Filed 8/1/02 In re Kelly B. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re KELLY B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. KELLY B., Defendant and Appellant.	A095777 (Alameda County Super. Ct. No. J 182681)

Following a contested jurisdictional hearing on a juvenile petition (Welf. & Inst. Code, § 602), the trial court found that appellant committed the misdemeanor offense of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)).[1] On appeal, he challenges the sufficiency of the evidence to establish his liability for the offense as an aider and abettor. We conclude that substantial evidence supports the trial court's finding, and affirm the judgment.

STATEMENT OF FACTS

On the morning of June 11, 2001, the victim Joseph S. was "walking to school" on Telegraph Avenue in Oakland, when he passed three boys between 15 and 17 years of

[1] An additional charged offense of robbery was dismissed by the trial court pursuant to Welfare and Institutions Code section 701.1.

age.[2] As Joseph walked by, one of the boys said, "I will sleep you."[3] Joseph was not acquainted with any of the boys and kept walking, but the boys followed him on bicycles. Appellant got off of his bicycle and approached Joseph, as did another boy who yelled at him, "you jumped my cousin." Joseph spoke briefly with the boys as they walked toward a doughnut shop. Someone else then appeared and asked if Joseph had "jumped somebody's cousin." Appellant then "tried to dip" Joseph by grabbing his legs and lifting, as the others punched at him. Joseph began "swinging at them," but he did not make contact with appellant and fell to the sidewalk on his back.

After Joseph was on the ground, "everybody started stomping" him. One of the boys removed five dollars from Joseph's pockets and "took off" his shoes as the beating continued. Finally, someone said to Joseph, "Walk home barefooted," and "then they all ran." Joseph was unable to specifically identify appellant, or anyone else, as one of the boys who hit him or went through his pockets after he fell to the ground. Joseph acknowledged that appellant never said anything to him. He also testified that appellant did not "remove himself from the situation" after Joseph was thrown to the ground.

After his attackers fled, Joseph noticed that a police officer had already arrived. He and the officer observed appellant run into the nearby doughnut shop. The police officer followed appellant, apprehended him, and returned him for identification by Joseph as one of the boys who participated in the attack. Joseph was then taken to the hospital for treatment of his wounds.

Appellant testified in his defense that on the morning of June 11, 2001, he met his cousin at the BART Station, and from there they went to the doughnut shop on Telegraph Avenue. Appellant saw his friends Ceb and Moe, along with a few people he did not know, at the corner of 40th and Telegraph. At about 10:00 a.m., they "rolled up" to Joseph on bicycles. Appellant had never seen Joseph before. Ceb asked Joseph, "Did

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[2] For the sake of clarity and convenience we will refer to the parties and witnesses by their first names.

[3] To "sleep you" means to "beat you up."

you jump my cousin?" Appellant inquired if Joseph knew *his* cousin. Joseph answered no to both questions.

According to appellant's version of the incident, the entire group began walking to the doughnut shop, whereupon Joseph proclaimed, "Y'all trying to jump me," and "balled up his fists." When appellant's friend Moe said to Joseph, "I will sleep you," Joseph struck appellant across the head. Appellant took Joseph to the ground by lifting his legs, then "stepped back" and began to walk away as Ceb and Moe "started beating him up." Appellant claimed that Moe was the one who took five dollars and shoes from the victim.

DISCUSSION

Appellant complains that the evidence does not support the trial court's finding that he was an aider and abettor of the assault upon the victim by his friends. Specifically, appellant argues that the evidence fails to prove his prior knowledge of the assault, or his "intention of encouraging or facilitating the assault by Moe and Ceb." He maintains that his role as a mere "party to a confrontation" which subsequently escalated into an assault fails to establish the requisite intent for criminal liability as an aider and abettor.

