Court of Appeal, Sixth District, California.
In re FOREST C., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Forest C., Defendant and Appellant.
No. H030989.
(Santa Cruz County Super. Ct. No. J21051).
Feb. 8, 2008.

McADAMS, J.

*1 This juvenile proceeding involves defendant Forest C., a minor. On appeal, the minor challenges the sufficiency of the evidence to support the juvenile court's true findings on the charges of arson and vandalism and on the enhancement for excessive loss. The minor also contends that his statement to law enforcement was involuntarily obtained. Furthermore, with respect to the vandalism count, the minor first asserts that the court should have stayed punishment and he also argues that the court was required to declare that count as either a felony or a misdemeanor. The People concede the last point. For reasons explained below, we accept both of the minor's contentions concerning the vandalism count but we reject his other appellate challenges.[FN1]

FN1. The minor has also filed an original petition for writ of habeas corpus in this court (*In re Forest C. on Habeas,* case no. H032229). In that proceeding, he challenges the juvenile court's findings on grounds of ineffective assistance of counsel, supported in part by evidence that is not part of the record on appeal. We have disposed of the habeas petition by separate order filed the same day as this opinion.

To establish the proper framework for our review, we first briefly summarize the law governing juvenile proceedings. Against that framework, we describe the factual and procedural history of this case. We then address the specific contentions raised here.

JUVENILE DELINQUENCY: STATUTORY BACKGROUND

Juvenile delinquency proceedings are governed by the Welfare and Institutions Code, starting with section 602. Among the statute's express purposes are "the protection and safety of the public and each minor under the jurisdiction of the juvenile court...." (Welf. & Inst.Code, § 202.) Thus, a "fundamental premise of delinquency adjudication" is concern for both "the best interests of the minor and public protection." (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) As a general rule, juvenile delinquency proceedings are bifurcated, commencing with a jurisdictional phase and concluding with a disposition order. (*In re Gladys R.* (1970) 1 Cal.3d 855, 859; Welf. & Inst.Code, §§ 602, 706.)

SUMMARY OF FACTUAL AND PROCEDURAL HISTORY

The events giving rise to these proceedings took place in the early morning hours of September 16, 2006. At about 2:30 a.m. on that date, the Santa Cruz County Sheriff's Department received a report of a fire alarm at the San Lorenzo Valley High School campus.[FN2]

FN2. The high school shares the campus with a middle school and an elementary school.

The Fires

At least eight separate fires were set-seven at the high school and one at the junior high school-igniting the contents of three metal garbage cans and two plastic recycling cans, as well as three posters.[FN3] Seven of the fires were described as "small" and they burned out without extensive damage.

FN3. There was testimony that a ninth fire had been set in a display case outside the high school library, but it is not clear that the court admitted that evidence.

The largest of the fires severely damaged the high school library, with the loss estimated at $1.25 million or more. Its point of origin was a recycling container outside the library door, which was more than half-full of paper products. The fire marshal opined that fire from the recycling can entered the library building through an adjacent glass window that broke out.

Three persons were suspected of setting the fires: the minor, who was 15 years old at the time; Sam N., a 16 year old; and Garrett Frasca, who was 18. Within minutes of the fire alarm, the three had gotten a ride from Sam's friend, Sonia B., who picked them up at a location near the high school and took them to the minor's home. Several days later, Sonia placed a telephone call to Sam, which was surreptitiously recorded at the behest of law enforcement. During that conversation, Sam implicated the minor and Garrett in the fires at the school.

The Minor's Statements to Law Enforcement

*2 On September 19, 2006, Santa Cruz Sheriff's Deputy Steve Christensen contacted the minor at his home and told him that he was under arrest for starting the fires at the

high school. Christensen advised the minor of his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436.) The minor indicated that he understood those rights.

Christensen drove the minor to the sheriff's office. During the drive, he questioned him about "why this happened." According to the deputy's testimony, the minor said "that he and his friends didn't mean to intentionally set that big of a fire. Words to the effect of, you know, 'It was senseless. It wasn't intentional,' those sorts of things...."

Once at the sheriff's office, Christensen took the minor to an interview room with recording capability. Christensen again gave the *Miranda* advisements, and the minor again expressed an understanding of his rights. The minor then became uncooperative, refusing to answer questions, intimating that the deputy had arrested the wrong person, and denying "everything that he had already admitted to in the car." The recorded interview lasted about an hour and twenty minutes. Throughout, the minor insisted "that he was merely a witness and he was watching others do certain things." The minor swore that he did not personally light anything on fire. But he admitted seeing Sam start a fire in a display case just outside the library, which grew rapidly and "spooked" the minor. Garrett then retrieved a fire extinguisher from a janitor's closet, but when he attempted to use it, it "started to expel its contents uncontrollably." Christensen questioned the minor about whether he had a cigarette lighter in his possession that night; after initially denying it, the minor admitted having one.

The recorded interview concluded when the room was needed for an interview with another suspect, and Christensen moved the minor into an office occupied by Detective Joe Ramsey. The minor was there with Ramsey for 20-30 minutes; Christensen was also present for part of that time. While in Ramsey's office with both officers present, the minor admitted igniting one or more posters at the school after being told that Sam had implicated him.

Jurisdiction

On September 21, 2006, the Santa Cruz County District Attorney's Office filed a petition under Welfare and Institutions Code section 602. The petition alleged that the minor had committed arson and vandalism. (Pen.Code, §§ 451, 594.) [FN4] It also contained a special enhancement allegation, which asserted property damage exceeding $1 million. (§ 12022.6.)

FN4. Further unspecified statutory references are to the Penal Code.

A contested jurisdictional hearing was conducted in October 2006, over the course of four court days. The minor and Sam N. were tried together. In limine motions were presented by all parties.

The District Attorney's witnesses included Deputy Christensen, other law enforcement officials, a fire marshal, an insurance claims adjustor, the school librarian, and Sam's friend, Sonia B. The minors presented two witnesses: Felton's fire chief and a defense

investigator. Both parties presented documentary evidence. Neither minor testified, and the court refused to allow the statements of either to be used against the other.

*3 Following the parties' presentation of evidence, the parties argued several motions, including the minor's motion to exclude his statements to law enforcement as involuntary. The juvenile court denied that motion. The minor also moved for a judgment of acquittal as to the excessive loss enhancement, on the grounds of insufficient evidence. (See § 1118; Welf. & Inst.Code, § 701.1.) The court indicated its intent to deny the motion, but stated its desire to first read the cases cited by counsel. Counsel then argued the merits of the case, and the court took the matter under submission, announcing its ruling the following day.

As relevant here, the court found true the allegations that the minor had committed arson and vandalism, sustaining both counts of the petition. The court also sustained the special allegation of excessive loss.

