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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY JARED JAMES,

Defendant and Appellant.

2d Crim. No. B230189
(Super. Ct. No. YA074994)
(Los Angeles County)

Danny Jared James appeals a judgment following conviction of first degree burglary (three counts), receiving stolen property, child endangerment, and misdemeanor resisting a police officer. (Pen. Code, §§ 459, 496, subd. (a), 273a, subd. (a), 148.)¹ We order the abstract of judgment amended, but otherwise affirm.

FACTS AND PROCEDURAL HISTORY

In 2008 and 2009, James committed nighttime burglaries of homes in a South Los Angeles neighborhood. On May 6, 2009, Los Angeles County sheriff's deputies caught James and his girlfriend, minor R.P., as they left a home on St. Andrews Place. James's sister, Stephanie James, waited nearby in a parked Buick automobile that contained purloined goods from prior burglaries. During a confrontation with the deputies, Danny James was shot and wounded. At trial, the prosecutor presented

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

evidence of three residential burglaries that James committed and his possession of stolen property from another burglary, among other crimes.

Burglary of the Gauci Residence

(Count 7)

On August 24, 2008, Elvira Gauci lived in an apartment on 153rd Street in Lawndale. When she awoke that morning, she discovered a screen had been removed from her kitchen window, the window was open, and her computer, cell phone, and other electronic items were missing.

Sheriff's Deputy Steve Woolum, a fingerprint expert, recovered a fingerprint from the "very clean" inside ledge of the kitchen window. Woolum obtained James's fingerprints during trial, compared them to the print recovered from the Gauci kitchen window, and concluded that the recovered print belonged to James. Gauci testified that she did not know James or his sister.

Possession of Stolen Property from the Espinoza Residence

(Count 3)

On May 3, 2009, Tonette Espinoza and her family were moving into a residence on Ruthelen Street in Los Angeles. In the late evening, Espinoza looked for her purse which she had placed on the living room sofa, but it was missing. She reported the suspected theft to police officers that night. Three days later, Los Angeles Deputy Sheriff Mark Stone recovered Espinoza's purse, her perfume bottle, a hospital badge from the hospital where she gave birth to her son, and her coin purse, among other things, from Stephanie James's automobile. Espinoza found a school schedule for R.P. inside the purse. Espinoza did not know James or his sister and had not invited them into her home.

Burglary of the Banks Residence

(Count 1)

Barbara Banks and her family lived on Imperial Highway in Los Angeles, near the Gauci, Espinoza, and James residences. At approximately 2:30 a.m. on May 6, 2009, Banks arose from bed to tend to her daughter. She noticed that a window was open and that her computer, several purses, and shoes were missing. She notified police

officers immediately. Deputy Stone later recovered some of Banks's missing property from Stephanie James's automobile. Banks did not know Danny James or Stephanie James and had not invited them into her home.

Burglary of the Walker Residence, Child Endangerment, and Resisting Arrest
(Counts 2, 5 & 8)

Mary Walker lived with her two minor grandchildren and her niece, Sequoia Blodgett, on St. Andrews Place in Los Angeles. At approximately 3:00 a.m. on May 6, 2009, Blodgett became frightened when she heard voices outside her window. She telephoned for police emergency assistance. Blodgett then heard footsteps inside the residence and she and the other residents locked themselves in a bedroom.

Sheriff's deputies responded to Blodgett's report of a burglary in progress and surrounded Walker's residence. Deputies knew the neighborhood as an "extremely high crime area and a very active gang area in South Los Angeles." Deputy Casey Chesier saw James setting a flat-screen television set on the ground and R.P. climbing out of Walker's window with a DVD player. Chesier illuminated James and R.P. with his flashlight and commanded them to drop to the ground. In response, they ran and jumped over a wall in back of the property. Chesier gave chase and alerted other deputies stationed nearby that the burglary suspects were running through backyards.

Deputies in back of the property saw James and R.P. jumping over the wall. R.P. ran toward the automobile driven by Stephanie James, but then turned and ran a different direction. James reversed his direction and jumped the wall again toward Deputy Chesier. Chesier saw James pull a dark-colored handgun from his waistband. He ordered James to "drop the pistol." When James turned toward Chesier, Chesier fired his weapon three times, wounding James. Chesier later saw a dark-colored toy water pistol near James.

Walker and Blodgett testified that they did not know Danny James or Stephanie James and that they had not invited them to the residence.

