Filed 10/9/19 In re V.N. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re V.N., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B292302 (Super. Ct. No. FJ55800) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. V.N., Defendant and Appellant.	

V.N. appeals a judgment of the juvenile court sustaining a Welfare and Institutions Code[1] section 602 petition, with findings V.N. committed second degree commercial burglary (Pen. Code, § 459; count 1), and vandalism causing damage over $400 (Pen. Code, § 594, subd. (a); count 2). We conclude, among

[1] All further unlabeled statutory references are to the Welfare and Institutions Code.

other things, that: (1) substantial evidence supports the juvenile court's finding on count 2; and (2) the People's failure to provide the mandated statutory notice for deferred entry of judgment (§ 791; see Judicial Council Forms, form JV-751) was error which requires us to set aside the judgment and remand for a suitability hearing. If, on remand, V.N. is found suitable and elects deferred entry of judgment, she shall be given an opportunity to comply with the terms of deferred entry of judgment. If V.N. is deemed unsuitable or does not agree to the terms of deferred entry of judgment, the judgment shall be reinstated.

FACTS[2]

Walter Castillo was the "real estate agent" for the sellers of a remodeled single family home. It was "on the market for sale." It had a "for-sale" sign on the front of the residence. The house was surrounded by a fence and "gated with locks." The only way to gain entry to the home would be to unlock the gate or jump the fence. The house was not occupied.

On March 31, 2018, Police Officer Justin Samaniego received a dispatch call to go to that home because someone was trespassing. V.N and her male companion were on the property. Samaniego and his partner jumped over the fence surrounding the home to approach the residence. Samaniego saw V.N.'s male companion leave from the back of the house and try "to flee." Samaniego commanded him to stop and then took him into custody. V.N.'s male companion told the police that V.N. was inside the house.

Samaniego's partner called for V.N. to come out of the house. V.N. came out holding a backpack. Her male companion

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[2] V.N.'s request for judicial notice, filed May 9, 2019, is granted.

also had a backpack. Samaniego's partner ordered V.N. to "face the wall" and "put her hands behind her back." She did not initially comply with these commands.

The police searched the two backpacks and found items that were taken from the home, including a wine bottle, a wine glass, and a wash cloth. Police officers searched the home. There was no one else inside.

On March 31, the police notified Castillo that there had been a "break-in at the home." Castillo was last at that home on March 29. He testified that "as far as [he knew]," he was the last person to be in that home prior to the break-in. He had "locked up the house" on March 29, and it was "vacant." He did not know V.N., and she had no permission to be in the house. He had given no one else permission to be in that home. There was damage to the back door of the home. That damage was not present when he locked up the home on March 29. Castillo testified, "[T]his damage was new." He said that, "[a]s a result of the break-in," repairs had to be made to the house. He said the damages totaled $3,575.

The juvenile court sustained the petition as to counts 1 and 2. As to the vandalism count, the court said, "[G]iven the amount of damages, I will find it to be a felony." The court declared V.N. a ward of the court and placed her home on probation.

DISCUSSION

Substantial Evidence

V.N. contends there is insufficient evidence to support the finding that she or her companion committed the act of vandalism that damaged the door to the property in question. We disagree.

"In reviewing a claim of insufficient evidence, we view the entire record in the light most favorable to the judgment." (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398.) We do not weigh the evidence or decide the credibility of the witnesses.

"Felony vandalism prohibits the malicious destruction of property causing damage of $400 or more." (*Sangha v. LaBarbera* (2006) 146 Cal.App.4th 79, 87, fn. 6.) Defendants may be guilty of vandalism as aiders and abettors. "'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.' [Citation.]" (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080.)

V.N. claims there were no eyewitnesses who could testify about seeing her and her companion break the door. But an appellate court "must accept logical inferences that the [trier of fact] might have drawn from the circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.) ""'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment."'" [Citations.]" (*People v. Holt* (1997) 15 Cal.4th 619, 668.)

When the police arrived at the residence, V.N.'s companion was "behind the house," "trying to jump over the fence," and "flee the area." When he was taken into custody, he told police that V.N. was in the house. When apprehended, both V.N. and her companion had items they had taken from inside

the house. Samaniego testified V.N. and her companion were the only people in the home.

Castillo testified that to his knowledge he was the last person to be in the home "prior to the break-in." On March 29, he was at the house and there was no damage to the door. The police notified him of the break-in on March 31, which is when he first saw the damage. Castillo testified that "this damage was new." He said that after he locked the house on March 29, "the only way to access the home" would be with "the proper key" to open the door. V.N. did not have permission to enter the home, and Castillo did not "allow anyone else" to have access to it.

V.N. does not challenge the finding that she and her companion committed burglary in that house. Consequently, it is undisputed that they entered the house with criminal intent. From Castillo's and Samaniego's testimony, the juvenile court could reasonably infer that no one else had access to the house during the relevant time period. V.N. and her companion did not have a key or other access to open the door. The People note that "[s]ince the house was locked and unoccupied, there was no way in other than by force," and there is "no evidence that [V.N.] or her companion found the door already broken when they arrived at the house." The People introduced photographs showing damage to the door and the door frame. The damage near the door knob was consistent with a break-in by someone who did not have a key. The court found, "[T]wo people were found to have been involved in a burglary of the house. They had to gain entry to the house." It could reasonably infer they entered through the door causing damage to it in their effort to gain entry. V.N. has not met her strong burden to show insufficiency of the evidence.

