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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.R., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

A133922

(Solano County  
Super. Ct. No. J40903)

Following a contested jurisdictional hearing on October 17, 2011, the juvenile court sustained an allegation that appellant J.R had committed a first-degree residential burglary (Pen. Code, § 459<sup>1</sup>; Welfare & Inst. Code, § 602).<sup>2</sup>

Assigned counsel has submitted a *Wende*<sup>3</sup> brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that J.R. has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

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

<sup>2</sup> The juvenile court dismissed an attempted burglary allegation at the commencement of the hearing on motion of the prosecution.

<sup>3</sup> *People v. Wende* (1979) 25 Cal.3d 436.

We find no arguable issues and therefore affirm.

### **BACKGROUND**

At approximately 4:18 p.m. on June 6, 2011, D.J. was at home when he heard the doorbell ring. He ignored the bell because he was playing video games. Shortly thereafter, he heard strange noises coming from the backyard. Looking into the backyard from an upper floor of his house, D.J. saw two males in his backyard, one wearing a black hoodie and the other wearing a white shirt.<sup>4</sup> He called the police.

J.R. and another minor were stopped shortly thereafter by Fairfield police officers near D.J.'s home. J.R. was wearing a white t-shirt. D.J. identified J.R. as the individual in the white t-shirt who had been in his backyard. D.J. and J.R. were schoolmates.

J.R. initially denied having been in the backyard of D.J.'s home and claimed that he had been walking through the neighborhood on the way to a friend's house. After being transported to juvenile hall, J.R. was reminded of his *Miranda* rights and told Fairfield Police Officer Steven Carnahan that he had gone to D.J.'s house to collect a \$90 debt that D.J. owed him. When no one answered the doorbell, J.R. pried the screen off of the front window next to the door, but he was unable to open the window. He then tried unsuccessfully to open a sliding glass door from the rear yard.

At the jurisdictional hearing, J.R. testified that he went to D.J.'s home intending to confront D.J. about the money owed to J.R.<sup>5</sup> After getting no response to the doorbell, J.R. admitted that he removed a screen and tried unsuccessfully to open a window; he then entered the backyard and tried to open a locked sliding-glass door at the rear of the house. When asked what he planned to do if he had been able to gain entry to the house, J.R. responded "I didn't think that far. I just wanted to confront [D.J]."

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<sup>4</sup> In his initial report to police, D.J. indicated that there may have been three individuals in the backyard.

<sup>5</sup> The dispute between D.J. and J.R. arose over a defective iPhone which D.J. sold to J.R. for \$90.

On prosecution rebuttal, Carnahan testified that J.R. had told him that, after ringing D.J.'s doorbell and receiving no response, J.R. concluded that no one was home. J.R. also said that he intended to break into the house to collect his debt.

J.R.'s counsel did not dispute that removal of the window screen constituted a sufficient entry for purposes of burglary, but argued that the evidence did not show that J.R. had any felonious intent when he admittedly attempted to break into D.J.'s house. The court found that J.R. had attempted to break into the house believing that no one was present, and that his intent was to commit theft in order to "collect his debt." The court found that the burglary allegation had been proven beyond a reasonable doubt.

At the dispositional hearing on November 28, 2011, the juvenile court declared J.R. a ward of the court and placed him on probation in his parents' home. Standard terms and conditions of probation were imposed. A timely notice of appeal was filed.

#### **DISCUSSION**

Our review of the record reveals no arguable issues. J.R. admitted to police, and admitted in his testimony, that he attempted to enter the house and had removed a screen in his effort to do so. A person who enters a dwelling with intent to commit grand or petit larceny or any felony is guilty of burglary. (§ 459.) Any kind of entry, complete or partial, will suffice. (*People v. Valencia* (2002) 28 Cal.4th 1, 13.) "[E]ven the minimal entry effected by penetration into the area behind a window screen—without penetration of the window itself—is 'the type of entry the burglary statute was intended to prevent.' [Citation.]" (*Ibid.*)

The only contested issue at the jurisdictional hearing was J.R.'s intent at the time he attempted entry into the house and removed the window screen. The trial court found that, consistent with his statement to Carnahan, J.R. believed that no one was home, and that J.R. intended to take property in self-help collection of money that he claimed D.J. owed him. An essential element of any theft crime is the specific intent to permanently deprive the owner of his or her property. (*People v. Avery* (2002) 27 Cal.4th 49, 54.) The law recognizes that a good faith "claim-of-right" to specific property may negate felonious intent. (*People v. Williams* (2009) 176 Cal.App.4th 1521, 1526–1527.) "The

claim-of-right defense is based on the sound concept that a person who acts under a good faith belief that he is repossessing his own property lacks felonious intent to deprive another of his or her property. [Citation.]” (*Id.* at p. 1528.)

A defendant has no right to self-help reimbursement, however, on an unliquidated claim. “ “It is a general principle that one who is or believes he is injured or deprived of what he is lawfully entitled to must apply to the state for help. Self-help is in conflict with the very idea of social order. It subjects the weaker to risk of the arbitrary will or mistaken belief of the stronger. Hence the law in general forbids it.” ’ [Citation.]” (*People v. Tufunga* (1999) 21 Cal.4th 935, 952–953 (*Tufunga*) [recognizing, but limiting, a bona fide claim-of-right defense to the larceny element of robbery].) In *Tufunga*, our Supreme Court noted that section 511, which provides a defense to a charge of embezzlement for property appropriated under a claim of title preferred in good faith, expressly excludes unlawful retention of the property of another “to offset or pay demands held against him,” and that section 490a<sup>6</sup> has expanded that application to all theft-related offenses. (*Tufunga*, at p. 952 & fn. 4; see also *People v. Creath* (1995) 31 Cal.App.4th 312, 318–319; *People v. Romo* (1990) 220 Cal.App.3d 514, 518–519.) J.R. was properly found to have committed a burglary.

#### **DISPOSITION**

The judgment is affirmed.

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<sup>6</sup> “Wherever any law or statute of this state refers to or mentions larceny, embezzlement, or stealing, said law or statute shall hereafter be read and interpreted as if the word ‘theft’ were substituted therefor.” (§ 490a.)

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Bruiniers, J.

We concur:

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Jones, P. J.

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Needham, J.