Filed 5/24/18 P. v. Robertson CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DEJUAN LAMONT ROBERTSON, Defendant and Appellant.	B283054 (Los Angeles County Super. Ct. No. GA099940)

APPEAL from a judgment of the Superior Court of Los Angeles County. Suzette Clover, Judge. Affirmed.

Richard L. Fitzer, 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, Idan Ivri and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

Dejuan Lamont Robertson (defendant) removed items from a storage shed less than ten feet away from the back door of an apartment located above a mortuary. A jury convicted him of first degree burglary and, because the apartment was occupied at the time, specially found that a person was "present in the residence during [the burglary's] commission." On appeal, defendant asserts that the trial court erred in not declaring a doubt about his competence to stand trial and that the jury's verdict and special finding are not supported by substantial evidence. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

The Cabot and Sons Funeral Home operates out of a two-story building in Pasadena. On the building's first floor is a mortuary; on its second floor, a three-bedroom apartment. Just outside the rear door of the apartment is a three-walled structure housing a washer and dryer and, across from that but within eight feet of the rear door, a storage shed. The washer and dryer structure and the storage shed do not share any walls with the apartment, but they do share "all one connected roof" albeit one of varying heights; access between all three is by way of a covered breezeway.

In October 2016, the funeral director was living in the upstairs apartment with his wife and two young children. The family used the storage shed to house the family's "summer toys," the funeral director's tools, lamps, at least one suitcase, and boxes of other household items. The family used the breezeway, laundry unit, and storage shed for "regular, daily living purposes."

Just after midnight on a Friday morning in October 2016, the funeral director heard what he thought were footsteps on the rooftop of the apartment. Moments later, he learned that the mortuary's alarm had been tripped. The director called 911.

When he went outside to meet the police, the funeral director saw that someone had entered the storage shed, taken several items, and then discarded them: The director found a suitcase in the breezeway, latex gloves scattered on the stairs and roof, and a piece of his daughter's snorkel gear on the windowsill outside the apartment's hallway window. The hallway window frame was pushed inwards, and the glass was cracked.

The police found defendant inside the mortuary itself. His fingerprints were found on the apartment's hallway window.

II. Procedural Background

The People charged defendant with first degree burglary (Pen. Code, § 459).[1] The People further alleged that the burglary constituted a "violent" felony because a person was "present in the residence during [its] commission" (§ 667.5, subd. (c)(21)). Additionally, the People alleged that defendant's 2002 conviction for first degree burglary constituted a "strike" within the meaning of our state's Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d)) as well as a prior "serious" felony (§ 667, subd. (a)(1)).

A jury found defendant guilty of first degree burglary and found true the allegation that a person was present during its commission. In a bifurcated proceeding, the trial court found true the allegations regarding defendant's prior conviction.

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

The trial court sentenced defendant to a prison term of 13 years, comprised of an eight-year term for the first degree burglary (calculated as four years, doubled for the prior strike) plus five years for the prior serious felony.

Defendant filed this timely appeal.

DISCUSSION

I. Competence to Stand Trial

Defendant argues that the trial court erred in not suspending his criminal proceedings to conduct a full competency trial.

A. *Pertinent facts*

1. *Immediately after arrest*

Defendant was uncooperative during the booking process following his arrest at the mortuary and was for a few hours placed in a "padded" "isolation cell."

2. *Pretrial hearing*

At a hearing held more than three months before trial, defendant requested a new court-appointed defense attorney pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. During the ensuing hearing held outside the prosecutor's presence, defendant told the court that he had "talked to the Department of Mental Health" prior to the charged burglary, and that he wanted an attorney who is "going to . . . work things out with me." The defense attorney responded that he was attempting to work out a disposition with the prosecutor involving some sort of mental health treatment. Defendant also complained that the police "never read [him his] rights" and that he was wrongly charged because "[a]ll [he] did was walk in there, [and get] high."