Disposition

In November 2006, the juvenile court conducted the dispositional hearing. The juvenile court placed the minor on probation. It ordered the minor to serve 139 days in juvenile hall, with credit for 49 days, the balance to be served on an electronic monitoring program. The minor was released to the custody of his mother and stepfather. As stated in the wardship order, the court imposed a nine-year maximum term of confinement.

Appeal

The minor brought this timely appeal. (Welf. & Inst.Code, § 800 .) He raises several issues. First, he challenges the sufficiency of the evidence to support the juvenile court's findings. Next, the minor contends that the court erred in refusing to exclude his statements to law enforcement, or, alternatively, that his counsel was ineffective in connection with the suppression motion. Finally, the minor makes two additional arguments concerning the vandalism count: that the court should have stayed punishment on that count and that it should have declared the offense as either a felony or a misdemeanor.

ANALYSIS

We address the minor's appellate arguments in turn. As to each, we start by setting forth the applicable review standard. We then summarize and apply the relevant legal principles to the facts of this case.

I. Sufficiency of the Evidence

We begin with the minor's claims of insufficient evidence, which he directs at all of the charges of the petition.

A. Standard of Review

"To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) In making this determination, the reviewing court does not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (See, e.g., *People v. Jones* (1990) 51 Cal.3d 294, 314.) All conflicts in the evidence and all reasonable inferences must be resolved in favor of the judgment. (*People v. Maury* (2003) 30 Cal.4th 342, 396; *In re Charles G.* (1979) 95 Cal.App.3d 62, 67.) "Under this standard, the court does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing 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." (*People v. Hatch* (2000) 22 Cal.4th 260, 272, internal quotation marks, citations, and italics omitted.)

*4 These principles apply with equal force to appellate review of juvenile court findings. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809; *In re Charles G., supra,* 95 Cal.App.3d at p. 67.) Thus, we will affirm the juvenile court's finding "unless the record clearly shows that upon no hypothesis whatsoever is there sufficient substantial evidence to support it." (*In re Lynette G* . (1976) 54 Cal.App.3d 1087, 1094, internal quotation marks omitted .)

B. Evidence that the Minor Committed Arson

As the minor acknowledges, the record contains "evidence that the library fire was of incendiary origin and was caused by someone igniting the contents of a plastic recycling bin near the library wall." But in the minor's view, "there was no evidence that [he] was that person." The minor thus asserts the lack of evidence establishing his personal liability for the fire that burned the library. He likewise challenges the sufficiency of the evidence to establish his liability for aiding and abetting the library fire. The minor acknowledges being present at the scene and watching the others, but he contends that there is "no evidence ... that he had any intent of aiding or encouraging them in lighting the library trash can."

The People disagree. They argue that the minor's admissions to Deputy Christensen constitute sufficient evidence supporting the minor's personal liability. "In any event," the People contend, "there is ample evidence ... he aided and abetted in that offense." In their view, the fire that ignited the library "was not an isolated or independent incident but rather the product of a common course of action among appellant and his associates." The People also dispute the minor's contention that he was a mere bystander.

As we now explain, under the deferential review standard that governs us here, we find sufficient evidence to support the juvenile court's finding that the minor committed arson, either directly or by aiding and abetting.

1. Personal Liability

"A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property." (§ 451.) "Arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years." (*Id.,* subd. (c).) As the California Supreme Court has explained, "arson is a general intent crime." (*People v. Atkins* (2001) 25 Cal.4th 76, 79.) To satisfy the statute's "willful and malice requirement ... the setting of the fire must be a deliberate and intentional act...." (*Id.* at p. 88.) "The statute does not require an additional specific intent to burn a 'structure, forest land, or property,' but rather requires only an intent to do the act that causes the harm." (*Id* . at p. 86.)

As the California Supreme Court has long recognized, "the very nature of the crime of arson ordinarily dictates that the evidence will be circumstantial." (*People v. Beagle* (1972) 6 Cal.3d 441, 449.) For that reason, eyewitness testimony or other direct evidence of guilt is not required to support a conviction for arson. (*People v. Solis* (2001) 90 Cal.App.4th 1002, 1010.)

*5 Here, the evidentiary record includes the minor's admission to Deputy Christensen, made during the drive to the sheriff's office, that he and the other two "didn't mean to intentionally set that big of a fire." The minor argues that this statement "is so vague ... that it lacks any real evidentiary value." We disagree. In our view, that admission supports an inference that all three youths set the big fire-the minor included-albeit without intending to burn down the library. As explained above, we draw all reasonable inferences in support of the juvenile court's determination. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5; *In re Charles G., supra,* 95 Cal.App.3d at p. 67.) And as the People point out, the juvenile court, as trier of fact, was not bound to accept the minor's later statements that he burned only posters. (*People v. Jones, supra,* 51 Cal.3d at p. 314 ["it is the exclusive province of the trial judge or jury to determine the credibility of a witness"].)

Even if the court had concluded that the minor's involvement was limited to burning posters, it nevertheless could find him liable for the library fire. Under the statute, one need not personally set a fire to be guilty of arson; liability also attaches to a person harboring the requisite intent who "aids" or "counsels" the burning of a structure. (§ 451.) Given the minor's admission that he ignited one or more posters at the school, during a spree in which at least eight separate fires were started, the juvenile court reasonably could infer that the minor aided or counseled the others in starting the fire that damaged the library.

2. Aiding and Abetting

At the very least, the record supports a determination that the minor aided and abetted the arson, even if he was not a perpetrator. (Cf. *People v. Culuko* (2000) 78 Cal.App.4th 307, 331 [jury could reasonably find that the defendants either perpetrated felony child abuse or affirmatively aided its commission]; *People v. McDaniels* (1980) 107

Cal.App.3d 898, 903-904 [jury could reasonably find that the defendant committed murder either as perpetrator or as aider and abettor].)

To be guilty of aiding and abetting, a person must "act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense." (*People v. Beeman* (1984) 35 Cal.3d 547, 560.) One who aids and abets the commission of a criminal offense is considered a principal in the crime. (§ 31.) For that reason, "the same criminal liability attaches whether a defendant directly perpetrates the offense or aids and abets the perpetrator." (*People v. Montoya* (1994) 7 Cal.4th 1027, 1038-1039.) Criminal liability may attach even where the contribution of the aider and abettor is slight. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 532.) "Thus, the law imposes criminal liability upon all persons 'concerned' in the commission of a crime." (*Id.* at p. 529, quoting § 31.)

*6 "Whether a person has aided and abetted in the commission of a crime ordinarily is a question of fact." (*In re Lynette G., supra,* 54 Cal.App.3d at p. 1094; accord, *In re Juan G., supra,* 112 Cal.App.4th at p. 5.) "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. [Citations.] In addition, flight is ... relevant in determining consciousness of guilt." (*In re Lynette G.,* at pp. 1094-1095.)

