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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ARRESEIGOR-  
GARRETT,

Defendant and Appellant.

B283576

(Los Angeles County  
Super. Ct. No. PA086815)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed.

Theresa Osterman Stevenson, 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, Zee Rodriguez and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

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Christopher Arreseigor-Garrett (Garrett) burglarized a home where he had previously purchased marijuana. Taking a safe from the home that contained marijuana, Garrett exited through a side door and climbed over a wall in his attempt to escape. The safe's owner and his girlfriend returned home and spotted Garrett. The owner tackled and wrestled Garrett to the ground while neighbors helped detain Garrett until police arrived. On appeal, Garrett challenges the sufficiency of the evidence underlying his burglary conviction. We affirm.

### **BACKGROUND**

Elizabeth Orzechowski (Elizabeth) and her adult daughter Amy Miller (Amy) lived in a home in Sylmar.<sup>1</sup> Amy's boyfriend, Ryan Fields (Fields), occasionally stayed at the home. Elizabeth, Amy, and Fields all had medical marijuana recommendations and stored marijuana inside the home. The marijuana was kept in mason jars as well as in a safe belonging to Fields.

In February 2016, Fields reconnected with Garrett, a former high school classmate. The two began spending time together and "hung out" at least three times inside Elizabeth and Amy's home. Fields also sold Garrett marijuana several times. Fields asked Garrett if he wanted a job marketing the marijuana. Garrett declined. When Garrett later asked Fields to put him in touch with one of his suppliers, Fields refused to do so.

On or about July 1, 2016, Garrett and his girlfriend, Deja Tubbs (Tubbs), spent the afternoon smoking marijuana with Fields inside the home. Although Amy was also there, she left with a friend to buy some cigarettes after arguing with Fields.

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<sup>1</sup> Garrett's opening brief refers to Orzechowski and Miller by their first names and we do the same.

When Amy returned 10 to 15 minutes later, Fields was acting strangely. He did not make sense, had difficulty remembering things, and began vomiting. Believing that Fields had been poisoned, Amy put him in the bathtub. She did not take him to the hospital.

Although Amy repeatedly told Garrett and Tubbs to leave so that she could tend to Fields, both remained inside the home. As Amy focused on Fields, Tubbs began to exit the house with an unidentified item. When Amy moved toward Tubbs to ask her what she was doing, Garrett grabbed Amy and pulled her back. Amy saw Tubbs put something in the back seat of Garrett's white Nissan. She then told Garrett to leave, and turned her attention back to Fields.

When Fields recovered, he noticed that a jar of marijuana was missing from a table in Amy's bedroom and that a container filled with marijuana concentrate was missing from the refrigerator. Fields estimated the value of the missing items totaled \$1,300. Fields texted Garrett to ask him about the missing marijuana. Garrett denied taking the marijuana. Instead, he claimed that the jar of marijuana had been placed inside the locked safe, a claim that Fields knew was false because the jar was too large for the safe. As Fields and Garrett continued to text each other, Garrett's messages became threatening. Garrett told Fields that he would be returning with some friends and that Fields should get a vest because there would be some fireworks.

On July 14, 2016, at 12:30 a.m., Elizabeth was asleep in her bedroom when she awoke to a loud noise. Elizabeth called out several times to see if Amy had caused the noise. Hearing no response, Elizabeth got out of bed and went to Amy's room.

When she went into Amy's room, Elizabeth saw a man in dark clothing exiting through the sliding glass door while carrying an object on his shoulder. Elizabeth went out the front door to get a better look at the intruder but stepped on some glass from a window that had been broken near the front door. Elizabeth returned to her room to get some shoes.

In the meantime, Amy and Fields were returning from a trip to the local Jack in the Box when they saw Garrett's white Nissan parked in front of the home. After parking their car, Fields heard a noise coming from the side yard. Looking toward the yard, Fields observed Garrett, wearing black clothes, climb over the wall. Both Fields and Amy saw Garrett holding the safe that belonged to Fields. The safe had been on a table in Amy's bedroom when Amy and Fields left to go to Jack in the Box. Garrett looked toward Amy and Fields, dropped the safe, and continued walking away from the home. Fields grabbed Garrett and the two men began punching each other, ultimately wrestling each other on the ground.

