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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARQUISE TREAIVONN FRAISE,

Defendant and Appellant.

B278129

(Los Angeles County
Super. Ct. No. NA100326)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark C. Kim, Judge. Affirmed.

Erica Gambale, 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, Assistant Attorney General, Paul M. Roadarmel, Jr. and David A Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Marquise Treaivonn Fraise appeals from his judgment of conviction of first degree burglary, claiming that the evidence is insufficient to support his conviction. We disagree and affirm.

FACTUAL AND PROCEDURAL SUMMARY

On August 20, 2013, Darlene Benn returned to her Long Beach apartment to find her bedroom window broken and her front door jamb damaged. She called the police, and Officer Xavier Veloz arrived in response to the call. Benn and Veloz entered the apartment and found Benn's bedroom had been ransacked. Her bed frame was broken, her dresser drawers were open, and her clothes had been removed from the drawers. A box in which Benn stored her jewelry underneath her clothing had been removed from the dresser and laid open on the bed. Benn realized that a sterling silver necklace with green stones was missing from the drawers, where she had stored it for months under her clothing.

Officer Veloz observed that one bedroom window pane had been removed and another had been broken. He also saw that the screen had been removed and placed on Benn's bed. He determined that the entry point for the burglary was the bedroom window.

Later, forensic specialist Catherine Aldorisio arrived at Benn's apartment to collect evidence. She lifted fingerprints from the jewelry box and lid. Latent print specialist Heather Cochran ran the prints through a database and found that appellant was a potential match. She obtained appellant's fingerprints, made a comparison with the prints found at Benn's apartment, and concluded the prints were a match. All of the prints identified on the box and lid matched defendant, except two prints which were

too smudged to be identified. Testimony from expert witnesses at trial was equivocal with respect to the amount of time that had passed since the fingerprints were impressed on the jewelry box.

Appellant was a friend of Benn's son and had been to Benn's apartment at various times, especially during the years 2009-2011. At that time, Benn knew that her son sometimes brought his friends to her apartment when she was not there. Benn did not permit her son or his friends to enter her bedroom. Benn had not given appellant permission to touch her jewelry, nor had she discussed jewelry with appellant. After the burglary, Benn told a detective that appellant had not been to her apartment for about three or four years prior to the incident. On direct examination, Benn stated that she had seen appellant at her home in 2013, the year the burglary occurred, but she could not specify the date. Benn later testified that she had no way of knowing whether or not appellant had been at her apartment in 2013.

The jury convicted appellant as charged, and found that the burglary had been in the first degree. This appeal followed.

DISCUSSION

Appellant challenges the sufficiency of the evidence supporting his burglary conviction.

In considering claims of insufficient evidence, we consider the record as a whole to determine whether it contains 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. Zamudio* (2008) 43 Cal.4th 327, 357.) Our review of the record is in the light most favorable to the verdict, drawing all inferences and resolving all conflicts in

favor of the judgment. (*Ibid.*) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.” (*Ibid.*, quoting *People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The issue in this case is whether fingerprint evidence alone is sufficient to identify defendant as the perpetrator of the crime. As our Supreme Court has observed, “[f]ingerprint evidence is the strongest evidence of identity, and *is ordinarily sufficient alone to identify the defendant.*” (*People v. Johnson* (1988) 47 Cal.3d 576, 601.) California courts have repeatedly found such evidence sufficient to identify a defendant. (See *People v. Preciado* (1991) 233 Cal.App.3d 1244, 1246; *People v. Tuggle* (2012) 203 Cal.App.4th 1071, 1076 (*Tuggle*).)

Appellant argues this case presents unique circumstances requiring further evidence. He argues that because he had been invited to Benn’s apartment before the burglary, the prosecution was required to negate the possibility that his fingerprints were impressed on Benn’s jewelry box prior to the burglary. We disagree.

Appellant primarily relies on *Mikes v. Borg* (9th Cir. 1991) 947 F.2d 353 (*Mikes*), in which fingerprint evidence alone was held insufficient to support the conviction of the defendant for murder. (*Id.* at p. 361.) The defendant’s fingerprints were identified on the murder weapon, a turnstile post, which also carried the fingerprints of other persons and had been accessible to the public at a hardware store sale before it was purchased by the victim. (*Id.* at pp. 355-356.) Because of the reasonable possibility that the defendant had impressed his fingerprints on the post when it was publicly accessible, rather than at the time

of the murder, the court found the fingerprint evidence insufficient without other evidence to show “*when* the fingerprints were impressed.” (*Id.* at p. 357.) In particular, the court required the prosecution to provide evidence that the post was “inaccessible” to the defendant prior to the murder. (*Ibid.*, see also *id.* at p. 359)

