

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE ,

Plaintiff and Respondent,

v.

DOMINIQUE DAJON FANTROY,

Defendant and Appellant.

B269553

(Los Angeles County
Super. Ct. No. BA434674)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Affirmed with directions.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Dominique Dajon Fantroy (defendant) was convicted by a jury of the first degree residential robbery of Rafael Lopez (Pen. Code,¹ § 211; count 1), and the first degree residential burglary of Martha Johns (§ 459; count two).² On appeal, defendant contends (1) substantial evidence did not support his conviction on either count, and (2) the abstract of judgment should be corrected to accurately reflect the trial court's award of pre-sentence custody credits. As we now discuss, we affirm the conviction and order the abstract of judgment corrected to accurately reflect defendant's pre-sentence custody credits.

FACTUAL AND PROCEDURAL BACKGROUND

Viewed in accordance with the usual rules of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence at trial established the following.

I.

The January 8, 2015 Robbery of Rafael Lopez's Residence

In January 2015, Rafael Lopez lived at 3339 West 41st Street in Los Angeles. Lopez testified that on January 8, 2015, he and his wife left the house at about 12:30 p.m. When they returned at about 2:15 p.m., a black car was parked in front of their house. Lopez and his wife entered the house and saw a young African-American woman and man inside one of the bedrooms. The man was carrying one of Lopez's pillow cases over

¹ All subsequent undesignated statutory references are to the Penal Code.

² Defendant and a codefendant, Deshaun Johnson, were tried together. Johnson is not a party to this appeal.

his left shoulder. The man struck Lopez's head with his right fist and then fled out the back door. Lopez briefly lost consciousness. When he regained consciousness, he saw that his house had been ransacked, and money and jewelry had been taken from his grown daughter's bedroom. Lopez also discovered in his kitchen a screwdriver and a cell phone that did not belong to him and had not been in the house when he left.

Detectives came to Lopez's house to investigate the break-in. According to the detectives' report, Lopez described the male suspect as about five feet five inches tall, 160 pounds, and 40 years old. The detectives showed Lopez photographs of two individuals, but at time of trial Lopez could not recall whether he had recognized them; he also was not sure whether the defendant, who was seated in the courtroom, was the man who robbed him. Lopez said he was "confused" because the blow to his head "affected my mind."³ Lopez testified he had never employed an African-American man to work at his house.

Officer Dennis Clark testified that on January 8, 2015, he responded to a report of a robbery at Lopez's residence. The residence had been ransacked. Clark recovered a cell phone that apparently had been left behind by the robbers. Clark and his partner determined that the robbers had entered Lopez's home through the kitchen window or door at the back of the house.

³ When asked if defendant was the man he saw in his house, Lopez said, "My memory is not good. I could say it was him, and I could say it's not him." The court asked, "Are you saying you're not sure?" Lopez replied: "That's it. I'm very confused. It could be him. It could not be him, because of my mind, because of my memory."

Clark directed that various areas of the house be dusted for fingerprints.

Larry Pellen, a Los Angeles Police Department (LAPD) forensic print specialist, testified that he participated in the robbery investigation of Lopez's home. He captured a palm print on the outside of the back door, as well as a print from a cell phone that was found under the kitchen window.

Nicole Osborn, an LAPD forensic print specialist, testified that she ran the prints recovered from Lopez's house through the Automated Fingerprint Identification System (AFIS). She concluded that the palm print recovered from Lopez's back door had been made by defendant's left palm.

Asia Hodge, an LAPD detective, testified that she was assigned to investigate the Lopez robbery. Detective Hodge obtained a warrant to search the cell phone recovered from Lopez's house and determined that it belonged to a woman named Mavis McField. Detective Hodge showed Lopez a "12-pack" photo array of 12 men, including defendant and Johnson. Lopez picked two photographs: the photograph of defendant and the photograph of an unidentified individual with similar features. Lopez said they "looked familiar, but he couldn't . . . say with 100-percent certainty if one person was the person that was there at the time of the . . . incident." Detective Hodge also showed Lopez a "six-pack" photo array of six women, including Mavis McField, but Lopez was not able to identify anyone.

Detective Hodge said that burglaries are usually planned and involve several people. Often, one person acts as the "lookout" while another person forcibly enters the home. Detective Hodge testified that defendant was six feet two inches

tall, weighed 215 pounds, and appeared to be well under 40 years old.