Elizabeth came out of her home and saw Fields wrestling with Garrett. Some of the neighbors were outside and Elizabeth asked one of them to call the police. Another neighbor struck Fields in the head with a clay pot. After Garrett was able to get away from Fields, Elizabeth asked her neighbors to stop Garrett because he had just "robbed" them. Two neighbors then grabbed Garrett and pinned him to the ground. From the ground, Garrett made threats, stating that they did not want to know what was going to happen when he got into his pocket. At the time, Garrett had a knife in his pocket.

While Garrett and Fields fought, Amy went to Garrett's vehicle. Pounding on the window, Amy told the driver (Tubbs) to

get out of the car. Instead of getting out the car, Tubbs drove away, crashing into two parked cars when several neighbors attempted to take a photo of the car's license plate. Police officers responding to the scene stopped the car and detained Tubbs.

When Officer Taylor McLaws arrived at the location, he observed Garrett being held on the ground by two other men. Garrett was not wearing a shirt. McLaws found a black shirt in the area where Fields had struggled with Garrett. The officer showed the shirt to Garrett, who admitted that it belonged to him. Officer McLaws also found a small safe in the area. The safe contained three jars of medical marijuana, with an estimated value of \$2,500, as well as two bottles of prescription medication and some cash. As he entered Elizabeth's home, Officer McLaws noticed that a glass window next to the front door had been broken. The officer also saw that Amy's bedroom had been ransacked.

Amy and Fields later testified that the safe was not the only item taken from the home that night. According to Amy and Fields, marijuana stored in Amy's bedroom (outside the safe) also had been taken. Amy believed one jar of marijuana was taken, while Fields testified that there had been two jars. A broken jar of marijuana was found in the backyard after Garrett's arrest.

Garrett testified at trial and denied committing the burglary. According to Garrett, he knew Fields from high school and they spent some time together smoking marijuana. In 2016, they reconnected and began spending time together. Garrett bought marijuana from Fields at Elizabeth's home three or four times. When Fields asked him to help sell marijuana, Garrett refused.

A few weeks before Garrett was arrested, he and Tubbs went to Elizabeth's home, where they smoked marijuana and watched a movie with Fields. Garrett saw Fields drink beer, smoke some marijuana, take a pill, and consume some "dabs" of a wax-like substance. When Amy arrived, she had an argument with Fields shortly before he began vomiting and choking. Garrett said Fields needed to go to the hospital, but Fields and Amy disagreed. Garrett and Tubbs then left the home. Fields later sent Garrett a number of threatening text messages accusing Garrett of stealing a jar of marijuana. According to Garrett, the accusation was false.

Despite the false accusation and threats, Garrett decided to purchase marijuana from Fields soon thereafter. Without first calling or texting Fields, Garrett and Tubbs drove to Elizabeth's home in the middle of the night. Seeing no car parked in the driveway, Garrett went to the front door while Tubbs remained in the car. Garrett rang the doorbell and waited to see if anyone would answer the door. As he waited, Garrett heard the dog barking from inside the home. Fields and Amy drove up about two minutes later. When Garrett approached them, Fields tackled him. Neighbors came outside and held Garrett until police arrived. Garrett denied breaking the window by the front door and said he did not take the safe or even enter the home that night.

The jury found Garrett guilty of first degree residential burglary (Pen. Code, § 459).<sup>2</sup> The jury further found that a person was inside the dwelling at the time of the offense. The trial court imposed a six-year sentence, but suspended execution

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<sup>2</sup> All further statutory references are to the Penal Code.

of the sentence and placed Garrett on five years' formal probation with one of the conditions requiring Garrett spend 365 days in county jail. The court also imposed applicable fines, fee, and assessments.

On appeal, Garrett contends the evidence was insufficient to support his conviction because the record does not contain substantial evidence to support a finding that he entered the residence. In case we do not agree with this claim, Garrett further contends the record fails to show he intended to commit a theft at the time he entered the residence. In sum, Garrett contends, his conviction, based upon insufficient and inherently improbable evidence, violates his constitutional rights to due process, thus requiring reversal.

### **STANDARD OF REVIEW**

When a defendant challenges the sufficiency of the evidence to support a judgment or resolution of a disputed fact, we apply the substantial evidence standard of review. Generally, our task “is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.) “Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Accordingly, on appeal we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Cochran* (2002) 103 Cal.App.4th 8, 13.)

