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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNARD FILES,

Defendant and Appellant.

B283936

(Los Angeles County  
Super. Ct. No. NA104341)

APPEAL from a judgment of the Superior Court of Los Angeles County. Judith L. Meyer, Judge. Reversed in part, affirmed in part.

Michele A. Douglass, 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, Assistant Attorney General, Zee Rodriguez and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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Bernard Files appeals the judgment entered following a jury trial in which he was convicted of three counts of arson<sup>1</sup> in violation of Penal Code section 451, subdivision (d).<sup>2</sup> In bifurcated proceedings the trial court found true the allegations that appellant had previously suffered a conviction for arson (§ 451.1, subd. (a)), he had suffered five prior serious felony convictions (§ 667, subd. (a)(1)), and he had served prior prison terms. (§ 667.5, subd. (b).) The trial court denied appellant's *Romero*<sup>3</sup> motion to dismiss his prior strike convictions, and imposed an aggregate sentence of 177 years to life in state prison.

Appellant contends insufficient evidence supports the arson conviction on count 4, requiring reversal. We agree and reverse the conviction on count 4.

### **FACTUAL BACKGROUND**

#### *Count 4: The fire at Fourth Street and Atlantic Boulevard*

Justin Grimes worked for the Long Beach Fire Department as a firefighter-paramedic. As he was driving to work between 6:30 a.m. and 8:00 a.m. on June 3, 2016, Grimes saw a figure crouched at the side of the road on Fourth Street near Atlantic Boulevard. The figure stood up, and as Grimes drew closer, he saw appellant standing next to a small flame in the gutter. Grimes could see paper and a coffee cup from a nearby 7-Eleven

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<sup>1</sup> The information charged four counts of arson; the jury acquitted on count 2.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

in the fire. Because no one else was nearby and appellant was standing so close to the fire, Grimes assumed appellant had started it. Grimes pulled over and said to appellant, “ ‘Hey, put that out. You can’t do that here.’ ” Appellant raised his hands and said, “ ‘Okay. Okay.’ ” “ ‘It wasn’t me.’ ” He promptly stomped on the fire and extinguished it. Thinking appellant was a homeless person who had started the fire to keep warm, Grimes continued on to work.

An arson investigator inspected the site later that day and observed a few burned items, including pieces of paper, part of a pizza-shaped cardboard box, and a plastic bag from a grocery store. He also noted “a little smoke stain to the curb from the fire,” which could be wiped off.

*Count 1: The dumpster fire in the alley between the apartment complexes on Atlantic Boulevard and Linden Avenue*

Later that morning at 8:53 a.m., Lawrence Martin was outside his apartment complex on Atlantic Boulevard when he saw appellant going through the trash in a nearby alley. Martin saw appellant moving paper from one side of a dumpster to the other side, and then observed smoke rising from the dumpster where appellant was adding the paper. As Martin watched, flames began to appear, rose up the side of the building and burned the dumpster lid. Martin called 911. As he reported the fire and gave a description of appellant, appellant left on a bicycle. Grimes, his captain, Greg Curiel, and other firefighters responded to the scene and extinguished the fire.

*Count 2: The dumpster fire at 120 Alamitos Avenue*

Before leaving the scene of the dumpster fire reported by Martin, Curiel and his team were notified of another fire at 120 Alamitos Avenue. They arrived to find another trash fire burning in a dumpster. Immediately after extinguishing that fire, the firefighters were dispatched to yet another trash fire at 23 Bonito Avenue.

*Count 3: The trash fire at 23 Bonito Avenue*

Around 9:22 a.m. that day, one of the residents of an apartment complex near 23 Bonito Avenue saw appellant in the alley picking trash out of the garbage cans. He then knelt down and used a lighter to set the trash on fire. Firefighters responded to the scene to find appellant kneeling down with a lighter in his hand trying to set fire to something on the ground.