Several pertinent factors are present here. First, as the minor admitted, he was at the scene of the crime. (*In re Lynette G., supra,* 54 Cal.App.3d at p. 1094.) Additionally, there is evidence of companionship among the three youths, including the minor's statement that the other two approached him after a school dance, while he was awaiting a ride from his mother, and invited him to walk through the school. (*Ibid.*) Finally, evidence that the minor fled the scene with the other two youths is probative on the question of his role as an aider and abetter, as it supports a finding of a shared common purpose. (*Id.* at p. 1095; see also, e.g., *In re Juan G., supra,* 112 Cal.App.4th at p. 5.)

Given these factors, the record supports an inference that the minor was at least "concerned" in the arson under an aiding and abetting theory. (§ 31.)

C. Evidence that the Minor Committed Vandalism

Generally speaking, vandalism occurs when a person defaces, damages, or destroys real or personal property belonging to another. (§ 594, subd. (a).) If the loss is amounts to $400 or more, the perpetrator may be sentenced to county jail or prison. (*Id.,* subd.(b)(1).)

As the People correctly observe, the same evidence that underpins the arson finding also supports the vandalism finding. The minor does not dispute the point. He argues only that there is insufficient evidence to support either count. For the reasons explained above, we disagree. We therefore conclude that sufficient evidence supports the vandalism finding.

D. Excessive Loss Enhancement

In 2006, the excessive loss provision read in pertinent part as follows: "(a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows: ... (3) If the loss exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years." (§ 12022.6, subd. (a)(3).) [FN5] "In enacting this section, the Legislature sought to deter large-scale crime." (*People v. Kellett* (1982) 134 Cal.App.3d 949, 959.) "A section 12022.6 enhancement must be proven beyond a reasonable doubt." (*Id.* at p. 958, fn. 2.)

FN5. As amended, section 12022.6, subdivision (a)(3), now imposes additional punishment for losses in excess of $1,300,000. (Stats.2007, ch. 420, § 1.)

*7 The minor argues that this statute requires "proof of a specific intent to cause damage or destruction." In support of that argument, he cites *People v. Kellett, supra,* 134 Cal.App.3d at pages 959-960, and the use notes to "CALCRIM No. 17.17 (Spring 2007 ed.)." [FN6] The minor also asserts a lack of evidentiary support for a finding of his specific intent to burn the library. Moreover, he argues, the enhancement should apply only to those who personally intend to cause damage, not to aiders and abettors.

FN6. As the People point out, there is no CALCRIM No. 17.17. The use note for *CALJIC* No. 17.17 states that the statute "requires proof of specific intent" but it does not elaborate as to whether the perpetrator must specifically intend to cause the particular amount of loss. (See Use Note to CALJIC No. 17.17 (Fall 2006 ed.) p. 1226.)

The People disagree on all points, saying: "There is no requirement that appellant have a specific intent to cause damage in the amount of $1,000,000 or that he personally caused the fire which resulted in the burning of the library." Concerning the intent required for liability under section 12022.6, the People rely on *People v. DeLeon* (1982) 138 Cal.App.3d 602, 606-607, which is cited in CALCRIM No. 3220. (Judicial Council of Cal.Crim. Jury Instns. (2007-2008) CALCRIM No. 3220, p. 1009.) The People also point out that "the instructions themselves-both CALJIC No. 17.17 and CALCRIM No. 3220-do not require the specific intent to cause the requisite amount of damage." In addition, the People reject the minor's claim that liability may not attach unless he personally set the fire resulting in the excessive loss. In any event, they urge, the record contains substantial evidence of the minor's personal involvement in setting the fire that caused the excessive damage.

1. Intent Requirement

We agree with the People that the statute does not require the specific intent to inflict property damage in the specified amount. As structured, section 12022.6 has two distinct elements: the intentional taking, damaging, or destruction of property (subdivision (a)), and a resulting loss exceeding the statutory amount, then one million dollars (subdivision

(a)(3)). The second element-the amount of the loss-does not refer to intent at all. As explained in *People v. DeLeon:* "The statute by its terms draws a distinction between the taking and the loss. It ... requires an intentional taking, damage or destruction of property in the commission of any felony," coupled with a loss exceeding the statutory amount. (*People v. DeLeon, supra,* 138 Cal.App.3d at p. 606.) "Although it is possible to conceive of a statute which would punish a defendant only to the extent of the value which he reasonably believed he was taking [citation], section 12022.6 is not so worded, and the use of the term 'the loss' is consistent with the traditional rule holding the criminal strictly liable for the higher amount actually taken...." (*Id.* at pp. 606-607, citing Model Pen.Code (Official Draft 1980) § 223.1, com. 3(c), pp. 144-147 (1980).)

That conclusion is further bolstered by the instructions themselves. In pertinent part, CALCRIM 3220 states: "To prove this allegation, the People must prove that: [¶] 1. In the commission ... of the crime, the defendant ... damaged ... property; [¶] 2. When the defendant acted, (he/she) *intended to ... damage ... the property;* [¶] AND [¶] 3. The loss caused by the defendant's ... damaging ... the property was greater than" the statutory amount. (CALCRIM No. 3220, italics added.) As the instruction properly reflects, the specific intent requirement applies only to the conduct of taking, damaging, or destroying the property of another.

2. Vicarious Liability

*8 In pressing his argument that the enhancement does not apply to those who are only vicariously liable, the minor relies on *People v. Walker* (1976) 18 Cal.3d 232. He also refers us to the commentary to CALCRIM No. 3220, which he characterizes as "enlightening on the correct interpretation of the enhancement." In his reply brief, the minor acknowledges "a dispute among the courts" on this point, but he contends that "the Committee holds the more well-reasoned view." The cited commentary reads in part: "The statute does not explicitly include vicarious liability but also does not use the term 'personally' to limit the scope of liability.... *People v. Fulton* (1984) 155 Cal.App.3d 91, 102 ... interpreted this language to mean that the statute did not require that the defendant personally take, damage, or destroy the property, but provided for vicarious liability.... However, the Fulton decision failed to consider the Supreme Court opinion in *People v. Walker [supra,]* 18 Cal.3d [at pages] 241-242 ..., which held that an enhancement does not provide for vicarious liability unless the underlying statute contains an explicit statement that vicarious liability is included within the statute's scope.... [A]lthough no case has explicitly overruled *Fulton,* the holding of that case appears to be contrary to the weight of authority." (Commentary to CALCRIM no. 3220.) [FN7]

