detained the four persons inside the Sonata. One of the persons was minor. Uwahori told the police

that the detained persons “were, in fact, the individuals that he saw.” However, Uwahori testified that he could not identify the three persons who went to the back of Kakita’s home “because they had hoodies on.”

A glass window at the back of Kakita’s home was broken. The screens for two adjacent windows were damaged and bent. Inside the home, a cinder block was on the floor near the broken window. The block had previously been on the outside of the home. The juvenile court said, “[W]hen they [the police] walk to the side of the house, all the screens are torn up and there’s a brick thrown through the window.” Defense counsel replied, “Right.”

Juvenile Court’s Decision

In sustaining the wardship petition, the juvenile court reasoned: “[Y]ou have . . . five guys that come up in two cars to a house at 11:37 at night, and two of them are seen going along the side of a house. The police are called. Police respond. Another guy gets out of the car, goes to the back. And all of a sudden three guys run out and jump in a car. They are found by the police in the car. They are detained. On observation, the police find a broken window, screens torn apart. [¶] So what you have is circumstantial evidence clearly, but very, very, very strong circumstantial evidence that these minors were in the act of breaking into this house when the police arrived. They were hiding in the car in an attempt to avoid arrest.”

Standard of Review

We “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a *reasonable trier of fact*

could find the [burglary allegation true] beyond a reasonable doubt.’ [Citations.] [¶] This standard means that when an appellate court determines that the evidence was insufficient, it has concluded that no ‘reasonable’ trier of fact could have found the [allegation true beyond a reasonable doubt].” (*People v. Guiton* (1993) 4 Cal.4th 1116, 1126-1127.)

“We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] . . . “[I]f the circumstances reasonably justify the [trier’s] findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.” [Citation.] We do not reweigh evidence or reevaluate a witness’s credibility. [Citation.]’ [Citations.]” (*People v. Nelson* (2011) 51 Cal.4th 198, 210.) “[A]ll conflicts must be resolved on the side of the judgment.” (*People v. Collins* (1925) 195 Cal. 325, 343.)

*Substantial Evidence Shows that Minor Aided and
Abetted or Was a Direct Perpetrator of the Burglary*

“[A] person is guilty of burglary if he or she enters any building . . . with the intent to commit larceny or any felony.” (*People v. Davis* (1998) 18 Cal.4th 712, 715.) It is undisputed that the throwing of the brick through the window satisfies the entry requirement. “[A] burglary may be committed by using an instrument to enter a building Thus, . . . using a tool to create a hole in a store wall, or using an auger to bore a hole in a corn crib is a sufficient entry to support a conviction of burglary.” (*Id.* at pp. 717-718; see also *People v. Calderon* (2007) 158 Cal.App.4th 137, 142, 145 [based on accomplice’s act of kicking in front door of residence, trial court correctly instructed jury “that ‘[u]nder the law of burglary, a person enters a building if some

part of his . . . body or *some object under his control* penetrates the area inside the building's outer boundary"].)

At the jurisdictional hearing the prosecutor argued, "[I]t appears that multiple minors were acting together, in concert, aiding and abetting each other in committing the burglary of this house." "[A]n aider and abettor's guilt 'is based on a combination of the direct perpetrator's acts and the aider and abettor's own acts and own mental state.' [Citation.]" [Citation.] Establishing aider and abettor liability 'requires proof in three distinct areas: (a) the direct perpetrator's actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor's mens rea—knowledge of the direct perpetrator's unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor's actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime.' [Citation.]" (*People v. Valdez* (2012) 55 Cal.4th 82, 146; see also *People v. Beeman* (1984) 35 Cal.3d 547, 560 ["an aider and abettor [must] act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense"].) "Among the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense. [Citations.]" (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.)

Minor contends that the evidence is insufficient to show that he aided and abetted or was a direct perpetrator of the burglary. He argues: "[T]he only evidence . . . supporting his involvement in the alleged burglary was the fact that he was found sitting in the car parked in front of [Kakita's] house." That

he was “‘merely present’ while events were unfolding” is insufficient to show that he “was in any way involved . . . in the alleged burglary.” (See *People v. Salgado* (2001) 88 Cal.App.4th 5, 15 [“mere presence at the scene of a crime is insufficient to establish aider and abettor liability”].)

Minor was not merely present at the scene of the burglary. He was one of four persons inside the Sonata parked in front of Kakita’s residence. Two persons left the car and went to the back of the residence. It is reasonable to infer that they were the direct perpetrators of the burglary, i.e., they damaged the screens and threw the brick through the window. When the police arrived, a third person left the Sonata and ran to the back of the residence. It is reasonable to infer that this person warned the two other persons of the police presence. The three persons then fled back to the Sonata. The evidence does not show whether minor was one of the two persons who went to the back of the residence, was the third person who warned the two other persons, or was the fourth person who remained inside the Sonata. But this gap in the evidence is of no consequence. “A reasonable trier of fact could infer from this evidence that the [four persons] were companions acting in concert according to a common plan such that the minor had foreknowledge of the burglary and harbored the intent to encourage or facilitate it.” (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1081.) A reasonable trier of fact could also infer that when the two persons left the Sonata and went to the back of Kakita’s residence, the other two persons who stayed in the car were acting as lookouts. Thus, even though we do not know minor’s precise role in the burglary, substantial evidence establishes his guilt either as a direct perpetrator or an aider and abettor.

Minor maintains “that the present case holds no evidence of [an intent] to commit a felony or a larceny within Kakita’s home. The evidence establishes malicious mischief or vandalism.” We disagree. It is reasonable to infer that the perpetrators damaged the screens and threw a brick through the window to gain entry into the residence for the purpose of committing theft or robbing Kakita. (See *People v. Frye* (1985) 166 Cal.App.3d 941, 947 [defendant’s unauthorized entry into home at 1:00 a.m. and flight upon discovery by the police “support the inference [he] entered with the intent to steal”].)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

David S. Wesley, Judge

Superior Court County of Los Angeles

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