

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

THERESA CAMILLE MORDAUNT,

Defendant and Appellant.

E055279

(Super.Ct.No. FVA1100532)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Theresa Camille Mordaunt appeals from a judgment of conviction of burglary and attempted robbery, both in the first degree. (Pen. Code, §§ 664, 211, 459.)<sup>1</sup> She asserts that the evidence was insufficient to support these convictions.<sup>2</sup> We disagree and affirm the judgment.

#### STATEMENT OF FACTS

Defendant lent money to the victim and her husband, who physically gave her their truck as collateral. At some point, while in defendant's possession, the truck was either damaged or otherwise became inoperative, as it was impounded in Newport Beach and never returned to the victim or her husband.<sup>3</sup>

Defendant sued in small claims court to recover the amount she claimed was due her, but the matter was dismissed after mediation. (The circumstances of the dismissal are not clear.) The matter was dismissed in December 2010.

On March 30, 2011, the victim was in her home when she heard a bumping sound at the screen door. The victim opened the door a few inches and saw defendant. She tried to close the door, but defendant kicked through the screen door and then kicked the actual door as well. The victim backed up, losing her balance. Defendant was yelling, "I want my money. Give me my money" and began swinging her arms and knocking

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Defendant was also convicted of vandalism and cutting a utility line. (§§ 594, subd. (b)(2)(A), 591.) She does not challenge these convictions.

<sup>3</sup> Apparently, it was impounded because it was "collecting" parking tickets for having an expired registration and being parked during street sweeping.

things over. The victim told her that she was going to call the police, and defendant picked up a game controller in the shape of a guitar and began swinging it at the victim, striking her on the arms. The victim estimated that the controller weighed between three and five pounds.

In the meantime, the victim managed to call 911<sup>4</sup> and ran into the bathroom. When she looked out, she saw defendant ripping the telephone wires out of the wall. After a few moments more, defendant left. The victim's purse was on a table during the incident.

The investigating officer testified that when defendant was apprehended and identified by the victim later in the same evening (but according to the victim "several hours later"), defendant appeared to be under the influence of some substance; she was agitated, rigid, and her speech was very rapid.

Defendant argues that there was no substantial evidence either that she actually tried to take money (or anything else) from the victim's person or immediate presence or that she had the specific intent to do so. Defendant suggests that her crime (if any) was extortion, not robbery. Defendant then extrapolates that the burglary conviction must also fall because the jury might have based it upon the "unproven" attempted robbery.

---

<sup>4</sup> A recording of the call was played for the jury.

## DISCUSSION

First, defendant properly concedes that even if she believed that the victim owed her money, it is not a defense to a charge of robbery if the elements of that crime are established. (*People v. Tufunga* (1999) 21 Cal.4th 935, 955-956.) We therefore proceed to the elements of a criminal attempt and the governing standard of review.

With respect to the substantial evidence argument, in determining whether the conviction should be upheld, our task is to determine whether *any* reasonable trier of fact could have decided that defendant intended to rob the victim. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1552.) In other words, the conviction must be based upon substantial evidence—evidence that is reasonable, credible, and of solid value. (*People v. Cravens* (2012) 53 Cal.4th 500, 508; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) The fact that the evidence might also reasonably lead to a contrary, or different, conclusion does not require reversal of the judgment. (*Cravens*, at p. 508.)

“An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (§ 21a.) Contrary to defendant’s implicit position, it is not necessary that a defendant actually commit an element of the underlying crime. So long as the specific intent has been formed and the defendant commits an act that causes sufficient risk of harm, it is immaterial that he or she could not complete the intended offense. (*People v. Medina* (2007) 41 Cal.4th 685, 694.) A conviction for attempt is proper as long as the defendant, in addition to possessing the required specific intent, commits an act that goes beyond

mere preparation and is a direct step towards the accomplishment of the criminal goal.

(*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 609.)

These principles readily demonstrate the lack of merit in defendant's claim.<sup>5</sup> With respect to specific intent, although as defendant notes she did not ask, "'Where is the money?'" she *did* say, "'I want my money. Give me my money.'" She also picked up an object susceptible of use as a weapon (the game controller "guitar") and wielded it against both household objects and the victim. Although defendant suggests that any intent to rob was formed after her entry, this theory is inconsistent with the forcible, even violent manner in which she entered, breaking the door, and pushing the victim backwards. Such an act could only with difficulty be reconciled with the supposition that defendant just wanted to talk about the debt. The jury acted well within its province in concluding that defendant broke into the home with the intent to take money from the victim by force.

Defendant also obviously took far more than a mere preparatory step in the accomplishment of the crime when she forced her way into the home, demanded money, and assaulted the victim. (See *People v. Birden* (1986) 179 Cal.App.3d 1020, 1026 [forcible entry alone is sufficient act to constitute attempt where intent to rob is admitted].) It is immaterial that she did not actually obtain money; that is one of the differences between an attempt and the completed crime. Nor does the fact that she did not take the victim's purse from wherever it lay prove anything helpful to defendant. The

---

<sup>5</sup> We do not go so far as the People, who pronounced loudly, "Rubbish."

crime of attempted robbery does not require that the defendant actually take or otherwise obtain possession of any property. (*People v. Lindberg* (2008) 45 Cal.4th 1, 29.) And even assuming arguendo that voluntary abandonment may in some circumstances prevent a conviction for attempt (see generally 1 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Elements, § 71, pp. 363-364), in this case, the jury could reasonably have concluded that defendant only left the victim's home and gave up her attempt to obtain money because the victim had secured herself in the bathroom and called for police assistance. (See *People v. Von Hecht* (1955) 133 Cal.App.2d 25, 36 [abandonment no defense where prompted by fear of discovery or arrival of police]; cf. *People v. Staples* (1970) 6 Cal.App.3d 61, 69 [reason for abandonment immaterial once the acts of the defendant have reached the point where they can be legally classified as an attempt].)

As for defendant's efforts to persuade that she should have been charged with extortion rather than robbery, they are unpersuasive. Although extortion may also involve the use of force or fear, it is distinguished from robbery in that the intent is to induce the victim to *consent* to part with the money or other property. (§ 518; *People v. Sales* (2004) 116 Cal.App.4th 741, 748.) It has also been said that the "force or fear" that supports a robbery conviction involves an immediate threat, while extortion is commonly based on a threat of future harm. (See *People v. Torres* (1995) 33 Cal.App.4th 37, 52, fn. 7.) Not only was defendant's use of force and violence against the victim immediate and simultaneous with the demand for money, it was also inconsistent with an intent to persuade the victim to peaceably consent.

As the evidence was amply sufficient to establish that defendant had the specific intent to rob the victim when she forced her way into the home, the burglary conviction is similarly invulnerable.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST  
Acting P.J.

We concur:

McKINSTER  
J.

CODRINGTON  
J.