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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ROYSE STRIBLING, Defendant and Appellant.	2d Crim. No. B230939 (Super. Ct. No. MA049233) (Los Angeles County)

Royse Stribling appeals his conviction by jury of two counts of attempted murder (counts 1-2; Pen. Code, §§ 664/187, subd. (a))[1], arson of an inhabited structure (count 3; § 451, subd. (b)), battery (count 4; 242), child abuse (count 5; § 273a, subd. (a)), and resisting an executive officer (count 6; § 69). The trial court, in a bifurcated proceeding, found that appellant had suffered a prior strike conviction (§§ 667, subds. (b) – (i); 1170.,12, subds. (a) – (d)), a prior serious felony conviction (§ 667, subd. (a)), and two prior prison terms (§ 667.5, subd. (b)). Appellant was sentenced to 31 years state prison. We affirm.

Facts

On the evening of May 30, 2010, appellant argued with his girlfriend, Kimberly Ridgle, and threw things around the apartment. Ridgle told him to stop because

[1] All statutory references are to the Penal Code.

he would wake the neighbors. Appellant, in an angry tone, replied, "You miss your [dead] father. Well you're going to see him real soon."

Ridgle was disturbed by the comment and took their 17-day-old baby to the bedroom. Minutes later, Ridgle smelled smoke and saw flames and smoke engulf the kitchen. Ridgle grabbed the baby and crawled out of the apartment. Appellant stood nude on the apartment balcony, yelling in an irate manner.

A neighbor, Stephanie Medina, heard the fire alarm and headed for the stairs. As Medina turned to go down the stairs, appellant wrapped a towel around her neck, choked her, and said "You're not going anywhere." Michael Abeyta punched appellant in the face and pulled Medina free. As Medina ran down the stairs, appellant yelled, "get back up here, you fat bitch!"

Los Angeles County Sheriff Deputies Jacob Montez and Joshua Whiting responded to the fire and saw appellant at the top of the stairwell, nude. Appellant kicked at the firefighters and was ordered to get out of the way. Appellant ignored the order, was tasered, and kicked the deputies. Deputy Montez tased appellant two more times until he complied and arrested him.

After appellant waived his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694]), Deputy Whiting asked why he started the fire. Appellant replied, "the first time or the second time, sir?" Appellant said that he put a computer in the fireplace and lit it on fire, and started a second fire by putting clothes in the oven and lighting it.

Appellant started the fire because he wanted Ridgle "to see her father." Deputy Whiting asked where Ridgle's father was. Appellant grinned and said, "Oh, well, he's dead." The deputy also asked whether he thought about the baby when he started the fire. Appellant responded: "Fuck that and fuck you. The baby might not even be mine."

Detective Greg Everett, who worked the Sheriff's arson-explosives detail, investigated the fire and testified that it was intentionally set by igniting paper and clothing

on the stove top. Detective Everett tried to interview appellant but appellant yelled at him and threatened to "kick [his] ass."

At trial, appellant claimed the fire was accidental. Appellant said that he cleaned the kitchen floor, lit two incense sticks, and went to bed. Appellant woke to the sound of the smoke alarm and helped Ridgle and the baby out of the apartment. Returning to the apartment, appellant saw flames "shooting up" from the stove top and tried to smother the flames. Appellant denied setting the fire, denied kicking the firefighters and deputies, and denied threatening Detective Everette.

The jury returned guilty verdicts for two counts of attempted murder, arson of an inhabited structure, battery, child abuse, and resisting an officer.

Substantial Evidence

Appellant contends that the convictions for attempted murder, arson, and child abuse should be reversed because there is no evidence that he deliberately set the fire. As in any sufficiency of the evidence appeal, we review the record in the light most favorable to the verdict and presume the existence of every fact the jury could reasonably deduce from the evidence in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not reweigh the evidence or reevaluate the credibility of the witnesses. (*Ibid.*) In the end, "it is the jury, not the appellate court, which must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.]" (*People v. Ceja* (1993) 4 Cal.4th 1134, 1139.)

Attempted murder requires specific intent to kill which, in this case was established by the arson. (See e.g., *People v. Bland* (2002) 28 Cal.4th 313, 330-331 & fn. 6 [intent to kill based on zone of harm].) Before the fire, appellant argued with Ridgle and said "you're going to see [your dead] father real soon." Ridgle took the baby to bed and woke minutes later to an apartment engulfed in smoke and flames.

Appellant did not call the fire department or try to rescue Ridgle and the baby. Appellant also blocked a neighbor's escape (Medina) and obstructed firefighters responding to the fire. Following his arrest, appellant told Deputy Whiting that he started the fire by lighting some clothes on fire. It was strong circumstantial evidence of intent to kill. (See

e.g., *People v. Lashley* (1991) 1 Cal.App.4th 938, 945-946 [intent to kill established by defendant's actions and words].)

Appellant argues that the fire was not deliberately set because the prosecution's case was based on the theory that the fire was started in the oven. This misstates the record.[2] Detective Everett testified that the burn marks and smoke line showed that the fire was intentionally set by igniting paper and clothing on the stove top. Photos were received into evidence depicting a V-shaped burn pattern starting at the stove top. Detective Everett's findings were consistent with appellant's testimony that flames were "shooting up" from the stove top. Even more damning was appellant's post-arrest statement that he deliberately set two fires. Substantial evidence supports the finding that appellant started the fire to burn down the apartment and kill Ridgle and their baby daughter.

Lesser Included Offense: Unlawfully Causing a Fire

Appellant argues that the trial court erred in not instructing on unlawfully causing a fire (§ 452, subd. (b)), a lesser included offense to arson. (See e.g., *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182.) A trial court must instruct on a lesser included offense where there is substantial evidence that, if accepted by the trier of fact, would absolve the defendant of guilt of the greater offense but not the lesser. (*People v. Blair* (2005) 36 Cal.4th 686, 745.)

Appellant told Deputy Whiting that he intentionally lit the fire. "Assertions that this evidence also supported a finding of 'recklessness' are untenable. [Appellant] denied setting any fire, and an accidental ignition, of course, would preclude any criminal

[2] The prosecution argued: "Defendant says he started a fire by placing clothes in the oven. Well, we know that there was clothing material placed on top of those burners. And it is the People's position that that's how the defendant started this fire. . . . [¶] . . . [¶] Defendant even admits that he threw water on top of the stove because that's the area where he started the fire . . . ."

liability. There was no evidentiary basis for finding mere 'recklessness' by [appellant] in starting the fire." (*People v. Lopez* (1993) 13 Cal.App.4th 1840, 1848.)[3]

The jury finding that appellant intended to kill Ridgle and the baby by maliciously setting the fire rules out the possibility that the fire was accidental. But for the failure to instruct on unlawfully causing a fire as a lesser included offense, it is not reasonably probable that appellant would have obtained a more favorable result. (*People v. Ledesma* (2006) 39 Cal.4th 641, 716.)

Jury Trial On Priors

Appellant claims that he was denied a jury trial on the prior Strike, the prior serious felony conviction, and prison prior enhancements. The record shows that appellant waived jury on the priors while the jury was deliberating on the principle charges. The trial court inquired twice about the jury waiver and had appellant enter the waiver on the record. The court found that appellant "has knowingly, understandingly, intelligently, and voluntarily waived his right to a jury trial on the balance of these priors."

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

[3] Appellant's attorney told the jury that "we don't know what really happened, how the fire really started."

Lisa Chung, Judge

Superior Court County of Los Angeles

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Noah P. Hill, Deputy Attorney General, for Plaintiff and Respondent.