FN7. The full text of the commentary reads as follows: "The statute does not explicitly include vicarious liability but also does not use the term 'personally' to limit the scope of liability. In *People v. Fulton* (1984) 155 Cal.App.3d 91, 102 ..., the Fourth Appellate District of the Court of Appeal interpreted this language to mean that the statute did not require that the defendant personally take, damage, or destroy the property, but provided for vicarious liability. In reaching this conclusion, the court relied on the reasoning of *People v. Le* (1984) 154 Cal.App.3d 1 ..., which held that an enhancement for being armed with a firearm under ... section 12022.3(b) allowed for vicarious liability despite

the fact that the statute does not explicitly include vicarious liability. The Fulton court also disagreed with the holding of *People v. Reed* (1982) 135 Cal.App.3d 149 ..., which held that ... section 12022.3(b) did not include vicarious liability. However, the *Fulton* decision failed to consider the Supreme Court opinion in *People v. Walker* (1976) 18 Cal.3d 232, 241-242 ..., which held that an enhancement does not provide for vicarious liability unless the underlying statute contains an explicit statement that vicarious liability is included within the statute's scope. Moreover, the Supreme Court has endorsed the *Reed* opinion and criticized the *Le* opinion, noting that *Le* also failed to consider the holding of Walker. (*People v. Piper* (1986) 42 Cal.3d 471, 477, fn. 5....) Similarly, the Fifth Appellate District of the Court of Appeal has observed that 'the weight of authority has endorsed the analysis in *Reed* ' and rejected the holding of *Le.* (*People v. Rener* (1994) 24 Cal.App.4th 258, 267 ... [holding that Pen.Code § 12022.3(a) & (b) does not include vicarious liability].) Thus, although no case has explicitly overruled *Fulton,* the holding of that case appears to be contrary to the weight of authority." (Commentary to CALCRIM 3220.)

In opposing that argument, the People rely on two California Supreme Court cases of more recent vintage than *Walker:* *People v. Lee* (2003) 31 Cal.4th 613 and *People v. Crow* (1993) 6 Cal.4th 952.

As *People v. Lee* makes clear, some statutory sentence enhancements require personal liability, while others do not. (*People v. Lee, supra,* 31 Cal.4th at pp. 625-626.) The high court explained its prior decisions on the issue, saying: "In *Walker,* we ... concluded that former section 12022.5 required, by implication, that a person who uses a firearm had to use the firearm *personally*." (*Id.* at p. 625, discussing *People v. Walker, supra,* 18 Cal.3d at pp. 238-242.) "Next, in *Cole* we ... concluded that for the section 12022.7 enhancement to apply, the statute expressly requires that a person who personally inflicts great bodily injury had to inflict such injury *personally.* " (*People v. Lee,* at p. 625, discussing *People v. Cole* (1982) 31 Cal.3d 568, 572-579.) "Lastly, in *Piper* we ... concluded that section 1192.7(c) requires, expressly, that a defendant who commits a felony in which he or she personally used a dangerous or deadly weapon had to have used such a weapon *personally* " and that it also "requires, by implication, that a defendant who commits a felony in which the defendant used a firearm had to have used the firearm *personally.* ... Following our reasoning in *Walker* and *Cole,* we declined to employ the law of criminal liability to remove from section 1192.7(c) its requirement of personal use of a firearm." (*People v. Lee,* at pp. 625-626, discussing *People v. Piper, supra,* 42 Cal.3d at pp. 475-478.) The court then distinguished the provision at issue in the case before it, saying: "Here, by contrast, section 664(a) does not require that an attempted murderer personally act with willfulness, deliberation, and premeditation." (*People v. Lee,* at p. 626.) In the court's view, the language of the provision "reveals an intent not to require personal willfulness, deliberation, and premeditation." (*Ibid.*) "Just as we refused in *Walker, Cole,* and *Piper,* to *remove,* at the People's behest, personal-conduct requirements imposed by the statutory provisions considered in those cases, here we similarly decline defendants' invitation to *insert* a personal-mental-state requirement not imposed by section 664(a)." (*Ibid.*)

*9 As the foregoing discussion makes clear, the existence of a personal liability requirement depends on legislative intent, as expressed through the statutory language of the particular enhancement provision at issue. (*People v. Lee, supra,* 31 Cal.4th at pp. 625-626.) As explained in *Reed,* "the Legislature has demonstrated that it knows how to limit the scope of an enhancement provision to one who personally commits the proscribed act by expressly so declaring when that is the effect it intends to achieve. Conversely, the Legislature has also shown that it knows how to impose vicarious liability under an enhancement provision by expressly and unmistakably so declaring its intent." (*People v. Reed, supra,* 135 Cal.App.3d at p. 152.) In some cases, however, it does neither, which results in ambiguity. (*Id.* at pp. 152-153.)

The statute at issue here does not require personal liability for the damage-either expressly or by necessary implication. (Cf. *People v. Lee, supra,* 31 Cal.4th at p. 626.) The sentence enhancement applies in pertinent part to anyone who "damages ... any property in the commission ... of a felony, with the intent to cause that ... damage ...." (§ 12022.6, subd. (a).) That phrase neither commands nor suggests a requirement that the property damage result from personal participation by the defendant. We therefore decline the minor's "invitation to *insert* a personal-mental-state requirement not imposed by section" 12022.6. (*People v. Lee,* at p. 626.)

Our reading of the statute finds some support in another California Supreme Court case, *People v. Crow, supra,* 6 Cal.4th 952. There, the court affirmed the imposition of a sentence enhancement under a similar predecessor version of section 12022.6, subdivision (a), for welfare fraud resulting in a loss in excess of $25,000. (*People v. Crow,* at pp. 960, 963.) The court affirmed on a theory of vicarious liability, though without directly construing the statute. In the high court's words, the "defendant *aided and abetted* [his co-defendant] Acosta in committing the welfare fraud at issue here...." (*Id.* at p. 960, italics added.) The court rejected the defendant's argument that "the evidence shows no acts by him to *aid and abet* Acosta's welfare fraud" noting that "defendant purchased a post office box, listing a false address. The jury could reasonably infer that defendant gave the false address to *assist* Acosta in the welfare fraud...." (*Id.* at p. 963, italics added.) By framing the issue in this fashion, the court implicitly rejected a requirement of personal liability under section 12022.6.

In any event, as discussed below, the evidence supports a finding that the minor personally damaged the property that caused the excessive loss. In reaching that conclusion, we reject the minor's assertion that "the only possible liability which could be imposed on appellant must necessarily be based on aiding and abetting...."

3. Supporting Evidence

*10 In response to the minor's motion for a judgment of acquittal as to the excessive loss enhancement, the juvenile court cited several factors favoring liability, including the fact that "a number of fires" were set, evidence that a nearly-full recycling can of "combustibles" was set on fire "right next to a wooden structure," and the fact that the youths did not "try to put it out" or "call for help."