Appellant also relies on *Birt v. Superior Court* (1973) 34 Cal.App.3d 934 (*Birt*), in which the court found that a magistrate lacked probable cause to justify the commitment of a defendant based on fingerprint evidence alone. The defendant’s fingerprints were found on a cigarette lighter inside a rental van which had been used to commit a burglary. (*Id.* at pp. 936-937.) The court focused on the fact that the cigarette lighter was a “readily movable object,” that over time the van had been rented by many persons, and that many unidentified fingerprints had been found in the van. (*Id.* at p. 938.) Given these facts, the inference that the defendant was present in the van at the time of the burglary could only be made through “guesswork, speculation, or conjecture,” and hence could not form the basis for probable cause. (*Ibid.*)

This case does not present the unique circumstances requiring further evidence that were present in *Mikes* and *Birt*. Here, appellant’s fingerprints were found on a jewelry box which, was not publicly accessible, but stored under clothing in Benn’s dresser drawers in her private bedroom. The fact that the box was a “readily movable object” is immaterial because it was not moved. Instead, it was stored for many months away from the public and Benn’s guests. Unlike *Mikes*, in which many other identifiable prints were found on the evidence, in this case appellant’s were the only identifiable fingerprints found on the

jewelry box, which was moved and opened in the course of the burglary. Appellant did not have permission to enter Benn's bedroom at any time or to touch her jewelry box. In light of these distinguishing facts, further evidence demonstrating when appellant's fingerprints were impressed on Benn's jewelry box was unnecessary.

California courts have declined to extend the reasoning in *Mikes* to cases in which, considering all the circumstances, the jury could reasonably identify the defendant based on fingerprint evidence. (*People v. Preciado*, *supra* 233 Cal.App.3d at p. 1246; *Tuggle*, *supra*, 203 Cal.App.4th at p. 1076; *People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1588.) In *Preciado*, the defendant's fingerprints were found on a wristwatch box from which the wristwatch had been stolen during a residential burglary. (*People v. Preciado*, *supra*, at p. 1246.) The defendant did not know the victim and the wristwatch box had never left the victim's home. (*Ibid.*) Considering these circumstances, the court distinguished the case from *Borum v. United States* (D.C. Cir. 1967) 380 F.2d 595, 597, in which, like *Mikes*, further evidence of inaccessibility was required to supplement fingerprint evidence. The court found such evidence unnecessary because, in light of the circumstances, impression prior to the crime would have required a "miracle." (*People v. Preciado*, *supra*, at p. 1247.)

In *Tuggle*, *supra* 203 Cal.App.4th at pages 1074-1075, the defendant's fingerprints were found on a vase inside a burglarized model home. The model home had been regularly cleaned prior to the burglary and the defendant said he had not been to any model homes in the previous two years. (*Ibid.*) On these facts, the court declined to apply *Mikes*, stating that it was not binding as a lower federal court decision (*Id.* at p. 1076), but

also noting that, even under *Mikes*, the evidence would have been sufficient to identify the defendant. (*Ibid.*) Considering the defendant's statements and the routine cleanings of the model home, the possibility that the defendant had touched the vase prior to the burglary was too remote to require further evidence to refute it. (*Ibid.*)

People v. Figueroa, *supra*, 2 Cal.App.4th at page 1587, also distinguished *Mikes*, finding that the case was "not controlling . . . because more than mere fingerprint evidence [was] present." The court also pointed out that apart from fingerprints on a window exterior which was the point of entry for a burglary, there was evidence that the window was regularly cleaned, and that defendant had not been to the home as a guest in the time since the most recent cleaning. (*People v. Figueroa*, at p. 1588.) There was no evidence that defendant "had any reason to place his hand on the window exterior except to gain surreptitious entry into the apartment." (*Ibid.*) The court held the evidence sufficient to support identification of the defendant in these circumstances. (*Ibid.*)

So in the present case, it was reasonable for the jury to infer that appellant did not touch the box at any time before the burglary because he did not have permission to be in Benn's bedroom, much less her jewelry box, and the box was not left in the open where guests could access it.

Appellant also argues the prosecution failed to demonstrate a relationship between the jewelry box bearing his fingerprints and the crime of burglary. The jewelry box was closed and hidden in Benn's dresser underneath her clothing when she left for work on August 20, 2013. When she returned, her home had been burglarized, the dresser drawers were open and the box laid

open on her bed. It is clear that the box was moved and opened during the course of the burglary. The fact that appellant's fingerprints were found on the box is sufficient proof that he moved and opened the box during the course of the burglary.

We conclude the jury's verdict is amply supported by the evidence.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.