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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALEXIS C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ALEXIS C., Defendant and Appellant.	D054521 (Super. Ct. No. J218868)

APPEAL from a judgment of the Superior Court of San Diego County, Dwayne K. Moring and Lawrence Kapiloff, Judges. Affirmed.

Alexis C. appeals from a judgment of wardship following a finding that she committed petty theft and residential burglary. (Welf. & Inst. Code, § 602.) Alexis, who was 11-years old at the time of the offenses, contends the evidence failed to rebut the presumption that she was incapable of committing the crimes. (Pen. Code, § 26, undesignated statutory references are to this code.) She additionally claims insufficient

evidence supported the finding that she intended to commit a felony when she entered the residence. We reject both contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The petition arises from two separate incidents that occurred in 2007 where Alexis allegedly committed petty theft at a mortuary and unlawfully entered an inhabited dwelling with the intent to commit theft. (All further dates are in 2007.) The juvenile court found the allegations true, declared Alexis a ward and determined the maximum term of confinement to be six years four months. The court placed Alexis under the supervision of the probation department and released her to her mother. In accordance with the applicable standard of review (part I, *post*), we shall recite the facts as established by the record viewed in the light most favorable to the judgment.

A. The Mortuary Incident

On June 28, Alexis entered a mortuary located on North Magnolia in El Cajon and stole a purse belonging to Sharon Drenning. El Cajon Police Officer Eric Thornton investigated the theft and talked to Alexis, who had been detained as a suspect. Officer Thornton spent about 45 minutes with Alexis. During the questioning, Alexis was upset, crying and possibly confused. Officer Thornton also noted that Alexis appeared frightened of him.

In response to Officer Thornton's questions, Alexis stated that she did not know why she had been detained, anything about the theft of a purse, the difference between right and wrong, and could not provide any examples of what would be right or wrong. Officer Thornton told Alexis that stealing was wrong and that people went to jail for

stealing. He determined that Alexis lacked capacity under section 26 because she could not provide examples about the difference between right and wrong, and did not know that stealing was wrong until he advised her. Officer Thornton escorted Alexis home, but did not speak to her mother.

Several months later, El Cajon Police Officer Kevin Trotter interviewed Alexis about the burglary incident. During the interview Alexis admitted taking the purse. After Alexis told him where he could find the purse, Officer Trotter recovered it and returned it to Drenning. Alexis told Officer Trotter that she had taken a Tide brand pen and a couple of dollars worth of change from Drenning's purse. Drenning confirmed that these items were missing from her purse, but that the purse still had her credit cards and keys.

B. The Burglary Incident

Gloria Michel lived in an apartment located in El Cajon with her 17-year-old daughter Francesca. The apartment had one entry door. Alexis's grandmother lived in the same apartment complex. Alexis had befriended Michel's other, younger daughter and had been allowed to spend the night two or three times. When Alexis had previously visited, Michel saw her rummaging through drawers in the kitchen and bathroom, but did not notice anything missing.

On September 25, Michel went to bed at about 10:00 p.m. She confirmed that the door was locked and the windows closed, and that she had closed her bedroom door. At some point, she woke up to discover the bedroom door open and the hallway light on. Believing that Francesca had turned on the light, Michel yelled, but later discovered Francesca asleep on the sofa. After Francesca denied turning on the light, Michel started

to investigate a noise, calling "who's in there." Eventually, she saw something in a blanket on the floor next to her bed. As the blanket moved, it looked like the person under it was trying to get under the bed. Michel kicked the blanket several times, asking who was there. Alexis then peeked her head out and Michel pulled the blanket off.

When Michel asked Alexis what she was doing there, Alexis said she came to tell Michel that her door was unlocked. Alexis then claimed that Francesca had let her inside. At some point, Michel told Alexis that she should not come inside the apartment without being invited. Michel got the impression that Alexis did not take the situation seriously, even after Michel told Alexis that she kept a knife by her bed and could have stabbed her.