II.

The January 11, 2015 Burglary of Martha Johns's Residence

Martha Johns lived at 5526 West 133rd Street in Hawthorne. On January 11, 2015, Johns left her house at 6:00 a.m. to go to work. Her doors and windows were locked. When she returned home, there were police vehicles on her street and a police officer told her that her house had been burglarized. In her guest bedroom, Johns saw that a pillow case was missing and the drawers of a chest and bedside table had been opened. Nothing appeared to have been taken from those drawers. She later discovered that a sliding glass door at the back of the house had been smashed and a small velvet bag containing the remains of a pet had been removed from a shelf near the back door. To Johns's knowledge, nothing else had been taken from her house. Johns did not recognize defendant and said he did not have permission to break into her home.

Cliff Meidl lives across the street from Johns. On January 11, 2015, Meidl called 911 after seeing an African-American man climb over a fence near Johns's house. While Meidl was speaking to the 911 operator, he saw a black Ford parked on his street. He saw an African-American individual "come up from" the driver's seat. About fifteen minutes later, Meidl saw the man who had climbed the fence—subsequently identified as defendant—on top of the roof of the neighboring house. Police officers surrounded the area, helped defendant down from the roof, and arrested him.

Anthony Barlin, an officer with the Hawthorne Police Department, testified that on January 11, 2015, he responded to a report of a suspicious person across the street from 5531 West 133rd Street. When Detective Barlin arrived at the location, he saw a black Ford sedan parked on the street. Deshaun Johnson exited the sedan with his cell phone in his hand. Officer Barlin took Johnson into custody. During a subsequent interview, Johnson admitted to “flocking” (burglarizing homes) in the past.

Robert Shay, an officer with the Hawthorne Police Department, testified that as he circled the block immediately following the burglary, he saw a woman, later identified as Mavis McField, squatting down behind a tree on the front porch of 5506 134th Street. Officer Shay detained her.

Jonathan Skovold, an officer with the Hawthorne Police Department, testified that he participated in the investigation of the suspected burglary on January 11, 2015. When he entered Martha Johns’s house, he saw that the west-facing sliding glass door had been broken and a cream-colored pillow case was in the yard. Once inside, he saw that one bedroom had been ransacked.

Raul Espinoza, a Hawthorne Police Department detective, observed defendant on the roof of Johns’s neighbor’s house immediately following the burglary. He instructed defendant to climb down, and then took him into custody.

During a recorded phone call defendant made from jail, defendant said that he climbed onto the roof of Johns’s neighbor’s house because “I knew it was low-key raining so I knew they wasn’t going to put the helicopter up. So that’s why I got on the roof.”

Steve Lovell is an LAPD officer assigned to the Southwest Gang Enforcement Detail. He testified that defendant, Deshaun Johnson, and Mavis McField are all members of the Rollin 30's Harlem Crips, a criminal street gang. The gang's primary activities include narcotics sales, burglaries, and robberies. Officer Lovell testified that in his opinion, the Lopez robbery and Johns burglary were committed for the benefit of a criminal street gang.

Martin Flores, a gang expert called by the defense, testified that based on the facts of this case, it was his opinion that the Lopez robbery and Johns burglary were not committed for the benefit of a gang. He did not opine as to defendant's, Johnson's, or McField's membership in the Rollin 30's gang.

III.

Information, Verdict, and Appeal

Defendant and Johnson were charged by information with the first degree residential robbery of Lopez, in violation of section 211 (count 1), and with the first degree residential burglary of Johns, in violation of section 459. Both offenses were alleged to have been committed for the benefit of a criminal street gang within the meaning of section 186.22, subdivisions (b)(1)(B)-(C).

The jury found defendant guilty of the first degree robbery of Lopez (count 1), and of the first degree burglary of Johns (count 2).⁴ The jury found not to be true the allegations that the offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent

⁴ The jury acquitted Johnson of the robbery of Lopez, but convicted him of the burglary of Martha Johns.

to promote, further, and assist criminal conduct by gang members.

The court sentenced defendant to consecutive terms of six years on count one and sixteen months on count two. The court ordered defendant to pay a \$300 restitution fine, a \$300 parole revocation restitution fine, a \$40 court security fee assessment, and a \$30 criminal conviction facilities assessment.