"In reviewing appellant's insufficiency of evidence argument, we ask not whether there is evidence from which the trier of fact could have reached some other conclusion, but whether, viewing the evidence in the light most favorable to respondent, and presuming in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence, there is substantial evidence of appellant's guilt, i.e., evidence that is credible and of solid value, from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Thus, our sole function as a reviewing court in determining the sufficiency of the evidence is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This same standard of review is applicable to juvenile appeals." (*In re Michael M*. (2001) 86 Cal.App.4th 718, 726, fns. omitted; see also *People v. Campbell*

(1994) 25 Cal.App.4th 402, 409; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.)

" 'A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.' [Citations.]" (*People v. Campbell, supra,* 25 Cal.App.4th 402, 409; see also *People v. Dyer* (1988) 45 Cal.3d 26, 60.) "[K]nowledge of another's criminal purpose is not sufficient for aiding and abetting; the defendant must also share that purpose or intend to commit, encourage, or facilitate the commission of the crime." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 530.) " '[A]n aider and abettor must have criminal intent in order to be convicted of a criminal offense.' [Citation.]" (*People v. Solis* (1993) 20 Cal.App.4th 264, 272; see also *In re Meagan R.* (1996) 42 Cal.App.4th 17, 22.) "The burden of proof on the prosecution is to show a defendant, as an aider and abettor, acted with knowledge of the criminal purpose of the perpetrator and with an intent or purpose either of committing, encouraging, or facilitating commission of the target offense. [Citation.] '[A]n aider and abettor will "share" the perpetrator's specific intent when he or she knows the full extent of the perpetrator's criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime. . . .' [Citation.]" (*In re Meagan R., supra,* at p. 22.)

"It is settled that if a defendant's liability for an offense is predicated upon the theory that he or she aided and abetted the perpetrator, the defendant's intent to encourage or facilitate the actions of the perpetrator 'must be formed prior to or during "commission" of that offense.' " (*People v. Montoya* (1994) 7 Cal.4th 1027, 1039, quoting from *People v. Cooper* (1991) 53 Cal.3d 1158, 1164; italics omitted.) However: "One may aid or abet in the commission of a crime without having previously entered into a conspiracy to commit it." (*People v. Nguyen, supra,* 21 Cal.App.4th 518, 530, quoting from *People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5; internal citations, quotation marks and italics omitted.)

We find all of the indicia of aiding and abetting in the record before us. While mere presence at the scene of a crime is not alone sufficient to constitute aiding and abetting, nor is the failure to take action to prevent a crime, these are both pertinent factors to be considered along with companionship with the perpetrator, and conduct before and after the offense, including flight. (*People v. Campbell, supra,* 25 Cal.App.4th 402, 409; *People v. Mitchell* (1986) 183 Cal.App.3d 325, 330; *People v. Chagolla* (1983) 144 Cal.App.3d 422, 429.) Appellant was not merely present as a party to a confrontation, as he suggests. He arrived at the scene of the assault in the company of the perpetrators, and was associated with both of them before and when the crime occurred. He also was not just an inactive bystander. Appellant testified that he asked if Joseph knew his cousin, which demonstrated his knowledge and interest in promoting the apparent purpose of the group to engage in a retaliatory attack upon the victim. Even more compelling evidence of intent is that appellant actually initiated the physical altercation with the victim by throwing him to the ground. Appellant's conduct thus directly precipitated and facilitated the beating by rendering the victim vulnerable. Then, upon completion of assault, he fled the scene with his friends.

The trial court was entitled to draw an inference from the evidence that appellant acted in concert with his companions Moe and Ceb to achieve the common intended objective of beating the victim. Appellant's protestations that he was unaware of the impending assault and did not intend it were dismissed by the trial court and need not be accepted on appeal. The circumstantial evidence to the contrary is substantial and supports the trial court's finding. (*People v. Mitchell, supra*, 183 Cal.App.3d 325, 330.)

The judgment is affirmed.

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Swager, J.

We concur:

Marchiano, P. J.

Stein, J.