Sheriff's deputies arrested Danny James, R.P., and Stephanie James. A search of the Buick automobile in which Stephanie James waited revealed property stolen

from the Banks and Espinoza burglaries. A later search of Stephanie James at the police station revealed rock cocaine hidden in her undergarment. Sheriff's Deputy Brian James, a latent fingerprint examiner, examined fingerprints taken from the Walker residence and the Buick automobile and determined that the prints were those of Danny James.

The jury convicted James of three counts of first degree burglary, receiving stolen property, child endangerment, and resisting a police officer. (§§ 459, 496, subd. (a), 273a, subd. (a), 148.) The trial court sentenced him to 10 years 8 months imprisonment, consisting of an upper six-year term for burglary (count 1), an eight-month term for receiving stolen property, one year four month terms for the three remaining felony counts, and one year in the county jail for the misdemeanor resisting arrest, the latter to be served concurrently. The court imposed a \$200 restitution fine, a \$200 parole revocation restitution fine (stayed), a \$240 court security fee, and a \$180 criminal conviction assessment. (§ 1202.4, subd. (b), 1202.45, 1465.8; Gov. Code, § 70373.) It awarded James 708 days of presentence custody credit.

James appeals and contends that there is insufficient evidence that: 1) he committed burglary of the Gauci apartment; 2) he possessed the Espinoza stolen property; and 3) he committed child endangerment of R.P. He asserts that the lack of sufficient evidence violates principles of due process of law pursuant to the federal and California Constitutions.

DISCUSSION

I.

James argues that insufficient evidence supports his conviction of burglary of the Gauci residence because there is no evidence of forced entry, e.g., broken glass or broken locks. He also asserts that there is insufficient evidence connecting him to the theft of the Gauci property. (*People v. Trevino* (1985) 39 Cal.3d 667, 697 [fingerprint evidence "fraught with uncertainty" regarding how or when print came to be placed on murder victim's dresser], overruled on other grounds by *People v. Johnson* (1989) 47 Cal.3d 1194, 1219-1221.) James relies upon *Mikes v. Borg* (9th Cir. 1991) 947 F.2d 353,

358-359 [record must contain sufficient evidence that fingerprints were impressed during murder and not at some earlier date].

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Solomon* (2010) 49 Cal.4th 792, 811.) Our review is the same in prosecutions primarily resting upon circumstantial evidence. (*Ibid.*) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.)

Sufficient evidence supports James's conviction of the Gauci burglary based upon the finding of his fingerprints on the inside ledge of the Gauci kitchen window shortly after the burglary. Gauci testified that the family usually closed the windows to the apartment when sleeping and that when her son awoke in the early morning of August 24, 2008, he found the kitchen window open, the window screen removed, and household electronics and a computer missing. The following day, Deputy Woolum recovered a fingerprint from the "very clean" inside ledge of the kitchen window. It is a reasonable inference from this evidence that James removed the screen, opened the window, entered the apartment, and took the missing items. Our Supreme Court has stated that "[f]ingerprint evidence is the strongest evidence of identity, and is ordinarily sufficient alone to identify the defendant." (*People v. Andrews* (1989) 49 Cal.3d 200, 211.)

There is no evidence that James had been a guest in the apartment or that he had passed by and accidentally passed his hand through the kitchen window. Gauci testified that she did not know Danny James or Stephanie James and had never met them. Moreover, she testified that she cleaned the window ledge weekly with a damp cloth. Circumstances here are similar to *People v. Preciado* (1991) 233 Cal.App.3d 1244. There, defendant left his fingerprint on a wristwatch box in a condominium that had been burglarized. The condominium owner did not know the defendant and the wristwatch

box had not left the condominium. The reviewing court determined that sufficient evidence supported defendant's conviction of burglary. (*Id.* at pp. 1246-1247.)

James's reliance on *Mikes v. Borg, supra*, 947 F.2d 353, is misplaced.

There, the victim was murdered with a disassembled turnstile post that had been used presumably for commercial purposes prior to the victim buying it for his repair shop. (*Id.* at p. 355.) The defendant's fingerprints were found on two of the turnstile posts. (*Id.* at pp. 355-356.) The reviewing court determined that insufficient evidence supported defendant's conviction for murder because there was a reasonable possibility that defendant's fingerprints were placed on the posts prior to the victim's acquisition of them. (*Id.* at pp. 358-359.)

