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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.

DEWAYNE CRAIG MARIS,

Defendant and Appellant.

B242686

(Los Angeles County
Super. Ct. Nos. NA088810 &
NA089308)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard R. Romero, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, under
appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Dewayne Craig Maris appeals from the judgment entered following his plea of no contest to first degree residential burglary with a person present (Pen. Code, § 459)¹ and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) and his admissions that he had previously served two prison terms within the meaning of section 667.5, subdivision (b); that he suffered a “strike” (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) when he was previously convicted of residential burglary (§ 459); and that he had suffered a conviction for a serious felony within the meaning of section 667, subdivision (a)(1) when he was previously convicted of residential burglary (§ 459). The trial court sentenced Maris to 26 years in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

a. Case No. NA088810.

At approximately 11:30 p.m. on April 20, 2011, Elyse Moore was at her home at 20 Belmont Avenue when she fell asleep on her couch. At approximately 1:30 a.m. on April 21, Maris entered Moore’s apartment. The hall light was on and Moore looked up to see Maris standing on the opposite side of her coffee table, walking out her front door. As soon as Maris left her house, Moore got up, closed her front door and locked it. Approximately 45 seconds later, she heard footsteps “coming back up the stairs, and trying to come back in [her] front door.” She heard someone “jiggling” the door knob, then heard the person walk back down the stairs.

Moore put on sweatpants and a sweatshirt, opened her door and walked down the stairs. She did not see anyone, so she ran to the nearby 7-Eleven store and purchased some cigarettes. As she was returning from the store, she saw Maris walking down her stairs. Moore told Maris that she was going to call the police. As it turned out, a police

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

² The facts have been taken from the transcripts of the preliminary hearings.

officer was walking right behind her. When Maris saw the officer, he ran.³ Moore “actually saw [Maris] from the point that he walked down the stairs until he was detained by the police[.]” He was wearing a dark jacket with a polo shirt underneath it and dark pants.

The police officer ran after Maris, caught up with him and placed him under arrest in front of a Round Table Pizza restaurant. A second officer who had arrived at the scene then walked upstairs to Moore’s apartment with her. After he looked around, the officer, Steinhauser, made a report of the incident.

After the officer left, Moore looked around her apartment and noticed that items on her dining room table had been “[k]nocked over.” In addition, her window blinds, which had been closed when she went to sleep, were open, a window which had been open was shut and the screen was missing.⁴ The dining room table, which was pushed up next to the window, had shoe prints on it and her school bag, which was sitting on the table, had been “rummaged through.” Moore’s purse, which had been closed and sitting by the coffee table, had been opened. However, it did not appear that anything was missing.

The following morning, Moore called the police so that they could conduct a more thorough investigation. Officers came to her apartment the following day.

Alyssa Davis lives in an apartment at 55 Roswell in Long Beach. Her apartment is one of the closest to an alley between Roswell and Belmont Avenue where Moore’s apartment is located. At approximately 1:37 a.m. on April 21, 2011, Davis was “tossing and turning in bed” trying to go to sleep. She looked out her window, which faces the alley, and saw a black shadow covering the window. She then “saw a person [in a black shirt or jacket] walking towards the window and two [gloved] hands come out.” Davis’s

³ Moore never actually called the police. She was “startled” and “really didn’t know what to do at that moment.”

⁴ Moore later found the screen in a dumpster.

bedroom window was open approximately two inches and did not have a screen. The gloved hands grabbed the windowsill and began to move inside. Davis screamed, “ ‘Hey, I see you,’ ” and the person pulled their hands back out of the window, then “took off.” Davis called the police and officers arrived at her apartment several minutes later.

Long Beach Police Officer Vincent Kong was on patrol on the night of April 21, 2011 when he received a call instructing him to go to the corner of Termino and Ocean Boulevard. The officer drove down the alley by a 7-Eleven store and “noticed a male Black wearing a blue jacket and dark pants walking eastbound in the alley towards Belmont Avenue.” At Belmont Avenue, Kong was flagged down by a woman who told him to stop the man in the blue jacket. By this time, the man was running south on Belmont. Kong followed him, lost sight of him for a moment and returned to the 7-Eleven store. There, he saw the “same male Black subject . . . hiding between a truck and a bush.” Kong got out of his vehicle, drew his firearm and ordered the man to come out and “get on the ground.” The man, who turned out to be Maris, complied with Kong’s orders.

