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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ANDREW RODRIGUEZ,

Defendant and Appellant.

B281282

(Los Angeles County
Super. Ct. No. KA111372)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, 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, Assistant Attorney General, Blythe J. Leszkay and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Robert Andrew Rodriguez (Rodriguez) of first degree burglary of a residence. On appeal, Rodriguez contests the sufficiency of the evidence to support his conviction, specifically, the jury's determination that he entered the residence with the intent to commit rape or theft. However, viewing the record in the light most favorable to the judgment, we find there was substantial evidence from which a reasonable trier of fact could find the intent element beyond a reasonable doubt. We thus affirm the conviction.

BACKGROUND

I. Charges and sentence

The Los Angeles County District Attorney filed a four-count information charging Rodriguez with attempted forcible rape (Pen. Code,¹ §§ 664, 261, subd. (a); count 2), first degree burglary (§ 459; count 3), criminal threats (§ 422, subd. (a); count 4), and impersonating a public officer (§ 146a, subd. (b); count 5).² The information also alleged that Rodriguez suffered two prior strike convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), two prior serious felony convictions (§ 667, subd. (a)(1)), and four prior prison terms (§ 667.5, subd. (b)).

Following trial, a jury convicted Rodriguez on count 3 (first degree burglary) and count 4 (criminal threats), but could not reach a verdict on the remaining counts. The court subsequently dismissed the remaining counts at the prosecution's request.

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

² The trial court dismissed count 1 (assault) at the conclusion of the preliminary hearing based on insufficient evidence.

Rodriguez admitted the prior conviction convictions. At sentencing, the trial court imposed a total term of 35 years to life, consisting of 25 years to life on count 3, a concurrent term of 25 years to life on count 4, plus five-year terms for each of the two prior serious felony convictions. The court struck the four prior prison terms.

II. Prosecution evidence

Masae Hayashi (Hayashi) lived with her husband Michiaki Ishimura (Ishimura), their 22-year-old son, Nobuhide, and 17-year-old daughter, Yuri. On December 14, 2015, at 7:30 p.m., Hayashi and her children were having dinner in the kitchen. When Hayashi and the children finished eating, they went upstairs to their rooms. Hayashi and Yuri went into the master bedroom which they shared. Hayashi sat on her bed and watched television as her daughter did her homework. Nobuhide went into his bedroom. Moments later, Rodriguez entered the master bedroom. He opened the closet door and looked around for several seconds. Rodriguez told Yuri to leave the room and ordered Hayashi to take off her clothes. Hayashi refused to follow Rodriguez's order and asked Rodriguez how he got into the house. Rodriguez ignored Hayashi's question and repeated his demand that Yuri leave the room and that Hayashi take off her clothes. Yuri began to cry and Hayashi told Rodriguez to leave. After Hayashi and Yuri refused to comply with his demands, Rodriguez told Hayashi to accompany him downstairs, telling her, " 'If you don't take off your clothes, I will kill you.' "

Hayashi walked out of the room and into the hallway. Rodriguez followed her. Hayashi told Rodriguez to go outside the house if he wanted to talk. Rodriguez remained in the hallway. Hayashi yelled out to her son and husband. Rodriguez told

Hayashi not to call them. When Nobuhide came out of his room, Hayashi told him in Japanese to call the police. Rodriguez ordered Nobuhide to go back into his room. Nobuhide remained where he was, returning to his room to call the police only when his father came upstairs.

When Ishimura walked up the stairs, he confronted Rodriguez and asked him who he was. Rodriguez said he was a Federal Bureau of Investigation (FBI) agent. Ishimura asked to see identification, but Rodriguez refused to show any. Rodriguez asked for the “legal documents” related to the house. Rodriguez said five men were working for him outside and they were ready to come inside upon his request. Ishimura went downstairs, opened the front door, and saw that no one was outside. He returned upstairs and told Rodriguez no one was outside and said that he would be calling the police. Ishimura then went back downstairs. Rodriguez exited the house and left the area.

Deputies from the Los Angeles County Sheriff's Department arrived a short time later. Deputy Julio Pinedo interviewed the family members, inspected the house, and determined that the point of entry was through a window in a downstairs bedroom. Deputy Pinedo reviewed surveillance video from cameras outside the residence. One of the videos showed Rodriguez peering through the kitchen window before he entered the house. From his vantage point, Rodriguez could see the kitchen along with the living room and the beginning of the staircase that went upstairs. Deputy Pinedo contacted the FBI and confirmed that the agency had not sent anyone to the area.