"A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the [judgment]. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Deferred Entry of Judgment

V.N. contends the juvenile court erred by not holding a hearing on her suitability for deferred entry of judgment (DEJ). She claims the People failed to provide her with the proper DEJ information notice (Judicial Council Forms, form JV-751) and she is entitled to a reversal.

DEJ is an alternative for qualified minors who have "not previously been declared to be a ward of the court for the commission of a felony offense." (§ 790, subd. (a)(1).) If they are eligible for probation and meet certain requirements, they may admit the allegations of the section 602 petition, comply with their probation conditions, and potentially receive the sealing of the "'records of the juvenile court proceeding. [Citation.]'" (*In re Usef S.* (2008) 160 Cal.App.4th 276, 282; see §§ 790, 791.) If the minor is potentially eligible, the juvenile court "independently determines the minor's suitability for DEJ." (*Usef S.*, at p. 284.) This is a matter within the court's sound discretion. A minor who is notified about DEJ eligibility and elects to contest the section 602 petition is not entitled to a hearing on DEJ eligibility. (*Usef S.*, at p. 286.)

Here, the People filed a Judicial Council form JV-750 on May 16, 2018, and checked the box indicating that V.N. was "eligible" for DEJ. But the People did not file the form JV-751. That form would have provided the DEJ information notice required by section 791.

Section 791 provides, in relevant part, that the People must provide a "clear statement" (*id.* at subd. (a)(3)); a description of DEJ procedures (*id.* at subd. (a)(1) & (2)); and notice that "in lieu of jurisdictional and disposition hearings, the court *may* grant a [DEJ] with respect to any offense charged in the petition, *provided that the minor admits each allegation contained in the petition* and waives time for the pronouncement of judgment, and that upon the successful completion of the terms of probation . . . the court shall dismiss the charge or charges against the minor" (*id.* at subd. (a)(3), italics added).

"[T]he DEJ is clearly intended to provide an expedited mechanism for channeling certain first-time offenders away from the full panoply of a contested delinquency proceeding. That goal could not coexist with a minor who insists on exercising every procedural protection offered, and who then on appeal faults the juvenile court for not intervening and short circuiting those very protections." (*In re Kenneth J.* (2008) 158 Cal.App.4th 973, 980.)

V.N. contends the judgment must be reversed in light of *In re C.W.* (2012) 208 Cal.App.4th 654. There, as here, the People did not file the form JV-751. The Court of Appeal set aside the dispositional order and remanded the case to the juvenile court to determine the minor's suitability for DEJ.

The People contend that although they did not have the general information form JV-751, they had something far superior—a probation report that investigated, factually evaluated, documented, and confirmed DEJ eligibility. Consequently, the July 13 request for a contested hearing was "tantamount to a rejection of DEJ," which makes V.N. ineligible for DEJ. (*In re Kenneth J.*, *supra*, 158 Cal.App.4th at p. 980.)

In re C.W., *supra*, 208 Cal.App.4th 654 is directly on point. The parties here agreed at oral argument that the record does not show that V.N. was ever advised or made aware that she was eligible for DEJ. There is no evidence that V.N. saw or was advised of the form JV-750 or the references to DEJ in the preplea probation report. The parties agree that DEJ was not discussed in the oral court proceedings.

This case is therefore like *In re C.W.*, where the record showed only that counsel received a court filing stating that the juvenile was eligible for DEJ. In that case, just like this case, the Attorney General argued that the juvenile court "was not required to make a threshold suitability determination . . . because [the juvenile] never admitted any allegations in the petition" after a form JV-750 (only) had been filed and served on counsel. (*In re C.W.*, *supra*, 208 Cal.App.4th at p. 662.) The *In re C.W.* court rejected that argument. So do we.

The error was not harmless here. The parties agreed at oral argument that record sealing pursuant to section 791 affords greater protection to juveniles that does section 786. Thus, if the juvenile court ends up terminating the case and sealing the records pursuant to section 786, more people will have greater access to those records than would occur if DEJ was granted and successfully completed.

Accordingly, because "there is no evidence whatsoever in the record on appeal that [V.N.] was ever advised of her eligibility for DEJ at any point in the proceedings" and because "the juvenile court did not conduct the necessary inquiry into [V.N.'s] suitability for DEJ" (*In re C.W.*, *supra*, 208 Cal.App.4th at p. 662), we will set aside the judgment and

"remand the case for further proceedings in compliance with the statutory scheme" (*ibid.*).

DISPOSITION

We set aside the juvenile court's findings and dispositional order. The matter is remanded for further proceedings in compliance with section 790 et seq. and California Rules of Court, rule 5.800, including notice to V.N. of her eligibility for deferred entry of judgment, as required by section 791. If, as a result of those proceedings, V.N. elects DEJ, the juvenile court shall exercise its discretion regarding whether or not to grant DEJ. If it determines that V.N. is not suitable for DEJ, or if V.N. rejects the allowable terms and conditions of DEJ, the judgment shall be reinstated.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Robert Leventer, Commissioner

Superior Court County of Los Angeles

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