The substantial evidence standard of review involves two steps. “First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our ‘power’ begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . [Citation.] ‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value . . . .’ [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633, fns. omitted.)<sup>3</sup>

## DISCUSSION

The elements of burglary are entry into a building with the intent to commit a felony or theft. (§ 459.) Garrett’s contention on appeal is that the testimony presented at trial was “inherently improbable” and therefore insufficient to support his conviction. He acknowledges there was trial testimony which, if believed,

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<sup>3</sup> The standard of review is the same in cases in which the prosecution relies primarily on circumstantial evidence. (*People v. Bean* (1988) 46 Cal.3d 919, 932.) “Because intent is rarely susceptible of direct proof, it may be inferred from all the facts and circumstances disclosed by the evidence.” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245.)



was sufficient to establish he did commit the crime of which he was convicted, but argues that the testimony, provided by biased witnesses, was marred by contradictions, inconsistencies and implausibilities, and thus no rational jury could have relied upon it as a basis to convict.

The contention is unpersuasive. The inherently improbable standard for rejecting testimony on appeal means that the challenged evidence is “unbelievable *per se*,” such that “the things testified to would not seem possible.” (*Lane v. Safeway Stores, Inc.* (1939) 33 Cal.App.2d 169, 175.) “The determination of inherent improbability must be made without resort to inference or deduction, and thus cannot be established by comparing the challenged testimony to other evidence in the case.” (*People v. Ennis* (2010) 190 Cal.App.4th 721, 725.)

In this case, however, Garrett’s claim simply amounts to an attack on witness credibility, as well as an invitation to reweigh the evidence, and thus cannot be the basis for a reversal of the judgment on appeal. Indeed, substantial evidence supports a finding that Garrett entered the residence. Elizabeth saw a man in dark clothing exiting through the sliding glass door while carrying an object on his shoulder. Shortly thereafter, Fields saw Garrett climb over the side yard wall while wearing black clothes. (Garrett later admitted that a black shirt found nearby belonged to him.) Fields and Amy saw that Garrett was holding a safe that had been *inside* the house earlier that night. Garrett looked toward Fields and Amy and dropped the safe. Fields then wrestled Garrett to the ground. Given that Fields and his neighbors were able to detain Garrett until the police arrived,

there is no reasonable possibility that Fields and Amy were mistaken as to who had exited their house with the safe.<sup>4</sup>

Nevertheless, Garrett notes, the prosecution did not examine the safe for fingerprints or DNA. Citing Officer McLaws's testimony that he did not remember seeing any cuts on Garrett's hands or glass shards in his shoes, Garrett further claims that it was inherently improbable he entered the home through the broken window at the front door. He also notes that, according to Fields, a dog was sleeping in the living room when Fields and Amy left that night. Yet Elizabeth never said she heard the dog bark or respond to an intruder breaking the window and entering the home. Garrett also contends that it was inherently improbable he entered the home through the sliding glass door on the side of the house since, according to Amy, it was locked and had a safety stick in the groove to prevent it from being slid open.<sup>5</sup> Furthermore, Garrett argues, Fields' testimony that Garrett shouldered the 60 to 80 pound safe as he climbed on

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<sup>4</sup> Garrett notes that, according to Elizabeth, Fields regularly took the safe with him when he went to his parents' house, so the fact that the safe was outside on the ground near where Fields had been located was not substantial evidence to support a jury's finding that Garrett had possession of the safe before the two men began fighting. We disagree. This argument asks us to ignore testimony from Fields and Amy that they saw Garrett holding the safe. It also overlooks the common sense finding that transporting a safe between two locations does not necessarily entail leaving that safe outside and unattended, at night. Indeed, the fact that Fields occasionally took the safe with him underscores the degree to which he valued its contents.

<sup>5</sup> As noted above, Elizabeth testified that she saw a man exit, not enter, through the sliding glass door.

top of and over a wall and jumped to the ground, grabbing the safe from the top of the wall, was also inherently improbable.

As stated above, Garrett's recitation of the perceived gaps in the prosecution's case is simply an invitation to reweigh the evidence presented to the jury, an invitation we decline. The jury was entitled to believe the testimony of Elizabeth, Fields and Amy while rejecting Garrett's claim that he never entered the home. Furthermore, neither fingerprint nor DNA evidence was required before the jury could credit the prosecution's witnesses. Nevertheless, their testimony was in fact corroborated by the broken window and ransacked bedroom, which Garrett did not, and could not, explain away. It is also not inherently improbable that a person could break a window and enter through it without sustaining cuts to a hand or collecting glass shards in a shoe. Nor is it inherently improbable that Garrett could carry the safe while making his escape.