In sustaining the petition as to both minors (including the special allegation), the judge said: "I can't come up with a conclusion that this is simply reckless behavior, any way I look at it. [¶] Maybe, if it were the first trash can lit and all of a sudden it got out of hand and you guys tried to put it out, okay, that makes sense, but when I have a number of little fires and I have, you know, this type of pile of papers and magazines and things right next to a wooden structure, when you had seen other trash cans go up in flames, there's no way I can find that this wasn't intentional, that it was simply reckless." As the juvenile court implicitly determined, the cited factors support an inference that all three youths contributed to all of the fires, including the big one that damaged the library.

In sum, on this record, there is adequate evidence that the minor personally participated in setting the fire that caused the excessive loss.

II. Admission of the Minor's Statement

The minor contends that the court erred in refusing to exclude his statement to Deputy Christensen, which he claims was involuntary. Alternatively, the minor asserts, his counsel was ineffective in connection with the motion to suppress.

A. The Court's Admission of the Statement

In the minor's view, the juvenile court erred in admitting his inculpatory statement, because it was involuntary under the totality of the circumstances. More specifically, he contends that the admission "that he lit one or more posters was involuntary because this statement was motivated by promises of benefit and leniency alternating with threats, and coupled with deception as to the evidence and legal consequences. In view of appellant's youth and naivet [é] ..., the statement was erroneously admitted." The minor further asserts that the error was prejudicial.

1. Standard of Review

"On appeal, we review independently the trial court's determination on the ultimate legal issue of voluntariness." (*People v. Williams* (1997) 16 Cal.4th 635, 659.) "But any factual findings by the trial court as to the circumstances surrounding an admission or confession ... are subject to review under the deferential substantial evidence standard." (*Id.* at p. 660; cf. *People v. Vasila* (1995) 38 Cal.App.4th 865, 873 [where the challenged statement is recorded and transcribed, review is independent].) "With respect to conflicting testimony, the appellate court accepts that version of the facts most favorable to the finding below, to the extent it is supported by the record." (*People v. Boyde* (1988) 46 Cal.3d 212, 238.)

2. Legal Principles

*11 "The litmus test of a valid waiver or confession is voluntariness." (*People v. Kelly* (1990) 51 Cal.3d 931, 950.) "A confession or admission is involuntary, and thus subject to exclusion at trial, only if it is the product of coercive police activity." (*People v. Williams, supra,* 16 Cal.4th at p. 659.) In determining voluntariness, the critical issue is

"whether the defendant's 'will was overborne at the time he confessed.' " (*People v. Maury, supra,* 30 Cal.4th at p. 404; see also, e.g., *In re Shawn D.* (1993) 20 Cal.App.4th 200, 208.)

"No single event or word or phrase necessarily determines whether a statement was voluntary." (*People v. Kelly, supra,* 51 Cal.3d at p. 950.) "In deciding the question of voluntariness, the United States Supreme Court has directed courts to consider 'the totality of circumstances.' " (*People v. Williams, supra,* 16 Cal.4th at p. 660.) Relevant factors include details about the interrogation, such as its length and location, as well as the existence of any police coercion; they also include the individual characteristics of the accused, such as maturity, education, sophistication, and physical and mental condition. (*Ibid.;* see also, *In re Shawn D., supra,* 20 Cal.App.4th at p. 209.) "A minor can effectively waive his constitutional rights [citations], but age, intelligence, education and ability to comprehend the meaning and effect of his confession are factors in that totality of circumstances to be weighed along with other circumstances in determining whether the confession was a product of free will and an intelligent waiver of the minor's Fifth Amendment rights [citation]." (*People v. Maestas* (1987) 194 Cal.App.3d 1499, 1508, fn. omitted; see also, e.g., *People v. McClary* (1977) 20 Cal.3d 218, 228-229, overruled on other grounds in *People v. Cahill* (1993) 5 Cal.4th 478, 510, fn. 17.)

When an admission is challenged as involuntary, the People have the burden of proving voluntariness by a preponderance of the evidence. (*People v. Markham* (1989) 49 Cal.3d 63, 71; *In re Aven S.* (1991) 1 Cal.App.4th 69, 75.)

3. Analysis

In asserting his claim of involuntariness, the minor relies both on his own characteristics and on details of the interrogation. We consider each point in turn.

a. The minor

As the minor points out, he "was only 15 years old. He was just beginning his sophomore year in high school so he would have only completed the ninth grade. He had never been arrested." (Cf. *In re Aven S., supra,* 1 Cal.App.4th at p. 77 [appellant there was a 15 year old, who, "while young, was experienced in the ways of the juvenile justice system"]; *In re Shawn D., supra,* 20 Cal.App.4th at p. 212 [appellant was a 16 year old, who "had prior contact with the police but was described as 'unsophisticated' and 'naïve' in the probation report"; he "suffered from posttraumatic stress disorder" and "had a difficult childhood"].) The minor cites the transcript of his statement as "compelling evidence that he was motivated to confess by the very statements made by the police."

*12 The juvenile court judge, who viewed the video recording of the interview, took a different view. As the judge put it, "it is abundantly clear that Forest knew that he didn't have to answer any questions and he didn't have to cooperate with law enforcement. He did that for an hour and 20 minutes before he really said anything of any substance that incriminated himself. There were some other bits and pieces that came out during the course of the investigation that were incriminating as well, but it was clear that he wasn't

intimidated." The judge's observation was borne out by the testimony of Detective Ramsey, who spent 20-30 minutes with the minor after his recorded interview, part of it with Deputy Christensen present. Ramsey testified that the minor did not seem "scared" or "intimidated"-just "bummed out" and "depressed." (See *People v. Farnam* (2002) 28 Cal.4th 107, 182 [although the 18-year-old defendant "was emotional when interviewed" by police, there was "no indication he felt intimidated" during interview]; *People v. Higareda* (1994) 24 Cal.App.4th 1399, 1409 ["appellant 'appeared calm,' not frightened or scared" during police interview].)

As the juvenile court explicitly determined, and as the record confirms, the minor held his own during the three police interviews, despite his youth and inexperience. The minor's personal characteristics thus do not compel a finding that his statement was involuntary.

b. The interrogation

"A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence." (*People v. Maury, supra,* 30 Cal.4th at p. 404; *In re Shawn D., supra,* 20 Cal.App.4th at p. 210.) "The statement and the inducement must be causally linked" however. (*People v. Maury,* at p. 405; see also, e.g., *People v. Ray* (1996) 13 Cal.4th 313, 340; *People v. Benson* (1990) 52 Cal.3d 754, 778.)

