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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSUE DAVID FUNEZ,

Defendant and Appellant.

B278243

(Los Angeles County  
Super. Ct. No. GA098216)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Jared D. Moses, Judge. Affirmed  
Ann-Marissa Cook, under appointment by the Court of  
Appeal, for Defendant and Appellant.  
No appearance for Plaintiff and Respondent.

A jury convicted defendant Josue Funez of one count of residential burglary and found true allegations regarding defendant's prior convictions at a bifurcated proceeding. The trial court sentenced defendant to a total term of 17 years in state prison. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and conclude that no arguable issues exist. We therefore affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

Defendant was charged by information with first degree residential burglary (Pen. Code, § 459<sup>1</sup>). The information alleged defendant suffered a prior strike conviction, also for residential burglary, and accordingly was subject to sentencing under sections 667, subdivisions (b)-(j), and 1170.12. The information further alleged the prior residential burglary conviction was a serious felony within the meaning of section 667, subdivision (a)(1), and that defendant had served prior prison terms for the prior residential burglary conviction and for receiving stolen property (§ 496), within the meaning of section 667.5, subdivision (a).

Prior to defendant's trial, he made a motion to dismiss his counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The trial court held a hearing and denied the motion. For reasons unclear from the record, however, defendant was represented by a different deputy public defender by the time of trial.

At trial, the prosecution called a percipient witness to testify about the burglary. She testified that, around 4:45 p.m. on February 21, 2016, she saw defendant walking down the

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

street across from her home in Alhambra. Defendant was wearing a long-sleeved white shirt. The witness had never seen defendant around there before. As the witness watched from inside her house, defendant approached the house directly across the street. He stood on the side of the house “for a long time,” about five minutes or more, and “it looked like he was trying to open the window.” Eventually, defendant “pulled himself into the window and he went inside the house.”

While the witness was watching defendant, her mother, who was with her, called 911. A recording of portions of the call was played for the jury. The witness’s mother gave her the phone, and the witness told the operator that “it looks like he’s going into my neighbor’s house across directly from us.” The witness next saw defendant about 15 minutes later, when the police arrived. About an hour later, the witness identified defendant in a field show-up. A recording of the witness’s field identification was played for the jury. The witness identified defendant in open court as the same man she saw enter the house and identified during the field show-up.

The prosecution also presented testimony from three Alhambra police officers who responded to the 911 call. Officer Brendan Thomas testified that he saw a man wearing a long-sleeved white shirt and tan pants coming out of the backyard of a home. Thomas identified the man in court as defendant. Thomas informed defendant that he was responding to a call about a suspicious person walking around the home, and defendant told Thomas that he was there to see his friend Andrew. Another responding officer, Mark Vega, handcuffed defendant and patted him down. During the search, Vega found a screwdriver, scissors, and a rose gold women’s watch in defendant’s right front

pocket. Vega found a wad of cash and a cell phone in defendant's left front pocket. Thomas opined that scissors and screwdrivers are commonly used as burglary tools.

After defendant was detained in a patrol car, Thomas and another responding officer, Joseph Wilson, walked around the perimeter of the house outside of which defendant was found. Thomas testified that two windows "appeared to be tampered with": one window screen appeared to have been cut, and another had been removed. Thomas testified that one of the damaged windows led to a bedroom that appeared to have been ransacked. "The drawers were pulled out of the dressers and clothes were thrown about the floor."

Wilson testified that he took the percipient witness to a field show-up later in the evening. She positively identified defendant as the person she had seen entering the house across the street from hers. Thomas talked to the residents of the burgled home, and all of them stated that no one named Andrew lived there.

The prosecution's final witness was the resident of the ransacked bedroom in the burgled home. She testified that she had left the house to run errands at around 4:00 p.m. on February 21, 2016. When she left, none of the windows in the house were open, and her room, which she had cleaned earlier that day, was organized. Her rose gold watch was on her dresser or shelf. When she returned to the house around 5:00 p.m., her bedroom window was open and her bedroom was "completely thrown apart." The victim "felt violated" by the invasion of her space. Several other people lived in her house, but none of them was named Andrew. She had never seen defendant before and had not given him permission to enter her home.