When Michel could not reach Alexis's mother by telephone, she decided to take Alexis to the grandmother's apartment. When Michel walked out, she discovered that her door was still locked. Alexis's mother was at the grandmother's apartment, but did not seem concerned about what Alexis had done.

After the incident, Michel found nothing missing and no drawers open. Nonetheless, she called the police the following day. Officer Trotter investigated the burglary the morning after the incident; he saw a pot under an open bathroom window. The screen was off that window and several others. He also recalled seeing fingerprints around the windows and described them as from a child; however, he never fingerprinted Alexis to determine whether the fingerprints belonged to her. A person needed to climb over a fence to access the windows from the outside.

Officer Trotter interviewed Alexis at her school. Alexis immediately asked him if she was going to jail, but then claimed she did not know why a police officer would want to talk to her. Officer Trotter explained the incident in Michel's apartment, but Alexis repeatedly denied being in the apartment. After Alexis's denials, Officer Trotter called Alexis's mother and confirmed that Alexis had been in Michel's apartment the night before.

When Officer Trotter asked Alexis why she had lied about being in Michel's apartment, Alexis replied that she was "tired of getting in trouble." Alexis admitted climbing over the fence, and claimed that she tried to get into Michel's apartment through the open bathroom window, but was too "fat" to get inside. Officer Trotter observed that although Alexis was not fat, the bathroom window was small. Nonetheless, he believed that a child-sized person could have gained access to the apartment through a window.

Alexis claimed that she entered the apartment through the closed, but unlocked door. Alexis asserted that once inside she went into Michel's bedroom, but did not give an explanation for being there. Officer Trotter asked Alexis whether she entered the bedroom to steal anything, but Alexis denied this intent. However, Alexis volunteered that had she found Michel's purse, she would have taken money from it. Alexis later claimed that she went into the bedroom to scare Michel.

Officer Trotter asked Alexis about the purse theft at the mortuary, and Alexis admitted stealing it. Alexis told Officer Trotter that she had a "scam" where she sold people cookie dough, telling them it was for a school fundraiser. If people wanted cookie dough, she purchased some at a store, keeping any profits. If people gave her a donation,

she would pocket the money. Alexis also admitted taking a purse from another apartment in the complex.

In response to Officer Trotter's question whether she knew right from wrong, Alexis admitted that her mother had taught her the difference when she was about six-years old. When Officer Trotter asked Alexis for examples, she stated that hitting someone or stealing was wrong. After Officer Trotter asked Alexis about entering another person's home when not invited, Alexis stated that would be "really, really wrong." Officer Trotter opined that Alexis knew the difference between right and wrong. At the end of the interview, Alexis returned to her class. Alexis was not upset during the interview, and other than her first question about whether she was going to jail, did not seem concerned.

C. Additional Evidence

Francesca denied letting Alexis inside the apartment. She confirmed that on the night of the incident the windows were closed, the door locked, and the hallway light was off. She also confirmed that the door was locked when Michel escorted Alexis outside.

Michel kept her purse on the floor by her bed or hanging from the headboard. When Alexis had visited in the past, Francesca observed her going through the hallway closets and opening closed doors. Alexis wandered around the apartment as it if were her own home. Francesca told Alexis a couple of times to not do that. When Alexis walked inside the apartment on one occasion without knocking, Francesca told her that she should knock first. These incidents occurred in the summer of 2007, before the burglary.

In June, Alexis spent the night visiting Francesca's little sister when she complemented Francesca on her distinctive shoes, and asked their size. After Alexis left the following day, Francesca noticed that the shoes were gone. Later that day, Francesca saw Alexis wearing the shoes, but Michel told her not to confront Alexis about them. Alexis admitted to Officer Trotter that she had taken the shoes.

Alexis's mother testified that she explained the difference between right and wrong to Alexis. She told Alexis that stealing was wrong when Alexis was about 4- or 5-years old. When Alexis was about 9- or 10-years old, after Alexis had entered a person's house without asking permission, she told Alexis that it was wrong to do so.

