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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRELL HOWARD,

Defendant and Appellant.

B267259

(Los Angeles County
Super. Ct. No. BA435636)

APPEAL from a judgment of the Superior Court of Los Angeles County, William N. Sterling, Judge. Affirmed.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Heather B. Arambarri, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Terrell Howard (Terrell)¹ appeals his conviction of first degree residential burglary. We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 1, 2015, Terrell was arraigned on an amended information charging him with one count of first degree residential burglary pursuant to Penal Code section 459.² He pleaded not guilty. Terrell was tried by a jury with two codefendants: his brother, Tyler Howard (Tyler), and Jhonay Taylor (Jhonay).

A. Testimony of Jose Ramos

Jose Ramos (Ramos) is the owner of a duplex located at 119 West 62nd Street in Los Angeles. The duplex is made up of two units: a two-bedroom house at the front of the property, and a one-bedroom guest house at the back. There are two windows at the front of the main house, one on each side of the front door. Each window is secured by metal security bars; between the metal bars and the windows are screens.

In March 2015, Ramos's home was protected by a home security system and security cameras. Two of the security cameras were at the front of the home—one pointing toward the front door, and the other pointing toward the driveway—and one camera was at the back of the home.

¹ Because some of the robbery participants have the same last names, we refer to them by their first names, with no disrespect intended.

² All undesignated statutory references are to the Penal Code.

Ramos testified he met Jhonay in about 2010, shortly after he moved into the neighborhood. He saw her frequently, sometimes more than once a day. He allowed Jhonay to “hang out” on his front porch, often with her friends, and he had allowed her inside his home 15 to 20 times. He sometimes gave Jhonay rides in his car, and he had given her his Wi-Fi password.

Ramos recognized Tyler as someone he saw once or twice a week, but said he did not know Tyler’s name. Ramos said Tyler would sometimes “tell me that he was hungry and needed some money. So I give him some money. He also offered himself to do some work for me. Sometimes I didn’t have anything for him to do, but I came up with things just to keep him busy.”

Ramos also recognized Terrell; Ramos was not sure what Terrell’s name was, but testified that “I think he’s been called Tyler.” At that point, the court interjected to say that the man to whom Ramos was referring was Terrell. Ramos said Terrell sometimes asked him for money, and he (Ramos) had hired both Terrell and Tyler to do odd jobs and to wash his car.

On March 27, 2015, before leaving for work, Ramos locked his front door, made sure the windows were closed, and turned on his alarm system. Later that day, he received a phone call from his alarm company indicating that someone was trying to break in or tamper with the front window of the living room. Ramos told the alarm company to call the police, and then he left work and headed home.

When Ramos arrived at his residence, the police were outside. Ramos observed that the security bars on the front left window had been cut, the screen had been removed, and the window glass was broken. Pieces of broken glass were found

inside Ramos's house under the broken window, but nothing had been taken from the home.

B. Video Footage of the Break-In

The March 27 break-in was captured on Ramos's home security cameras. The video footage of the break-in was provided to the police and played for the jury.

The jury was first shown footage from the camera pointed toward the driveway. The video showed a woman, subsequently identified as Jhonay, walking near the side and front of Ramos's property. A few moments later, a man dressed in a white tank top and plaid shorts is seen jumping over a chain link fence from Ramos's neighbor's yard into Ramos's yard.

The jury was then shown video footage from the camera that pointed towards Ramos's front door. The first image is of Jhonay and the man in the white tank top walking up Ramos's front walk and sitting on his front porch. About nine minutes later, two men, one wearing dark shorts and one wearing tan shorts, are seen entering Ramos's front yard and walking around the side of the house. The two men then return to the porch, and the man in tan shorts sits on a chair near the left front window and begins doing something to that window's security bars. The man in dark shorts appears to leave the front yard, and about a minute later, a large duffle bag is tossed from beyond the front walkway towards Jhonay, who is still seated on the porch. Jhonay catches the duffle bag and hands it to the man in the white tank top, who is seated beside her; he hands it to the man in the tan shorts. Jhonay and the man in the white tank top then leave the property.

The man in tan shorts is seen continuing to attempt to pry the bars off the left front window with some kind of tool, while

the man in dark shorts stands (and then sits) next to him, facing toward the street. After several minutes, the two men lift the metal bars away from the window, and the man in tan shorts pulls out the window screen. The man in the tan shorts then picks up the duffle bag and the men both leave the porch. About six minutes later, the man in dark shorts returns alone to the porch, lifts the metal bars, and appears to be trying to push open the window. He then runs from the porch.

Ramos testified that he recognized all three of the men visible in the video. He identified the man in the white tank top as Terrell Howard; the man in dark shorts as Tyler Howard; and the man in tan shorts as Jhonay's younger brother, Desean Taylor, who was not a defendant in the proceeding.