Promises and Threats

The minor claims that "Deputy Christensen's promises of leniency, benefits, and threats permeated the entire interview." As for promises, the minor cites the deputy's statements that he could "call a judge and talk to him" and "actually help ... a lot"; that "how much trouble" the minor was in "depended on [him] right now"; and that the minor should tell his "side of the story" so that "we can mitigate some of these things." In terms of threats, the minor points to the deputy's statement that failure to confess was "going to make it worse"; his threats to take the minor to juvenile hall; his reference to contacting a judge and reporting the minor's lack of remorse; and his statement that refusal to talk made the minor "equally as responsible as the other two guys." In the minor's view, Deputy Christensen's "statements went far beyond merely exhorting [him] to tell the truth."

"The line to be drawn between permissible police conduct and conduct deemed to induce or to tend to induce an involuntary statement does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he speaks the truth, as represented by the police. Thus, 'advice or exhortation by a police officer to an accused to "tell the truth" or that "it would be better to tell the truth" unaccompanied by either a threat or a promise, does not render a subsequent confession involuntary.' " (*People v. Hill* (1967) 66 Cal.2d 536, 549; see also, e.g., *People v. Belmontes* (1988) 45 Cal.3d 744, 773; *People v. Maestas, supra,* 194 Cal.App.3d at p. 1507.) "When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can

perceive nothing improper in such police activity." (*People v. Hill,* at p. 549.) "On the other hand, if in addition to the foregoing benefit, or in the place thereof, the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible. The offer or promise of such benefit need not be expressed, but may be implied from equivocal language not otherwise made clear." (*Ibid.;* see also, e.g., *People v. Holloway* (2004) 33 Cal.4th 96, 115.)

*13 In this case, we do find some of Deputy Christensen's remarks troubling. One particular example is the officer's statement to the minor that he could "call a judge and talk to him" and that he could "actually help ... a lot" by presenting the minor's thought processes at the time. Rejecting the People's contrary assertion, we consider that statement to be qualitatively different from a simple promise to talk to the district attorney, with the qualification that the prosecutor would decide the ultimate charges. (Cf. *People v. Higareda, supra,* 24 Cal.App.4th at p. 1409 [if defendant was truthful, officer " 'would talk to the District Attorney' " who would decide on " 'any other further action' "]; *People v. Boyde, supra,* 46 Cal.3d at p. 239 [officer "clearly stated that he had no authority to make any promise of leniency ... but could only pass information on to the district attorney"]; *People v. Holloway, supra,* 33 Cal.4th at p. 116 ["detectives did not represent that they, the prosecutor or the court would grant defendant any particular benefit if he told them how the killings happened"].)

Here, based on the deputy's statements that he could "call a judge" and "actually help" the minor, the minor was "given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement"-which is improper. (*People v. Hill, supra,* 66 Cal.2d at p. 549; see also, e.g., *People v. McClary, supra,* 20 Cal.3d at p. 229 ["threats of punishment and the promises of leniency" to 16-year-old suspect rendered her statements "involuntary and inadmissible"; there, the officers "strongly implied that if defendant changed her story and admitted mere 'knowledge' of the murder, she might be charged only as an accessory after the fact"]; *In re Shawn D., supra,* 20 Cal .App.4th at p. 214 [the minor's confession was rendered involuntary by officer's repeated suggestions that he would be treated more leniently if he confessed].)

However, even recognizing the officer's conduct as improper, we find no basis for reversing the juvenile court's explicit determination that the interrogation techniques did not overbear the minor's will to resist. "A confession is 'obtained' by a promise within the proscription of both the federal and state due process guaranties if and only if inducement and statement are linked, as it were, by 'proximate' causation." (*People v. Benson, supra,* 52 Cal.3d at p. 778.) In this case, the inducement and the minor's statement are not linked. Here, the court found it "abundantly clear that Forest knew that he didn't have to answer questions and he didn't have to cooperate with law enforcement" and "that he wasn't intimidated." The record supports that finding. The minor did not make the inculpatory statements in response to the officer's promises or threats. To the contrary, even after those inducements were made, the minor adamantly adhered to his story that he knew nothing and was a mere bystander. As the People point out, the minor

admitted burning one or more posters only after learning that Sam had implicated him. (See *People v. Belmontes, supra,* 45 Cal.3d at p. 774 ["factual detail revealed in the officers' questions" led the defendant to conclude that his fellow suspects "had 'snitched him off' "].) On this record, we cannot agree that the deputy's inducements were the motivating cause of the minor's inculpatory statements.

Deception

*14 The minor also complains about Deputy Christensen's repeated lies on two critical subjects: evidence implicating the minor and the legal consequences of the minor's actions.

As the minor observes, police deception is a relevant consideration weighing against a finding of voluntariness. (*In re Shawn D., supra,* 20 Cal.App.4th at p. 209.) On the other hand, "deception does not necessarily invalidate a confession." (*People v. Thompson* (1990) 50 Cal.3d 134, 167.) "Where the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted." (*People v. Farnam, supra,* 28 Cal.4th at p. 182 ["deception concerning defendant's fingerprints was unlikely to produce a false confession"]; cf. *People v. Holloway, supra,* 33 Cal.4th at p. 116 [no deception in telling the defendant that "circumstances can reduce the degree of a homicide or, at the least, serve as arguments for mitigation in the penalty decision"].)

Accepting that deception may lead to an involuntary confession in some circumstances, that is not our case. As explained above, the juvenile court made an express finding that the deputy's interrogation techniques did not motivate the minor's inculpatory statements, and the record supports that finding. Deputy Christensen's use of deception thus did not overcome the minor's will or cause him to make the challenged admission.

In sum, the court did not err in admitting the minor's statement that he lit one or more posters on fire.

3. Prejudice

Even if we were to assume judicial error in admitting the challenged statement, the minor has not demonstrated any prejudice.

As this court observed in *Shawn D.,* "under California law, the harmless error test is used to gauge the prejudicial effect of admitting inadmissible confessions." (*In re Shawn D., supra,* 20 Cal.App.4th at p. 217, citing *People v. Cahill, supra,* 5 Cal.4th at pp. 509-510.) Applying that test there, we concluded that reversal was required because there was "no evidence to connect appellant to the burglary other than appellant's confession." (*In re Shawn D.,* at p. 217.)

Here, by contrast, the juvenile court relied on evidence that did not come from the minor's inculpatory statement about lighting posters. Rather, the court specifically cited other evidence, including the fact that "a number of fires" were set, evidence that a

nearly-full recycling can of "combustibles" was set on fire "right next to a wooden structure," and the fact that the youths did not "try to put it out" or "call for help." Moreover, as discussed above, a reasonable inference supporting the court's findings arises from the minor's statement-which is not challenged as involuntary-that he and the other two youths "didn't mean to intentionally set that big of a fire."

