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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GUSTAVO MEDINA FLORES,

Defendant and Appellant.

F067959

(Super. Ct. No. MCR041631)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Dale J. Blea, Judge.

James F. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Peter H. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J. and Smith, J.

A jury convicted appellant Gustavo Medina Flores of two counts of first degree burglary (Pen. Code, § 459). On August 28, 2013, the court sentenced Flores to an aggregate prison term of seven years four months in the instant case and a consecutive, eight-month term in an unrelated case.

On appeal, Flores contends: (1) the evidence is insufficient to sustain his convictions and (2) the court committed instructional error. We affirm.

FACTS

On April 14, 2011, Nicole Barajas returned to her house in Madera County and found it had been broken into. A television was missing from her living room and an Xbox and a picture were missing from another room. The screen to a window on the attached garage had been removed. A sheriff's deputy was able to lift three sets of latent fingerprints from the screen.

On April 26, 2011, William Prosperi arrived at his mother's house in Madera County and discovered that the lower part of the front door had been kicked out. Someone was still in the house when Prosperi entered but Prosperi did not see the person leave. Prosperi found that a television in a cabinet had been removed from its brackets and pulled away from the wall. The television was on and was displaying a snowy picture. A sheriff's deputy was able to remove three sets of latent fingerprints from the television.¹

Josephina Roderick testified that she had worked for seven years as an identification specialist for the Madera County Sheriff's Department analyzing latent fingerprints. She had a Bachelor of Arts degree in anthropology, a master's degree in forensic science and she had completed over 1,000 hours in forensics specializing in fingerprints. Roderick also had taken various other courses related to fingerprint analysis

¹ Prints are lifted off a surface by brushing the surface with a special dust, applying a tape to the area, and then applying the tape to a fingerprint card which transfers the prints from the tape to the card.

through different professional associations. During her tenure as a fingerprint analyst for the sheriff's department she completed over 2,000 fingerprint comparisons.

Roderick analyzed latent fingerprints obtained from both burglaries. Once she determined that the quality of the latent prints was sufficient for them to be analyzed she scanned the fingerprint cards into a computer. She then ran the latent prints through the Automated Fingerprint Identification System (AFIS) database to search for possible matches and received a list of 20 potential matches from known fingerprints for each set of latent prints.

Roderick then began a three-level comparison of each set of known fingerprints on the AFIS generated list to the unknown latent fingerprints. First, she looked at the pattern type of the ridges to see if they had a loop, arch, or whorl pattern. Second, she looked at the characteristics of the ridges to see whether they formed dots or islands or whether they bifurcated, i.e., split into two. Third, she looked for pores to see if they were in the same location. A person can have from 35 to 175 "points or characteristics" in one finger that can be used for comparison. However, once she finds sufficient matching minutia between latent prints and known prints, based on the law of biological variance that nothing in nature is identical, she can state with confidence that the latent prints and the known prints come from the same person.

Using this process Roderick was able to match the latent prints obtained from each burglary to Flores's fingerprints based on 14 matching points or characteristics she found between the latent prints and Flores's prints. Flores was the first person on the AFIS list of potential matches for each set of latent prints. Nevertheless, once she determined the latent prints belonged to him she did not analyze any other fingerprints because the 14 matching characteristics provided her with enough information to make the identification.

David DePartee testified he had worked for 29 years in the field of latent prints, including the last 22 years as a latent print analyst with the Department of Justice Crime Lab in Fresno. His formal training included a one-week course called Advance Latent

Fingerprints at the Rio Hondo Community College Police Academy, four courses relating to fingerprint analysis at FBI academies that were two-to-three weeks long and numerous other relevant classes through the Department of Justice and other agencies.

DePartee performed a similar comparison as Roderick on the latent prints found at the two burglaries. After finding at least eight clear matching points and no dissimilar points, he determined that the latent prints from each burglary belonged to Flores.

