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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. CORNELL AARON BROWN, Defendant and Appellant.	B281312 (Los Angeles County Super. Ct. No. SA093025)

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

Robert N. Treiman, 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, and Michael C. Keller, Acting Supervising Deputy Attorney General, for Plaintiff and Respondent.

Cornell Aaron Brown appeals the judgment entered following a jury trial in which he was convicted of first degree residential burglary. (Pen. Code,[1] § 459.) Appellant admitted two prison priors under section 667.5, subdivision (b) and a prior serious felony conviction under section 667, subdivision (a)(1) and the Three Strikes law. (§§ 667, subds. (b)–(i), 1170.12, subds. (b)–(d).) The trial court denied a defense *Romero*[2] motion and imposed an aggregate sentence of nine years in state prison.[3] Appellant contends the trial court erroneously instructed on first degree burglary by modifying CALCRIM No. 1701 and abused its discretion in denying appellant's *Romero* motion. We disagree and affirm.

FACTUAL BACKGROUND

In 2016 Francesco Panzieri lived in a four-story apartment building with 30 to 40 residential units and an attached ground floor parking garage. The garage has three gated entrances/exits for cars and a pedestrian gate. Each gate is controlled by a separate remote control. The apartments are accessible from the garage by an elevator requiring a separate access key.

On May 2, 2016, approximately 9:00 a.m., Panzieri went down to the garage from his apartment to get his motorcycle to

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

[2] *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*).

[3] The sentence consisted of the low term of 2 years for the burglary, doubled to 4 years for the prior strike conviction (§ 667, subd. (e)(1)), plus a consecutive 5-year term pursuant to section 667, subdivision (a)(1).

drive to work. Panzieri had parked the motorcycle behind his orange Mini Cooper the night before, and had left his helmet on the motorcycle seat. Panzieri found his motorcycle parked in its space, but the helmet was missing. After confirming that his girlfriend had not moved the helmet, and certain that he had left it on the motorcycle, Panzieri called the police to report it stolen.

Surveillance video of the garage interior[4] showed appellant ride a bicycle through an exterior gate about 10 seconds after the gate had opened to allow a car to exit. Appellant looked around as he rode through the garage in between and around cars. Approximately 7:25 a.m., appellant appeared near Panzieri's orange Mini Cooper and rode away carrying Panzieri's black motorcycle helmet in his right hand.

DISCUSSION

1. *The trial court properly instructed on the elements of first degree burglary.*

Appellant contends the trial court improperly inserted the word "apartment" before "building" in CALCRIM No. 1701, thus creating a mandatory presumption that the parking area was an occupied part of an inhabited dwelling house. Appellant claims the effect of this error was to remove from the jury's consideration the essential question of "whether an apartment building (or condominium complex) was a building for purposes of section 460 and whether a street level parking area beneath the apartments was an inhabited portion of a building." We find no error in the trial court's modification of CALCRIM No. 1701, and conclude

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[4] Videos from what appear to be motion-sensor surveillance cameras in the garage were played for the jury.

that the trial court properly instructed on all the elements required for first degree burglary.

We review de novo the claim that the court's instructions effectively directed an adverse finding against appellant by removing an issue from the jury's consideration. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) Looking to the instructions as a whole, together with the trial record and the arguments of counsel, we determine whether the trial court " 'fully and fairly instructed on the applicable law.' " (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) In so doing, we assume that jurors are intelligent people, capable of understanding the jury instructions given. (*Ibid*.) In the final analysis, we interpret the instructions, where reasonably possible, to support the judgment rather than defeat it. (*People v. Spaccia* (2017) 12 Cal.App.5th 1278, 1287; *People v. Ramos*, *supra*, 163 Cal.App.4th at p. 1088.)

Contrary to appellant's argument, the issue before the jury was not whether an apartment building qualifies as a *building* that could be burglarized, which it most certainly does, but whether appellant entered an *inhabited dwelling place* with the *intent to commit a theft*. An apartment is specifically listed in the statutory definition of burglary as one of the structures that can be burglarized.[5] Section 459 further states that " 'inhabited' means currently being used for dwelling purposes, whether occupied or not." Section 460 in turn defines first degree burglary

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[5] Section 459 provides in relevant part: "Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary." (§ 459.)

as any "burglary of an inhabited dwelling house . . . or the inhabited portion of any other building." Thus, in order to find a burglary in the first degree the jury must find the defendant entered an inhabited dwelling house with the intent to commit a felony. (*People v. Thorn* (2009) 176 Cal.App.4th 255, 261 (*Thorn*).)