Immediately following this testimony, the jurors left the courtroom and Tyler's counsel advised the court that "all counsel believe that the witness has confused . . . Terrell Howard and Tyler Howard. . . . [I]t is Tyler Howard who jumped over the gate, over the fence, and sat on the front porch. It is Terrell Howard who is attempting to get into the house" by pushing on the window. The court asked counsel to draft a stipulation; they did so, and the following stipulation was read to the jury: "All counsel stipulate that during Jose Ramos's testimony, he confused Tyler Howard and Terrell Howard. In fact, it was Tyler Howard who jumped the fence and sat on the porch and Terrell Howard at the window."

All parties also stipulated that "partial prints, consisting of two fingers and a palm belonging to Terrell Howard, were lifted from the window" of Ramos's house.

C. Conviction, Judgment, and Appeal

The jury convicted Terrell, and acquitted Tyler and Jhonay. Terrell was sentenced to a state prison term of nine years. He timely appealed.

DISCUSSION

Terrell contends (1) the evidence presented at trial was insufficient to prove his identity, and therefore cannot support his conviction for residential burglary, and (2) the trial court committed prejudicial error by failing to give the jury a unanimity instruction. For the reasons that follow, we disagree and affirm.

I.

**Substantial Evidence Supported Terrell's
Conviction of Residential Burglary**

Terrell contends that the evidence presented at trial was insufficient to prove his identity as a participant in the burglary. Terrell acknowledges that he stipulated to his identity as the person “at the window,” but urges that the stipulation “did not offer clarification. Instead, it lent to the confusion. The inexplicable misidentifications could not simply be undone with an agreement. [The stipulation], which essentially reversed Ramos’s identification of the two men, does not explain how Ramos could have continuously misidentified the two men in court.”

We conclude that substantial evidence supported the jury’s conclusion that Terrell participated in the burglary. “ ‘ “When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable,

credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.”

[Citation.] We determine “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.” [Citation.] In so doing, a reviewing court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.] [Citation.]” (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1104.)

We begin by noting that Terrell does not contend that he entered the stipulation involuntarily or that the stipulation is otherwise invalid. “‘[W]hen a party enters into a voluntary stipulation, he generally is precluded from taking an appeal claiming defects in the stipulation.’” (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1328; see also *People v. Gurule* (2002) 28 Cal.4th 557, 623 [same].) The issue before us, therefore, is not the validity of the stipulation, but rather whether the eyewitness and physical evidence, plus the stipulation, considered together, are sufficient to support Terrell’s conviction of residential burglary. Having carefully reviewed the video of the burglary and Ramos’s testimony, we conclude that the conviction is supported by substantial evidence.

Significantly, the videos clearly show the roles of each of the two male defendants. The male defendant who is shown jumping the fence and then sitting on Ramos’s porch is slender and wearing a white tank top and plaid shorts. The video shows him catching a black duffle bag and then leaving Ramos’s porch at approximately 2:16 p.m. The other male defendant is heavier set and wore a dark shirt and dark shorts. He is seen standing next to Desean as Desean pries open the security bars;

approximately six minutes later, he is seen pushing on the window glass, which ultimately broke.

The video thus clearly shows the roles, but not the identities, of each of the two male defendants. The stipulation—that “Tyler Howard . . . jumped the fence and sat on the porch” and “Terrell Howard [was] at the window”—fills the gap, identifying the two defendants depicted in the video. Taken together, therefore, the video and the stipulation are substantial evidence to support Terrell’s residential burglary conviction.

Moreover, the video, Ramos’s testimony, and the stipulation regarding identity are not the only evidence of Terrell’s culpability. The jury also heard evidence in the form of a stipulation that “partial prints, consisting of two fingers and a palm belonging to Terrell Howard, were lifted from the window” of Ramos’s house. “[U]nder California law, it is established that fingerprints are strong evidence of identity and ordinarily are sufficient, without more, to identify the perpetrator of a crime. (*People v. Johnson* (1988) 47 Cal.3d 576, 601; *People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1588 [palm prints found on a window which was the point of entry for a burglary were sufficient for a conviction where there was no evidence the defendant, who had visited the apartment before the burglary, had been present after the window was cleaned and there was no evidence the defendant would have had occasion to place his hand on the window ‘except to gain surreptitious entry into the apartment’]; *People v. Preciado* (1991) 233 Cal.App.3d 1244, 1247 [fingerprints on a wristwatch box in a burglarized apartment were sufficient for a conviction because the victim did not know the defendant and the box, which the victim received as a gift 18 months earlier, had

never left the home].)” (*People v. Tuggle* (2012) 203 Cal.App.4th 1071, 1076.)

In the present case, although there was evidence that Terrell had done odd jobs around Ramos’s house, there was no evidence that those jobs had ever given Terrell occasion to place his hand on the exterior of the broken window—i.e., the side of the window protected by metal security bars.

For all of these reasons, the evidence thus is sufficient to support Terrell’s burglary conviction.

II.

