

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

REECE PETER HOLLIDAY,

Defendant and Appellant.

D059891

(Super. Ct. No. SCN279332)

APPEAL from a judgment of the Superior Court of San Diego County, Richard E. Mills, Judge. Affirmed.

In this unfortunate case, the appellant, who suffers from paranoid schizophrenia, unlawfully entered an occupied dwelling in order to steal a slice of pizza. He undoubtedly terrified the teenage girls who were inside the house and he has now been convicted of first degree residential burglary. While we are satisfied appellant was properly convicted, we can only observe it is sad that he has incurred a conviction for a serious felony for such a trivial goal, getting a slice of pizza.

Reece Peter Holliday was convicted, following a jury trial, of residential burglary where there were persons present inside the dwelling. (Pen. Code, §§ 459, 460, 667.5, subd. (c)(21).) The trial court granted Holliday five years formal probation.

Holliday filed a timely notice of appeal. In his appeal he contends there is not sufficient evidence to prove that he intended to steal pizza when he entered the dwelling. We will find there is sufficient substantial evidence in this record to prove his intention to steal. Accordingly, we will affirm.

#### STATEMENT OF FACTS

At around 5:30 p.m. on July 11, 2010, two young girls were babysitting the children of a family in Vista. One of the girls was outside the house when Holliday approached her and asked if she was alone. The girl told Holliday that her father was inside the house, at which point Holliday said he would "just go home." The girl went inside and locked the door.

In the meantime, the girls had ordered a pizza to be delivered to the house. The pizza delivery person arrived shortly after the encounter with Holliday. While the girls and the children were eating the pizza Holliday knocked on their door and rang the doorbell. One of the girls opened the door, at which point Holliday asked if he could have some pizza. The girl told him it was almost all gone. Holliday responded that he did not think that was possible since the pizza had just been delivered.

The girl slammed the door and they took the children upstairs. As they were going upstairs they observed Holliday at the living room sliding door. The girls took the

children into the master bedroom and tried to hold the door shut. As they were holding the door shut, they observed a shadow under the door and felt someone pushing on the door. One of the girls called 911.

Holliday was arrested about 15 minutes after police arrived. He told police that he had encountered a girl in the front yard of a house and that she told him her parents were home and that they had ordered a pizza. Holliday went home, but then returned to the house because he wanted a slice of pizza. Holliday said he knocked on the door and asked for a slice of pizza, but the girl who answered told him the pizza was gone.

Holliday told police that after the girl told him he could not have any pizza, he went to the sliding glass door of the living room. He opened the door and went inside. Holliday said he went inside to see if everything was alright and denied that he went upstairs. Holliday said that while he was inside the house he noticed the pizza was not all gone so he took a slice.

### **Defense Case**

Holliday called a forensic clinical psychologist to testify about Holliday's mental state. The witness said that Holliday suffered from paranoid schizophrenia.

### **DISCUSSION**

Holliday contends there is not sufficient evidence in this record to prove that he intended to steal pizza before he entered the dwelling. He does not challenge the proof that he entered the occupied dwelling or that he in fact stole a slice of pizza. His contention focuses on what he contends is a lack of evidence to prove his intent at the

time of entry. Holliday argues that his statements show he did not believe there was pizza in the house because the girls told him it had been consumed. Thus he argues he did not have the requisite intent for the offense of burglary. We are satisfied that a reasonable jury could conclude that the purpose of Holliday's entry into the house was his fixation on getting a slice of the girls' pizza, and however trivial the purpose, the evidence established an intent to steal before the actual entry into the dwelling.

### 1. Standard of Review

When an appellate court reviews a claim of insufficient evidence to support a conviction, it applies the very familiar substantial evidence standard of review. Under that standard the court reviews the entire record, drawing all reasonable inferences in support of the fact finder's decision. The court does not make credibility decisions and it does not reweigh the evidence. Rather the appellate court simply determines whether there is sufficient substantial evidence in the record from which a reasonable jury could have been satisfied of the defendant's guilt beyond a reasonable doubt. In short, it is not our role on appeal to retry the question of guilt or innocence. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We apply the same standard when we review a conviction based on circumstantial evidence. (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

### 2. Analysis

In order to convict a person of burglary, the prosecution must prove the person entered the building with the concurrent intent to commit theft or a felony. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041.) The intent of the defendant at the time of entry

into a building is usually proved by circumstantial evidence. That is, we look to the circumstances surrounding the entry to determine if the jury could reasonable infer an intent to commit theft at the time of the entry. (*People v. Holt* (1997) 15 Cal.4th 619, 669-670.) The fact a defendant actually committed a theft inside the building may create a reasonable inference that the theft was the purpose of the entry. (*Id.* at p. 670; *In re Leanna W.* (2004) 120 Cal.App.4th 735, 741.)

Although Holliday told police he entered the dwelling to see if everything was alright, the jury was not required to believe his version of the events. Given his clear fixation on getting some pizza from the girls, and the immediate nature of his entry through the glass door after being locked out by the girls supports an inference he was still in pursuit of his goal. It is notable that Holliday told police he did not go upstairs, yet the girls testified that he did and that he pushed on the bedroom door. In other words, the jury could well have rejected his unlikely story that he went in to see if everything was alright, given his earlier insistence that there should have been some pizza left and that he continued to pursue the issue. The fact that he did take some pizza once inside is a fact that tends to support the theory that obtaining some of the pizza was the purpose of his actions, however strange his fixation might have been. We are therefore satisfied that on this record the jury could have been convinced of the intent to commit theft beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.