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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SCOTT C., a Person Coming Under the Juvenile Court Law.	B232488 (Los Angeles County Super. Ct. No. KJ33917)
THE PEOPLE, Plaintiff and Respondent, v. SCOTT C., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Merrill L. Toole, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

George Kita for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and David C. Cook, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A juvenile court sustained a petition filed under Welfare and Institutions Code section 602 alleging that minor and appellant Scott C. committed a lewd, forcible act on a child, under Penal Code section 288, subdivision (b)(1).[1] Scott appeals, contending that there was insufficient evidence to support the judgment. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

On May 13, 2009, J.V. was a 12-year-old seventh grader. Just before lunch at school, while J.V. was in a music class, Anthony, Scott (12 years old), Luis (13 years old), and Israel (12 years old) came up to her. Anthony and Scott asked if she wanted to go to the choir room, because they wanted to show or to tell her something. Anthony and Scott led J.V. to the choir room. Someone closed the door, leaving J.V. alone in the room with Israel. She tried to open the door, but someone was holding it shut. Israel touched J.V.'s breast and buttocks over her clothes. She tried to get away and told him to stop.

Israel called for the others to come in. Anthony and Scott came in, and Luis stood by the door. J.V. tried to leave, but they forced her to the ground. Scott held her legs, and Anthony held her arms. Israel was on top of her, touching her breast. The incident lasted about 5 to 10 minutes, during which people were looking in through a window on the door. The boys were laughing during the incident. When the lunch bell rang, the boys let J.V. go.

Scott later asked J.V. if she felt anything "there," pointing at her crotch. He said he'd fingered her, but J.V. didn't think he had.

Israel told Los Angeles County Deputy Sheriff Thomas Lanning that he grabbed J.V.'s buttocks and breasts. She yelled for him to stop, and when she struggled, Israel yelled for help. They pushed her to the ground, and one boy held her legs, and two others

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[1] All further undesignated statutory references are to the Penal Code.

held her arms. Israel grabbed her breasts, and because she was struggling so much, they let her go. Israel also told the school principal that he touched J.V.'s breast.

Scott told Deputy Lanning it was Israel's idea to bring J.V. into the choir room and to fondle her. At Israel's request, Scott and Anthony brought J.V. to the room. Staying on the outside, Scott closed the door and looked through a glass window. He saw Israel fondle J.V.'s breasts and he heard J.V. yell, " 'No.' " Israel told the other boys to help him, and Scott held J.V.'s legs and touched her crotch area. He also told the deputy that any touching was accidental. Scott told the school principal that he touched J.V.'s stomach.

Anthony told the deputy that he helped push J.V. to the ground and held down one of her arms as Israel fondled her. Anthony told the school principal that he was one of the boys who talked J.V. into going into the choir room, and he held her hands above her head.

Luis told Deputy Lanning that he watched Israel fondle J.V., and when Israel asked for help, he helped to push J.V. to the ground, and he held one arm as she struggled. Luis told the school principal that he was the one who brought J.V. to the ground and held one or more of her hands. J.V. begged him to stop.

All four boys told the deputy they knew what they had done was wrong.

Dr. Jody Ward, a clinical forensic psychologist, did a psychosexual evaluation of Scott. The Rorschack Inkblot test showed that Scott was overwhelmed with stress and had inadequate coping skills. He tended to avoid his emotions and was socially awkward. He reached conclusions hastily, not thinking them through before acting. Dr. Ward also gave Scott the Able Assessment for Sexual Interest test, which measures sexual interest and involves looking at slides of people in various states of undress. Scott did not respond to the slides in a sexual manner. He tended to deny sexual interest in everything, although he did say adolescent girls were a "little bit higher," albeit, still "disgusting." The results for his visual reaction were not reliable, possibly because he wasn't mature or because he was afraid. She found no evidence of sexually deviant behavior, and the incident seemed to result from immaturity and poor judgment.