The Trial Court Did Not Err by Failing to Give a Unanimity Instruction

Terrell urges that the trial court erred in failing to give a unanimity instruction. He contends that “[t]wo acts of entry—one by Desean and another by [Terrell]—were used by the prosecutor to support the entry element of the burglary charge: first, [the prosecutor] argued [that] Desean made entry when he pulled out the window screen, and [Terrell] aided and abetted the entry by talking to and ‘encouraging’ Desean to that end [citation]; second, the prosecutor also argued that [Terrell] as a perpetrator entered the home when he lifted the metal bars and pushed on the window after Desean had already removed the screen [citation].” Thus, Terrell says, the court had a sua sponte duty to instruct the jury regarding the unanimity requirement “[because] the evidence showed two different acts of entry with felonious intent and required a unanimous finding [Terrell] was guilty of at least one of those acts.”

We conclude that a unanimity instruction was not required in this case. The elements of first degree burglary in California are: (1) entry into a structure currently being used for dwelling

purposes (2) with the intent to commit a theft or a felony. (*People v. Sample* (2011) 200 Cal.App.4th 1253, 1261.) “‘[A] burglary is complete upon the slightest partial entry of any kind, with the requisite intent’” (*People v. Valencia* (2002) 28 Cal.4th 1, 8, disapproved on other grounds by *People v. Yarbrough* (2012) 54 Cal.4th 889, 894.)

It is undisputed that in a criminal case, “‘the jury must agree unanimously the defendant is guilty of a *specific* crime. [Citation.] Therefore, cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act.’ [Citation.] ‘When the prosecutor does not make an election, the trial court has a sua sponte duty to instruct the jury on unanimity.’ [Citation.]” (*People v. Leonard* (2014) 228 Cal.App.4th 465, 491.) In deciding whether to give a unanimity instruction, “the trial court must ask whether (1) there is a risk the jury may divide on *two discrete crimes* and not agree on any particular crime or (2) the evidence merely presents the possibility the jury may divide, or be uncertain, as to the exact way the defendant is guilty of a *single discrete crime*. [Citation.] In the first situation, but not the second, it should give the unanimity instruction. [Citation.]” (*People v. Hernandez* (2013) 217 Cal.App.4th 559, 570.)

In the present case, the evidence did not suggest, and the prosecutor did not argue, that the defendants committed two discrete burglaries. The trial court instructed the jury pursuant to CALCRIM No. 1700 that an individual is guilty of the crime of burglary when he “enter[s] a building” with the requisite intent—i.e., when “some part of his or her body or some object under his

or her control penetrates the area inside the building's outer boundary." The evidence before the jury suggested that although Desean *attempted* to enter Ramos's home, there was no *actual* entry until Terrell broke the window and breached the home's outer boundary.

The prosecutor's argument to the jury was consistent with the video evidence of a single entry. In her closing argument, the prosecutor told the jury as follows: "[D]o we have the defendant[s] entering a building? Yes, we do. *Who enters the building? Mr. Terrell Howard.* He entered the building, meaning the house, when he lifted those metal bars after Desean had already removed the window screen and got into that outer boundary of the house and started pushing on the window, causing the window to break into the house." (Italics added.) She repeated this in her rebuttal: "[Terrell's attorney] told you . . . that his client Terrell didn't remove the screen. And that all Terrell really did was shake and push on the window. And that, really, Desean is the one that is responsible and not Terrell. [¶] [T]he law tells you the complete opposite of what [Terrell's attorney] argued. The law tells you that you don't have to go in and take anything. You just have to have the intent to take something when you enter the outer boundary of the property. And that's what we have here. It is true when you watch the video that it's Desean that actually pulls the screen out from the frame [But] Terrell is the one who comes back. *And he's the one that gets under those bars and manipulates the window causing it to break, causing the entry with the shards of glass that are inside the residence.* It's a completed burglary." (Italics added.)

In short, the prosecutor contended that there was only one entry into Ramos's home, which occurred when the living room window was broken. On this record, the jury could not have convicted Terrell of residential burglary without unanimously concluding that Terrell "entered" Ramos's home by breaking an exterior window. A unanimity instruction therefore was not required.³ (See *People v. Perez* (1993) 21 Cal.App.4th 214, 223 [defendant "was charged with one offense, second degree robbery, based on one discrete criminal event. There is no question as to which act constituted the robbery. Witnesses testified the perpetrator entered the store, displayed a gun, took the money in the register and fled. However, there was conflicting evidence regarding which specific acts [defendant] committed during the robbery. [Under these circumstances], it was not necessary jurors unanimously agree on whether [defendant] was the direct perpetrator or aided and abetted the robbery by driving the perpetrator to the store."].)

³ The prosecutor's statement to the jury, that "Terrell is guilty of this crime both as a perpetrator and as an aider and abettor because he did aid and abet Desean prior to him coming up to the window and actually manipulating it himself," does not suggest a different result. Although the prosecutor described the several ways in which Terrell had participated in the burglary, she clearly told the jury that the "entry" occurred when Terrell "lifted those metal bars after he had already removed the window screen and got into that outer boundary of the house and started pushing on the window causing the window to break."

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.