Defendant timely appealed from the judgment of conviction.

DISCUSSION

I.

The Verdict Is Supported by Substantial Evidence

Defendant contends the prosecution failed to present sufficiently reliable evidence to establish beyond a reasonable doubt that he participated in the Lopez robbery, as alleged in count one, and in the Johns burglary, as alleged in count two. For the reasons that follow, we conclude that the evidence was sufficient to support defendant's convictions on both counts.

A. Standard of Review

In assessing the sufficiency of the evidence, we review the entire record to determine whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) "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." (*Ibid.*)

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 deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The same standard applies where the conviction rests primarily on circumstantial evidence. (*People v. Thompson* (2010) 49 Cal.4th 79, 113.) We may not reweigh the evidence or resolve evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Accordingly, we may not reverse for insufficient evidence unless it appears “ ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

B. Substantial Evidence Supported Defendant's Conviction of the Lopez Robbery

Defendant urges the evidence failed to establish beyond a reasonable doubt that he participated in the Lopez robbery. For the reasons that follow, the contention is without merit.

There was strong circumstantial evidence connecting defendant to the robbery. “[U]nder California law, it is established that fingerprints are strong evidence of identity and ordinarily are sufficient, without more, to identify the perpetrator of a crime. (*People v. Johnson* (1988) 47 Cal.3d 576, 601; *People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1588 [palm prints found on a window which was the point of entry for a burglary were sufficient for a conviction where there was no evidence the defendant, who had visited the apartment before the burglary, had been present after the window was cleaned and there was no evidence the defendant would have had occasion to place his hand on the window ‘except to gain surreptitious entry into the apartment’]; *People v. Preciado* (1991) 233 Cal.App.3d 1244, 1247 [fingerprints on a wristwatch box in a burglarized apartment were sufficient for a conviction because the victim did not know

the defendant and the box, which the victim received as a gift 18 months earlier, had never left the home].)” (*People v. Tuggle* (2012) 203 Cal.App.4th 1071, 1076.)

In the present case, as we have discussed, defendant’s palm print was found on the outside of the back door of Lopez’s house, which was determined to have been the robbers’ point of entry. Although the prosecution’s forensic expert could not say that the palm print had been left the day of the robbery, the defense did not offer any alternative explanation for the presence of defendant’s palm print on Lopez’s back door, and Lopez testified that he did not know defendant and had never employed an African-American man to work at his house. Accordingly, the jury reasonably could infer from the palm print evidence that defendant participated in the January 8, 2015 robbery of Lopez’s home.

Further, defendant was one of two men Lopez picked out of the photographic array. Although Lopez “couldn’t . . . say with 100-percent certainty if [one of the two people he picked out of the photo array] was the person that was there at the time of the . . . incident,” his identification of defendant is significant. As courts have noted, “ ‘In order to sustain a conviction it is not necessary that the identification be positive or free from inconsistencies.’ ” (*People v. Martinez* (1962) 206 Cal.App.2d 809, 812.) “The identification of the defendant need not be positive. . . . Testimony that a defendant ‘resembles’ the robber [citation] or ‘looks like’ the same man [citation] has been held sufficient.” (*People v. Yates* (1958) 165 Cal.App.2d 489, 494.)

Finally, the palm print evidence and Lopez’s identification of defendant was strengthened by the additional evidence that (1) Mavis McField’s cell phone was found in Lopez’s house after

the robbery, (2) three days after the Lopez robbery, defendant and McField were arrested together for the Johns burglary, (3) defendant and McField were both members of the same criminal street gang, whose primary activities included burglaries and robberies, and (4) the same method was used to gain entry and burglarize the Lopez and Johns homes—i.e., a back door or window was forced open, a pillow case was removed from a bed, rooms were ransacked, and small items that appeared to be of value were taken. Evidence that defendant and McField committed a burglary together on January 11, 2015, strengthened the inference that defendant and McField had committed a similar crime together three days earlier.⁵ Coupled with evidence that defendant’s palm print was found on the back door of Lopez’s house—a house that he had never been given permission to enter—and Lopez’s positive identification of defendant, the evidence before the jury was more than sufficient to support defendant’s conviction of the Lopez robbery.