Dr. Laura Brodie, a clinical and forensic psychologist, evaluated Israel. On the Personal Inventory for Youth test, which measures objective personality functioning, Israel tested as defensive, denying common faults. Overall, however, his clinical profile was within normal limits. The Able Assessment for Sexual Interest also was normal, showing sexual interest in elementary adolescents and adult females. The doctor saw no serious or significant pathology to worry about.

II. Procedural background.

On August 10, 2009, a petition was filed under Welfare and Institutions Code section 602, alleging against Scott count 1, forcible lewd act on a child (§ 288, subd. (b)(1)), and count 2, sexual battery by restraint (§ 243.4, subd. (a)).[2]

On March 4, 2011, the juvenile court found true the allegation in count 1 that all four boys, including Scott, committed a forcible lewd act on a child, a felony (§ 288, subd. (b)(1)). The court found that Anthony, Luis, and Scott were aiders and abettors. The court declared Scott a ward of the court under Welfare and Institutions Code section 602 and allowed him to remain home under various conditions of probation.

DISCUSSION

III. There was sufficient evidence to support the judgment against the minor, Scott.

The minor makes two arguments regarding the sufficiency of the evidence: (1) he was not an aider and abettor because there was insufficient evidence Israel touched J.V. to gratify himself sexually; and (2) the minor, Scott, did not have the requisite intent to gratify himself sexually. We find that there was sufficient evidence to support the judgment against Scott.

The same standard of appellate review applicable to reviewing the sufficiency of the evidence to support a criminal conviction applies to considering the sufficiency of the evidence in a juvenile proceeding. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) "Under this standard, the critical

[2] Count 2 was dismissed.

inquiry is 'whether, after reviewing 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.] An appellate court '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 defendant guilty beyond a reasonable doubt.' [Citations.]" (*In re Ryan N.*, at p. 1371.)

Under section 288, any person who willfully and lewdly commits, by use of force, violence, duress, menace or fear of immediate and unlawful bodily injury, any lewd or lascivious act on a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony. (§ 288, subd. (b)(1).) A person may aid and abet a lewd act when he or she assists the direct perpetrator by aid or encouragement, with knowledge of the perpetrator's criminal intent and with the intent to help him carry out the offense. (*People v. Beeman* (1984) 35 Cal.3d 547, 561.) Relevant factors to consider whether one is an aider and abettor include presence at the scene of the crime, companionship, and conduct before and after the offense. (*Ibid.*; see also *People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

There was sufficient evidence that Scott aided and abetted a lewd act directly committed by Israel. Israel told Scott to lure J.V. to the choir room. As instructed, Scott and Anthony told J.V. they wanted to show or to tell her something, and they led her to the choir room. Once J.V. was in the choir room, they shut the door, leaving J.V. alone with Israel, who grabbed J.V.'s breasts and buttocks, ignoring her pleas for him to stop. Someone held the door shut so that J.V. could not get out. When J.V. struggled, Israel called for help, and Scott, along with Anthony and Luis, entered the room, forced J.V. to the ground, and held her arms and legs so that Israel could continue to touch J.V.'s breasts. And although J.V. denied that Scott touched her crotch area, Scott told her and Deputy Lanning that he did touch her.

This evidence was sufficient to establish Scott's liability as an aider and abettor. Scott was with the other boys (Anthony, Luis, and Israel) during music class. He admitted watching Israel grab J.V.'s breasts and buttocks and hearing her yell, "No." Therefore, when Israel called for help in restraining J.V., Scott knew what Israel intended to do, and he aided and abetted Israel by holding down a struggling J.V. Moreover, there was evidence that Scott also touched J.V.—he told J.V. and the school principal he touched her.

