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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JORGE L. RODRIGUEZ, Defendant and Appellant.	B238801 (Los Angeles County Super. Ct. No. BA387528)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H. Egerton, Judge. Affirmed.

Comar Law and D. Inder Comar, under appointment by the Court of Appeal, for the Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Jonathan M. Krauss, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Jorge L. Rodriguez was convicted by jury of one count of first degree burglary (Pen. Code, § 459). On appeal, defendant argues there was insufficient evidence that he had the specific intent to commit a felony when he entered the victims' home. Because there was substantial evidence that defendant entered through a crawlspace and ransacked the home before he was interrupted by neighbors and police, we affirm.

FACTS

At 1:00 p.m. on August 8, 2011, sisters Elba and Elena Olivero left their Los Angeles home to buy car insurance. Their 70-year-old brother, Americo Olivero, remained at home. At 4:00 p.m., neighbor Antonieta Tunchez noticed defendant "wandering" inside the patio of the Oliveros' house. He was very dirty and bleeding from his forehead. Tunchez lost sight of him and went into her house to call the Olivero sisters to let them know someone was inside their house. Elba and Elena headed home when they received her call.

Tunchez called another neighbor, Johnnie Underwood, and told her someone was inside the Olivero house. Underwood called her grandson, Raymond Wells, for help. When Wells arrived at the Olivero house, he saw defendant walking out the patio door. Wells asked defendant, "What are you doing in that yard? I know you don't live there." Defendant went back inside the patio and closed the door. Wells then saw defendant go behind the garage and enter the crawlspace beneath the house. Wells called police after he was unable to coax defendant out of the crawlspace.

At 4:37 p.m., Los Angeles Police Officers Ramon Melendez and Ronald Sanchez responded to a report of a burglary in progress. When they arrived at the Oliveros' home, other officers were already looking for the intruder. The laundry room and storage room that were attached to the house appeared to be "ransacked." The storage room was in "disarray" with "stuff turned over." One of the washing machines was pushed away from the wall, revealing an open access to the crawlspace, and dirt and debris on the floor. Officer Sanchez opined that defendant entered the house through the crawlspace.

Officer Melendez saw defendant in the crawlspace. He identified himself as a police officer and ordered defendant to come out. Defendant lay still and did not comply. After five minutes, defendant crawled out and was detained in the laundry room. He was uncooperative and agitated. It was unclear to the officers whether he was under the influence of drugs or alcohol. Officers patted him down but did not find any contraband.

After defendant was detained, Officer Sanchez walked Elba and Elena through the house (their brother Americo was not home). They noticed the washing machine had been moved, and the crawlspace access behind the machine was open. In the adjacent storage room, "[e]verything was strewn about and the refrigerator had been moved away from the wall." Blankets and clothes were on the floor, yogurt had been removed from the refrigerator, a leaf blower was moved, and a shelf attached to an outside wall, beneath Elba's bedroom window, was broken. A storage cabinet had been taken from the laundry room and placed outside, turned on its side, and emptied of its contents. The laundry and storage rooms were not in the same condition as when the sisters left home earlier that day. Nothing appeared to be missing.

Defendant presented evidence that he was intoxicated. Defendant's employer, Walter Arias, testified that when he arrived at the jobsite at 1:00 p.m. on August 8, 2011, defendant and several other employees were pouring concrete for a driveway. Defendant was clumsy and smelled of alcohol. He saw defendant drink three Heineken beers. He told defendant to sit down and "sober up." Defendant tried to work but had difficulty, knocking over a cement mixer. Around 3:30 p.m., defendant left the jobsite.

DISCUSSION

In reviewing a claim of insufficient evidence, our role is a limited one. (*People v. Smith* (2005) 37 Cal.4th 733, 738.) The test is whether, on the entire record, there is substantial evidence from which a rational trier of fact could find defendant guilty beyond a reasonable doubt. "'"On appeal, we must view the evidence in the light most favorable to the [prevailing party] and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]"'

[Citations.]" (*Id*. at p. 739.) Substantial evidence is that which is reasonable, credible and of solid value. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1329.) We do not reweigh the evidence. Questions of credibility and the weight to be given to the evidence are matters for the jury. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Ceja* (1993) 4 Cal.4th 1134, 1139.)

Burglary involves the act of unlawful entry accompanied by the specific "intent to commit grand or petit larceny or any felony." (Pen. Code, § 459; *People v. Montoya* (1994) 7 Cal.4th 1027, 1041.) "One may [be] liable for burglary upon entry with the requisite intent . . . , regardless of whether the felony or theft [actually] committed is different from that [originally] contemplated . . . , or whether any felony or theft actually is committed." (*Montoya*, at pp. 1041-1042.) In order to constitute a burglary, the defendant must intend to commit the theft or felony at the time of entry. (*People v. Holt* (1997) 15 Cal.4th 619, 669.) The existence of the requisite intent is rarely shown by direct proof, but may be inferred from the circumstances. (*Ibid*.)

Defendant contends there was no evidence of his intent when he entered the house because he did not take anything, and did not possess burglary tools. Relying on *In re Leanna W*. (2004) 120 Cal.App.4th 735, defendant posits that the notion he had the intent to steal upon entry is pure speculation. Defendant's reliance on *Leanna W.* is misplaced. In *Leanna W.*, a minor entered her grandmother's home without permission and threw a party where alcohol was consumed, pay-per-view movies were watched, property was damaged, and items were stolen. Because there was no evidence of what the minor did at the party (as opposed to what her guests did), the Court of Appeal concluded there was insufficient evidence the minor committed burglary or theft. (*Id.* at pp. 741-742.)

In contrast, there was substantial evidence of defendant's activities in the Oliveros' home. No one else was seen near the house at the time defendant entered, and the laundry and storage rooms were ransacked, which leads to the reasonable inference that defendant was looking for something of value to steal before he was interrupted by neighbors and the police. Defendant did not immediately comply with orders to exit the

crawlspace, evidencing a consciousness of guilt. (*People v. Cramer* (1967) 67 Cal.2d 126, 130-131 [resisting arrest may demonstrate a consciousness of guilt].) This evidence plainly supports a reasonable inference that defendant intended to steal when he entered the home. Given our standard of review, it is irrelevant that other conclusions from the evidence are possible.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.