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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK WAYNE DAVIS,

Defendant and Appellant.

A145539

(San Mateo County
Super. Ct. No. SC082135A)

Patrick Wayne Davis (appellant) appeals from a judgment entered after a jury convicted him of second degree burglary (Pen. Code, § 460, subd. (b), count 1),¹ fraudulent use of access card or account information (§ 484g, subd. (a), count 2), and theft of access card or information (§ 484e, subd. (d), count 3), and the trial court found true an enhancement allegation and placed him on three years probation with various conditions including that he serve six months in county jail. He contends there was insufficient evidence to support the second degree burglary conviction. We reject the contention and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed October 16, 2014, charging appellant with second degree burglary (§ 460, subd. (b), count 1), fraudulent use of access card or account information (§ 484g, subd. (a), count 2), and theft of access card or information (§ 484e, subd. (d), count 3). The information further alleged appellant was ineligible for probation (§ 1203,

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

subd. (e)) due to four prior felony convictions for violations of Health and Safety Code, sections 11350 (in November 1997, January 2001, and July 2010) and 11352 (in March 1990).

On the evening of May 31, 2014, Anastacia Espanol was working as a sales representative at Hertz Rental Car at the San Francisco Airport. At about 6:30 or 6:50 p.m., appellant arrived and said he had a reservation to rent a vehicle. Espanol found appellant's reservation on her computer and asked him for his driver's license and credit card; appellant gave her both. The driver's license, which had appellant's picture and the name Patrick Wayne Davis, appeared to be valid. The credit card was a Capital One MasterCard.

Following "company policy," Espanol ran appellant's credit card through a scanner to see if the card was legitimate. The scanner was supposed to show the full name but only the last name "Davis" appeared on the scanner.² Espanol became suspicious. Without telling appellant there was an issue with his card, Espanol went to the back of the office with the card to ask her colleague, Hector Hernandez, to check whether the card was legitimate. Espanol told Hernandez that only the last name appeared when she ran the card through the scanner. Espanol left the card with Hernandez and returned to the front to tell appellant, "The car is not ready. They're still preparing the car for you. So if you can have a seat." Appellant patiently waited in the lobby. At one point, appellant asked Espanol about the rental car and she told him it was not yet ready.

Hernandez looked at the card and noticed right away that the first four digits of the account number, which are usually imprinted separately on the top or bottom of a credit card, did not appear in that fashion on appellant's card. He then ran appellant's card through the scanner and saw that it showed only a last name; there was no first name or first initial, and no account number. Following procedure, Hernandez called Citibank—the bank Hertz always calls to verify credit cards—and gave the number on appellant's

²Espanol testified that the scanner was also supposed to show the account number, but that the account number did not appear on the scanner.

Capital One credit card. The person at Citibank told Hernandez that the card was not a Capital One card, but a Chase card, and that the cardholder was not Patrick Davis. The person at Citibank would not disclose any further information. Hernandez called his manager, Michael Fini, the location manager at Hertz Corporation who was working at the San Francisco Airport that day. Hernandez told Fini that he believed the card appellant presented was fraudulent, and explained that he had been informed by Citibank that the card had been issued by Chase, not Capital One. Fini and Hernandez called police, who arrived shortly thereafter.

Fini testified he had seen an “incredible amount” of identity theft and fraudulent credit card use over the past three years, and that “at the beginning of it,” Hertz was “losing cars weekly, if not a couple times a week at one point or another.” More recently, Hertz had been able to detect most of the fraud attempts before the transaction went through. Fini testified that records showed that appellant made a reservation on May 31, 2014, at 5:30 p.m. to rent a Sports Utility Vehicle (SUV) for two weeks, with a pick up time of 7:00 p.m. the same day. The total cost for the rental was \$1,316.01. According to Fini, indicators of possible fraud in this case were that the reservation was booked with little notice, and that the reservation was for a high-end vehicle. A reservation made within an hour and a half was most typical in fraud cases, and reservations made within six hours were considered possible fraud.

Juan Acosta testified that he owned a Chase credit card in 2014. On May 31, 2014, he was informed by police that his credit card was being used. He was confused because he had his credit card in his possession. Ultimately, Acosta’s account was closed for fraud and his bank sent him a new credit card. Acosta did not know appellant and had never given him permission to have his credit card account information.