At 11:00 a.m. the next day, Sergeant Tom Harris and Deputy Jason McGinty visited a residential care facility near the

Hayashi residence.³ The deputies told the property manager about the crime and provided a general description of the suspect. The manager identified Rodriguez as someone who lived in the building and matched the description. Rodriguez was arrested at the facility. During a postarrest interview with police, Rodriguez admitted that he knew people were inside the residence and confirmed that he entered through the bedroom window. As he headed for the stairs, Rodriguez said that Ishimura was in the kitchen with his back towards him. After entering the master bedroom upstairs, Rodriguez said he was an FBI agent and told Yuri to leave the room so he could be alone with Hayashi. When asked whether he told Hayashi to take off her clothes, Rodriguez denied making the statement and said he was not a rapist. Rodriguez said he was told to go to the residence to collect money, but refused to say who told him to do so.

III. Defense evidence

The defense rested without presenting any witnesses.

DISCUSSION

On appeal, Rodriguez contests the sufficiency of the evidence to support his first degree burglary conviction, specifically the jury's determination that he entered the residence with the intent to commit rape or theft.

We review the sufficiency of the evidence under the deferential substantial evidence standard of review. “[W]e review the whole record in the light most favorable to the judgment to determine whether it discloses substantial

³ Deputy McGinty provided the address for the location. An online search of that address reveals that it is a residential care facility. (See <http://www.buzzfile.com/business/Royal-Palms-Recovery-Home>.)

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. [Citations.] The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] “Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant’s guilt beyond a reasonable doubt. ‘ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ [Citations.]” [Citation.]’ [Citations.] The conviction shall stand ‘unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” ’ ” (*People v. Cravens* (2012) 53 Cal.4th 500, 507–508.)

“Burglary ordinarily requires (1) unlawful entry into a building with (2) the intent to commit theft or *any* felony. ([Citation]; see § 459.) Entry of an inhabited dwelling house with the requisite intent is burglary of the first degree. (§ 460, subd. (a).)” (*People v. Mejia* (2012) 211 Cal.App.4th 586, 605.) “[I]ntent, as a mental fact, must usually be proved by circumstantial evidence. ‘[S]uch intent must usually be inferred from all the facts and circumstances disclosed by the evidence, rarely being directly provable.’ [Citation.] In [*People v.*] *Matson* [(1974) 13 Cal.3d 35], the court held that evidence that the defendant entered a female victim’s apartment surreptitiously, hid in her bathroom with the lights out, and then denied under

oath that he had done so was sufficient to support a finding of entry with intent to rape.” (*People v. Smith* (1978) 78 Cal.App.3d 698, 704 (*Smith*).) In *Smith*, the evidence that the defendant “was armed with a knife or other object of substance” when he confronted the victim in her apartment and subsequently fled was sufficient evidence to support the defendant’s burglary conviction. (*Ibid.*) The court stated that “ ‘[w]hen the evidence justifies a reasonable inference of felonious intent, the verdict may not be disturbed on appeal.’ ” (*Ibid.*) In order to convict a defendant of burglary, jurors need not “ ‘all agree on the specific “theory” of the entry—i.e., what particular felony or felonies the defendant intended at the time—provided they are told they must be unanimous in finding that a felonious entry took place.’ ” (*People v. Griffin* (2001) 90 Cal.App.4th 741, 750.)

Here, sufficient evidence supported Rodriguez’s first degree burglary conviction. Rodriguez first peered through the kitchen window as the family ate dinner in the kitchen. Moments after Hayashi and her daughter Yuri went upstairs to their bedroom, Rodriguez entered the house and went directly upstairs by slipping through the kitchen without alerting Ishimura. When Rodriguez confronted Hayashi and Yuri in their bedroom, he ordered Yuri to leave the room and that Hayashi remove her clothes. When Hayashi refused to do so, Rodriguez repeated his demand and threatened to kill her if she did not comply. Rodriguez’s postarrest denial to police demonstrated that he understood his purported demand bore the sign of a rapist. Viewing this record in the light most favorable to the judgment, it discloses substantial evidence from which a reasonable trier of fact could find the intent element beyond a reasonable doubt.

