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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.

STEVEN NASH LESLIE SPEARMAN,

Defendant and Appellant.

2d Crim. No. B235063
(Super. Ct. No. KA090490)
(Los Angeles County)

Steven Nash Leslie Spearman appeals a judgment after conviction by jury of one count of first degree residential burglary. (Pen. Code, § 459.)¹ After a bifurcated trial, the trial court found Spearman had served one prior prison term (§ 667.5, subd. (b)); had suffered a prior serious felony conviction (§ 667, subd. (a)(1)); and had suffered a prior serious or violent felony conviction or juvenile adjudication. (§§ 667, subd. (b)-(i); 1170, subds. (a)-(d).) The court sentenced Spearman to state prison for a term of 18 years.

Spearman contends there was insufficient evidence to support his conviction for burglary either as a perpetrator or as an aider and abettor. We affirm.

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

FACTUAL AND PROCEDURAL BACKGROUND

On a weekday morning in 2009, Mark Ramirez was cycling through a Claremont neighborhood. A blue car with three occupants almost hit him. He later identified Spearman as a passenger in the front seat.

When Ramirez returned to the neighborhood about 20 minutes later, the blue car was parked near an intersection. It was alongside a wall.

No one was inside the car. Ramirez looked over the wall and saw that the driver of the blue car was now in the backyard of 504 Miramar Avenue trying to pry open a sliding door. Another man was with him. These two men were never apprehended.

Ramirez went to a nearby fire station and reported what he saw. He described the car then, and at trial, as a blue, four-door 1990's Toyota Corolla.

Two Claremont police officers responded to Ramirez's call. Officer Sidenfaden found a blue, four-door 2004 Honda parked next to the wall, at the intersection. The officer thought it was an unusual place to park because there were no driveways within several hundred feet.

Spearman was sitting alone in the driver's seat, talking on a cell phone. He seemed to have short hair but it could have been in corn rows. The officer did not notice any tattoos.

The officer asked Spearman for identification and Spearman handed over his driver's license. The photograph matched Spearman's appearance. Spearman's forehead was beaded with sweat. It was a cool morning. Spearman said he had been sitting alone in the car all morning and he was there to meet a friend.

Officer Sidenfaden went back to his motorcycle to check Spearman's license information. He heard dogs barking on the other side of the wall. While he was distracted, Spearman ran away. The officer ran after him but did not catch him.

Meanwhile, Officer Thompson saw two people scaling the wall from the yard of 504 Miramar Avenue. They ran away and he was unable to catch them. He

and Officer Sidenfaden searched the area but did not find any suspects. While they searched, another officer arrived. The blue car was gone.

The house at 504 Miramar Avenue had been ransacked. Property from inside was piled outside. A bathroom window screen had been cut away.

Officers interviewed Ramirez, who said the passenger in the front seat of the blue car was dark-skinned with medium length hair and wore a white T-shirt. An officer showed Spearman's driver's license to Ramirez, and Ramirez said this was the front seat passenger. Ramirez also identified Spearman at trial.

Ramirez did not describe tattoos or a distinctive nose and he said Spearman's hair was loose and collar length. Spearman has light skin, a large, wide nose, and a tattoo on the right side of his neck. Members of Spearman's family testified at trial that Spearman had visible tattoos on his neck and arms and he wore his hair in corn rows that reached down to the middle of his back at the time of the burglary. On cross-examination, Ramirez initially said he had "no doubts" about Spearman's identity, but he later said he was not sure.

Spearman's cousin testified at trial that he and Spearman were working out on Santa Monica beach on the morning of the burglary. Spearman's first trial by jury ended in a mistrial after the jury deadlocked. He was convicted on retrial.

DISCUSSION

Spearman contends there was not sufficient evidence to support his conviction for burglary either as a perpetrator or as an aider and abettor. We disagree.

We review the entire record in the light most favorable to the prosecution "to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Silva* (2001) 25 Cal.4th 345, 368.) We must accept logical inferences that the jury might have drawn from circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) We will reverse for insufficient evidence only if there is insufficient evidence to support the jury's verdict upon any theory whatsoever. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

There was no direct evidence that Spearman aided and abetted the burglary, but circumstantial evidence was sufficient to sustain his conviction. Burglary is committed where a person enters a residence with intent to commit grand or petit larceny or any felony. (§ 459.) Here, the cut window screen, the ransacked residence, and the pile of property outside were circumstantial evidence that a burglary had been committed.

Spearman's liability as an aider and abetter required proof that (1) the perpetrator committed the crime; (2) Spearman knew the perpetrator intended to commit the crime; (3) before or during commission Spearman intended to aid and abet the perpetrator; and (4) Spearman's words or conduct did in fact aid and abet the perpetrator's commission of the crime. (§ 31; CALCRIM No. 401.) An aider and abettor may develop the intent to facilitate at any time before or during the commission of the burglary, so long as he does so before the perpetrator leaves the structure. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1045.)

Spearman is correct that mere presence at the scene of a crime is not sufficient to establish aider and abettor liability. (*In re Michael T.* (1978) 84 Cal.App.3d 907, 911.) But here there was circumstantial evidence of more than mere presence. A witness saw Spearman with two other men in a blue car parked just over a wall from the scene of the burglary, just before the burglary occurred. Ramirez saw at least one of these men attempting to commit the burglary by prying open a sliding door. While the burglary was still underway, an officer found Spearman in the driver's seat of a blue car, parked in the same place Ramirez had seen it parked, talking on a cell phone. Spearman was sweating and he ran away after the officer contacted him. The two men who had been committing the burglary ran away at the same time.

Spearman's conduct was circumstantial evidence of guilty knowledge that his companions were engaged in a burglary and of his own involvement in that activity. His presence in the car before and during the commission of the burglary was circumstantial evidence that he aided in the commission of the burglary by acting as a lookout or a getaway driver. The discrepancies in Ramirez' description of Spearman

and conflicts in the evidence concerning the make of the blue car were matters of credibility and weight that are within the exclusive province of the jury. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) We will not disturb their determinations on appeal.

DISPOSITION

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

David C. Brougham, Judge
Superior Court County of Los Angeles

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