Courts give the term "inhabited dwelling house" a broad, inclusive definition, focusing on whether the dwelling is used as a residence. (*People v. Cruz* (1996) 13 Cal.4th 764, 776 (*Cruz*); *Thorn*, *supra*, 176 Cal.App.4th at p. 261.) "[T]he term 'inhabited dwelling house' means a 'structure where people ordinarily live and which is currently being used for dwelling purposes. [Citation.] A place is an inhabited dwelling if a person with possessory rights uses the place as sleeping quarters intending to continue doing so in the future.' " (*Cruz*, *supra*, 13 Cal.4th at p. 776; *Thorn*, *supra*, 176 Cal.App.4th at p. 261.)

As applied here, there can be no debate that an apartment building is patently a *dwelling house*, and the apartment complex in this case was manifestly *inhabited*. What remains is appellant's contention that the street level parking area beneath the apartments did not constitute an inhabited portion of the building, and therefore appellant's burglary of the garage could not be in the first degree. Innumerable courts have rejected appellant's contention, and so do we.

"In determining whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is 'functionally interconnected with and immediately contiguous to other portions of the house.' [Citation.] 'Functionally interconnected' means used in related or complementary ways. 'Contiguous' means adjacent, adjoining, nearby or close." (*People v. Rodriguez* (2000) 77 Cal.App.4th 1101, 1107 (*Rodriguez*).)

Numerous courts have found an attached garage to be functionally connected to the building to which it is attached, and thus part of the inhabited dwelling for purposes of first degree burglary.[6] (See, e.g., *People v. Debouver* (2016) 1 Cal.App.5th 972, 981–982 (*Debouver*) [secured underground garage was integrated part of apartment complex]; *People v. Harris* (2014) 224 Cal.App.4th 86, 89–90 [attached garage converted to guest room with no direct access to the main house was part of the inhabited dwelling]; *Thorn*, *supra*, 176 Cal.App.4th at pp. 262–263 [carports located directly underneath apartments designated for residents' parking were " 'functionally interconnected' with the inhabited dwelling"]; *In re Edwardo V.* (1999) 70 Cal.App.4th 591, 594 [garage attached to residential duplex with no direct access to living units qualifies as an inhabited dwelling house under § 460]; *People v. Fox* (1997) 58 Cal.App.4th 1041, 1047 (*Fox*) [trial court properly instructed jury that, when garage is attached to inhabited dwelling, it is considered part of the inhabited dwelling]; *People v. Ingram* (1995) 40 Cal.App.4th 1397, 1402, 1404 [garage with no direct access to house was functionally connected to residence where it shared roof with residence], overruled on other grounds in *People v. Dotson* (1997) 16 Cal.4th 547, 560.)

Appellant maintains that the court's instruction improperly usurped the jury's function by preventing the jury from

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[6] In this regard, our Supreme Court has explicitly acknowledged that an area such as an attached garage, even if it lacks direct access to the residence, nevertheless falls within the policies informing the law of first degree burglary. (*Cruz*, *supra*, 13 Cal.4th at p. 776.)

determining whether the garage was an inhabited portion of the apartment complex. But appellant misstates the relevant inquiry. "It is well settled that burglary of an inhabited dwelling house may be accomplished even if the specific room that the burglar unlawfully enters is not a space where people live. In determining whether the defendant has burglarized an inhabited dwelling house, '[t]he question is not whether the specific area is used for sleeping or everyday living, but whether the area is functionally interconnected to and immediately contiguous to the residence, which is used for sleeping or everyday living.' " (*In re M.A.* (2012) 209 Cal.App.4th 317, 323, quoting *Rodriguez*, *supra*, 77 Cal.App.4th at p. 1110.)

The precise instructional challenge appellant raises here was expressly rejected by the courts in *Thorn* and *Fox*. In both of these cases, as in the present case, the trial court instructed the jury that to find the defendant guilty of first degree burglary, it must find he burglarized an inhabited building, that a building is inhabited if it is used as a dwelling, and that a garage or carport that is attached to an inhabited dwelling is part of the inhabited dwelling, and not a separate structure. (*Thorn*, *supra*, 176 Cal.App.4th at p. 267; *Fox*, *supra*, 58 Cal.App.4th at p. 1047.) Both courts reasoned that under these instructions the jury was required to determine whether the structure the defendant entered was inhabited, and whether the garage was attached and " 'thus an integral part of the structure.' " (*Thorn*, *supra*, 176 Cal.App.4th at p. 268; *Fox*, *supra*, 58 Cal.App.4th at p. 1047.) In both cases, it was only upon resolution of these factual questions that the jury could find the defendant guilty of first degree burglary.

So it is in the case at bar. By directing the jury to determine whether the apartment building was inhabited, and

whether the parking structure was attached to the apartment building and functionally connected with it, the trial court's instruction on first degree burglary accurately stated the law and properly left the essential questions of fact to the jury.

