Filed 4/21/15 In re Christian F. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re CHRISTIAN F., a Person Coming Under the Juvenile Court Law.	B256847
THE PEOPLE, Plaintiff and Respondent, v. CHRISTIAN F., Defendant and Appellant.	(Los Angeles County Super. Ct. No. VJ40120)

APPEAL from a judgment (order continuing wardship) of the Superior Court of Los Angeles County, Kevin Brown, Judge. Affirmed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary E. Sanchez and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Christian F., a minor, appeals from the order continuing wardship entered following a determination he committed vandalism causing at least $400 damage. (Pen. Code, § 594, subds. (a) & (b)(1); Welf. & Inst. Code, § 602.) The court ordered him placed in camp. We affirm the order continuing wardship.

FACTUAL SUMMARY

1. *People's Evidence.*

Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687, 697 (*Dennis B.*)), the testimony of Daniel Collaro at appellant's adjudication established as follows. Collaro owned apartment buildings, known as Collaro Apartments, in Pico Rivera. About 2:40 p.m. on March 5, 2014, he observed "the pool wall was graffitied." As owner of that property, Collaro had that graffiti removed. It cost approximately over $400 to have the graffiti removed.

At the adjudication, the People marked for identification (1) as People's exhibit No. 1, a photograph of a wall, (2) as People's exhibit No. 2, a piece of paper bearing the title "Rafael Painting," and (3) as People's exhibit No. 3, an invoice bearing the words "Frazee Paint." Only People's exhibit No. 1 was admitted into evidence.

Collaro testified as follows. People's exhibit No.1 depicted the graffiti and pool wall. People's exhibit No. 2 was the bill from the painter for his labor. The bill was created or billed to Collaro within a week of March 5, 2014. The painter needed to be paid $200, Collaro was planning to pay him, but Collaro had not yet paid him.

People's exhibit No. 3 was a paint invoice from Frazee Paint. The invoice was dated July 26, 2013, and, on that date, Collaro purchased all paint documented in that invoice. Collaro purchased the paint to paint his building. When Collaro bought the paint and repainted the building, some paint remained. The painter used that paint to paint over the graffiti that occurred in March 2014.

There were probably 25 gallons of paint in the garage. When the painter did the job of painting the graffiti, Collaro gave him the paint out of the garage. Collaro gave the painter one full five-gallon container of primer. When the job was done and the container was returned to Collaro, about an inch of primer remained in the container. Collaro also gave the painter one full five-gallon container of peach paint. When the job was done, the container was returned to Collaro, and "about an inch" of peach paint remained in that container.

Collaro testified he paid $105.95 for each five-gallon container of primer. He paid $107.95 for each five-gallon container of paint plus sales tax on each five-gallon container.

Los Angeles County Sheriff's Deputy Jesus Hernandez testified as follows. About 2:40 p.m. on March 5, 2014, Hernandez was assigned to vandalism enforcement and, on that date, he went to Collaro Apartments. Hernandez went there "regarding a vandalism call that just occurred." People's exhibit No. 1 depicted a cinder block wall with graffiti that said "Pico Nuevo 13" and, to the right of that, graffiti that said, "Rivera 13 187." The phrase "Pico Nuevo 13" was "crossed with blue paint." The above graffiti was the graffiti to which Hernandez "responded" on March 5, 2014.

Hernandez also testified as follows. The graffiti "Rivera 13 and 187" was painted with blue, or light blue, paint. A "line across" black graffiti was painted with the same blue, or light blue, paint. A "blue X [was] crossing out some black graffiti." The graffiti "Pico Nuevo 13" was the black graffiti.

The prosecutor, after categorizing four items of graffiti, i.e., "the Rivera 13, the 187, the crossing out and then the black graffiti underneath," asked Hernandez if he saw any other graffiti on the wall on March 5, 2014. Hernandez replied no.

Hernandez further testified as follows. Appellant spoke to Hernandez about the vandalism. Appellant said he did the writing, he was from Rivera 13, and he had written "Rivera 13 and 187." Appellant apologized for his actions.

2. *Defense Evidence.*

In defense, appellant's father testified as follows. People's exhibit No. 1 depicted the graffiti appellant's father saw in March 2014 on the day his son was arrested. There was, at the site, additional graffiti not depicted on People's exhibit No. 1. The additional graffiti was visible from the street. The writing was on the same kind of wall as the wall depicted in People's exhibit No. 1.

ISSUE

Appellant claims there is insufficient evidence he is responsible for graffiti costing more than $400 to repair. We disagree.

DISCUSSION

"When reviewing a claim of insufficiency of evidence, we must view the evidence in the light most favorable to the verdict and presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from that evidence. The test is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. We must determine whether a reasonable trier of fact could have found the prosecution sustained its burden of proof beyond a reasonable doubt of each essential element of the offense. Substantial evidence must be of ponderable legal significance, reasonable in nature, credible and of solid value." (*People v. Briscoe* (2001) 92 Cal.App.4th 568, 584-585.)

Moreover, our power begins and ends with the determination whether there is substantial evidence, contradicted or uncontradicted, to support the judgment. (*People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1181-1182.)