3. *First day of trial*

On the day trial was to begin and a panel of prospective jurors was waiting to be called into the courtroom, defendant refused to change out of his jail uniform and into "street clothes" because, in his view, he was "in . . . jail" and he "want[ed] [the jury] to know the truth" rather than "carry on a facade that everything is fine and dandy." The trial court attempt to persuade defendant that this was "not in [his] best interest[]," but defendant insisted upon remaining in his jail uniform. The trial court noted that "this is just attitude."

Moments later, defendant asked if he could "go pro. per." The trial court denied the request, explaining, "while you are competent to stand trial and assist counsel" and that there was no "basis to invoke [section] 1368 [the competency statute]," "you are [not] mentally competent to represent yourself" and "not prepared to represent yourself," particularly with "a jury outside."

Defendant then asked for a different court-appointed lawyer. The court convened a *Marsden* hearing outside the prosecutor's presence. Defendant explained that he wanted "somebody that's going to help me." The defense attorney responded that he had obtained a "doctor's report indicating that [defendant] was operating under maybe a cloud of some mental health issues" and had sought to fashion a plea that accounted for those issues, but the prosecutor had taken "a hard line" and would "not flex." The court found "no basis in law or fact for the *Marsden* motion." The court also found "that the *Marsden* hearing and pro se request is an effort to delay the matter with the jury outside."

Defendant *then* expressed a desire to enter a plea of "no contest." The trial court refused to entertain the plea.

4. *Second day of trial*

On the morning of the second day of trial, defendant refused to come into the courtroom from the lockup. The court and counsel spoke with defendant over the phone, and he expressed a desire to enter a plea of "guilty by reason of insanity." After the court explained that such a plea would expose him to "mandatory lifetime commitment in a state mental hospital," defendant said he was "scared" and decided to cooperate and come up to the courtroom. The trial court noted that defendant was "acting like it's a game."

Jury selection proceeded.

5. *Third day of trial*

On the third day of trial, defendant refused to come out of his jail cell for the morning session. Defendant eventually changed his mind, and trial resumed after lunchtime.

During a break in the afternoon session, the court observed that defendant appeared to be finding the trial itself "tedious" and was becoming "restless[]" and kept "looking back at the [courtroom's exit] door." Given defendant's prior penchant for disruptive behavior and "out of an abundance of caution," the court ordered the bailiffs to handcuff defendant's left hand to his chair in a way the jury could not see. The defense attorney agreed that defendant was "restless," but suggested that the bailiffs instead secure defendant to his chair with a "stealth belt" that operates like a seatbelt but is less visible to the jury. The trial court agreed with defense counsel's suggestion, and defendant was secured to his chair with a belt that the jury could not see.

6. *Fourth day of trial*

Despite being warned by the trial court the afternoon before that his refusal to come to court would be treated as his voluntary decision to absent himself, defendant refused to leave his cell on the morning of the fourth day of trial. The court informed the jury "not to consider or speculate" about defendant's absence and that it should "not affect [its] verdict" or "deliberations," but proceeded with trial in defendant's absence.

Later that day, the bailiffs informed the court that defendant had refused to leave his cell because, in his words, "The judge is being dumb with me, so I don't want to go to court."

7. *Last day of trial*

Defendant came to court without incident.

B. *Analysis*

As a matter of due process, a criminal defendant may not be tried or convicted while mentally incompetent. (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 464; *Pate v. Robinson* (1966) 383 U.S. 375, 384-386.) For these purposes, a defendant is mentally incompetent if he (1) """lacks a "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'""" of the proceedings against him, or (2) lacks """"a rational as well as a factual understanding of the proceedings against him."""" (*Sattiewhite*, at p. 464, quoting *Dusky v. United States* (1960) 362 U.S. 402, 402.) A trial court is required to suspend criminal proceedings and conduct a full competency trial if substantial evidence, even if conflicting, raises a reasonable doubt regarding the defendant's mental competence. (§ 1368, subds. (a) & (b); *People v. Lightsey* (2012) 54 Cal.4th 668, 691; *People v. Welch* (1999) 20 Cal.4th 701, 737-738 (*Welch*).)