Long Beach Detective Marcus Briones works the “burglary detail.” On April 22, 2011, Briones executed a search warrant at Maris’s apartment located at 1151 Walnut, which is fairly close to both Moore’s and Davis’s apartments. It faces the same alley. After Maris had been advised of his *Miranda*⁵ rights, Briones asked Maris if a pair of “NFL Raider” Reebok tennis shoes were the shoes he had been wearing on the night of his arrest. The soles of the shoes matched the prints found on Moore’s dining room table and Maris admitted that those were the shoes he had been wearing that night.

b. *Case No. NA089308.*

On July 24, 2010, April Stevens lived at 207 Belmont Avenue, Apartment B, in Long Beach. At approximately 6:45 p.m. that day, Stevens walked from her front porch to her living room, then, after a few moments, into the bathroom. When she walked in

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

the door and turned on the light, Stevens saw Maris standing in her bathroom. Stevens backed up against a wall and asked Maris what he was doing there. Maris told Stevens, “ ‘Don’t scream,’ ” then held up both of his hands. He had socks on each of them. Maris approached Stevens, pushed her hard toward the bathtub, almost knocking her over, then attempted to cover her mouth with his hand. He placed his other hand behind her neck. Stevens started to scream and to move her head back and forth. She was partly in the bathtub and Maris continued to attempt to place his hand over her mouth. He, however, never quite succeeded and, after approximately 30 seconds, he “got up, and ran out of the room.” After running through Stevens’s bedroom, Maris left the apartment through the front door.

After Maris left, Stevens got up, walked through her bedroom and ran out the front door of the apartment. The back door and some of the windows were open because it was July and had gotten quite warm in the apartment. Maris had apparently attempted to leave the apartment through the back door, but several of Stevens’s neighbors had been standing there.

Stevens’s neighbor, Ashley Hostini, telephoned the police during the incident. Later, when, on three different occasions, she met with police, Stevens was shown a “six-pack,” or a group of six photographs. The first time was in October, three months after the assault. Each time, Stevens picked a photograph of an individual who looked like her attacker. She was, however “never sure. [She] never said, ‘This is, for sure, the person.’ ” The last time an officer came to her home with a six-pack was April 28, 2011. At no time when she was shown a group of photographs was Stevens confident that she could identify the person who had entered her apartment. Stevens had “kind of tried to block a bunch of [the incident] out of [her] mind, and with a bunch of pictures, that [made] it difficult” to identify someone.

Although she had not identified him in the photographic lineups, Stevens did identify Maris in the courtroom. For Stevens, “seeing a person . . . live in court” was “completely different [from] looking at photographs on a piece of paper[.]” At the

hearing, Stevens was certain that Maris was the individual who had come into her bathroom.

2. *Procedural history.*

An information charging Maris with two counts of first degree residential burglary with a person present (§ 459) was filed on August 1, 2011 in case No. NA088810. In addition to the burglaries, it was alleged that Maris had suffered prior convictions for which he served prison terms pursuant to section 667.5, subdivision (b), one for addiction to a narcotic or possession of a firearm in violation of former section 12021, subdivision (a)(1) and one for assault with a firearm (§ 245, subd. (a)(2)); that he had suffered prior convictions pursuant to the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), one for residential burglary (§ 459), two for robbery (§ 211) and one for assault with a firearm (§ 245, subd. (a)(2)); and that he had suffered prior convictions for serious felonies pursuant to section 667, subdivision (a)(1), one for residential burglary (§ 459), one for assault with a firearm (§ 245, subd. (a)(2)) and one for robbery (§ 211).

