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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ANDREI JOMAN RICKMON, Defendant and Appellant.	B284214 (Los Angeles County Super. Ct. No. YA091640)

APPEAL from a judgment of the Superior Court of Los Angeles County. Alan B. Honeycutt, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and J. Michael Lehmann, Deputy Attorney General, for Plaintiff and Respondent.

Andrei Rickmon appeals the judgment entered following a jury trial in which he was convicted of five counts of first degree residential burglary (Pen. Code, § 459) and one count of conspiracy to commit burglary (Pen. Code, § 182, subd. (a)(1).)[1] The trial court imposed an aggregate determinate sentence of 21 years 4 months on five of the counts, followed by an indeterminate sentence of 35 years to life on the remaining count based upon a finding of two prior strikes.

The charged counts concerned incidents occurring at six different residences over a period of less than a month in November 2014. Rickmon was on parole at the time of the burglaries and was wearing a GPS device that placed him at the scene of each burglary. Rickmon argues that, despite this evidence of his presence, the evidence was insufficient to show that he actually entered any of the residences or otherwise aided and abetted the burglaries. We reject the argument and affirm.

FACTUAL BACKGROUND

1. *Count One: Conspiracy*

Rickmon was arrested after an incident that occurred at a Manhattan Beach home on November 27, 2014. While the residents of the home were away, a neighbor observed a car pull up and the occupants discard some trash. The car drove off and later returned. The neighbor heard a door open and shut, and saw someone walking toward the house. The person knocked on the side door of the house, then turned and gave a "heads up" nod toward the car.

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[1] Subsequent undesignated statutory references are to the Penal Code.

Two other persons got out of the car. One person opened a side gate with his sleeve covering his hand, and he and another person entered the side yard. An officer testified that burglars commonly use clothing to cover their hands to avoid leaving fingerprints.

The neighbor retrieved his phone from his house and called the police. As he was on the phone with the police, he observed the persons get back into the car and drive away. He provided a description of the car, and later learned that the car had been stopped. The police brought him to a field showup, where he identified the three persons he had seen at the neighbor's residence based on their clothing.

Rickmon was one of the persons that the neighbor identified. The police arrested Rickmon and the other occupants of the car. After a search they found some miscellaneous jewelry.

While in custody in a police car, Rickmon spoke with an officer. He said that the persons in the car were on their way to Culver City and got lost "on the back streets." One of the occupants got out of the car and knocked on the door of a residence to ask for directions. Rickmon said that he never got out of the car.

About an hour later Rickmon spoke to the same officer while at the Manhattan Beach Police Department jail. During that conversation Rickmon said that the driver had been lost but denied that anyone had gotten out of the car.

After arresting and booking Rickmon, the officer determined that Rickmon was wearing a GPS device on an ankle bracelet. The prosecution's GPS expert, a parole agent, testified that Rickmon was wearing a GPS device that showed him to be present at the Manhattan Beach residence during the events that the neighbor observed.

2. *The Five Burglary Counts*

Testimony by witnesses established that five different homes in Rancho Palos Verdes were burglarized on three dates in November 2014: one on November 3rd; three on November 12th; and one sometime between November 1st and November 14th. Property in each house was ransacked and/or stolen. Data from Rickmon's GPS device showed that he was at each location on the date and at a time when the break-ins either occurred or could have occurred.

The burglary on November 3rd was recorded on a home security system, which showed images of the burglars. The home owner was not able to identify either of the burglars from the video. However, based on his review of the security video, a sheriff's department detective testified that he believed that one of the burglars was Rickmon. He also testified that an object on that person's left ankle appeared consistent with a GPS device.

The ankle monitor with the GPS device was first placed on Rickmon about 12:04 p.m. on November 3, 2014, the date of the first charged burglary. He wore the monitor until he was arrested on November 27th.

The prosecution's GPS expert testified that the GPS system was accurate in identifying a person's location within a range of about 50 feet.

3. *The Uncharged Burglary*

A house in Arcadia was burglarized on November 6, 2014. A resident came home from work and found the front door ajar. Closets were opened and property inside the house was scattered over the floor. One safe inside the house was forced open and another was taken. Cash was missing.

Cameras mounted around the house showed two men leaving through the front door about a half hour before the

resident returned home. The resident identified Rickmon as one of those persons from a photograph taken by one of the cameras. Rickmon's GPS device placed him at the scene.

DISCUSSION

1. *Standard of Review*

In considering a challenge to the sufficiency of the evidence, an appellate court must " '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.' " (*People v. Avila* (2009) 46 Cal.4th 680, 701, quoting *People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In conducting such a review, the court " 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*Avila,* at p. 701, quoting *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The same standard of review applies whether direct or circumstantial evidence is involved. (*Avila*, at p. 701.)

2. *Substantial Evidence Supports the Verdict*

To prove burglary, the prosecution must show: (1) unlawful entry; and (2) an accompanying intent to commit grand or petit larceny or any felony. (§ 459; *People v. Montoya* (1994) 7 Cal.4th 1027, 1041 (*Montoya*).) Rickmon argues that the evidence was insufficient to show that he actually entered any of the residences in the charged burglaries.[2] He cites the GPS expert's testimony

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[2] Rickmon challenges only the evidence concerning the five completed burglaries. He does not address the evidence underlying the first count for conspiracy to commit burglary concerning the incident on November 27, 2014.

that the GPS device was accurate only within a range of about 50 feet, and argues that the GPS evidence therefore showed only that he was at the scene of the burglaries and not necessarily inside any of the residences.