The trial court acted appropriately in not conducting a competency hearing because substantial evidence did not raise a reasonable doubt about defendant's mental competence. Defendant's conduct in remaining in his jail uniform, then asking to proceed pro se, then asking for new counsel, then asking to enter various pleas, and then refusing to come to court reflected a rational and well as factual understanding of the proceedings. Indeed, as the trial court found, his conduct constituted a concerted "effort to delay" those proceedings. And although defendant complained about his lawyer's inability to work out a plea deal involving a mental health component, defendant demonstrated his ability to consult with his lawyer because he was able to cogently articulate his disagreement about negotiation strategy as well as possible defenses (such as the failure of the police to read him his "rights").

Defendant raises seven objections to this conclusion, none of which has merit.

First, defendant argues that the circumstances of his arrest in the mortuary following the burglary itself and of his custody placement after arrest—namely, that the former occurred as defendant was about to attempt an act of necrophilia and the latter involved his placement in a "padded" cell—are evidence of mental incompetence. He is wrong because neither sheds any light on his capacity to understand the legal proceedings against him at the time of trial (which was six months later). (E.g., *People v. Corona* (1978) 80 Cal.App.3d 684, 713-714 ["insanity embraces a question different from" "mental incompetence"].)

Second, defendant points to his actions to obstruct the proceedings. If anything, however, those efforts demonstrate his

understanding of those proceedings. And, as our Supreme Court has held, "an uncooperative attitude is not, in and of itself, substantial evidence of incompetence." (*People v. Mai* (2013) 57 Cal.4th 986, 1034.)

Third, defendant cites the trial court's finding that defendant was not competent to represent himself. But the standard for competence to represent oneself is different from—and more onerous than—the standard for competence to stand trial. (*People v. Johnson* (2012) 53 Cal.4th 519, 530.) A finding of incompetence to represent oneself does not constitute substantial evidence of incompetence to stand trial.

Fourth, defendant cites the trial court's concerns that defendant might escape. A defendant's desire to escape is not evidence of incompetence. (*People v. Cox* (1978) 82 Cal.App.3d 221, 227.) This is especially true when it is part of a broader pattern of conduct aimed at disrupting the criminal proceedings.

Fifth, defendant directs us to his comment that the trial judge was "being dumb." However, a defendant's "bizarre statements" are not substantial evidence of incompetence. (*Welch*, *supra*, 20 Cal.4th at p. 742.) Again, this is particularly true when they are part of a larger pattern of disruption.

Sixth, defendant notes his desire to obtain a plea deal involving mental health treatment as well as the probation report's statements that he has a substance abuse problem and is homeless. But the former was a negotiation goal and the latter came out after trial; more to the point, neither speaks to defendant's ability to understand the proceedings against him.

Lastly, defendant analogizes his case to *Torres v. Prunty* (9th Cir. 2000) 223 F.3d 1103. The analogy does not hold because the defendant in *Torres v. Prunty* asserted that the trial judge

and defense counsel were part of a "medical conspiracy" against him. (*Id.* at pp. 1108-1109.) Here, defendant's conduct was aimed chiefly at disrupting the proceedings that he understood.

II. Substantial Evidence

Defendant contends that substantial evidence does not support (1) his conviction for first degree burglary, or (2) the special finding that a "person" "was present in the residence" at the time of burglary. In assessing these claims, we "'resolve [all] conflicting inferences'" in favor of the verdict and special finding, and ask only whether there is '"'"substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt."'" [Citation.]" (*People v. Casares* (2016) 62 Cal.4th 808, 823.)

A. *First degree burglary*

Burglary occurs when a person enters a variety of different enclosed spaces—ranging from buildings to sea vessels to aircraft—with the intent to commit a felony. (§ 459.) As pertinent here, a burglary becomes a first degree burglary when the enclosed space entered is "an inhabited dwelling house . . . or the inhabited portion of any other building" (§ 460, subd. (a)); otherwise, it is second degree burglary (§ 460, subd. (b)). "[T]he distinction between first and second degree burglary is founded upon the perceived danger of violence and personal injury that is involved when a residence is invaded." (*People v. Cruz* (1996) 13 Cal.4th 764, 775-776 (*Cruz*).)

