Felony Vandalism Charges Proper When Prosecutor Adds Damages Up From Multiple Victims

The Second Appellate District recently made new law by affirming a Pomona judge's decision that felony, rather than misdemeanor, vandalism charges were proper when the total damages are considered. In this case, there were damages suffered by defendant's mom and an apartment owner, which when totaled, exceeded the misdemeanor vandalism limits of \$400.

Mike Camacho, the Pomona judge who ruled the prosecutor was correct, said felony vandalism charges (Penal Code § 594(a)), where proper when the \$382 in repair costs to a car and \$265 in damages to a window were added, making the total in excess of \$400, the upper limit for misdemeanor vandalism (Penal Code § 594 (b)).

The underlying facts were that Nellie Martinez refused to unlock her apartment to let in her son, Manuel Carrasco, following an argument. Carrasco flew into a fit of rage, throwing a statue through the apartment window and then, in the same angry outburst, broke two windows of Martinez's car, parked nearby.

The prosecutor charged Carrasco with violating Penal Code § 594 (a), felony vandalism, for unlawfully and maliciously damaging or destroying over \$400 worth of real and personal property. The issue was that the property belonged to two different people. Complicating things for Carrasco, he had two prior prison priors within the last five years, making his exposure quite high.

The jury then convicted Carrasco of felony vandalism. Judge Camacho then sentenced Carrasco to three years and four months in state prison. Judge Camacho sentenced Carrasco to the low term of sixteen months, then added one year for each of the two prison priors.

Carrasco appealed, arguing to the Second Appellate District in *People v. Manuel Jesus Carrasco* (2012 DJ DA12 13433), that he could only be conducted of two counts of misdemeanor vandalism because the damage to each did not exceed \$400. In other words, Carrasco was arguing that the prosecutor should not have added the damages together as he or she did.

The Second Appellate District disagreed, funding that the single felony charge was proper because the damage did not result from separate and distinct criminal acts. Rather, one general impulse caused the damages. This impulse came from a single event – the refusal to allow him entry into the home.

The appellate court reasoned that in the analogous context of petty theft (Penal Code § 484) versus grand theft (Penal Code § 487), aggregation of the value of multiple stolen items was proper. For example, when a person shoplifts five items from the same store at the same time, whose total exceeds \$950, it is grand theft rather than five charges of petty theft.

The Second Appellate District also cited to In re *Arthur V* (2008), a case where defendant smashed a car window, resulting in \$150 of damage and then immediately kicked another person

standing nearby, causing that person to drop his cell phone, resulting in \$350 in damage. In that case, the damages were added together, exceeding \$400 and felony vandalism charges were filed.

Consequently, the Second Appellate District denied Carrasco's appeal and affirmed the conviction for felony vandalism.

This article was written by Greg Hill. He has defended vandalism cases as well as other offenses such as DUI, domestic violence, theft and drug offenses all over the state of California. He is an attorney in Torrance, California and a former Marine Officer. He is a U.S. Naval Academy graduate (B.S., 1987), Boston University graduate (M.B.A., 1994) and Loyola Law School graduate (J.D., 1998). Visit his firm's website at http://www.greghillassociates.com or his firm's Facebook page at http://www.facebook.com/pages/greg-hill-associates/198954460153651.