In September 2008, Dr. Susan Benjestorf, a clinical psychologist retained by defense counsel, evaluated Alexis. Dr. Benjestorf concluded that Alexis had low average intelligence, and diagnosed her with psychotic disorder, not otherwise specified, which is a thought disorder that can affect a person's perception of reality, including the difference between right and wrong. Dr. Benjestorf explained that Alexis experienced command type auditory hallucinations, some visual hallucinations, and concluded that Alexis needed on-going therapy.

Alexis told Dr. Benjestorf that on the night of the burglary incident she entered the apartment through the unlocked door while listening to voices telling her to scare Michel. Dr. Benjestorf considered Alexis's attempt to enter the apartment through several windows before using the door consistent with her age and desire to scare someone. She also considered Alexis's act of hiding under a blanket a means to surprise or scare someone, not as a disguise.

Dr. Benjestorf testified that Alexis lied to the police about being in the apartment to avoid getting into trouble and that Alexis knew she would get into trouble if she did something wrong. Dr. Benjestorf concluded that Alexis did not understand the wrongfulness of her behavior at the mortuary or the apartment. Nonetheless, during the evaluation, Alexis gave Dr. Benjestorf examples of right and wrong.

DISCUSSION

I. *Legal Principles and Standard of Review*

A juvenile under the age of 14 is presumed incapable of committing a crime, but the presumption can be rebutted if the prosecuting attorney presents clear and convincing proof that the minor appreciated the wrongfulness of the criminal act alleged in the delinquency petition. (§ 26; *In re Manuel L.* (1994) 7 Cal.4th 229, 231-232.) A child's knowledge of the wrongfulness of her conduct is rarely susceptible of direct proof and generally must be established by circumstantial evidence and the reasonable inferences from it. (*People v. Buckley* (1986) 183 Cal.App.3d 489, 494-495.) A court should consider "the minor's age, experience, and understanding, as well as the circumstances of the offense, including its method of commission and concealment. [Citations.]" (*In re James B.* (2003) 109 Cal.App.4th 862, 872-873.) As a child approaches the age of 14, the more likely it is for the child to appreciate the wrongfulness of her acts. (*Ibid.*) The testimony of a minor's parent regarding instructions to the minor is relevant in establishing whether the minor appreciated the wrongfulness of her actions. (*In re Paul C.* (1990) 221 Cal.App.3d 43, 53.) The conduct and statements of a minor during the

commission of the crime or after its commission may also evidence an awareness of the wrongfulness of the conduct. (*In re Cindy E.* (1978) 83 Cal.App.3d 393, 400.)

When a minor contends there is insufficient evidence to support the determination that she understood the wrongfulness of her conduct, "[w]e review the whole record most favorably to the judgment to determine whether there is substantial evidence - that is, evidence that is reasonable, credible, and of solid value - from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.] The trier of fact, not the appellate court, must be convinced of the [finding], and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) We apply the same standard of review when a minor challenges the sufficiency of the evidence establishing the charged crime. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.)

II. *Knowledge of the Wrongfulness of the Acts*

The juvenile court concluded that Alexis understood the wrongfulness of her conduct by clear and convincing evidence. The court relied on the mother's testimony that she had explained to Alexis the difference between right and wrong from an early age. It considered Alexis's interview with Officer Trotter, including her ability to provide examples of theft and a fraudulent scheme that she referred to as a "scam." Although it acknowledged Dr. Benjestorf's testimony that Alexis had a below average I.Q. adequacy and was delayed in maturity, the court found her actions in entering Michel's residence,

questioning Francesca about the shoes, and discussing the scam as "criminally sophisticated" for an 11-year old.

Alexis asserts the evidence did not support the finding that she understood the wrongfulness of her conduct during either incident, and that the juvenile court erred by lumping the facts of the separate incidents together. We disagree.