Robert Perry, an investigator with Chase Bank, testified that he investigated credit card account number 5466 0420 0910 2573. Based on the first six digits of the account number, also called the BIN (bank identification number), Perry stated the account belonged to a MasterCard issued by Chase and that the cardholder was Juan Acosta. Perry testified that stolen credit card numbers are available for purchase on the Internet,

along with plastic for making fraudulent cards. The plastic is available with or without the credit card company's logos, holograms, and other graphics. The credit card in this case was "fairly good quality" because the printing looked professional.

Detective Patrick McKenna of the San Mateo County Sheriff's Office investigated this case. He testified that the fraudulent use of a credit card to rent a vehicle at the airport was a common practice. The perpetrator usually made the reservation with little notice before pickup so that the car rental company would have less time to investigate possible fraud. He testified that typically, pick up occurs at night, after the credit card companies close for business, so that the car rental company is unable to contact them. The perpetrator would usually rent a high-end vehicle, such as an SUV or Mercedes, which he or she might then use to commit other crimes. Half of the time, criminals would use their own driver's licenses when presenting fraudulent credit cards, because the many new security features on driver's licenses have made it difficult to use fake driver's licenses without getting caught.

The jury found appellant guilty on all three counts. Appellant waived a jury trial on the enhancement allegation, and the trial court found the allegation true. The court placed him on three years probation with various conditions including that he serve six months in county jail.

DISCUSSION

Appellant contends there was insufficient evidence to support the second degree burglary conviction. Specifically, he asserts there was "an absence of evidence" that he intended to use the fraudulent credit card at the time he entered Hertz. We reject the contention.

In reviewing a claim of insufficient evidence, the appellate court must review the whole record in the light most favorable to the People, and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576–577.) The proper test is whether any rational trier of fact could find appellant guilty beyond a reasonable doubt. (*People v. Barnes* (1986) 42 Cal.3d 284, 303.)

“Every person who enters any . . . building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.” (§ 459; *People v. Fenderson* (2010) 188 Cal.App.4th 625, 635.) The intent to commit the theft or felony must exist at the time of entry. (*People v. Holt* (1997) 15 Cal.4th 619, 669.) “Commonly, that intent must be inferred from the circumstances of the charged offense or offenses.” (*Ibid.*) “ ‘While the existence of the specific intent charged at the time of entering a building is necessary to constitute burglary in order to sustain a conviction, this element is rarely susceptible of direct proof and must usually be inferred from all of the facts and circumstances disclosed by the evidence.’ ” (*Ibid.*) “When the evidence justifies a reasonable inference of felonious intent, the verdict may not be disturbed on appeal.” (*Id.* at p. 670.)

Here, the evidence showed that appellant called Hertz on May 31, 2014, at 5:30 p.m. and made a reservation to rent an SUV that same day at 7:00 p.m. Appellant provided Espanol with a fraudulent credit card—one that had a Capital One logo on it but had actually been issued by Chase. The card had appellant’s name on it but did not scan correctly, and the legitimate cardholder was Juan Acosta, who did not know appellant and had never given him permission to use the card. In light of the ample evidence that appellant presented Espanol with a fraudulent credit card, combined with evidence that his actions mirrored those of typical fraudulent credit card users—e.g., reservations made within an hour and a half of pick-up, evening pick-up times, high-end vehicles such as SUVs—a jury could reasonably find appellant had the specific intent to use the fraudulent card when he entered Hertz to rent his car.

Appellant argues that the fact that Espanol *asked* him for the credit card—as opposed to him voluntarily providing it—shows he did not intend to use that credit card at the time he entered Hertz. He points out that he had not provided Hertz with a credit card at the time he made the reservation, and could have had sufficient cash—\$1,316.01—to pay for the rental, or may have had a checkbook or other credit cards he intended to use. The fact that appellant presented the fraudulent credit card only upon request, however, does not absolve him of criminal intent. In any event, so long as there is substantial evidence supporting the judgment, the fact that the evidence might also be

reconciled with contrary findings does not warrant reversal. (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) Thus, even assuming these facts as presented by appellant suggest he may not have had the requisite intent at the time of entry, we conclude his contention fails because there was other, substantial evidence supporting the finding that he did.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.

A145539, People v. Davis