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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

E.R.,

Defendant and Appellant,

B238927

(Los Angeles County
Super. Ct. No. FJ48821)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Cynthia Loo, Referee. Affirmed.

Mary Bernstein, 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 and Steven D. Matthews, Assistant Attorneys General,
Ana R. Duarte, Deputy Attorney General for Plaintiff and Respondent

Appellant, E.R., then a minor, was adjudicated to have committed the crime of vandalism of property (Pen. Code, § 594, subd. (a)), a misdemeanor, in this delinquency proceeding (Welf. & Inst. Code, § 602). He raises a single ground on appeal: that the evidence does not support the adjudication. We conclude that it does, and affirm the adjudication.

FACTUAL SUMMARY

Francisca N. resided in an apartment building in Los Angeles with her husband and her children, including 16-year-old Bianca. At about 1:00 in the morning of March 5, 2011, just after she had arisen to get a drink of water, Francisca looked out the street-facing window of her apartment and saw appellant on his skateboard, heading toward her husband's truck. The truck was parked in front of the apartment building, about 33 feet from the living room window. It was illuminated by a nearby lamppost. Francisca recognized appellant from having seen him on previous occasions ("every day"), skateboarding in the neighborhood. On this occasion, appellant stopped by the driver's side of the truck, took hold of his skateboard and struck the door window three times; he then turned and left. The car window was "completely broken".

Bianca was awakened by the noise and, when Francisca explained what she had seen, Bianca asked that she call police. Francisca did not do so because she did not want any trouble. About an hour later, at 2:00 that morning, Bianca was sitting on a couch in the living room when she heard a skateboard crash into the living room window. The broken glass fell over her. She next saw appellant reach through the broken window and retrieve the skateboard that had been used to smash the window. He looked mad as he pulled the skateboard out. Bianca knew appellant (they had been seeing each other but it was "unofficial", i.e., Bianca's parents were unaware of it) and recognized him. She opened the front door, but by then appellant was skating away. Francisca testified that when she saw appellant smash the truck window he was wearing a hooded blue sweater. Bianca testified that when she saw him that morning he was wearing a black sweater.

Some days later Francisca saw appellant in front of her apartment. She and her husband told him to go away, and this time Francisca called police.

Appellant did not testify, but he presented an alibi defense. His friend, Jose S., testified that he was with appellant on the evening before the incidents. They were hanging out and skateboarding in the area of the apartment when Bianca's father, who was in his truck, saw them and looked at them "with disapproval". This was at about 8:00 p.m. At about 11:00 that evening the father reappeared, now intoxicated, and kicked appellant. Jose stood in front of appellant and then walked him home. By then it was near midnight. At about 3:00 am, Jose was outside when he heard a window break. He then saw Bianca, who was upset. He asked her what happened and she said she suspected appellant had broken the apartment window with a skateboard. Jose was aware that Bianca and appellant were having some difficulties at the time, but he knew that appellant's skateboard had been run over earlier that day and was not usable. Jose also testified that hooded sweaters were common attire in the area.

Appellant's mother, Gloria, also testified. She said that appellant had returned home at about 12:10 in the morning of March 5. He had been beaten up and had blood on his shirt, which also was torn. She did not believe appellant went out after that because she would have heard motion in the residence.

DISCUSSION

We note, initially, that while the evidence demonstrates the commission of two separate acts of vandalism—the smashing of the truck window and the breaking of the apartment window some time later—only the former was charged, and no issue is raised as to the propriety of evidence concerning the second incident to prove culpability for the first.

The law governing substantial evidence is too well established to require detailed discussion here. In brief, on appeal after a conviction the only issue is whether there is sufficient evidence in the record to support the conviction. If there is, that is the beginning and end of inquiry on the issue of sufficiency of the evidence. The appellate

court is not entitled to substitute its view of credibility and similar issues for the determination of the trier of fact. Instead, the appellate court must uphold the decision of the trier of fact even though the justices may feel that had they been trial judges on the case they would have ruled differently. (See, e.g., *Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Osband* (1996) 13 Cal.4th 622, 690.)

Appellant recognizes on appeal that the same person may have committed both acts of vandalism in this case, and that their commission in the same location on the same night “appears suspicious”. But, he argues, suspicion is not evidence. It raises only a possibility, which is only a speculation, and speculation is not sufficient to uphold a conviction. Since only Francisca saw appellant break the car window, he focuses on what he argues are weaknesses in her testimony, and infers from the trial court’s statement that it found Bianca to be entirely credible and credited Bianca’s testimony, it did not credit the testimony of her mother. There is an inconsistency between Bianca’s testimony and the testimony of Jose and appellant’s mother. And, as the trial court stated, the case does entail a credibility call, and “someone is lying”. As between Bianca and Jose, the court believed it was Jose who was lying and that Bianca was telling the truth. But only one witness saw the truck window being smashed: Francisca. We cannot read the court’s brief statement, upon which appellant relies and to which we have just referred, to support a conclusion that the court disbelieved her. To the contrary, the rule that on appeal we must resolve all factual disputes in favor of the judgment, requires the conclusion that the trial court credited Francisca’s identification of appellant as the one who smashed the truck window.

DISPOSITION

The order of adjudication from which this appeal is taken is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, S.