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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KRISTINA MARTORANA-RUSSO,

Defendant and Appellant.

A146211

(Contra Costa County
Super. Ct. No. 05-150409-1)

Defendant Kristina Martorana-Russo appeals from her conviction for residential burglary. She argues the trial court erred in admitting evidence of an uncharged offense, specifically an incident in which she allegedly stole several items from a drug store. We find any error was harmless and affirm.

I. BACKGROUND

Defendant was charged by information with felony first degree residential burglary (Pen. Code, §§ 459, 460, subd. (a)) and misdemeanor possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). A jury found defendant guilty on both counts. The trial court sentenced defendant to three years of probation and one year in jail.

The charges arose out of an incident in Richmond on the afternoon of February 24, 2015. Betty Ann Blakeman observed Jonathan Spain and Antonio Arteché stop in front of her house and stare at a neighboring home where Curtis Reichert lived. Spain forced in Reichert's front door and walked inside. Blakeman called the police. While she talked with the dispatcher, she saw Spain come back into view with a bicycle and a pack.

Deputy Kenneth Ferraro arrived and detained Spain. At the time, Spain had with him a bicycle, several bags, a woman's purse, and a portable stereo wrapped in a black sweatshirt. Reichert later identified some of these items as his. The woman's purse contained a bag with methamphetamine in it. Defendant later told the police the purse was hers, as was the methamphetamine in the purse.

Two other officers, Deputies Jamison Smith and John Ecker, subsequently arrived on the scene. After Smith yelled into the house, defendant walked out of a back hallway towards him. The officers found defendant was carrying a small screwdriver with a "hook top" in her boot. Deputy Wayne Lee testified the screwdriver could be used as a burglary tool. The officers also apprehended Arteche, who was carrying several pocketknives, screwdrivers, and a flashlight.

The police found Arteche's black backpack inside Reichert's home. It contained a large mug filled with loose change, which belonged to Reichert, and clothing and bedding items. The police also found Reichert's door frame had been "busted off" and there were fresh scrape marks on the frame that appeared to have been caused by a "screwdriver-type device."

Prior to trial, the prosecutor filed a motion in limine to introduce evidence of four uncharged crimes. Over defendant's objection, the court granted the prosecution's motion as to two of the incidents. The first of the two admitted incidents occurred in November 2011. Angela Cox heard glass breaking in her bathroom and then saw defendant standing outside the bathroom window removing the screen. Defendant was standing on an overturned recycling bin to reach the window and had knocked over a glass figurine. As to the second incident, the court admitted evidence that, in November 2012, defendant "grabbed" items worth \$66 from a Walgreens cosmetics counter and left the store without paying for them. The trial court found evidence of both offenses was relevant to prove defendant's intent.

During closing argument, defendant's counsel argued the prosecution had failed to prove defendant intended to commit burglary when she entered the Reichert residence: "What did she intend to do when she entered? And, again, without us knowing what

she's saying happened when [defendant] entered, it's really hard to just speculate as to what her intent was. And yet, that's what the prosecution is asking you to do here, is to speculate, that because she was in the residence, that she entered it with the intent.”

II. DISCUSSION

Defendant now argues the trial court erred in admitting evidence of the uncharged shoplifting offense from November 2012. She contends the evidence was inadmissible under Evidence Code sections 1101 and 352. According to defendant, the shoplifting incident does not support an inference she had the intent to steal when she entered Reichert's home because the shoplifting incident involved a completely different type of alleged conduct. We conclude any error in admitting evidence of the uncharged conduct was harmless.

Errors in admitting evidence of uncharged offenses are evaluated pursuant to the *Watson*¹ standard. (See *People v. Malone* (1988) 47 Cal.3d 1, 22; *People v. Williams* (2009) 170 Cal.App.4th 587, 612.) Under this standard, we must determine whether it was “reasonably probable that a result more favorable to the defendant would have resulted” had the evidence of the uncharged crimes not been admitted. (*People v. Welch* (1999) 20 Cal.4th 701, 750.)

In this case, it is not reasonably probable the jury would have acquitted defendant of the burglary charge had the shoplifting incident been excluded. Even without this evidence, the prosecution offered compelling evidence of defendant's guilt. In her appellate briefing, defendant suggests she entered Reichert's home to find shelter. But the record simply does not support this theory, and there is no indication it was argued to the jury. “ ‘In a prosecution for burglary, the evidence on which a defendant is convicted may be purely circumstantial and if substantial . . . is sufficient to support the judgment of guilty.’ ” (*People v. Jordan* (1962) 204 Cal.App.2d 782, 786.) Here, the evidence of intent was considerable, with or without the shoplifting incident.

¹ *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).

Defendant was found inside Reichert's house after Spain had broken into it. She apparently gave Spain her purse as he left the house with several of Reichert's belongings, indicating she did not intend to stay long and she was acting in concert with Spain. Defendant was also with Arteche, who had Reichert's possessions in his backpack. Both defendant and Arteche were carrying screwdrivers, which were identified as burglar's tools. There was also evidence screwdrivers were used to break into Reichert's home. Moreover, defendant attempted to break into another home in 2011. Defendant does not dispute that this incident was admissible, and it is strong evidence of defendant's intent here. Given defendant was with Spain and Arteche, who were found with Reichert's possessions, there was also compelling evidence she was guilty under an aiding and abetting theory.

III. DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P.J.

Dondero, J.