Defendant's motion for judgment of acquittal under section 1118.1 was denied. Defendant exercised his constitutional right not to testify but called one witness, another resident of the burgled home, on his behalf. That witness testified that he later discovered two laptop computers and some "DJ headphones" were missing from his bedroom. Those items never were returned to him.

The court instructed the jury using the CALJIC pattern instructions. After the jury indicated it had reached a verdict, but before the verdict was read, the prosecution sought leave to file an amended information alleging three additional one-year prison priors under section 667.5, subdivision (b) and removing charges pertaining to another individual. The trial court granted leave to amend over defendant's objection.

The jury returned a guilty verdict. Defendant then proceeded to a jury trial on his priors. The prosecution presented testimony from a paralegal familiar with state prison prior packets, and the court admitted three prison prior packets into evidence. The jury found all of the priors allegations true.

Prior to sentencing, defendant filed a motion to dismiss his strike prior pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The trial court denied the *Romero* motion due to defendant's "significant, substantial, ongoing, unbroken criminal history." The court nevertheless struck the belatedly added one-year priors "in the interest of justice" and to ensure that the previous residential burglary conviction was not improperly used to support multiple sentencing enhancements. The court sentenced defendant to the high term of six years, doubled that sentence due to the prior strike, and imposed an additional five years pursuant to section

667, subdivision (a)(1), for a total prison term of 17 years. The court imposed various fines and fees and awarded defendant 218 days of actual custody credit and 218 days of good time/work time credit.

Defendant timely appealed.

### **DISCUSSION**

After examining the record, appointed appellate counsel filed a brief raising no issues, but asking this court to independently review the record on appeal pursuant to *Wende, supra*, 25 Cal.3d at pp. 441-442. On March 6, 2017, we advised defendant that he had 30 days to file a supplemental letter brief raising any issue he wished this court to consider. Defendant timely submitted a letter brief in which he asserts his innocence. He argues that the percipient witness testified falsely and claims that he found the rose gold watch near the sidewalk and intended to return it to its owner. We interpret defendant's arguments as a challenge to the sufficiency of the evidence supporting his conviction.

In reviewing the sufficiency of the evidence to support a conviction, "we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to

justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Defendant was convicted of first degree burglary in violation of section 459. That statute provides in pertinent part: “Every person who enters any house, room, apartment . . . with the intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, ‘inhabited’ means currently being used for dwelling purposes, whether occupied or not.” Section 460, subdivision (a) further provides that “[e]very burglary of an inhabited dwelling house . . . is burglary of the first degree.” The elements of first degree burglary accordingly are: (1) entry into a structure currently being used for dwelling purposes (2) with the intent to commit a theft or a felony. (See *People v. Anderson* (2009) 47 Cal.4th 92, 101.)

The trier of fact—the jury—concluded that those elements were proven beyond a reasonable doubt. Our review of the record establishes that substantial evidence supported the jury’s findings. “[D]irect evidence of one witness who is entitled to full credit is sufficient for proof of any fact.” (Evid. Code, § 411.) The percipient witness testified that she saw defendant enter the window of the house across the street from hers. Defense counsel cross-examined the witness and argued that she was “misremembering or embellishing.” The jury found the witness

credible, and we cannot reweigh or reconsider that finding on appeal. Two other witnesses, including defendant's witness, provided direct evidence that they inhabited the house. There was no direct evidence as to defendant's intent; defendant did not argue at trial that he picked up the watch from the sidewalk. However, it was reasonable for the jury to infer that defendant intended to commit a theft because the resident's watch was found in defendant's pocket, along with burglary tools. In short, substantial evidence supported the verdict.

In addition to considering defendant's claims, we have independently reviewed the entire record for other arguable issues. We are satisfied that no arguable issues exist and defendant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

#### **DISPOSITION**

The judgment is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.