## **DISCUSSION**

Appellant contends insufficient evidence supports his conviction for arson in count 4, requiring reversal. In assessing appellant's substantial evidence claim, " 'we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " (*People v. Avila* (2009) 46 Cal.4th 680, 701; *People v. Watkins* (2012) 55 Cal.4th 999, 1019–1020.) We draw all reasonable inferences in favor of the verdict and presume the existence of every fact the jury could reasonably deduce from the evidence that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) However, we do not limit our review to the evidence favorable to respondent (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1153;

*People v. Johnson* (1980) 26 Cal.3d 557, 577), and the appellate court may not “ ‘go beyond inference and into the realm of speculation in order to find support for a judgment. A finding . . . which is merely the product of conjecture and surmise may not be affirmed.’ ” (*People v. Memro* (1985) 38 Cal.3d 658, 695, overruled on other grounds by *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2; *People v. Marshall* (1997) 15 Cal.4th 1, 35.)

The same standard applies where the prosecution relies primarily on circumstantial evidence. (*People v. Nelson* (2011) 51 Cal.4th 198, 210; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) If the circumstances reasonably justify the jury’s findings, the conclusion of a reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not justify reversal of the judgment. (*Zamudio*, at p. 358.)

Nevertheless, “ ‘ “[c]ircumstantial evidence is like a chain which link by link binds the defendant to a tenable finding of guilt. The strength of the links is for the trier of fact, but if there has been a conviction notwithstanding a missing link it is the duty of the reviewing court to reverse the conviction.” ’ ” (*People v. Williams* (2013) 218 Cal.App.4th 1038, 1053–1054.)

With some exceptions not applicable here, the crime of arson does not include the burning of one’s own property. (§ 451, subd. (d); *In re L. T.* (2002) 103 Cal.App.4th 262, 264–265.) Here, there was no evidence to support a finding that the trash appellant was discovered burning did not belong to him. Grimes first saw the trash in appellant’s possession; he never saw it in anyone else’s possession, nor did he see appellant collect any trash to start or add to the fire. Grimes did not see appellant set the fire, and when Grimes came upon appellant standing next to it, no one else was nearby. For all the evidence showed,

appellant had simply set fire to the remains of his own purchases from the nearby 7-Eleven store.

Respondent contends circumstantial evidence demonstrated that the trash did not belong to appellant, citing appellant's own statement and the fact that he set a string of fires, one after another, in a single day. While this evidence may have been relevant to show that appellant started the fire, it had no bearing on whether appellant set fire to his *own* trash. Respondent argues that appellant's statement, " 'It wasn't me,' " "tended to show that he was burning property he was not permitted to burn." Respondent's interpretation of the statement depends on the improbable assumption that appellant's guilty conscience proceeded not from starting a fire in the middle of the street, but from burning trash that wasn't his. In fact, the only reasonable interpretation of the statement in context is that when caught standing next to a fire in the street, appellant denied starting it because he knew that he could get in trouble for starting a fire in the street.

Further, while the fact that appellant burned trash he foraged from trash cans later in the day may raise a suspicion that he did the same in setting the first fire, the mere suspicion does not constitute evidence that the trash did not belong to him. In the absence of any evidence about the origin of the trash, we are thus left to speculate about how appellant came to be in possession of the trash he was burning. But "speculation, supposition and suspicion are patently insufficient to support an inference of fact," and likewise will not support a conviction. (*People v. Franklin* (2016) 248 Cal.App.4th 938, 951; *People v. Waidla* (2000) 22 Cal.4th 690, 735 [ " 'speculation is not evidence, less still substantial evidence' " ]; *People v. Thompson* (1980)

27 Cal.3d 303, 324 [“ ‘Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact’ ”].)

Because the record contains no substantial evidence that appellant burned property that did not belong to him in connection with count 4, we conclude that his conviction on that count must be reversed.

### **DISPOSITION**

The judgment of conviction on count 4 is reversed. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.