DISCUSSION

Sufficiency of the Evidence

In reviewing a challenge to a judgment based upon insufficiency of the evidence, we review all of the evidence in the light most favorable to the prosecution to determine whether a reasonable jury could have found the elements of the crime beyond a reasonable doubt. (*People v. Jackson* (1989) 49 Cal.3d 1170, 1199-1200.) If the judgment is supported by substantial evidence—evidence that is reasonable, credible and solid—we will affirm. Even where the prosecution has relied on circumstantial evidence, this does not change our standard of review. If the evidence reasonably justifies the jury’s findings, the fact that the circumstances might be reconciled with a different conclusion does not warrant reversal of the judgment. (*People v. Thomas* (1992) 2 Cal.4th 489, 514.)

Flores’s burglary convictions were based primarily on the expert testimonies of Roderick and DePartee that the fingerprints found at the scene of each burglary belonged to Flores. “[U]nder California law, it is established that fingerprints are strong evidence of identity and ordinarily are sufficient, without more, to identify the perpetrator of a crime. (*People v. Johnson* (1988) 47 Cal.3d 576, 601; *People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1588 [palm prints found on a window which was the point of entry for a burglary were sufficient for a conviction where there was no evidence the defendant, who had visited the apartment before the burglary, had been present after the window was cleaned and there was no evidence the defendant would have had occasion

to place his hand on the window ‘except to gain surreptitious entry into the apartment’]; *People v. Preciado* (1991) 233 Cal.App.3d 1244, 1247 [fingerprints on a wristwatch box in a burglarized apartment were sufficient for a conviction because the victim did not know the defendant and the box, which the victim received as a gift 18 months earlier, had never left the home].)” (*People v. Tuggle* (2012) 203 Cal.App.4th 1071, 1076.)

Flores contends the evidence is insufficient to sustain his burglary convictions because neither expert followed verifiable guidelines, applied standards that detected errors, or compared the latent prints with the other potential matches on the list generated by the AFIS program. Additionally, according to Flores, neither expert provided an error rate or provided a scientifically based reason why their examination of fingerprints stopped once they matched a certain number of points of comparison. Flores further alleges that both experts were concerned with results and conclusions rather than the methodologies they used to arrive at those conclusions. Flores also alleges, that Roderick admitted that if she had continued examining Flores’s fingerprints after matching 14 points of comparison she might have found a dissimilarity that would have excluded Flores as the source of the latent prints.

“A party may impeach an expert witness by *contradiction*, i.e., by showing the falsity of any matter upon which the expert based his opinion. This can be done either by cross-examination of the expert or by calling other witnesses to offer evidence showing the nonexistence or error in the data upon which the first expert based his opinion.” (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 922–923.) “Any flaws in an expert’s opinion may be exposed through the adversary’s own evidence or in cross-examination. Those imperfections do not make the expert’s sources so unreliable or speculative as to lead to rejection. So long as foundational reliability is met, the strength of an expert’s assumptions affects the weight rather than the admissibility of the opinion.” (*Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1121.)

The foundation required to establish the expert's qualifications is a showing that the expert has the requisite knowledge of, or was familiar with, or was involved in a sufficient number of transactions involving the subject matter of the opinion. (See *People v. Chavez* (1985) 39 Cal.3d 823, 828–829.)

Roderick and DePartee had extensive experience in fingerprint comparison. Roderick had a Master's Degree in Forensic Science and had completed over 1,000 class hours in forensics specializing in fingerprints. She had also worked as an identification specialist for the Madera County Sheriff's Department for seven years and had completed over 2,000 fingerprint comparisons. DePartee had worked 29 years in the field of latent prints, including 22 years as a latent print analyst with the Department of Justice and had received many hours of formal training over the years. Thus, Roderick and DePartee were both properly qualified as experts on fingerprint identification. Further, their testimonies provide evidentiary support for Flores's convictions because they both compared the latent fingerprints from each burglary to Flores's fingerprints and both concluded that the latent prints belonged to Flores.

Flores could have had his own expert compare his prints to the latent prints but chose not to. He also failed to present any other evidence to contradict the prosecution's expert witnesses. Further, the issues he raises go to the weight of the evidence rather than its sufficiency to sustain his burglary convictions.

In any case, there is no merit to Flores's contentions. Flores's claims that Roderick and DePartee were concerned with results and conclusions rather than principles or methodologies, and that they did not follow verifiable guidelines ignore the experts' testimonies regarding the methodology they employed in concluding Flores's fingerprints matched the latent prints.

