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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY DEVARRO MARTIN, Defendant and Appellant.	B233394 (Los Angeles County Super. Ct. No. SA075475)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Anthony Devarro Martin, in pro. per.; and Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Anthony Devarro Martin appeals from the judgment of conviction entered after a jury found him guilty of attempted burglary. No meritorious issues have been identified following a review of the record by defendant's appointed counsel and our own independent review of the record and analysis of the contentions presented by defendant in a handwritten supplemental brief. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of February 24, 2010, Roberta Maxwell was alerted by a neighboring tenant that her accounting business in Los Angeles appeared to have been burglarized. When she arrived at the business, she found a hole in the shatter-proof window adjacent to the handle of the wooden front door, and two of the three locks on the front door had been opened. The third lock, a deadbolt at the top of the door, was still closed. The metal security door behind the front door was undisturbed, as were the contents of the offices of Maxwell's business. On the ground outside the business were pieces of window glass, as well as a rock and a broomstick that had not been there the previous day. Blood on the window glass matched defendant's DNA.

Defendant was arrested and charged by an amended information with one count of attempted second degree burglary (Pen. Code, §§ 459, 664),[1] with special allegations he had previously suffered three serious or violent felony convictions within the meaning of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12), and had served five separate prison terms for felonies (§ 667.5, subd. (b)). Represented by appointed counsel, defendant pleaded not guilty to the charge and denied the special allegations.

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

Just before trial commenced, the prosecution elected to proceed on this case as a second strike case. The trial court agreed to defendant's request for a bifurcated trial on the special allegations. After the jury returned its verdict, defendant moved for a new trial based on insufficient evidence and ineffective assistance of counsel. The trial court denied the motions but agreed to revisit the new trial motion for ineffective assistance of counsel and to consider a motion as seeking appointment of new counsel (*People v. Marsden* (1970) 2 Cal.3d 118) at the bifurcated trial on the special allegations.

At the bifurcated trial, the court heard and denied defendant's new trial and *Marsden* motions. The trial court also denied his request to proceed in pro. per. (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562].) Defendant continued to be represented by his appointed counsel throughout the rest of the proceedings. Following the court trial on the special allegations, the court found true two of the alleged prior strike and four of the alleged prior prison term allegations.

The court sentenced defendant to three years for attempted second degree burglary (the 18-month upper term doubled as a second strike) plus three years of the prior prison term enhancements. Defendant received presentence custody credit of 372 days (248 actual days and 124 days of conduct credit). The trial court ordered defendant to pay a $40 court security fee, a $30 criminal conviction assessment, and a $1,200 restitution fine. The court imposed and suspended a parole revocation fine. The court also ordered defendant to make $200 in restitution to Roberta Maxwell. Defendant timely appealed.

DISCUSSION

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On December 29, 2011, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. After granting defendant several extensions, on June 28, 2012 he filed a handwritten supplemental brief in which he

claims the trial court committed reversible error in failing to instruct on the lesser related offense of felony vandalism. Although this claim does not present an arguable issue, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 120-121, we explain the reasons it fails.

Defense counsel requested the jury be instructed on the crime of vandalism as a lesser related offense because there was no evidence of intent to commit larceny or any other felony. (See § 459) The prosecutor did not agree to have the instruction given and the trial court declined to give it. Defendant contends the trial court committed two errors: failing to grant the defense request to instruct and failing to instruct sua sponte on the lesser related offense of felony vandalism.

A trial court in a criminal case has a duty to instruct on general principles of law applicable to the case (*People v. Blair* (2005) 36 Cal.4th 686, 744), that is, "'"'"'those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case.'"'"' (*People v. Valdez* (2004) 32 Cal.4th 73, 115.) This obligation includes the duty to instruct on a lesser included offense[2] if the evidence raises a question as to whether the elements of the lesser included offense, but not the greater offense, are present. (*Ibid.*; *People v. Breverman* (1998) 19 Cal.4th 142, 154; *People v. Birks* (1998) 19 Cal.4th 108, 118.)

However, a defendant has no right, absent the prosecution's acquiescence, to instruction on a lesser related offense. (*People v. Nelson* (2011) 51 Cal.4th 198, 215; *People v. Birks*, *supra*, 19 Cal.4th at p. 136.) Our Supreme Court has repeatedly held that this rule does not violate a defendant's due process rights under the federal or state

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2 A particular offense is considered a "lesser included" offense and, therefore, subject to the duty to instruct, if it satisfies one of two tests. The "elements" test is satisfied if the statutory elements of the greater offense include all the elements of the lesser, so that the greater cannot be committed without committing the lesser; the "accusatory pleading" test is satisfied if the facts actually alleged in the accusatory pleading include all the elements of the lesser offense such that the greater offense charged cannot be committed without committing the lesser offense. (*People v. Sloan* (2007) 42 Cal.4th 110, 117; *People v. Reed* (2006) 38 Cal.4th 1224, 1227-1228.)

Constitutions. (*Nelson*, at p. 215; *People v. Taylor* (2010) 48 Cal.4th 574, 622; *People v. Rundle* (2008) 43 Cal.4th 76, 146-148, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Vandalism is a lesser related, not included, offense of burglary. (See *People v. Lagunas* (1994) 8 Cal.4th 1030, 1037-1038; *People v. Delgado* (1989) 210 Cal.App.3d 458, 465.)

Moreover, the circumstantial evidence that defendant intended to commit larceny when he attempted to enter the business was very strong: He used a rock or broom to break a hole in the shatterproof window, close enough to the front door knob to reach inside and unlock the two locks that were visible from the window. In the process, defendant cuts his hand on the broken glass. However, he was prevented from opening the front door by the deadbolt, having been unable to see it, reach it or unlock it. The record in this case supports the jury's finding of the requisite intent. (See *People v. Medina* (2007) 41 Cal.4th 685, 694.)

We have examined the entire record and are satisfied defendant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly*, *supra*, 40 Cal.4th at pp. 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J. ZELON, J.