At proceedings held on October 4, 2011, counsel for Maris made a motion to dismiss count 2, the charge that Maris had burglarized Davis's apartment. Counsel argued that it was not realistic to think that, immediately after committing the burglary of Moore's apartment, Maris would attempt to enter Davis's home, which was only approximately 300 feet away. Counsel asserted that "most people would get away from there as soon as possible." The trial court indicated that it was the prosecutor's suggestion that Maris was "with Davis, [got] scared off from her place, and walk[ed] the 300 feet or so to Moore's apartment and then [got] involved with that incident." The court continued, "There are clear I.D.'s, and the time line is quite compelling, at least for probable cause purposes. So the [motion to dismiss] is denied."

After the case alleging the two burglaries was filed, a second matter, case No. NA089308, was brought against Maris. This information, also filed on August 1, 2011, alleged a burglary and an assault by means of force likely to produce great bodily injury. In addition, the same additional allegations of prior convictions and prison terms

had been charged. On October 4, 2011, the prosecutor made a motion to have the two cases consolidated. Although Maris's counsel argued that the second case involved "weak evidence" and it would be easy for "spillover evidence and bootstrapping" to take place, the trial court granted the motion. The trial court stated, "There is a strong preference for joint trials on similar charges. Identical Penal Code sections are involved here." There may very well "be cross-admissible" evidence. "[E]ven apart from that, all the counts are triable. There is not one which I would say is so substantially stronger or weaker that [it would cause] prejudice They are all triable counts." Accordingly, on January 18, 2012, an amended information was filed which charged, in addition to the two burglaries, a third first degree residential burglary with a person present (§ 459) (count 3) and an assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) (count 4). The information also alleged all of the allegations of previous convictions and prison terms which had been charged in the August 1, 2011 informations.

Maris had retained counsel to defend him with regard to counts 1 and 2. After the amended information was filed, the trial court appointed retained counsel to defend Maris with regard to counts 3 and 4 as well. The court addressed counsel and stated, "[Y]ou're on your own status, whatever that was, between you and Mr. Maris on 1 and 2, that continues, but I am appointing you on counts 3 and 4."

At proceedings held on May 5, 2012, the People offered Maris a sentence of 26 years in prison if he entered pleas of guilty or no contest to count 1 (first degree residential burglary with a person present in violation of section 459) and count 4 (assault by means of force likely to produce great bodily injury in violation of section 245, subdivision (a)(1)) and admitted that he had suffered a conviction for a serious or violent felony, residential burglary, in violation of section 459, for purposes of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)); that he had suffered two prior convictions for serious felonies, one for residential burglary (§ 459) and one for robbery (§ 211), pursuant to section 667, subdivision (a)(1); and that he had served two prison terms, one for "aggravated assault" in violation of section 245, subdivision (a)(2) and one for being a felon in possession of a firearm in violation of former section 12021,

subdivision (a)(1), pursuant to section 667.5, subdivision (b). Defense counsel then inquired of the trial court if it would, on an open plea, impose 26 years although Maris faced a theoretical maximum of 75 years to life in prison “because there [had been] separate victims.” After the trial court indicated that it believed Maris deserved the sentence of 75 years to life, he decided to accept the People’s offer of 26 years in prison.

Maris waived his right to a jury trial, his right to confront and cross-examine the witnesses against him, his right to present a defense and to use the subpoena power of the court to bring before it evidence and witnesses and his privilege against self-incrimination. He then pled no contest to count 1, first degree burglary with a person present and count 4, assault by means of force likely to produce great bodily injury, and admitted suffering the alleged prior convictions and prison terms, including the allegation that he had suffered a “strike” pursuant to the Three Strikes law. Counsel “join[ed] in the waivers” and “stipulate[d] to a factual basis” for the pleas and admissions. The trial court found that Maris had “knowingly, understandingly [and] intelligently, waived his rights to a jury trial, confrontation, cross-examination, his privilege against self-incrimination, his right to the free subpoena power of the court, and [that] the pleas and admissions were made knowing[] . . . the consequences[.] [Accordingly,] the court accept[ed] them and [found him] convicted on them.” The trial court then dismissed “[a]ll the other charges and allegations in [the] case . . . pursuant to [the plea] agreement.”

