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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

OLUJIMI SARAN HARVEY,

Defendant and Appellant.

B275685

(Los Angeles County  
Super. Ct. No. YA092337)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Scott T. Millington, Judge. Affirmed.

Brad Kaiserman, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Appellant Olujimi Saran Harvey appeals from the judgment entered following her conviction by jury of second degree burglary, with admissions she suffered two strikes and two prior felony convictions for which she served separate prison terms. (Pen. Code, §§ 459, 667, subd. (d), 667.5, subd. (b).) The court sentenced appellant to prison for six years. We affirm.

***FACTUAL AND PROCEDURAL SUMMARY***

1. The Present Offense.

a. *People's Evidence.*

The People's evidence established that about 7:00 a.m. on April 22, 2015, 19-year-old Stephanie Macias (Stephanie) and Miguel Macias (Miguel), her brother, were inside their residence at 3624 West 111th Place in Inglewood. Looking out a window, they saw a person inside their shed (or shack) which was in the backyard. Stephanie's father had built the shed before 2015.

The person later exited the shed with items, including a backpack. Stephanie called the police. Police arrived and approached the shed, and appellant fled. At 7:12 a.m., police detained appellant about a block away. During a field show-up, Stephanie told police she recognized the person as the one she had seen in, or in front of, the shed. Stephanie testified she recognized the person during the field show-up by the person's clothes. During a field show-up, Miguel saw the person whom he had seen taking items from the shed. Miguel testified that, based on the clothes, Miguel was "pretty sure" the person was the one whom he had seen in the shed.

Police found burglar's tools on appellant's person. Police interviewed appellant and she admitted she had entered the shed and had taken from it a backpack containing tools. Appellant said she was going to sell, trade, or keep the stolen items.

Eleazar Macias (Eleazar) testified the residence was his, he did not know appellant, and, on the morning of April 22, 2015, Eleazar did not allow anyone to come to his property to take things. Stephanie likewise denied knowing appellant or inviting her to Stephanie's home on the morning of April 22, 2015.

b. *Defense Evidence.*

In defense, Inglewood Police Officer Tyler Villicana testified as follows. Villicana received a radio call that police were detaining "a subject out of 3625 West 112th." The location was directly south of the Macias's residence. Villicana did not know where the subject had been before the detention. Villicana examined the deadbolt lock and doorknob of the shed but saw no damage on either, or on the door. He did not dust the shed for fingerprints, look for other witnesses, or conduct an extensive search for an additional suspect because a positive identification had been made. Moreover, fingerprints were very rarely found on surfaces such as the surfaces of the shed's doors. Villicana did not search other buildings because the only radio call had pertained to 3624 West 111th Place, the Macias's residence.

2. *Procedural History.*

On June 11, 2015, a magistrate held appellant to answer at her preliminary hearing. An information filed June 25, 2015, alleged that on or about April 22, 2015, appellant committed burglary (Pen. Code, § 459) by entering a storage shed with intent to commit larceny or any felony. The information also alleged appellant suffered the previously mentioned prior convictions. On June 25, 2015, the court arraigned appellant on the information and she pled not guilty. On August 26, 2015, appellant filed a Penal Code section 995 motion on the grounds that, at the preliminary hearing, there was insufficient evidence

of burglary and the requisite intent. On September 11, 2015, the People filed an opposition. On October 1, 2015, the court denied the motion.

On October 26, 2015, appellant's trial counsel asserted that, because appellant had not received her medication, appellant's counsel was declaring a doubt as to appellant's mental competency.<sup>1</sup> The court cited *People v. Halvorsen* (2007) 42 Cal.4th 379, 401, for the proposition that the court had to be presented with " 'substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial.' " The court cited another case for the proposition that the court did not have to declare a doubt based on appellant's counsel's assertions.

The court indicated that appellant, who was in custody, was refusing to appear in court. The court noted that on a previous occasion, appellant had refused to appear, the court had issued an extraction order and, once advised of the order, appellant chose to appear. The court observed appellant "had issues with the sheriff's department." Appellant's counsel asked for more time to converse with appellant. The court proposed to

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<sup>1</sup> Penal Code section 1368, states, in relevant part, "(a) If, during the pendency of an action and prior to judgment, . . . a doubt arises in the mind of *the judge* as to the mental competence of the defendant, *he or she shall state that doubt* in the record and inquire of the attorney for the defendant whether, in the *opinion* of the attorney, the defendant is mentally competent. . . . [¶] (b) If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369." (Italics added.)

trail the matter so appellant could receive her medication. Appellant's trial counsel stated she had no objection and indicated trailing the matter was appropriate because appellant needed her medication. Appellant personally indicated to the court that she had no problem coming to court but her complaint pertained to "the deputies." The court trailed the matter.

On October 27, 2015, the court noted appellant had received her medication. Appellant's counsel indicated she would not be declaring a doubt and "in terms of competence I think [appellant is] fine." Later that day, the jury was sworn.

On October 28, 2015, appellant's counsel again asserted she was declaring a doubt as to appellant's competency. Appellant's counsel indicated she had unsuccessfully attempted to speak with appellant to determine if she had received her medication. Appellant's counsel also indicated appellant was making various claims concerning the bailiff. The court asked appellant's counsel if she was asking the court "to declare a mistrial and declare a doubt at this time." Appellant's counsel replied, "Yes, Your Honor, if she can't assist me in her defense."

After appellant personally addressed the court, the court noted appellant had been speaking with her counsel in open court. The court gave appellant's counsel an opportunity to converse further with appellant. After appellant and her counsel conversed, appellant's trial counsel announced appellant was withdrawing her request for a mistrial and was ready to proceed, and appellant's counsel was withdrawing her asserted declaration of doubt as to appellant's competency.

On October 30, 2015, the jury convicted appellant. On November 17, 2015, appellant waived her constitutional rights and admitted the previously mentioned prior convictions. Appellant also filed a *Romero*<sup>2</sup> motion. The court continued the case to December 2, 2015, for sentencing. On November 30, 2015, the People filed a joint sentencing memorandum and opposition to the *Romero* motion.

On December 2, 2015, appellant's counsel asserted she was declaring a doubt as to appellant's competency. The court ordered criminal proceedings suspended pursuant to Penal Code section 1368 and, pursuant to Evidence Code section 730, appointed two doctors to evaluate appellant and report their findings to the court. On February 18, 2016, the court indicated the doctors' reports reflected different conclusions as to appellant's competency. The court appointed a third doctor.

On April 12, 2016, the court indicated as follows. The court had appointed two doctors, one at the People's request, the other at appellant's request, and the doctors prepared reports. In their respective reports, the People's doctor opined appellant was not competent, but appellant's doctor and the third doctor opined appellant was competent. The court admitted into evidence the three reports. Having considered them, the court found appellant was competent and ordered the resumption of criminal proceedings.

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<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

The court heard and denied appellant's *Romero* motion. The court sentenced appellant to prison for six years, consisting of the three-year upper term for second degree burglary, doubled pursuant to the Three Strikes law. The court struck for purposes of sentencing the two Penal Code section 667.5, subdivision (b) enhancements, awarded appellant presentence credits, and imposed various fines and fees. On June 13, 2016, appellant filed a notice of appeal.

### ***CONTENTIONS***

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed October 31, 2016, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments she wished this court to consider. No response has been received to date.

### ***REVIEW ON APPEAL***

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443; cf. *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1111-1112; *People v. Johnson* (1991) 235 Cal.App.3d 1157, 1166.)

***DISPOSITION***

The judgment is affirmed.

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GOSWAMI, J.\*

We concur:

ALDRICH, Acting P. J.

LAVIN, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.