

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAMES SNELL,

Defendant and Appellant.

F069506

(Super. Ct. No. CRF42560)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. James A. Boscoe, Judge.

C. Athena Roussos, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

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

INTRODUCTION

On December 6, 2013, an information was filed charging defendant with one count of first degree burglary (Pen. Code, § 459). The information also alleged defendant had a prior strike conviction (§ 667, subds. (b)-(i)), had two prior prison terms (§ 667.5, subd. (b)), and three prior felonies (§ 1203, subd. (e)(4)). A jury found defendant guilty of the charged offense, and defendant admitted to the allegations in the information. The trial court sentenced defendant to an aggregate term of 19 years in prison.

On appeal, defendant argues there was insufficient evidence to support his conviction. We affirm.

FACTS

On January 28, 2013, Kathleen Perkins and her son arrived at their apartment in Jamestown. As Perkins worked far from Jamestown, she only stayed in the apartment once a week. Upon entering the unit, Perkins heard blinds rustling, and noticed her television was missing. Realizing a burglary had taken place, Perkins grabbed her son, exited the apartment, and called the police and her ex-husband.

When Perkins returned to the apartment with her ex-husband, she discovered that many of her belongings had been stuffed into pillowcases or wrapped in sheets, and her television was lying on the bed, wrapped in a blanket. Her jewelry, clothes, shoes, cameras, and hair products were missing, as were her son's electronic games and accessories. Perkins's bedroom window was wide open, and she discovered a lit candle on her bedside table, and used condoms on the bed and on the floor.

Sheriff's Deputy Samuel Egbert responded to Perkins's call, and when he examined the bedroom window he noticed the screen was missing and lying outside on the ground. Egbert determined the window to be the point of entry for the perpetrator, and dusted the screen for prints, which yielded a partial palmprint. Subsequent forensic analysis determined the print belonged to defendant, who did not lease an apartment in the building but was known to stay in a unit rented by Perkins's upstairs neighbor.

Defendant was subsequently charged and convicted in connection with the robbery, and this appeal followed.

DISCUSSION

Defendant argues there was insufficient evidence to support his conviction for first degree burglary, as the palmprint left on the screen from the victim's bedroom window was insufficient to identify him as the perpetrator.¹ We disagree.

When addressing a challenge to the sufficiency of the evidence, we view the record in the light most favorable to the conviction and presume the existence of every fact in support of the conviction the trier of fact could reasonably infer from the evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) “Reversal is not warranted unless it appears ““that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]’ [Citation.]” (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1457.)

“Generally speaking whether fingerprints or palmprints of the accused are alone sufficient to identify the defendant as the criminal must depend on the particular circumstances of the case. [Citations.] Where such prints are found at the place of forced entry, particularly where such location is normally inaccessible to others, there is a reasonable basis for the inference that the prints were made there at the time of the commission of the offense and under such circumstances may alone be sufficient to identify the accused. [Citations.]” (*People v. Atwood* (1963) 223 Cal.App.2d 316, 326, overruled on other grounds in *People v. Carter* (2003) 30 Cal.4th 1166, 1197-1198.)

Here, defendant's palmprint was found on the screen that was removed from the point of entry for the burglary. Photographic evidence shows the window in question is located within a private enclosure outside of the victim's apartment. Further, the

¹ Defendant does not dispute that there was sufficient evidence to establish a burglary took place at Perkins's apartment. He only disputes the sufficiency of the evidence identifying him as the perpetrator.

investigating officer testified the screen was discovered lying on the ground outside the window. As the window and the area outside the window were part of an enclosed private area, there was sufficient evidence to establish that defendant's palmprint was found at the point of entry, which was in a location normally inaccessible to others. Accordingly, there was sufficient evidence to support the jury's conclusion that defendant was the perpetrator of the burglary. (*People v. Atwood, supra*, 223 Cal.App.2d at p. 326.)

Defendant attempts to rebut this conclusion by contending the private enclosure was bordered by a pedestrian walkway, and the evidence did not specify whether the screen was found in the private enclosure, or in the public walkway, where defendant may have happened upon it innocently. We are not persuaded by this argument. Testimony established the screen was found on the ground outside the window "flat on the ground or ... leaning against the building," not on the outside of the enclosure, over the fence surrounding the enclosure, beyond the grass that photographic evidence established laid beyond the fence, and in the pedestrian walkway. Given the testimonial and photographic evidence, there was more than sufficient evidence from which the jury could conclude defendant's palmprint was found at the point of entry, and in an area generally inaccessible to others. Defendant is not entitled to relief.

DISPOSITION

The judgment is affirmed.