However, the prosecution did not need to prove that Rickmon himself actually entered the residences. In each of the charged burglaries, there was evidence that *someone* committed a burglary. Rickmon was liable as a principal if he engaged in the completed offense or if he aided and abetted its commission. (§ 31; *Montoya, supra,* 7 Cal.4th at pp. 1038–1039.) A person is liable for aiding and abetting when "he or she aids the perpetrator of an offense, knowing of the perpetrator's unlawful purpose and intending, by his or her act of aid, to commit, encourage, or facilitate commission of the offense." (*Montoya*, at p. 1039.) If an actor " 'intentionally contribute[s]' " to an offense in this way, he or she is liable as a principal " 'even though the actor does not personally engage in all of the elements of the crime.' " (*Ibid.*, quoting *People v. Brady* (1987) 190 Cal.App.3d 124, 132.) Thus, Rickmon was guilty if he intentionally contributed to the burglaries, whether or not he actually entered the residences himself.

Rickmon acknowledges that the jury could properly find guilt based upon evidence that he aided and abetted the burglaries. However, he argues that there was insufficient evidence of aiding and abetting, because his mere presence at the scene of a crime does not establish that he "aided the principal in the burglaries."

Here, however, the evidence was not simply that Rickmon happened to be at the scene of a crime, but that he was present during five separate burglaries at five different residences over a period of less than a month. This was powerful circumstantial

evidence that Rickmon was not an innocent bystander in burglaries committed by others but was a willful participant in the crimes.

The persuasive force of this evidence is explained by the "theory of logical relevance . . . called the 'doctrine of chances.' " (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1378 (*Spector*).) The doctrine is based on the principle that " '[i]nnocent persons sometimes accidentally become enmeshed in suspicious circumstances, but it is objectively unlikely that will happen over and over again by random chance.' " (*Id.* at p. 1379, quoting Imwinkelried, *An Evidentiary Paradox: Defending the Character Evidence Prohibition by Upholding a Non-Character Theory of Logical Relevance, The Doctrine of Chances* (2006) 40 U.Rich. L.Rev. 419, 423.) The doctrine has been used to justify the admission of prior acts evidence to show the " 'objective improbability of a coincidence.' " (*Spector,* at p. 1379.) For example, in *Spector*, a murder case, the court relied on the doctrine in affirming the trial court's admission of evidence that the defendant had previously assaulted five other women with a firearm. (*Id.* at pp. 1354–1358, 1372–1381.) The evidence was relevant to negate the defense that the victim had shot herself. (*Ibid.*) And in *People v. Carpenter* (1997) 15 Cal.4th 312 (*Carpenter*), our Supreme Court relied on the doctrine in concluding that evidence of prior fatal shootings supported the inference that the defendant acted with intent to kill in shooting several other persons months later. (*Id.* at p. 379.)

In *Spector,* the court cited the facts in *U.S. v. Woods* (4th Cir. 1973) 484 F.2d 127 as the "classic modern example" of the doctrine of chances. (*Spector, supra,* 194 Cal.App.4th at p. 1378.) In *Woods*, a seven-month-old infant died of respiratory problems while in the defendant's care. On nine prior occasions the

defendant had access to or custody of children who had similar symptoms, resulting in seven previous deaths. There was no proof that any of the particular prior incidents involved foul play. " 'Only when all of the evidence concerning the nine other children and Paul [(the current victim)] is considered collectively is the conclusion impelled that *the probability* that some or all of the other deaths, cyanotic seizures, and respiratory deficiencies were accidental or attributable to natural causes was so remote, the truth must be that Paul and some or all of the other children died at the hands of the defendant.' " (*Ibid*., quoting *Woods*. at p. 133.)

The same principle applies here. While Rickmon might plausibly have been an innocent bystander at the scene of one burglary, the chance that he would happen to be an innocent bystander at the scenes of five separate burglaries in less than a month is vanishingly small.

Moreover, the evidence was not limited to GPS data placing Rickmon at the scene of the burglaries. The possibility that Rickmon was simply "at the wrong places at the wrong times," as he argues on appeal, is further diminished by evidence that he willfully participated in several burglaries.

That evidence included the testimony and security video concerning the Arcadia burglary, admitted as evidence of a similar act under Evidence Code section 1101, subdivision (b). It also included the evidence of the conspiracy to burglarize the residence in Manhattan Beach. The jury found that Rickmon participated in that conspiracy, and Rickmon does not challenge

the evidence underlying that finding on appeal.[3] There was also the detective's testimony who identified Rickmon from the security video of the November 3rd incident. In light of the deferential standard of review that we employ in analyzing Rickmon's substantial evidence argument, we interpret that testimony as direct evidence of Rickmon's involvement in the November 3rd burglary.

The evidence of Rickmon's *intentional* participation in nascent and completed burglaries, both charged and uncharged, makes it highly unlikely that he was inadvertently or innocently present at the scene of any of the charged burglaries. (See *Carpenter, supra,* 15 Cal.4th at p. 379 [" 'similar results do not usually occur through abnormal causes; and the recurrence of a similar result (here in the shape of an unlawful act) tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state' "], quoting 2 Wigmore, Evidence (Chadbourn rev. 1979) § 312, p. 241.) Thus, the evidence was sufficient to support the jury's finding of guilt on the five charged burglary counts.

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[3] That evidence included Rickmon's own inconsistent statements to the police about events at the house, which the jury could have found negated an innocent intent. (See *People v. Simpson* (1954) 43 Cal.2d 553, 564 ["False and contradictory statements of a defendant in relation to the charge are themselves corroborative evidence"].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.