C. Assistance of Counsel

As an alternative argument to his judicial error claim, the minor asserts that his trial counsel was ineffective, for failing to make a sufficiently specific objection to the admission of his statement on voluntariness grounds and for failing to obtain a ruling on that point.

1. Standard of Review

*15 A claim of ineffective assistance of counsel presents a mixed question of fact and law, which is generally subject to de novo review, especially where constitutional rights are implicated. (*In re Resendiz* (2001) 25 Cal.4th 230, 248-249.) We independently review the record, to determine whether the appellant has shown prejudicially ineffective representation "by a preponderance of substantial, credible evidence...." (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.)

2. Legal Principles

"There are two components to an ineffective assistance of counsel claim: deficient performance of counsel and prejudice to the petitioner." (*In re Cox* (2003) 30 Cal.4th 974, 1019.) To prevail on the claim, the defendant must show both elements. (*People v. Benavides* (2005) 35 Cal.4th 69, 92-93; *In re Resendiz, supra,* 25 Cal.4th at p. 239.)

"The first prong, deficient performance, is established if the record demonstrates that counsel's performance fell below an objective standard of reasonableness under the prevailing norms of practice." (*In re Alvernaz, supra,* 2 Cal.4th at p. 937; *People v. Benavides, supra,* 35 Cal.4th at p. 93.) In assessing performance, courts must indulge a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." (*Strickland v. Washington* (1984) 466 U.S. 668, 689.) "On a direct appeal a conviction will be reversed for ineffective assistance of counsel only when the record demonstrates there could have been no rational tactical purpose for counsel's challenged act or omission." (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1007.)

The second prong, prejudice, requires proof of a reasonable probability that the result would have been different in the absence of counsel's incompetence. (*People v. Benavides, supra,* 35 Cal.4th at p. 93.) Prejudice must be established as a demonstrable reality and not mere speculation. (*In re Cox, supra,* 30 Cal.4th at p. 1016.) "It is not sufficient to show the alleged errors may have had some conceivable effect on the trial's outcome; the defendant must demonstrate a 'reasonable probability' that absent the errors the result would have been different." (*People v. Mesa, supra,* 144 Cal.App.4th at p. 1008.)

The two elements of the claim are independent. For that reason, we need not discuss whether counsel's performance was deficient if we discern no reasonable probability of an adverse effect on the outcome. (*In re Cox, supra,* 30 Cal.4th at pp. 1019-1020; *People v. Mesa, supra,* 144 Cal.App.4th at p. 1008.)

3. Analysis

The minor first addresses counsel's performance, which includes the duty to seek the exclusion of harmful evidence. (*In re Jones* (1996) 13 Cal.4th 552, 582.) As the minor acknowledges, trial counsel did attempt to suppress his statement about igniting one or more posters. And as he also acknowledges: "The due process voluntariness issue based on the specific ground of promises of leniency and misrepresentations was mentioned several times." But he nevertheless asserts deficient performance based on "counsel's failure to obtain a ruling on the voluntariness ground." In the minor's view, the court ruled only on the effectiveness of the minor's *Miranda* waiver, without realizing that the voluntariness issue had distinct components. (See *People v. Farnam, supra,* 28 Cal.4th at p. 181 [defendant claimed that circumstances "rendered his confession involuntary despite the fact that *Miranda* warnings were given"]; *People v. Higareda, supra,* 24 Cal.App.4th at p. 1407 [defendant's claim was based on involuntariness not *Miranda* violation].)

*16 On the question of prejudice, the minor contends that there was a reasonable probability of a better result had counsel properly raised the issue with the juvenile court. "Absent his admission that he lit a poster or some posters on fire," the minor asserts, "there was no admissible evidence against him."

In this case, we may dispose of the minor's claim based solely on the question of prejudice. Thus, "we need not grade counsel's performance" because we conclude that the minor "was not prejudiced by counsel's alleged deficiencies." (*In re Cox, supra,* 30 Cal.4th at pp. 1019-1020.) As we now explain, we discern no reasonable probability of a different outcome had the minor's trial counsel pressed for an explicit ruling on voluntariness or had she succeeded in suppressing the challenged statement on that ground.

We first address the minor's contention that counsel should have pressed for a specific ruling on the question of voluntariness. We do not share the minor's view of the record on this point. As the judge's comments make clear, he decided the issue on the question of voluntariness. For that reason, even if a more specific ruling been sought and given, it is unlikely that it would have favored the minor.

We next consider whether there is any reasonable probability that the minor would have obtained a better result at the jurisdictional hearing if the suppression motion had been granted. We conclude that there is not. As explained above, we disagree with the minor's contention that his inculpatory statement about lighting posters was the only admissible evidence against him. To the contrary, the juvenile court explicitly mentioned other evidence pointing to the minor's guilt, including the number of fires set, the proximity of the recycling can fire to the wooden building, and the youths' failure to try

to fight the fire or call for help. Additionally, the minor's unchallenged statement about the lack of intent to "set that big of a fire" also supports the juvenile court's true finding.

For all of these reasons, the minor has failed to establish prejudice resulting from trial counsel's failure to press for a more specific ruling on her motion to exclude the minor's statement.

III. Stay of Punishment

The minor's next appellate contention is that the court should have stayed punishment on the vandalism count under section 654.

A. Legal Principles

"Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct." (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) "Whether a course of conduct is indivisible depends on the intent and objective of the actor." (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1743.) The statute is intended "to insure that a defendant's punishment will be commensurate with his culpability." (*People v. Perez* (1979) 23 Cal.3d 545, 552.) "Section 654 does not allow any multiple punishment, including either concurrent or consecutive sentences." (*People v. Deloza,* at p. 592.) Rather, "the trial court may impose sentence for only one offense-the one carrying the highest punishment." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.)

*17 "The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination." (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) "Each case must be determined on its own circumstances." (*Ibid.*) The trial court's determination is reviewed for substantial evidence. (*Ibid.*) "On appeal, the court may stay the effect of the judgment as to the lesser offense so far as the penalty alone is involved." (*In re Joseph G., supra,* 32 Cal.App.4th at p. 1744.)

B. Procedural Background

Here, the minor was placed on probation and released to the custody of his mother and stepfather. As reflected in the wardship order, the court imposed a nine-year maximum term of confinement. At the dispositional hearing, the court did not explain how it calculated that term. The probation officer's report recommended a nine-year maximum term, comprised of six years on the arson charge as the principal term plus three years on the excessive loss enhancement, without any "additional time" on the vandalism charge based on a "sentence merge" under section 654.

