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

THE PEOPLE,

Plaintiff and Respondent,

v.

KELLY VAUGHN,

Defendant and Appellant.

F071410

(Tulare Super. Ct. No. VCF311040)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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

A jury convicted appellant Kelly Vaughn of first degree burglary (count 1, Pen. Code, §§ 459, 460, subd. (a))¹ and found true an allegation that another person was present during the burglary, which made the burglary a violent felony (§ 667.5, subd. (c)(21)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On December 23, 2014, at approximately 11:00 p.m., Melissa De Leon was asleep in her house in Tulare, California when she was awakened by a noise in the family room. De Leon got up, peered into the room, and saw an intruder who was trying to rip a television off of the fireplace mantel. De Leon screamed at the intruder and for her husband. The intruder looked at De Leon face to face and she continued screaming. As De Leon's husband was getting up, the intruder went out of the house through the back door. All the lights in the house were on while the intruder was inside.

De Leon's husband checked the house and then called the police. When the police arrived De Leon described the intruder to them as a white male, six feet tall, with broad shoulders, and facial hair who was wearing blue jeans, a long sleeved shirt, and a black beanie. She also told the officers that the intruder took numerous items including presents, tools, art pieces, a leaf blower and two bicycles. The officers showed her three suspects they had detained and De Leon told the officers that none of them were the intruder. A few hours later an officer returned and showed De Leon a photo lineup of six individuals that contained a photograph of Vaughn. De Leon unequivocally identified Vaughn from the photo lineup as the intruder.

¹ All further statutory references are to the Penal Code.

On January 26, 2015, the district attorney filed an information charging Vaughn with first degree burglary, an allegation that someone was present during the burglary, and a prior prison term enhancement.²

On March 11, 2015, the jury reached its verdict in this matter.

On April 9, 2015, the court sentenced Vaughn to the aggravated prison term of six years.

Vaughn's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Vaughn has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.

² Vaughn's prior prison term enhancement was based on his 2014 felony receiving stolen property conviction for which Vaughn was originally sentenced to a 16-month prison term. On April 17, 2014, pursuant to section 1170, subdivision (d)(1), the court recalled the sentence on that conviction and placed Vaughn on probation for three years in that case on condition that he serve 421 days in local custody. This apparently was the reason the prior prison term enhancement was dismissed on January 26 or 27, 2015.