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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.

RAUL AGUILAR,

Defendant and Appellant.

B270933

(Los Angeles County
Super. Ct. No. NA081679)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Affirmed in part, reversed in part, and remanded with directions.

Adrian K. Panton, 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, Susan Sullivan Pithey and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Raul Aguilar appeals from the judgment entered following a bench trial that resulted in his conviction on two counts of first degree burglary (Pen. Code, § 459;¹ counts 1 and 2), one count of making a criminal threat (§ 422, subd. (a); count 3), and one count of assault likely to produce great bodily injury (§ 245, subd. (a)(1); count 11) with true findings as to several gang, firearm use, and prior prison term enhancement allegations (§§186.22, subd. (b)(1)(C), 12022, subd. (a)(1), 667.5, subd. (b)). On appeal, defendant contends the evidence was insufficient to establish that he committed two burglaries. The People concede error, and we agree. Consequently, we reverse the judgment in part and remand for resentencing. In all other respects, the judgment is affirmed.

FACTUAL AND PROCEDURAL SUMMARY

On March 20, 2009, Cecilia Estrada was at the home of her boyfriend, Leo Reyes, in Long Beach when she saw defendant, codefendant Edgardo Moreno,² and a group of other individuals across the street. Estrada knew defendant, codefendant Moreno, and others in the group were members of the Westside Longos gang. Estrada went across the street and was approached by defendant, who propositioned Estrada to have sex with one of his friends. When Estrada refused, the group confronted her and said she was “disrespecting” them. Fearing that she could be hurt or killed, Estrada went back to Reyes’s house.

The group followed Estrada into Reyes’s house and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Codefendant Moreno is not a party to this appeal.

assaulted her. One individual grabbed Estrada by her hair and attempted to drag her out of the house. Defendant then grabbed Estrada by the arm, threw her to the ground, and started punching her in the face. The others started kicking her in the head and chest as she covered her face and curled up. The assailants warned Reyes not to interfere and showed him guns they had tucked into their waistbands. At some point Estrada lost consciousness and the group stopped beating her. When she regained consciousness, members of the group including defendant warned Estrada not to say anything or they would kill her.

In October 2009, defendant was charged by amended information with, inter alia, two counts of first degree burglary (§ 459): count 1 charged defendant with burglary of a building occupied by Reyes, and count 2 charged him with burglary of a building occupied by Estrada. Defendant waived jury trial, and the case proceeded to a bench trial in December 2010. Defendant admitted four prior prison terms. In her testimony, Estrada said she could not recall the events in question. The prosecution case was based largely on Estrada's testimony at the felony preliminary hearing and statements she made to police officers during an interview following the assault. A police detective also testified as a gang expert.

The court found defendant guilty of two counts of first degree burglary (§ 459; counts 1 and 2), one count of making a criminal threat (§ 422, subd. (a); count 3), and one count of assault likely to produce great bodily injury (§ 245, subd. (a)(1); count 11). The court further found true the following special allegations: a gang enhancement on each count (§ 186.22, subd. (b)(1)(C)), a principal use of a firearm enhancement on counts 1

through 3 (§ 12022, subd. (a)(1)), and a prior prison term enhancement (§ 667.5, subd. (b)).

Defendant was sentenced to an aggregate term of 10 years in state prison as follows: the court imposed the high term of six years plus an additional year for the firearm enhancement on count 1, a consecutive 16-month term on count 2 (one-third the midterm), a consecutive eight-month term on count 3 (one-third the midterm), and a consecutive one-year term on count 11 (one-third the midterm). The court struck the prior prison term enhancement and stayed imposition of sentence on the gang enhancement.

This appeal followed.

DISCUSSION

Defendant contends the evidence presented at trial was insufficient to support his conviction of two counts of first degree burglary. The People concede that the evidence indicates only one burglary was committed. We agree.

Under section 459, burglary is committed when a person “enters any house, room, apartment . . . or other building . . . with intent to commit grand or petit larceny or any felony.” Section 460, subdivision (a) further provides that “[e]very burglary of an inhabited dwelling house . . . or the inhabited portion of any other building, is burglary of the first degree.” The purpose of these burglary statutes “is to forestall situations that are dangerous to personal safety caused by the unauthorized entry of an intruder into an inhabited dwelling. [Citation.]” (*People v. Richardson* (2004) 117 Cal.App.4th 570, 574 (*Richardson*))

“[T]he conduct described and proscribed by section 459 is a single act: entry.” (*People v. Washington* (1996) 50 Cal.App.4th

568, 577.) “First degree burglary is the entry of an inhabited house or a room within an inhabited house.” (*People v. Meredith* (2009) 174 Cal.App.4th 1257, 1264, citing CALCRIM No. 1701.) For example, *People v. Sparks* (2002) 28 Cal.4th 71, 73 held that “a defendant’s entry into a bedroom within a single-family house with the requisite intent can support a burglary conviction if that intent was formed only after the defendant’s entry into the house.”

However, *Richardson, supra*, 117 Cal.App.4th at page 576 explained that “[*Sparks*] does not stand for the proposition that multiple burglary convictions may be founded on a defendant taking items from several rooms within a single dwelling.” Rather, entry into multiple rooms within a single building constitutes multiple burglaries only where there are separate, individual dwelling spaces in which the occupants have a “separate, reasonable expectation of protection against an unauthorized entry.” (*Id.* at p. 575.) Accordingly, “a different burglary occurs each time the perpetrator enters into a separate dwelling space if a new and separate danger is posed to each of the occupants upon entry into each dwelling.” (*Id.* at p. 574, citing *People v. O’Keefe* (1990) 222 Cal.App.3d 517, 521.)

Here, defendant was charged with two counts of first degree burglary. Count 1 alleged defendant “enter[ed] an inhabited dwelling house . . . and inhabited portion of a building” occupied by Reyes. Count 2 alleged he “enter[ed] an inhabited dwelling house . . . and inhabited portion of a building” occupied by Estrada. However, the evidence presented at trial indicated that the inhabited dwelling involved in both counts was Reyes’s house, and that there was only one entry by defendant, codefendant Moreno, and the group into the house. There was no

evidence of a separate entry into a separate dwelling space occupied by Estrada. Accordingly, the conviction on count 2 must be reversed.

DISPOSITION

The judgment is affirmed as to the convictions on counts 1, 3 and 11; the conviction on count 2 is reversed. The matter is remanded for resentencing.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.