Because defendant does not dispute that he entered the storage shed with the intent to steal items, the question we must answer is: Does substantial evidence support the jury's finding

that the storage shed was part of the funeral director's "inhabited dwelling house"? The answer is "yes."

By statute, "'inhabited' means currently being used for dwelling purposes, whether occupied or not." (§ 459.) However, this term has been given a "broad, inclusive definition" (*Cruz*, *supra*, 13 Cal.4th at pp. 776, 779), and reaches not only the structure where people actually sleep but also any structure that is an "integral part of a dwelling"—that is, any structure that is both "functionally interconnected with and immediately contiguous to other portions of the house." (*People v. Ingram* (1995) 40 Cal.App.4th 1397, 1404 (*Ingram*), overruled in part on another ground by *People v. Dotson* (1997) 16 Cal.4th 547; *People v. Moreno* (1984) 158 Cal.App.3d 109, 112 (*Moreno*); *People v. Rodriguez* (2000) 77 Cal.App.4th 1101, 1107, 1109 (*Rodriguez*).)

Substantial evidence supports the jury's finding that the storage shed in this case is "functionally interconnected with and immediately contiguous to" the funeral director's apartment. It is functionally interconnected with the apartment because it is where the director and his family stored their personal belongings incident to living there. (*People v. Zelaya* (1987) 194 Cal.App.3d 73, 74-76 [burglary of storage rooms is first degree burglary]; *People v. Coutu* (1985) 171 Cal.App.3d 192, 193-194 [same].) It is also immediately contiguous to the apartment because it is connected by a breezeway and a roof common to the apartment, breezeway, and shed. (*Coutu*, at pp. 193-194 [so holding]; cf. *People v. Picaroni* (1955) 131 Cal.App.2d 612, 613, 618 (*Picaroni*) [detached garage with separate roof; not first degree burglary]; *People v. Hines* (1989) 210 Cal.App.3d 945, 949-950 [detached building with no breezeway; not first degree

burglary].) At least one decision is directly on point: In *Coutu*, the court upheld a first degree burglary conviction when a defendant entered a storeroom connected to the main house by a breezeway, all under a common roof. (*Coutu*, at pp. 193-194.) We have precisely the same facts here.

Defendant raises five arguments in response, none of which has merit.

First, defendant asserts that the storage shed was not beneath the same roof as the breezeway and apartment. However, the funeral director's testimony that there was "all one connected roof" constitutes substantial evidence of a contiguous roof.

Second, defendant argues that the storage shed does not share the same roof as *the mortuary*. But this is irrelevant because the first degree burglary is premised on the relationship between the storage shed and *the funeral director's apartment*.

Third, defendant contends that he could not tell from the street that the mortuary had an apartment on its second floor. But this fact, and defendant's *knowledge* of this fact, are irrelevant. (See *People v. DeRouen* (1995) 38 Cal.App.4th 86, 91 [noting the burglary statutes do not "'contain[] any requirement that a defendant have knowledge that a dwelling house is inhabited'"].)

Fourth, defendant points out that the funeral director had to exit his apartment to reach the storage shed. This is true, but of no consequence. The same was true in *Coutu*, but burglary of the storeroom still constituted first degree burglary. (See also *Moreno*, *supra*, 158 Cal.App.3d at p. 112 [entry into attached garage that is only accessed by exiting residence; first degree

burglary]; *Ingram*, *supra*, 40 Cal.App.4th at p. 1404 [same]; *In re Edwardo V.* (1999) 70 Cal.App.4th 591, 592 [same].)