C. Contentions

The minor argues that the juvenile court should have stayed the vandalism count under section 654, and he rejects the notion that his placement on probation resolves the issue. In support of that position, the minor relies in his opening brief on this court's decision in

People v. Fry (1993) 19 Cal.App.4th 1334. In that case, we first summarized the parties' positions as follows: "Although the court suspended execution of the sentence and placed defendant on probation, he contends that under ... section 654, he may not properly be punished for both arson of the carport and arson of the vehicle that was inside it because the two offenses were part of a single, indivisible course of conduct and shared the same criminal objective." (*Id.* at p. 1340.) "The Attorney General concedes, and we agree, that it was error to impose, but not stay, the sentence on one of the two offenses. Both resulted from a single act and, in light of the trial court's finding that defendant did not intend to burn the carport, both shared the same criminal objective." (*Ibid.*) That said, we then considered and rejected the Attorney General's suggestion "that we need do nothing about this error because defendant was placed on probation." (*Ibid.*) We concluded: "Defendant was entitled to have the trial court follow the proper procedures in imposing sentence, and the judgment should so reflect. Thus, having decided to treat the four-year term for arson of a structure as the principal term, the court should have separately stayed execution of the term imposed for arson of the vehicle in the carport." (*Ibid.*)

The People take a different view, urging that "the 654 issue is not properly before this Court." They rely on *In re Danny H.* (2002) 104 Cal.App.4th 92. In that case, as in this one, the minor "was ordered home on probation in the home of his parents. The court did not order [him] removed from the physical custody of his parents." (*Id.* at p. 106.) The minor there nevertheless asserted that the juvenile court erred in calculating his "maximum theoretical period of confinement, which appeared to include consecutive confinement periods on counts one and two"-the latter of which should have been stayed under section 654. (*Ibid.*) But the appellate court saw "no need to decide the issue." (*Ibid.*) It reasoned: "Only when a court orders a minor removed from the physical custody of his parent or guardian is the court required to specify the maximum term the minor can be held in physical confinement. Accordingly, there is no need to decide the section 654 issue or to correct the trial court's order calculating [the minor's] maximum theoretical period of confinement." (*Ibid.*)

*18 In his reply brief, the minor counters the People's reliance on *Danny H.* with two arguments. First, he asserts, "the better view is that a ... section 654 stay should be placed in the record in order to ensure the point is not overlooked if probation is ever revoked. Second, and more importantly, a section 654 stay has relevance to protect appellant against future penal consequences ."

D. Analysis

We agree with the minor that the stay issue should not be overlooked, even where probation is granted. First, the inherent worth of an accurate record of judgment must be recognized. (See *People v. Fry, supra,* 19 Cal.App.4th at p. 1340.) Moreover, clarity in the rendition of judgment may also assist in determining future penal consequences. As history demonstrates, penal consequences change from time to time. By way of example, prior case law held that stayed convictions could not be the basis for sentence enhancements. (*People v. Pearson* (1986) 42 Cal.3d 351, 363 ["to enhance a defendant's sentence because of a stayed conviction would constitute multiple punishment and is prohibited by section 654"].) With the enactment of the Three Strikes Law, however, that

changed. (See *People v. Benson* (1998) 18 Cal.4th 24, 29.) As the California Supreme Court has held, the Three Strikes Law "must be interpreted to permit-but not necessarily require-a qualifying prior conviction to be treated as a strike even if the sentence on the conviction has been stayed pursuant to the provisions of section 654." (*Id.* at p. 36.) Given the prospect that the existence of a stayed conviction could affect the minor in the future, we agree that exactitude in the judgment is called for.

Although we agree with the minor that the judgment on the vandalism count should be clarified, we do not agree with his proposed remedy. The minor asks us to modify his sentence to stay imposition of punishment for that offense. In support of that request, he cites case law holding that "the proper procedure is for the reviewing court to modify the sentence to stay imposition of the lesser term." (*People v. Spirlin* (2000) 81 Cal.App.4th 119, 131, internal quotation marks and citations omitted.) That statement of law originates with *People v. Beamon* (1973) 8 Cal.3d 625.[FN8] In *Beamon,* the court felt " *compelled* to the conclusion *as a matter of law* that on the record here both crimes were committed pursuant to a single intent and objective...." (*People v. Beamon,* at p. 639, italics added.) Based on that conclusion, the court modified the judgment to stay the lesser conviction. (*Id.* at p. 640; see also, e.g., *People v. Fry, supra,* 19 Cal.App.4th at p. 1340, 1341 [judgment modified on appeal to stay the sentence on the second arson count, where the record showed only one criminal act and the trial court made a specific finding supporting a single criminal objective].)

FN8. In *Spirlin,* the 2000 decision on which the minor relies, the relevant quotation is attributed to a 1996 case, *Butler.* (*People v. Spirlin, supra,* 81 Cal.App.4th at p. 131, quoting *People v. Butler* (1996) 43 Cal.App.4th 1224, 1248.) *Butler* in turn quotes a 1985 case, *Martinez.* (*People v. Butler,* at p. 1248, quoting *People v. Martinez* (1985) 171 Cal.App.3d 727, 736.) *Martinez* states: "Where, as here, multiple prison terms are improperly imposed, the proper procedure is for the reviewing court to modify the sentence to stay imposition of the lesser term." (*People v. Martinez,* at p. 736.) In support of that proposition, *Martinez* cites *People v. Beamon, supra,* 8 Cal.3d 625. (*People v. Martinez,* at p. 736.)

As a general rule, however, analysis under section 654 involves a factual exercise that is entrusted to the trial court. (*People v. Hutchins, supra,* 90 Cal.App.4th at p. 1312.) We therefore conclude that the better course here would be to remand the matter to the juvenile court for its determination on whether to stay the vandalism offense.

IV. Wobbler

*19 In his final argument on appeal, the minor contends that the court erred in failing to declare the vandalism offense as either a felony or a misdemeanor. The People concede the point, stating: "The record does not indicate that the court exercised its discretion to declare whether the offense was [a] misdemeanor or a felony." As we now explain, the concession is well taken.

Welfare and Institutions Code section 702 provides pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable

alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." As the California Supreme Court has explained, the statute "is unambiguous. It requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) The statute "serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under Welfare and Institutions Code section 702. For this reason, it cannot be deemed merely 'directory.' " (*Id.* at p. 1207.) Furthermore, the juvenile court's imposition "of a felony-length maximum term period of confinement, by itself, does not eliminate the need for remand when the statute has been violated. The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*Id.* at p. 1209.)

The record here does not establish the juvenile court's awareness or exercise of its discretion. Remand thus is appropriate.

DISPOSITION

The case is remanded for the juvenile court (1) to determine whether to stay the vandalism count under section 654, and (2) to declare the vandalism count as either a felony or a misdemeanor, as required by Welfare and Institutions Code, section 702. In all other respects, the challenged jurisdictional and dispositional orders are affirmed.

WE CONCUR: MIHARA, Acting P.J., and DUFFY, J.

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