Filed 4/20/16 In re D.D. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.D., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B266182 (Super. Ct. No. 1435919) (Santa Barbara County)
THE PEOPLE, Plaintiff and Respondent, v. D.D., Defendant and Appellant.	

D.D. appeals from a judgment sustaining a juvenile wardship petition. (Welf. & Inst. Code, § 602, subd. (a).) The court found true allegations that he had committed the crimes of first degree residential burglary (Pen. Code, § 459) and receiving stolen property. (*Id.*, § 496, subd. (a).) The latter offense was reduced to a misdemeanor. The court continued appellant on probation and committed him to Los Prietos Boys Camp for 120 days.

Appellant contends that the evidence is insufficient to support the finding that he committed a burglary. The contention is frivolous. We affirm.

Facts

A Surface tablet (Surface), Kindle e-book reader, and Xbox video game console were stolen from a residence. The Surface did not include a charger. The thief removed a window and entered the residence through the opening.

The burglary occurred during the afternoon on July 11, 2015. That evening, the Surface was offered for sale on the internet. The owner of the Surface communicated with the seller via the internet. The owner did not disclose that the Surface had been stolen from her. The seller said that the Surface did not include a charger because his dog had eaten it. The seller also said that he had possessed the Surface for three months.

The following day, the owner contacted the police. Officer Vincent Magallon identified the seller as appellant, who was 12 years old. Appellant was on probation and was subject to global positioning system (GPS) monitoring. Appellant wore the GPS device on his ankle. The GPS showed that, between 2:12 p.m. and 2:24 p.m. on July 11, 2015, appellant was at the burglarized residence.

The owner of the Surface arranged to meet with appellant at his apartment. The meeting was scheduled for the evening of July 12, 2015. Officer Magallon went to the apartment at the scheduled time and asked appellant how he had acquired the Surface. Appellant replied that, while he was at Ryan Park the previous day, a man named "Rondel" had given it to him. When Magallon said that the Surface had been stolen during a burglary, appellant denied taking it.

Officer Magallon informed appellant that his GPS device showed that he had been at the burglarized residence around the time of the burglary. Appellant replied that he had been at the residence, but had stayed outside while Rondel went inside after removing a window. Appellant said that he had thought Rondel "was robbing" the residence. Appellant gave Magallon the stolen Surface, Kindle, and Xbox. He said that Rondel "had told him to hang onto it for three days and Rondel would come back for it."

Appellant testified as follows: On July 11, 2015, Rondel asked appellant "to help him get his stuff from his ex-girlfriend's house." Rondel, who was about 21 years

old, said that his ex-girlfriend had kicked him out of the house. Appellant agreed to help. Rondel entered the house through a window. Once inside, he opened the front door for appellant. Appellant entered, and Rondel told him to sit on a couch. After Rondel had retrieved his property, they left through the front door and "walked to where [Rondel] was supposed to drop off his stuff." But nobody was there. Appellant offered to "hold [Rondel's] stuff for him until he could get . . . his stuff together . . . ." Later that same day, Rondel said that appellant should try to sell the "stuff." Appellant believed that the property taken from the house belonged to Rondel and had not been stolen.

Physical evidence supported Rondel's involvement in the burglary. A couch was directly in front of the window that the burglar had removed to gain entry into the residence. A shoe print was on the armrest of the couch. The shoe print appeared to have been made by an adult's shoe. Appellant was not an adult. According to Officer Magallon's report, he was four feet, three inches tall and weighed 70 to 80 pounds.

Juvenile Court's Decision

The juvenile court observed that, "in terms of burglary," the issue is "the intent at the time that he enters the property; the intent to commit larceny or another felony." It concluded that appellant "was at the property with the intent to commit a burglary." The court continued: "I don't believe [appellant] did this by himself. I believe there was somebody else there. I believe [appellant was] a minor player in this. . . . I believe that it's quite likely that [he] went along, in the eyes of this other individual, as a lookout, as someone to help him in the culmination of this crime . . . ." The court noted that appellant had "admitted that [he] went into the property." It found that, when appellant entered the residence, he not only knew that the other individual was committing a crime but also intended to take items from the residence for his own purposes.

Standard of Review

"We apply the substantial evidence standard of review. [Citation.] Thus, we review the entire record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the alleged

crimes beyond a reasonable doubt. [Citation.]" (*In re Brandon G.* (2008) 160 Cal.App.4th 1076, 1079.) "[W]e are in no position to weigh any conflicts or disputes in the evidence. The juvenile trial court was the trier of fact and the sole judge of the credibility of witnesses . . . . Even if different inferences can reasonably be drawn from the evidence, we cannot substitute our own inferences or deductions for those of the trial court. We must . . . [give the prevailing] party the benefit of every reasonable inference from the evidence tending to establish the correctness of the trial court's decision, and resolv[e] conflicts in support of the trial court's decision. [Citations.] In short, in juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination of whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, which will support the decision of the trier of fact. [Citations.]" (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1373, fn. omitted.)

Discussion

Appellant contends that "the prosecution submitted insufficient evidence to sustain the trial court's finding of burglary, which was premised on aider and abettor liability." (Capitalization omitted.) The doctrine of aider and abettor liability "'snares all who intentionally contribute to the accomplishment of a crime in the net of criminal liability defined by the crime, even though the actor does not personally engage in all of the elements of the crime.' [Citation.]" (*People v. Montoya* (1994) 7 Cal.4th 1027, 1039.) Appellant argues that there is no substantial evidence "that at the time of his entry into and presence at the residence . . . , [he] knew of [the perpetrator's] intent to steal, that [he] had the intent of facilitating the burglary, and [that he] in fact aided or promoted the perpetrator's commission of burglary." Thus, "the prosecution presented insufficient evidence to establish [appellant's] guilt as an aider and abettor of burglary."

The juvenile court's decision was not based on an aiding and abetting theory. The court made clear that it considered appellant to have been a perpetrator of the burglary. A burglary is committed when a person enters a structure with the intent to commit larceny or any felony. (Pen. Code, § 459.) The juvenile court found that

appellant had personally engaged in all of the elements of the crime: he had entered the residence with the requisite intent. The court stated, "[T]he finding that I'm making [is] that at the time that entry by you was made into this property, . . . you not only knew what the other individual, Randy or Rondel, was doing by going into the property, but that you, yourself, were going in for the purpose of obtaining items that you subsequently could either use for yourself or give to someone or, as we saw, try to sell it."

Substantial evidence supports the juvenile court's finding that appellant was a perpetrator of the burglary. Only a few hours after the burglary, appellant tried to sell the stolen Surface over the internet. "Possession of recently stolen property is so incriminating that to warrant conviction [for burglary] there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt. [Citations.]" (*People v. McFarland* (1962) 58 Cal.2d 748, 754.) Here, there was ample corroboration. Appellant's GPS device showed that he had been at the burglarized residence around the time of the burglary. Appellant told Officer Magallon that he had thought Rondel "was robbing" the residence. Appellant testified that he had actually entered the residence. He made conflicting statements as to his actions at the residence and how he had acquired the Surface. "The numerous conflicting stories given by appellant could fairly support the inference that they were all false and reflected a consciousness of guilt. [Citation.]" (*People v. Benson* (1989) 210 Cal.App.3d 1223, 1233.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Arthur A, Garcia, Judge

Superior Court County of Santa Barbara

Miriam R. Arichea, 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, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.