This evidence was also sufficient to establish Scott's and Israel's intent to gratify themselves sexually. Scott, however, cites *In re Jerry M.* (1997) 59 Cal.App.4th 289, to show that neither he nor Israel acted with the intent to gratify themselves sexually. In *Jerry M.*, the 11-year-old Jerry touched the breasts of three young girls. Twelve-year-old Clair was with friends when Jerry approached the group and squeezed Clair's breasts through her shirt. (59 Cal.App.4th at p. 294.) A month later, he refused to return Clair's bike unless she showed him her breasts, which she ultimately did. While Stephanie was standing near her apartment complex's mailboxes, Jerry touched her breasts, saying that they " 'grew' " and felt " 'good.' " (*Ibid.*) While Sonia was on her apartment building steps, Jerry asked if she was " 'flat' " and put his hands under her shirt and bra, touching her breasts with his fingertips. (*Ibid.*)

A petition alleged against Jerry four violations of section 288, subdivision (a), which requires specific intent to arouse the sexual desires of either the perpetrator or the victim. The court found that various circumstances were relevant to establish intent: "[T]he charged act, extrajudicial statements, the relationship of the parties, other acts of lewd conduct, coercion or deceit used to obtain the victim's cooperation, attempts to avoid detection, offering of a reward for cooperation, a stealthy approach to the victim, admonishment of the victim not to disclose the occurrence, physical evidence of sexual arousal and clandestine meetings," and the defendant's age. (*In re Jerry M.*, *supra*, 59 Cal.App.4th at p. 299.)

Relying largely on Jerry's age (11) and his prepubescence, *Jerry M.* found that the minor lacked the specific intent to sexually arouse himself. (*In re Jerry M., supra,* 59 Cal.App.4th at p. 300.) The court, however, also found relevant that the victims knew Jerry and that his conduct was public, occurring in daytime and in the presence of others, thus there was no attempt or opportunity to avoid detection. No clandestine activity occurred and the minor didn't warn the girls not to tell what happened. The minor's touching was momentary, without caress or an attempt to prolong the touching. The court thus concluded that "Jerry was a brazen 11-year-old whose conduct was more consistent with an intent to annoy and obtain attention than with sexual arousal." (*Ibid.*)

The sentiment underlying *Jerry M.* was that the natural, normal curiosity of a prepubescent child, even if inappropriately expressed, should not be criminalized. (Cf. *In re Randy S.* (1999) 76 Cal.App.4th 400, 407-408 [rejecting notion that the minor's age (11) trumped other factors showing that his touching of his stepsister was sexually motivated].) Several factors, however, distinguish Jerry's prepubescent curiosity from what Scott, who was 12, and his friends did to J.V. Unlike Jerry who touched the girls in public without attempting to avoid detection, Scott and Israel and the others lured J.V. to the deserted choir room. That there was a window in the door through which others could, and did, peer does not render their conduct less clandestine or immune to the reasonable inference they wanted to hide their misconduct from others. Scott watched as Israel touched a struggling J.V. Also, unlike the momentary touchings in *Jerry M.*, the touchings here were repeated and prolonged, lasting approximately 5 to 10 minutes. The touchings were perpetrated while J.V. repeatedly said "stop" and struggled against the boys, who forced her to the ground and held her arms and legs so she couldn't escape.

Given this evidence, the juvenile court could reject the principal's opinion that the boys were prepubescent and the psychologist's opinion that the incident resulted merely from immaturity and poor judgment, an opinion which, in any event, doesn't preclude a conclusion that Scott acted also with intent to gratify himself sexually.

IV. The minor's contention that the *Gladys R.* advisement was defective has been waived on appeal.

In re Gladys R. (1970) 1 Cal.3d 855, requires clear and convincing evidence that a minor understood the wrongfulness of his or her action. A deputy spoke to Scott and the other minors after the incident to ascertain whether they knew the wrongfulness of their actions. Scott contends that the advisement given to him under *Gladys R.* was defective. He fails, however, to provide any argument or citation to authority to show how it was defective, and therefore the contention has been waived. (Cal. Rules of Court, rule 8.204(a)(1)(B); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.