Here, there is no evidence that the Gauci apartment was open to the public generally. (*Taylor v. Stainer* (1994) 31 F.3d 907, 909 [defendant's fingerprint on interior window sill of victim's apartment window sufficient to convict him of her murder].) The fingerprints were found on an interior window sill that was cleaned weekly. Unlike *Mikes v. Borg, supra*, 947 F.2d 353, James's fingerprints were not found on an object found in public places accessible to the public generally.

II.

James contends that insufficient evidence supports his conviction of receiving the Espinoza stolen property. He points out that his fingerprints were found only on the exterior of his sister's Buick automobile and that some of the items taken from Espinoza – perfume and a purse – are of interest to women. In sum, James argues that the evidence merely raises a suspicion of guilt which is legally insufficient to support a judgment.

Circumstantial evidence may be sufficient to connect a defendant to a crime and may prove his guilt beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) If the factual findings are reasonably supported by the evidence and all reasonable inferences therefrom, the opinion of the reviewing court that the circumstances might support a contrary finding does not warrant reversal of the judgment. (*Ibid.*)

The elements of the offense of receiving stolen property are: 1) the property was received, concealed, or withheld by the defendant; 2) the property was obtained by theft; and 3) the defendant knew the property was stolen. (*People v. Grant* (2003) 113 Cal.App.4th 579, 596.) "Possession of the stolen property may be actual or constructive and need not be exclusive. [Citations.] Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property." (*Ibid.*)

Sufficient evidence supports James's conviction of receiving stolen property. He burglarized South Los Angeles residences in the early morning hours and took computers, household electronics, and purses. James removed window screens and entered the residences through a window. Sheriff's deputies caught James and R.P. in the act of burglarizing the Walker residence through an open window. Stephanie James waited nearby in the "getaway" vehicle that also contained Espinoza's and Banks's property. As James concedes, he and his sister Stephanie lived together in the same neighborhood as his burglary victims. Moreover, although the stolen purses contained articles used by women, the crime of receiving stolen property does not require that the defendant receive the property for his personal use.

III.

James contends that there is insufficient evidence to support his conviction of child endangerment, asserting that he did not have care or custody of 16-year-old R.P. and that he did not place her in a dangerous situation. He points out that R.P. was free to leave the scene and fled from armed deputies in a different direction. James adds that he is only one year older than R.P.

Section 273a, subdivision (a) provides: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, . . . having the care or custody of any child, . . . willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished . . ." Section 273a does not require that a defendant be related to a child; "Care or custody" implies a

willingness to assume caregiver duties. (*People v. Morales* (2008) 168 Cal.App.4th 1075, 1083 [section 273a refers to plain meaning of terms "care or custody"].)

There is sufficient evidence that James had the care or custody of R.P. in the early morning of May 6, 2009. It is a reasonable inference that they arrived together in Stephanie James's Buick automobile with the intent to commit a burglary. Together they burglarized the Walker residence while its residents were inside. The neighborhood was a high crime area with criminal street gangs and its streets were unsafe at night. These circumstances satisfy the care or custody requirement of the statute.

There is also sufficient evidence that James endangered the health and welfare of R.P. when he used her assistance to burglarize occupied residences at night. "A child entering a neighbor's locked residence in order to help commit a burglary is indeed a highly dangerous undertaking that exposes the child to a number of serious physical dangers, e.g., someone in the home might react violently to the trespass, etc. Such circumstances reasonably allowed a finding that it was 'likely,' i.e., there existed a substantial danger, that is, a serious and well-founded risk, of great bodily harm or death to the child in appellant's actions." (*People v. Wilson* (2006) 138 Cal.App.4th 1197, 1205; *id.* at p. 1200 [parent impressed son to "do a 211" of neighbor's home].) Moreover, the commission of a crime invites a police response, sometimes involving lethal force.

Thus, sufficient evidence and all reasonable inferences therefrom satisfy the elements of the child endangerment statute. We do not substitute our reasonable inferences for those of the trier of fact. (*People v. Abilez, supra*, 41 Cal.4th 472, 504.)

IV.

Our review of the appellate record reflects several clerical errors in the abstract of judgment. The trial court pronounced a sentence of eight months for the receiving stolen property conviction and one year four months for the child endangerment conviction. The abstract does not accurately reflect this sentence. It also inaccurately refers to "receiving stolen property" as "receiving stolen burglary," and "child endangerment" as "child abuse." The trial court shall amend the abstract of judgment to

correct these errors and forward the amended abstract to the Department of Corrections and Rehabilitation.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jose I. Sandoval, Judge

Superior Court County of Los Angeles

Ava R. Stralla, 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, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.