⁵ In this regard, the prosecutor argued: “How does [the fact that McField’s phone was left at the Lopez crime scene] prove Mr. Fantroy’s identity, you may ask? Three days later on the [11th] of January, they’re together again. It’s a circumstantial piece of evidence. It doesn’t directly prove it, but it is another piece of evidence showing that Mr. Fantroy was the one that did that crime that day. [¶] . . . [¶] I point your attention to the pillowcase, ladies and gentlemen, that Mr. Lopez said he saw his assailant carrying over his shoulder. It’s a small piece of evidence, but the method is the same Again, showing you the photograph of the outside of Ms. Johns’[s] house, what is that? What is that that was found outside of her house? It is a pillowcase, the same method, the same way of assembling property.”

Defendant urges that the evidence did not sufficiently tie him to the robbery because Lopez could not conclusively identify defendant as his attacker and, indeed, told the police that his attacker was shorter, weighed less, and was older than defendant. We do not agree that Lopez's failure to conclusively identify defendant is dispositive. As we have said, an identification need not be positive or free from inconsistencies to sustain a conviction. (E.g., *People v. Martinez, supra*, 206 Cal.App.2d at p. 812.) In any event, Lopez's inability to conclusively identify defendant is readily explained by the blow to the head Lopez sustained during the robbery, which caused him to briefly lose consciousness and to suffer apparent memory loss. By his own account, the blow to his head "affected [Lopez's] mind" and caused him to feel "confused." Accordingly, Lopez's failure to conclusively identify defendant following the robbery or to identify him at trial does not undermine the jury's verdict.

*C. Substantial Evidence Supported Defendant's
Conviction of the Johns Burglary*

Defendant urges the evidence failed to establish beyond a reasonable doubt that he participated in the Johns burglary. Again, we do not agree.

Viewed in the light most favorable to the verdict, the evidence established that around the time someone broke into and burglarized Johns's house, defendant was seen climbing over Johns's fence and then was found on the roof of a neighboring house. During a jailhouse phone call, defendant said he climbed up on the roof because it was raining and he knew "they"—presumably, the police—"wasn't going to put the helicopter up" during a rainstorm. Defendant, Johnson, and McField—who were all discovered in the vicinity of Johns's home immediately

after the burglary—were members of the same criminal street gang, whose primary activities include burglaries and robberies. There was no evidence that defendant or his associates lived in the area in which they were arrested, and defendant gave no explanation for his presence in the neighborhood or on the roof. Based on this evidence, the jury reasonably could conclude that defendant had participated in the Johns burglary and had climbed onto the roof of the neighboring house to avoid arrest.

Defendant challenges the verdict based on the absence of various kinds of evidence—i.e., evidence that he possessed burglary tools, that his fingerprints were found in or near Johns’s house, that anyone saw him enter or leave the house, that he had any cuts or lacerations associated with breaking a glass door, or that he possessed any items taken from Johns’s home. These arguments “are nothing more than an effort to get us to reweigh the evidence after a jury verdict, which is not our job when reviewing a verdict for sufficiency of the evidence.” (*People v. Mejia* (2012) 211 Cal.App.4th 586, 608.) Accordingly, we reject them.

II.

The Abstract of Judgment Should Be Corrected to Accurately Reflect the Trial Court’s Award of Pre-Sentence Custody Credits

Defendant claims, and the Attorney General agrees, that the abstract of judgment should be corrected to reflect the trial court’s oral pronouncement that defendant “is given 196 days of presentence credits.” We agree. “It is well settled that [a]n abstract of judgment is not the judgment of conviction; it does not control if different from the trial court’s oral judgment and may not add to or modify the judgment it purports to digest or

summarize. [Citation.]’ [Citation.] When an abstract of judgment does not reflect the actual sentence imposed in the trial judge’s verbal pronouncement, this court has the inherent power to correct such clerical error on appeal, whether on our own motion or upon application of the parties. [Citation.]” (*People v. Jones* (2012) 54 Cal.4th 1, 89.) We therefore order that the abstract of judgment be corrected to conform to the trial court’s oral pronouncement that defendant receive 196 days of presentence credit.

DISPOSITION

For the reasons discussed above, we affirm the judgment in its entirety. With respect to the abstract of judgment, the superior court is directed to prepare a corrected abstract of judgment that reflects the trial court's award of 196 days of presentence credit, and to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

JOHNSON (MICHAEL), J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.