Penal Code[1] section 594 provides, in relevant part, "(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism: [¶] (1) Defaces with graffiti or other inscribed material. [¶] (2) Damages. [¶] (3) Destroys. [¶] . . . [¶] (b)(1) *If the amount of defacement, damage,* or

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[1] Subsequent section references are to the Penal Code.

destruction *is four hundred dollars ($400) or more,* vandalism is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), . . . [¶] (2)(A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment." (Italics added.)

There is no dispute there was sufficient evidence appellant committed vandalism for purposes of section 594, subdivision (a). Appellant asserts "the question presented in this appeal is whether the cost to paint over [appellant's] graffiti exceeded $400." We disagree. The issue is whether there was substantial evidence "the amount of defacement, damage, or destruction [committed by appellant] is four hundred dollars ($400) or more" within the meaning of section 594, subdivision (b)(1).

Moreover, there is no dispute appellant wrote, on the pool wall depicted in People's exhibit No. 1, blue graffiti that said "Rivera 13 187," as well as a blue line across, and/or a blue X crossing out, black graffiti that said "Pico Nuevo 13." Appellant concedes he wrote graffiti.

1. *Appellant is Responsible for All Defacement and Damage Reflected in People's Exhibit No. 1.*

Appellant argues the painter painted surfaces covered by appellant's graffiti and graffiti of third parties; therefore, appellant is responsible for only a proportionate share of the repair cost. We reject the argument. First, there was substantial evidence the painter painted over (1) the graffiti that said "Rivera 13 187," (2) any blue line or X that crossed out "Pico Nuevo 13," and (3) the graffiti "Pico Nuevo 13," but there was no substantial evidence the painter painted over any other graffiti. We note the record, fairly read, reflects the painter painted over appellant's graffiti "the night" of the incident.

Appellant's father testified to the effect there was graffiti elsewhere in the apartment complex and not depicted in People's exhibit No. 1. However, there was no substantial evidence the painter painted any graffiti other than the above three enumerated categories of graffiti depicted in People's exhibit No. 1. Nor was there substantial evidence the painter painted other areas of graffiti that night.

Second, as mentioned, there is no dispute appellant committed vandalism for purposes of section 594, subdivision (a). With respect to *the pool wall*, appellant maliciously committed acts of defacement and damage. He did so not only by writing separate graffiti ("Rivera 13 187") but by crossing out preexisting graffiti ("Pico Nuevo 13") perhaps written by a third party. Appellant concedes he is responsible for the repair cost to the extent the painter covered appellant's graffiti. Appellant is responsible for the repair costs resulting from the covering of his separate graffiti and his crossing out of the preexisting graffiti.

Third, we reject appellant's suggestion he is not responsible for the repair cost to the extent the painter covered that portion of the preexisting "Pico Nuevo 13" graffiti that was not crossed out by appellant. By crossing out "Pico Nuevo 13," appellant defaced and damaged the pool wall.

2. *The Amount of the Defacement and Damage Reflected in People's Exhibit No. 1 Is Four Hundred Dollars or More.*

Appellant argues the five-gallon container of primer and five-gallon container of paint were left over from repainting the building; they were not specifically purchased to cover the graffiti; and about one inch of the primer, and one inch of the paint, were not used to cover the graffiti; therefore, damages as to the primer and paint should be measured, not by the cost of each container of primer or paint but by the amount of primer or paint actually used. We reject his argument.

First, Collaro testified, concerning the graffiti on the pool wall as depicted in People's exhibit No. 1, that it cost approximately over $400 to have the graffiti removed. Appellant does not challenge in this appeal the admissibility of this testimony. Second, there is no dispute Collaro's damages included $200 for the painter's labor.

Third, Collaro testified without objection he paid sales tax on each five-gallon container of primer and on each five-gallon container of paint.

Fourth, in order for the painter to remove the paint depicted in People's exhibit No. 1, Collaro gave the painter one full five-gallon container of primer that cost $105.95, and one full five-gallon container of paint that cost $107.95. Collaro testified that, after the job was done, there was "only *maybe* an inch" (italics added) of primer left and "*about* an inch" (italics added) of paint left. Accordingly, there was no substantial evidence as to the amount of primer and paint left in the two containers; therefore, there was no substantial evidence the value of that combined residuum was such that the value of the primer and paint the painter actually used to paint over that graffiti was (1) significantly less than $213.90 (the combined cost of the primer and paint) or (2) in any event, less than $200.

Fifth, appellant cites no authority holding the measure of damages as to the materials of primer and paint should be anything other than its cost of $105.95 and $107.95, respectively.

We hold there was substantial evidence to convince a rational trier of fact, beyond a reasonable doubt, that appellant committed vandalism proscribed by section 594, subdivision (a), and "the amount of defacement, damage, or destruction [was] four hundred dollars ($400) or more" within the meaning of section 594, subdivision (b)(1). (*Cf. Dennis B., supra*, 18 Cal.3d at p. 697.) None of appellant's arguments compel a contrary conclusion.

DISPOSITION

The judgment (order continuing wardship) is affirmed.

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KITCHING, J.

We concur:

EDMON, P. J.

ALDRICH, J.