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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAUN MARVEL ALLEN,

Defendant and Appellant.

B229920

(Los Angeles County
Super. Ct. No. GA079751)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dorothy L. Shubin, Judge. Affirmed.

Rita L. Swenor, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and
Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Shaun Marvel Allen, appeals the judgment entered following his conviction for residential burglary, with prior serious felony conviction findings (Pen. Code, §§ 459, 667, subd. (a)-(i)).¹ He was sentenced to state prison for a term of 35 years to life.

The judgment is affirmed.

BACKGROUND

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

1. Prosecution evidence.

On the morning of April 13, 2010, Stephanie Cram was driving down Morada Place in Altadena when she saw a used orange Cadillac with no license plates make a U-turn and then drive very slowly. The Cadillac eventually stopped two or three houses from the corner of Hill Avenue and parked. A skinny young man exited the Cadillac with a backpack and walked up the driveway to a house. The driver stayed in the Cadillac. Cram did not believe these people lived at that house, so she called 911.

Cram testified she was about 10 houses away from the Cadillac when she saw the man exit the car and walk up the driveway. She was watching this man through her rear- and side-view mirrors, and she acknowledged not having had a really clear view of him.

Los Angeles County Sheriff's Deputy Gregory Gabriel and his partner left the Altadena Sheriff's Station in response to the burglary-in-progress call. When they arrived, other officers who were already at the house directed them to go to the next street over, New York Drive, and look for the suspect.

Less than 10 minutes after having left the police station, Gabriel spotted defendant Allen walking down New York Drive. Allen looked agitated; he was "flailing [his] arms wildly." As the patrol car approached, Gabriel saw Allen hit the side of a parked vehicle several times with his fist and then throw an object resembling a white ball onto the

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

ground.² The officers ordered Allen to stop and detained him. Gabriel retrieved the object Allen had thrown. It turned out to be a balled-up pair of gym socks. Inside the socks there was a gold chain necklace. It was broken near the clasp and there was a price tag attached to it. Gabriel did not find a backpack or any other jewelry in the area.

Sue Feinberg lived at 1430 Morada Place. When she left the house that morning, she opened the back door so her dog could go outside. When she returned home after the burglary, Feinberg found her daughter's jewelry box turned upside down on her bed. In Feinberg's own bedroom, she found her closet door open and her blood pressure cup, which was usually kept inside the closet, on top of the bed. Shown the necklace discarded by Allen, Feinberg identified it as belonging to her daughter. Feinberg's daughter also identified the necklace and testified her grandmother had given it to her sometime around April 1 as a birthday gift. She last saw the necklace on her dresser before she left for school the morning of the burglary. The necklace had not been broken at that time.

Detective Derric Taylor interviewed Allen at the police station. Allen said the necklace in his socks belonged to his girlfriend and that she had asked him to have it repaired. Allen said he had been out for a morning walk on New York Drive when his feet began hurting, so he took his socks off. When he saw the approaching deputies, he discarded the socks. Allen did not say why the necklace was inside his socks.

Feinberg testified she and her daughter subsequently discovered that a second necklace was missing. This was a gold chain, with an astrological medallion hanging from it, which had been another birthday gift.

² Gabriel testified: "As we drove closer to him, I noticed that . . . in addition to flailing his arms rather wildly – he kind of hit the side of a parked white SUV several times with his left fist and then it appeared that something was thrown from his fist at that time, onto the pavement there." "It appeared to be like a white object, ball, maybe a softball or something at that point. That is the best we could observe at that point."

CONTENTION

There was insufficient evidence to sustain Allen's conviction for burglary.

DISCUSSION

Allen contends there was insufficient evidence to sustain his burglary conviction because there was no evidence he had ever been inside Feinberg's house. This claim is meritless.

1. *Legal principles.*

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence – that is, 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.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The standard of review is the same in cases in which the prosecution relies 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.]” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

"The crime of burglary consists of an act – unlawful entry – accompanied by the ‘intent to commit grand or petit larceny or any felony.’ (§ 459.) One may be liable for burglary upon entry with the requisite intent to commit a felony or a theft (whether felony

or misdemeanor), regardless of whether the felony or theft committed is different from that contemplated at the time of entry, or whether any felony or theft actually is committed.” (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041-1042, fn. omitted.) That is, “the gist of [burglary] is *entry* with the proscribed intent, and . . . such an entry constitutes the completed crime of burglary ‘regardless of whether . . . any felony or theft actually is committed.’ [Citation.]” (*People v. Allen* (1999) 21 Cal.4th 846, 863, fn. 18.)

“Possession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt. [Citations.] This court stated in *People v. Lyons*, 50 Cal.2d 245, 258 [disapproved on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 32], ‘[Possession] of stolen property, accompanied by no explanation, or an unsatisfactory explanation of the possession, or by suspicious circumstances, will justify an inference that the goods were received with knowledge that they had been stolen. The rule is generally applied where the accused is found in possession of the articles soon after they were stolen.’ [Citations.] In *People v. Citrino* [1956] 46 Cal.2d 284, 288-289, after pointing out that corroboration need only be slight and may be furnished by conduct of the defendant tending to show his guilt, we said, ‘. . . the failure to show that possession was honestly obtained is itself a strong circumstance tending to show the possessor’s guilt of the burglary.’ ” (*People v. McFarland* (1962) 58 Cal.2d 748, 754.)

“Our Supreme Court has indicated that the slight corroboration that permits an inference that the possessor knew that the property was stolen may consist of no explanation, of an unsatisfactory explanation, or of other suspicious circumstances that would justify the inference. [Citation.]” (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1575.)

2. Discussion.

Allen argues the evidence established no more than his “presence a few blocks from the Morada residence and that he [was] detained near the place where one of the stolen necklaces was found.” Not so.

As the Attorney General points out: Allen “was apprehended shortly [after the burglary] a short distance from the home in possession of one of the necklaces that was stolen from the residence. When the officers approached appellant, he was acting peculiar, flailing his arms wildly, looking ‘agitated,’ and hitting the side of a parked car with his . . . fist. Appellant then attempted to discard the necklace, which was concealed in a sock, by throwing it on the ground. When questioned about the necklace, appellant falsely claimed that it belonged to his girlfriend and stated that he had been given the necklace to have it repaired.”

Allen complains Cram’s physical description of the suspect who walked up the driveway did not match him, and points out he was not found in possession of the second missing necklace. However, Cram acknowledged she did not get a good look at the suspect, whom she had been watching through her rear- and side-view mirrors from a fair distance away. Allen’s identity as the perpetrator was primarily established by his possession of the stolen necklace, not by an eyewitness identification. And, as the Attorney General says, the fact Allen “was not found with the backpack or the second necklace [does] not negate the fact that he *was* found with one of the stolen necklaces.”

There was sufficient evidence to sustain Allen’s conviction.

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.