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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO HERRERA,

Defendant and Appellant.

B280173

(Los Angeles County
Super. Ct. No. VA142358)

APPEAL from an order of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Affirmed.

Carlos Ramirez, 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, Scott A. Taryle, Supervising Deputy Attorney General, Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

The jury found defendant and appellant Sergio Herrera guilty of first degree residential burglary. (Pen. Code § 459.)¹ He was sentenced to two years in prison. Defendant contends that the evidence was insufficient to support the jury's finding that he entered the residence with the specific intent to commit burglary. We affirm the judgment.

FACTS²

Victor Medina and his family returned home from a party early in the morning on July 10, 2016. The Medina's house was completely surrounded by a fence, with passages on both sides connecting the front and back yards. A gate across the driveway provided vehicle access. The family went inside, but Medina remained in the front yard to close the gate to the driveway. As he was closing the gate, Medina encountered defendant walking along his driveway from the backyard. He did not know defendant and had not given anyone permission to be in the house while the family was out. Medina asked defendant what he was doing. Defendant shrugged his shoulders, walked past him, and left the front yard.

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

² Defendant did not present evidence on his behalf.

Once inside his home, Medina noticed that some items had been moved. A window that had been closed when the family left was open, and the screen had been removed. The window had been partially covered by the refrigerator and a mattress had been leaned against it. Both had been moved aside. The television stand doors were open, and the interior of the stand looked as though it had been “ransacked.” Medina’s daughter’s laptop, which had been turned off and unplugged, was plugged in and turned on. A bottle of glitter had been moved from Medina’s daughter’s room to the kitchen table. No items were missing.

Los Angeles County Sheriff’s Department Deputy Miguel Ortiz was dispatched to the scene in response to Medina’s report of the break in. Medina described the person he encountered in the driveway. Deputy Ortiz issued a “crime broadcast” on the police radio with the description. Soon afterwards, Deputy Ortiz was informed that a person (defendant) who matched the description had been detained. Deputy Ortiz drove Medina to the location where defendant was being held. Medina identified defendant as the person he saw in the driveway. Defendant’s clothing was covered in glitter.

After his arrest, defendant told Deputy Ortiz that “he was looking for something [inside the Medina’s home], but [] couldn’t find anything.”

DISCUSSION

In order to prove that a defendant committed residential burglary, it must be shown that he entered a dwelling with the specific intent to commit a felony or theft. (§ 459.) The intent to commit a felony or theft must exist at the time of the entry. (*People v. Holt* (1997) 15 Cal.4th 619, 669.) Evidence of intent is usually circumstantial and, to be sufficient, it must support a reasonable inference of the requisite state of mind in order to support a conviction of burglary. (*Id.* at pp. 669–670.) On review upon a claim of insufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576–578.) After a review of the whole record, we determine whether there was sufficient evidence that any rational trier of fact could find a defendant guilty beyond a reasonable doubt. (*Ibid.*) The standard of review is unchanged when the prosecution relies upon circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) Even if we find that the circumstantial evidence could reasonably be reconciled with a different verdict, we do not reverse so long as the circumstances reasonably justify the outcome reached by the jury. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Defendant argues that the evidence he intended to commit a theft or felony was speculative. Specifically, he

argues that his use of electricity when he plugged in Medina's daughter's computer was incidental—i.e., he intended to use the computer, not to steal electricity; his removal of glitter flakes was accidental; and his statement that he was “looking for something” did not establish that he intended to steal whatever it was he was looking for. He argues that the fact that he did not take anything from the residence—in particular the laptop computer that he had plugged in and was therefore obviously aware of—demonstrates he did not have the intent to steal something from the house.

It is uncontested that defendant entered the Medina's home without their permission by removing a screen, pushing aside large, heavy items, and going through a window. There is sufficient circumstantial evidence to support the finding that he did so with the intent to steal. Although it is uncertain how long defendant was in the Medina's home, in the time he was there he ransacked the area where the television was located, and began to use a laptop computer. Such electronics are portable and of value. The jury could have reasonably inferred that defendant intended to take the items but was interrupted when the family returned home. Moreover, defendant's statement that he was “looking for something” may reasonably be interpreted to mean that he entered with the intent of stealing some specific type of property, but was unsuccessful in locating whatever he was looking for. That the statement is also susceptible of another interpretation is not relevant to

our inquiry. Our role is to determine whether the jury's findings are supported by substantial evidence. Viewing the evidence in the light most favorable to the judgment, we conclude that substantial evidence supported defendant's conviction.

DISPOSITION

We affirm the judgment.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

LANDIN, J.*

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