Fifth, defendant urges us to adopt the tests for "inhabited dwelling" set forth in *People v. Grover* (1986) 177 Cal.App.3d 1182 and *Picaroni*, *supra*, 131 Cal.App.2d 612. *Grover* states, in part, that a burglary is not first degree "where the defendant did nothing more than burglarize the uninhabited portion of an inhabited building." (*Grover*, at p. 1187.) Because this statement, when read in isolation, is inconsistent with just about every other case on this issue, the same appellate court that decided *Grover* later held that "a more complete statement of our holding in *Grover* is that burglary of an uninhabited portion of an inhabited building is burglary in the second degree *unless the uninhabited portion of the inhabited building is an integral part of that inhabited dwelling*" (*Rodriguez*, *supra*, 77 Cal.App.4th at p. 1109, italics added)—which, as noted above, is the test we apply. *Picaroni* holds that "entry [into] the garage alone would not necessarily be an entry of the inhabited dwelling," but *Picaroni* involved a detached garage without a contiguous roof; it is distinguishable. (*Picaroni*, at pp. 613, 618.)

B. *Person present in the residence*

A first degree burglary becomes a "violent felony" (and hence a strike within our Three Strikes law) if "another person, other than an accomplice, was present in the residence during the commission of the burglary." (§ 667.5, subd. (c)(21); *People v. Munguia* (2016) 7 Cal.App.5th 103, 110.) Because this elevation in the severity of the crime reflects the "'*potential* for violence,'" it applies "'even though the defendant had no contact with the occupant.'" (*Munguia*, at p. 110, italics added.)

Because the funeral director, his wife, and his two children were present in the apartment at the time defendant entered the storage shed, the question we must answer is: Does substantial evidence support the jury's special finding that the apartment and storage shed are part of the same "residence"? We conclude that the answer is "yes."

This conclusion is dictated by *People v. Harris* (2014) 224 Cal.App.4th 86. There, the court upheld the jury's finding of the "person present" enhancement when a defendant burglarized a guestroom in a converted garage that shared a roof with the main house but required the use of an exterior door to enter. (*Id.* at p. 89.) In reaching this holding, the court noted that the potential for violence was greater because the defendant was "just feet from where [the residents] slept." (*Id.* at p. 91.) What is more, because the guestroom "adjoin[ed], share[d] a common roof, and [was] functionally connected," the court ruled that the person present enhancement was appropriately applied. (*Ibid.*) Here, defendant entered the storage shed, which was just feet from the apartment's rear door and from the bedrooms where the funeral director's children were sleeping.

Defendant argues that *People v. Singleton* (2007) 155 Cal.App.4th 1332 uses a different test than *Harris*, that *Singleton's* analysis is the only analysis that avoids an absurd result, and that *Harris* was wrongly decided. To be sure, the court in *Singleton* noted that the trigger for first degree burglary (namely, entry into an "inhabited dwelling house") was different than the trigger for the person present enhancement (namely, that a person be "present in the residence"), and that the broad construction of the former term should not necessarily be applied to the latter. (*Id.* at pp. 1336-1339.) But *Singleton* did not

purport to hold that the two terms could never overlap (nor *could* it, as that would mean the person present enhancement would never apply). Instead, *Singleton* held that (1) a person was not "present" in a specific apartment when he was outside, down the hallway, and around the corner from that apartment but still within the apartment complex's common areas, and (2) the fact that the burglary may still have been first degree because the hallway was under the same roof as the apartment did not *dictate* application of the person present enhancement. (*Id.* at p. 1338.)

In our view and in the view of other courts, *Singleton* exists harmoniously alongside *Harris* in that *Singleton* did not speak to the situation present in *Harris* and in this case—namely, where the burglar was in a functionally interconnecting and contiguous structure "just feet from" where residents were sleeping (thereby making the potential for violence greater). (Accord, *People v. Debouver* (2016) 1 Cal.App.5th 972, 981-982 [harmonizing *Singleton* and *Harris*, and holding that the person present enhancement properly applied when burglary is in an apartment complex's underground garage with a resident present].) Nor, as defendant suggests, does this mean that a person could be convicted of two counts of first degree burglary for entering the adjoining structure and the main house, a result defendant calls absurd. Where, as here, the two structures are considered the same dwelling or residence, only one conviction lies. (Cf. *People v. O'Keefe* (1990) 222 Cal.App.3d 517, 521 [person may be convicted of multiple counts of burglary for entering multiple dorm rooms].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