During oral argument in this case, appellant asserted that an apartment building parking garage, consisting of nothing more than lines painted on the floor with no designated areas for storage of personal property, does not qualify as a "residence" for purposes of first degree burglary. In so arguing, appellant relies on *People v. Singleton* (2007) 155 Cal.App.4th 1332 (*Singleton*). *Singleton* held that a common area of an apartment building does not qualify as a "residence" for purposes of the special finding under section 667.5, subdivision (c)(21) that elevates a first degree burglary to a violent felony if "another person, other than an accomplice, was present *in the residence* during the commission of the burglary."[7] (*Id*. at pp. 1338–1339.) The court reasoned that the choice of the word "residence" in the statute, a term not used "in other statutory references to burglary, strongly [indicates] the term was intended to refer to a location different

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[7] Section 667.5, subdivision (a) calls for the imposition of a 3-year sentence enhancement where the defendant has served one or more prior prison terms and the new offense is one of the violent felonies specified in subdivision (c). Subdivision (c) in turn provides: "For the purpose of this section, 'violent felony' shall mean any of the following: [¶] . . . [¶] (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary."

than the broadly interpreted 'inhabited dwelling.' " (*Id*. at p. 1339.)

Appellant's reliance on *Singleton* is misplaced, however. In *Singleton*, there was no question that the burglary occurred in an "inhabited dwelling" (an apartment) and was therefore in the first degree. Rather, the issue was whether a person standing outside the apartment in the hallway during the burglary was present "in the residence" for the violent felony finding under section 667.5, subdivision (c)(21). On the other hand, *People v. Debouver*, *supra*, 1 Cal.App.5th 972 (which appellant asserts was wrongly decided) is directly on point. As in the instant case, the defendant in *Debouver* burglarized a parking garage attached to an apartment complex. And as in *Singleton*, the issue was not whether the burglary was of an inhabited dwelling and thus in the first degree, but whether the apartment manager's presence in the garage during the burglary satisfied the "in the residence" requirement under section 667.5, subdivision (c)(21). But in rejecting the defendant's argument "that an underground garage is not a 'residence' within the meaning of section 667.5, subdivision (c)(21)," *Debouver* distinguished *Singleton*, holding that the underground garage, which shared a common roof with the apartment complex, was an integrated part of the dwelling. (*Debouver*, *supra*, 1 Cal.App.5th at p. 981, citing *Rodriguez*, *supra*, 77 Cal.App.4th at p. 1107.) The court concluded that because the burglary of the apartment complex garage qualified as a first degree burglary and the building manager was present during the crime, the burglary constituted a violent felony justifying the section 667.5, subdivision (a) enhancement. (*Debouver*, *supra*, 1 Cal.App.5th at p. 982.)

2. *The trial court did not abuse its discretion in denying the* Romero *motion.*

Appellant contends the trial court abused its discretion in refusing to dismiss his prior strike conviction in accordance with *Romero*. We disagree.

Appellant's conviction in the present case constituted his second strike under the Three Strikes law. At the sentencing hearing in this case, defense counsel moved to dismiss appellant's 2015 prior strike conviction for residential burglary under *Romero*. Counsel argued that prior to trial the prosecution had been willing to dismiss the prior strike allegation and offered a plea deal to second degree burglary for four years. Defense counsel argued that because the value of the stolen property was only $150 and the burglary was not committed in any living quarters, a second strike sentence would be grossly disproportionate to the seriousness of the crime, and another similar conviction could result in a life sentence.

Denying appellant's *Romero* motion, the trial court specifically found that the nature and circumstances of appellant's current and prior criminal convictions did not place him outside the spirit of the Three Strikes sentencing scheme. The court noted that appellant had committed multiple felonies in just five years, and the prior strike he was seeking to dismiss was also a first degree burglary for which he had been released from custody only six months before committing the instant offense. In his lengthy criminal history, appellant had demonstrated no success on probation or parole. The court also took into account its choice of the low term for the current conviction, and declared that it would "be an abuse of my discretion" to strike the prior serious felony conviction under the circumstances.

Under section 1385 a trial court has discretion to strike a prior serious felony conviction for sentencing purposes "in furtherance of justice" upon finding that, "in light of the nature and circumstances of [defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).) We review the trial court's refusal to dismiss a strike prior under section 1385 for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*); *Williams*, *supra*, at p. 158.) Under this standard, " ' "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." ' [Citations.] [Further], a ' "decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.' " ' [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Carmony*, *supra*, 33 Cal.4th at pp. 376–377.)

As our Supreme Court has explained, the Three Strikes law establishes certain sentencing norms and "creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*Carmony*, *supra*, 33 Cal.4th

at p. 378.) "In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not 'aware of its discretion' to dismiss [citation], or where the court considered impermissible factors in declining to dismiss." (*Ibid.*) The high court continued: " '[W]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance' [citation]. Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Ibid.*)

In denying appellant's *Romero* motion in the instant case, the trial court was plainly aware of its discretion to dismiss appellant's strike prior and declined to do so based on valid reasons intended to meet legitimate sentencing objectives. The trial court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.