Alexis was about 11 and one-half-years old when she stole the purse from the mortuary. Her mother testified that she talked to Alexis about right and wrong and told her at a young age not to steal. Lessons Alexis received through church reinforced the concept of right and wrong. This evidence is sufficient to constitute the proof required by section 26 that Alexis understood the wrongfulness of her conduct when she stole the purse. (*In re Paul C.*, *supra*, 221 Cal.App.3d at p. 53.) Although Officer Thornton concluded that Alexis did not know the difference between right and wrong, the trial court could have discounted the weight of this evidence because Officer Thornton did not speak to Alexis's mother, and Alexis appeared confused and frightened during the interview.

Similarly, the juvenile court could reasonably infer that Alexis understood the wrongfulness of her conduct when she entered Michel's home a few months later because Alexis's mother had instructed Alexis when she was about 9- or 10-years old that it was wrong to enter a person's house without her permission. There was no evidence in the record showing that Alexis had her mother's permission to enter Michel's home the night of the burglary incident. Additionally, before the burglary incident, Francesca told

Alexis that she should knock before entering the apartment. Michel had also told Alexis that she should not come inside the apartment without being invited.

When confronted with her lie about being inside Michel's apartment, Alexis told Officer Trotter that she was "tired of getting in trouble." This response strongly suggests Alexis knew it was wrong to enter Michel's apartment without permission. Alexis also confirmed her mother's testimony by telling Officer Trotter that her mother had taught her the difference between right and wrong when she was about six-years old. As the trial court noted, Alexis showed a certain level of criminal sophistication by using the word "scam" to describe her practice of obtaining money by lying about a school fundraiser. This evidence is sufficient to support the juvenile court's conclusion that Alexis understood the wrongfulness of her conduct when she entered Michel's home without permission.

Accordingly, our review of the record shows an amplitude of evidence to support the juvenile court's finding that Alexis appreciated the wrongfulness of her actions when she engaged in the conduct. We therefore conclude that the prosecution rebutted the presumption she was incapable of committing the crimes.

III. *Sufficient Evidence Supported the Residential Burglary Conviction*

Alexis contends the evidence does not support the juvenile court's finding that she entered Michel's apartment intending to commit a felony. This contention is without merit.

To prove the crime of residential burglary, it must be shown that Alexis entered a dwelling with the specific intent to commit a felony or theft. (§ 459.) The intent to

commit a felony or theft must exist at the time of the entry. (*People v. Holt* (1997) 15 Cal.4th 619, 669.) Evidence of intent is usually circumstantial and inferred from all the facts and circumstances surrounding the crime. (*People v. Lewis* (2001) 25 Cal.4th 610, 643.)

Here, the juvenile court indicated that it relied heavily on the circumstantial evidence surrounding the forced entry into the apartment and prior thefts to infer that Alexis had the intent to commit a theft when entering the apartment. In making this determination, the court necessarily rejected Alexis's explanation that she entered through an unlocked door to scare Michel, but believed Michel's and Francesca's testimony that the door had been locked, and Officer Trotter's testimony that a child-sized person could have gained access to the apartment through a window. The unlawful entry alone supports a reasonable inference of felonious intent. (*People v. Holley* (1961) 194 Cal.App.2d 538, 540.) Because Alexis had been inside Michel's apartment in the past where she had shown a propensity to wander alone, the court could reasonably infer that Alexis knew Michel kept her purse in her bedroom and that she intended to take the purse when she entered the apartment.

Although Alexis challenges the reasonableness of these inferences because she is a minor with mental health issues, it is not our task to substitute our deductions for the inferences drawn by the juvenile court. Moreover, the juvenile court rejected Dr. Benjestorf's opinion that Alexis was undergoing a psychotic episode during the burglary as not credible. It found that opinion not credible because Alexis did not have a documented history of psychotic episodes, and she waited about a year before explaining

her conduct with information regarding command auditory hallucinations. We may not second-guess the juvenile court's credibility determination. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

We conclude there was sufficient circumstantial evidence to allow the juvenile court to reasonably infer that Alexis possessed the requisite specific intent to sustain the burglary conviction.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.