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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.

ERON LEWIS WELCOME,

Defendant and Appellant.

B230949

(Los Angeles County  
Super. Ct. No. KA091887)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on June 20, 2012, be modified as follows:

1. At the end of the last paragraph on page 7, after the sentence ending “within the meaning of Penal Code section 459,” add as footnote 3 the following footnote, which will require renumbering of the subsequent footnote:

<sup>3</sup> *Magness v. Superior Court* (2012) 54 Cal.4th 270 (*Magness*), does not compel a contrary conclusion. *Magness* concluded the defendant’s use, while standing in the driveway of a residence, of a remote control to open a motorized garage door did not constitute an entry into the residence for purposes of Penal Code section 459. (*Id.* at p. 272.) *Magness* stated, “There is no question that ‘an intruder’s use of a garage door opener to open a garage door violates the occupant’s possessory interest and fosters a

situation that can be extremely dangerous to personal safety.’ But not all conduct that implicates the interests underlying the burglary statute constitutes a completed burglary. That the requirement of ‘entry’ inevitably calls for line drawing does not make the line drawing absurd. The line we adopt — something outside must go inside for an entry to occur — is simple, workable, and consistent with common sense. It is also consistent, to our knowledge, with every case that has found a completed burglary.” (*Id.* at pp. 279-280.)

In the present case, there was, for the reasons previously discussed, sufficient evidence of physical entry (that something outside went inside), i.e., sufficient evidence appellant and/or Hoover used a screwdriver as a pry tool to penetrate behind the screen, and/or used hands to remove the screen and penetrate behind it. Moreover, there was sufficient evidence said physical entry invaded Zaniias’s possessory right in the house and caused the dangers to personal safety created by the usual burglary situation. (See *Magness, supra*, 54 Cal.4th at pp. 273-275, 276, 279-280.)

There is no change in the judgment.

Appellant’s petition for rehearing is denied.