Moreover, "[t]he field of fingerprint identification ultimately rests on two premises: that each individual's fingerprints are unique and that the unique pattern of a person's prints does not change over time." (*United States v. Baines* (2009) 573 F.3d

979, 982.) Thus, once the experts found a certain number of identical points in Flores's prints and the latent prints, it was unnecessary and redundant for them to continue comparing the two sets of prints for additional identical points of comparison. Similarly, once it was determined that the latent prints belonged to Flores, it was unnecessary to compare the fingerprints of other people on the AFIS list to the latent prints because the uniqueness of each person's fingerprints assured that they would not match.² Further, Roderick testified that she required 14 identical points of comparison in order to make an identification whereas DePartee testified that he required only eight and Flores did not introduce any evidence to show that either number was too small to make an accurate identification.

There is also no merit to Flores's contention that Roderick conceded that had she continued her comparison of Flores's prints after finding 14 matching points, she might have found a dissimilarity which would have excluded him as the source of the latent prints. During cross-examination defense counsel asked Roderick, "You had 14 points of 86 assuming that he has 100 points on his finger, 86 of those points could have been possible exclusions, right?" Initially, Roderick replied affirmatively. However, she quickly corrected herself stating, "I'm sorry. That was a no. We had -- I had sufficient

² During cross-examination defense counsel asked Roderick if she could have looked at the fingerprints of someone else on the AFIS list she was provided to see if she could "possibly" match 18 or more points. Roderick responded, "I could have possibly made more points on this individual [Flores] also." Flores contends that through this answer, Roderick conceded that if she had compared the prints of other people on the AFIS list to the latent prints she may have found a set of prints that had more matching points of comparison with the latent prints than Flores's prints did. We disagree. Roderick testified that the 14 matching points of comparison between Flores's prints and the latent prints were sufficient to identify the latent prints as belonging to Flores. Thus, the answer quoted above appears to simply mean that Roderick could have continued comparing Flores's prints or other people on the AFIS list with the latent prints but it was not necessary because she had already identified them as belonging to Flores.

evidence based -- especially based on the quality. The quality of the print is really good. So based on the quality, and the quantity I was able to stop at [14].”

In any event, to the extent the answers noted above were inconsistent with each other, we “review the record in a light most favorable to the judgment, *resolving all conflicts in the evidence and drawing all reasonable inferences in support of the jury’s determination.*” (*People v. Honig* (1996) 48 Cal.App.4th 289, 350, italics added.) Thus, we conclude that the evidence is sufficient to sustain Flores’s conviction on two counts of first degree burglary.

The Alleged Instructional Error

Flores contends the only evidence that he had the requisite intent to steal when he entered into the Prosperi house was that the television had been removed from its wall brackets. He further posits that because this evidence was speculative with respect to his intent when he entered the house, based on the absence of evidence of intent to steal, the jury could have concluded that he committed the lesser offense of attempted burglary. Thus, according to Flores the court erred by its failure to sua sponte instruct the jury on attempted burglary. This claim is meritless.

“[T]he sua sponte duty to instruct on a lesser included offense arises if there is substantial evidence the defendant is guilty of the lesser offense, but not the charged offense. [Citation.] This standard requires instructions on a lesser included offense whenever “a jury composed of reasonable [persons] *could ... conclude*[]” that the lesser, but not the greater, offense was committed. [Citations.] In deciding whether evidence is ‘substantial’ in this context, a court determines only its bare legal sufficiency, not its weight.” (*People v. Breverman* (1998) 19 Cal.4th 142, 177.)

Flores entered the Prosperi residence, without consent, when no one was home by breaking out the bottom of the front door. The jury could reasonably infer from the lack of consent, the forcible entry into a house with its resident gone, and the removal of the television set from its wall brackets, that he entered with the intent to steal. Thus, there is

no merit to Flores's contention that there was insufficient evidence that he entered the Prosperi house with the requisite intent. Further, once Flores entered the house with the requisite intent the burglary offense was committed. (*People v. Aguilar* (1989) 214 Cal.App.3d 1434, 1436.) Therefore, since the evidence did not show that Flores committed anything less than the completed offense of burglary, the court was not required to instruct on the lesser included offense of attempted burglary and its failure to do so was not error.

DISPOSITION

The judgment is affirmed.