Finally, we note that testimony from just a single witness can sustain a conviction, unless the testimony is physically impossible or patently false. (*People v. Cudjo* (1993) 6 Cal.4th 585, 608.) Indeed, on appeal, "the only question is: Does it seem *possible* that what the witness claimed to have happened actually happened?" (*People v. Ennis, supra*, 190 Cal.App.4th at p. 729.) Therefore, "[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Huston* (1943) 21 Cal.2d 690, 693, overruled on another ground in *People v. Burton* (1961) 55 Cal.2d 328, 352.) Here, it is certainly plausible that what the witnesses claimed to have happened actually

happened. Their testimony was neither physically impossible nor patently false. Thus, sufficient evidence supported Garrett's conviction.

The cases relied upon by Garrett are inapposite. In *People v. Casillas* (1943) 60 Cal.App.2d 785, a rape victim testified on direct examination that her father had committed the crime. On cross-examination, she recanted and said her father never had intercourse with her, and the only reason she said he did was to protect a boy who got her pregnant. (*Id.* at p. 791.) Then, on redirect, she admitted her father did rape her, and said she made up the story about the boy to protect her father. (*Ibid.*) Finally, on re-cross examination, she again claimed her father never had intercourse with her. (*Id.* at p. 793.) The appellate court found the victim's testimony "so lacking in substantiality as to truth or credibility that it falls far short of that quantum of verity, reasonableness and substantiality required by law in criminal cases," and therefore reversed the defendant's conviction. (*Id.* at p. 794.) Unlike *Casillas*, however, this case does not involve serial recantations. Nor does it involve contradictory testimony among the witnesses. Rather, each witness testified as to what they saw from their particular location at that particular time. Pieced together, their testimony was sufficient evidence to find that Garrett entered the house, took the safe, exited the house through the sliding door, scaled a wall, and was almost immediately spotted and detained.

Garrett's reliance on *People v. Blakeslee* (1969) 2 Cal.App.3d 831 is also inapt. In *Blakeslee*, the defendant was convicted of second degree murder for the shooting death of her mother. (*Id.* at p. 836.) The defendant lived with her brother and mother and was shown to have been at the scene immediately

before and after the shooting occurred. (*Id.* at pp. 833–835.) On the evening of the crime, the defendant’s brother, Michael, had argued with his mother immediately before her murder. (*Id.* at p. 833.) The defendant and Michael left the apartment at 7:20 p.m. (*Ibid.*) The defendant contended that when she returned to the apartment at 7:40 p.m., she found her mother dead on the floor. (*Id.* at p. 836.) The coroner testified that the bullets that killed the victim could not be used to identify the gun used in the murder. (*Id.* at p. 835.) However, he said that the victim’s wounds were consistent with those made by .22-caliber rifle bullets. (*Ibid.*) No weapon was ever produced or specifically identified with the murder. (*Id.* at p. 836.) Michael testified that he kept a .22-caliber single shot rifle in his room, and that the rifle was missing after the murder. (*Id.* at p. 835.) He further testified that the defendant knew where the rifle and ammunition were located, and that she had used the rifle on several occasions for target practice. (*Ibid.*) The defendant admittedly lied to the police about her movements on the night of the murder as well as her knowledge of the presence of the gun in the apartment. (*Id.* at p. 836.) She testified that she had lied to the police to protect her brother from prosecution. (*Id.* at p. 838.)

In overturning the conviction, the appellate court noted that the conviction was based solely on the defendant’s presence at the scene of the crime five to ten minutes before and after the crime, and on the fact she told a false story to police about her movements that night. (*Blakeslee, supra*, 2 Cal.App.3d at p. 840.) The court noted that an equally strong case could be made against the defendant’s brother, Michael, stating: “On the evidence in this record we could thus bring together opportunity, motive, propensity, and even work in [the defendant’s]

falsehoods, in a plausible reconstruction of the crime with Michael as the protagonist instead of [the defendant].” (*Ibid.*) The court reasoned that evidence capable of such manipulation lacks substantial probative value. (*Ibid.*)

According to Garrett, as in *Blakeslee*, there was an equally plausible case here that he went to the residence to buy marijuana from Fields and encountered him while waiting outside. We disagree. Garrett’s claim that he went to the home in the middle of the night to buy drugs from a person already angered and believing Garrett to be a thief, makes little to no sense. In short, Garrett’s version of events cannot be deemed equally plausible. Garrett’s alternative claim that even if he did enter the home, he did so without the intent to steal is similarly unpersuasive. If the jury found Garrett forced entry into the home, ransacked a bedroom, took a safe, escaped through a side door, and climbed over a wall, it could certainly reasonably find Garrett entered the home with the intent of stealing.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.