Sentencing proceedings were held on May 30, 2012. The trial court denied Maris’s request to postpone sentencing for another 30 days. In addition, the trial court denied Maris’s request to withdraw his plea based on the fact that he was “coerced into accepting the People’s 26-year offer.” Maris indicated that, “[a]s a result of his third-strike offenses, . . . he was coerced into taking the lesser sentence.” The trial court replied, “That is not legal coercion. So the request to withdraw on that basis is denied.”

Pursuant to the agreement, the trial court denied probation with regard to counts 1 and 4. The court then, with regard to count 1, sentenced Maris to state prison for six years, doubled to 12 years pursuant to the Three Strikes law. The court added “5 years for each of the [section] 667[, subdivision] (a)(1) allegations admitted[,]” for a total of

22 years. With regard to count 4, the court imposed one-third the mid-term of one year, then doubled the term for a total of two additional years. Finally, for each of the two section 667.5, subdivision (b) prison terms, the trial court imposed one year. In total, Maris was sentenced to 26 years in state prison. He was awarded presentence custody credits for 397 days actually served and 59 days of conduct credit, for a total of 456 days.

The trial court ordered Maris to pay a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$240 restitution fine (§ 1202.4, subd. (b)), and a \$240 suspended parole revocation restitution fine (§ 1202.45).

On July 17, 2012, Maris filed a timely notice of appeal and request for a certificate of probable cause. In his request for a certificate of probable cause, Maris indicated that he felt compelled to accept the People's offer after the trial court indicated that it believed he deserved a life sentence. In addition, he asserted his trial counsel was incompetent for failing to investigate his claim that two of his prior convictions were invalid; counsel failed to contact the experts who could have shown the priors were improper. Finally, Maris argued he was never advised that, once he entered the no contest plea, he could neither withdraw it nor attack it collaterally. The trial court denied Maris's request for a certificate of probable cause on July 19, 2012.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed October 18, 2012, the clerk of this court advised Maris to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider.

In a letter filed November 8, 2012, Maris indicated he believed that the consolidation of the two cases was "questionable." Section 954 provides in relevant part: "An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or

more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated.” Some of the factors to be considered when determining whether to consolidate cases are the cross-admissibility of evidence, whether one of the two cases contains “highly inflammatory charges” and whether one of the cases is a “weak case” and its joinder with a relatively strong case would be prejudicial. (See *Belton v. Superior Court* (1993) 19 Cal.App.4th 1279, 1284.) Here, Maris argues the cases occurred almost a year apart and that the time factor, itself, would cause him to be prejudiced by their consolidation. The contention is without merit. Although they occurred several months apart, both cases involved the burglary, with a person present, of apartments in the same area. After Maris entered the apartments and confronted the occupants, he left. In addition, although he attacked the occupant of one apartment but did not physically harm the occupant of the other, “neither case is more likely to be [more] inflammatory.” (*Id.* at p. 1287.) Maris has failed to demonstrate “that the potential for substantial prejudice outweighs the well-recognized benefits to the state from joinder of cases.” (*Id.* at p. 1288.) The trial court properly exercised its discretion when it consolidated the two cases. (*Ibid.*)

In a second letter, filed November 9, 2012, Maris claimed he should have been charged with section 460, which indicates the difference between first and second degree burglary. Section 459 simply refers to burglary in general. He urged citation to one statute alone was not enough to allege an offense and thus, by pleading to only section 459, he could not be held liable for the commission of first degree residential burglary. Again, Maris’s contention is without merit. In *People v. Scofield* (1983) 149 Cal.App.3d 368, 371, the court determined that, reading sections 459, 460 and 461 together, “we see section 459 defines the elements of the crime, section 460 divides the crime into two levels of seriousness for the purpose of sentencing, and section 461 sets out the sentence terms. The aggravating factors used to establish the degree of an offense are not the elements of the crime. [Citations.]”

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.