Rodriguez contends there was no evidence he had the intent to commit rape as he entered the home because nothing established that he saw the three family members before entering the residence, “much less whether he harbored any intent to rape anyone at the time he entered the residence.” In so arguing, Rodriguez focuses on the fact that he did not initiate physical contact with Hayashi. However, such contact is not required for a conviction. For example, a burglary conviction based on intent to commit rape was upheld where the defendant entered a home and simply tugged on covers at the foot of the bed, fleeing just as the victim awakened. (*People v. Kittrelle* (1951) 102 Cal.App.2d 149, 156.) Similarly, Division Two of our appellate district upheld a burglary conviction based on intent to commit rape or theft where a defendant entered a locked house at night, stood in a hallway with his arms outstretched toward a 15-year-old girl dressed in a nightgown, and ran from the house when she gasped. (*People v. Moody* (1976) 59 Cal.App.3d 357, 363.) In both instances, as in this case, the defendant entered a home and moved toward, but did not actually touch, the intended victim. Here, as in *Kittrelle* and *Moody*, it was enough for the prosecution to show the defendant’s purpose in entering. This we glean from his actions. After waiting until the home’s female occupants went upstairs, Rodriguez entered the house, where he had no business being, and went straight to Hayashi’s bedroom. “Burglarious intent can reasonably be inferred from an unlawful entry alone.” (*People v. Jordan* (1962) 204 Cal.App.2d 782, 786.) Here, of course, we have far more given that Rodriguez tried to isolate Hayashi and ordered her to remove her clothes, threatening to kill her if she did not obey. Although “mere speculation cannot support a conviction” (*People v. Marshall*

(1997) 15 Cal.4th 1, 35), in this case, a trier of fact could reasonably conclude that Rodriguez entered the residence with the requisite intent without the additional factual circumstances suggested by Rodriguez.

Moreover, even if we were to agree that, given the absence of any additional circumstances, a trier of fact may have just as reasonably concluded that Rodriguez entered the home without the requisite intent, reversal is not warranted. (See, e.g., *People v. Lewis* (2001) 25 Cal.4th 610, 643–644.) As we have stated, a reviewing court’s opinion that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Cravens, supra*, 53 Cal.4th at p. 508.) The jury in this case adopted an interpretation of events contrary to Rodriguez’s and our role on appeal is simply to determine whether its findings in support of the burglary conviction are supported by sufficient evidence. The record here contains substantial circumstantial evidence supporting the jury’s finding as to Rodriguez’s felonious intent.

Rodriguez cites the facts of other cases in which evidence of intent was insufficient. However, there is little if any value in comparing the facts of the present case with facts in other cases when reviewing the sufficiency of the evidence. (*People v. Rundle* (2008) 43 Cal.4th 76, 137–138, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421 [because sufficiency of evidence review requires analysis of unique facts and inferences in each case, comparing cases is of little value].) We thus do not need to distinguish his authority.

As noted by the People, there was also sufficient evidence the burglary was committed with the intent to commit a theft. At arrest, Rodriguez stated that he entered the home to collect

money. Although he did not make a statement to that effect during the crime and did not actually take any money, Rodriguez did ask Ishimura and Hayashi to give him documents related to the house. Thus, along with an intent to commit a rape, it was reasonable to infer Rodriguez also harbored an intent to commit a theft.

“In reviewing the evidence on appeal, the applicable test is not whether guilt has been proven beyond a reasonable doubt, but rather whether substantial evidence supports the conclusion of the trier of fact. [Citations.] The reviewing court does not perform the function of reweighing the evidence; instead, the court must draw and inferences in support of the verdict that can reasonably be deduced from the evidence.” (*People v. Culver* (1973) 10 Cal.3d 542, 548.) In other words, we must “accept logical inferences that the jury might have drawn from the circumstantial evidence.” (*People v. Maury* (2003) 30 Cal.4th 342, 396.) Further, if the circumstances reasonably justify the jury’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. (*In re Cesar V.* (2011) 192 Cal.App.4th 989, 995.) Applying these principles, we find sufficient evidence to support the jury’s determination that Rodriguez unlawfully entered the home with the intent to commit rape or theft and thus affirm his conviction.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.