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JAN 28 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA,<br><br>Appellee,<br><br>v.<br><br>JESUS GREGORIO ORNELAS,<br><br>Appellant. | 2 CA-CR 2008-0123<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 111, Rules of<br>the Supreme Court |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072512

Honorable Hector E. Campoy, Judge

AFFIRMED

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Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson
Tucson
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By David J. Euchner
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E C K E R S T R O M, Presiding Judge.

**¶1** Appellant Jesus Ornelas was convicted after a jury trial of burglary in the second degree. The trial court sentenced him to an enhanced, presumptive prison term of 11.25 years. On appeal, Ornelas argues the evidence was insufficient to support his conviction. We disagree and affirm the conviction and the sentence imposed.

**¶2** We view the evidence in the light most favorable to upholding the conviction. *State v. McCurdy*, 216 Ariz. 567, ¶ 14, 169 P.3d 931, 937 (App. 2007). At trial, a neighbor testified that, on an afternoon when the victim was away on a business trip, she saw two men standing near the victim's house. The men looked up and down the street and walked up the steps to the front of the house. One of the men looked through the windows, opened the front screen door, and put his hand on the doorknob. At that point, the neighbor called 911. She then saw the men go behind the victim's house. Shortly thereafter, she heard an alarm sounding from the house.

**¶3** When officers arrived at the scene, they heard the alarm and one officer saw Ornelas jumping from the open doorway into the backyard. Another officer found a set of keys when he searched Ornelas. One of the keys operated the dead bolt lock on the kitchen door. The officers also discovered that a window in the home had been broken, presumably with a brick found inside. Personal items of the victim had been disturbed and knocked off the top of a piano located under the broken window. And, shoe prints found on top of the piano had markings that were similar to the markings on the tennis shoes Ornelas had been wearing.

**¶4** When the victim returned home, she found the damage to her window and the area around it, but reported that nothing was missing from her home. After the close of the state's evidence, Ornelas moved for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., arguing the state had not presented any evidence establishing he had the intent to commit a felony or theft inside the victim's residence. The court denied the motion. Ornelas then testified he had only entered the victim's home to use the bathroom. After the jury found him guilty of burglary, the court sentenced him for the crime, and this appeal followed.

**¶5** Ornelas argues the trial court erred when it denied his motion for judgment of acquittal made pursuant to Rule 20 because there was insufficient evidence to support his conviction for burglary. We review a trial court's decision to deny a Rule 20 motion for an abuse of discretion, and only if "'a complete absence of probative facts'" supports the conviction will we reverse it. *State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007), *quoting State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996). In determining whether the evidence presented at trial was sufficient to support a conviction, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

**¶6** Ornelas concedes the state proved the first two elements of burglary—that he had entered or remained unlawfully in a residential structure—but contends it offered no evidence of the third element—that he had intended to commit any felony or theft inside the

home. *See* A.R.S. § 13-1507(A) (elements of burglary in second degree). But a conviction for burglary does not require that the underlying felony be completed, *State v. Bottoni*, 131 Ariz. 574, 575, 643 P.2d 19, 20 (App. 1982), and the requisite intent can be proven by circumstantial evidence. *State v. Marahrens*, 114 Ariz. 304, 306, 560 P.2d 1211, 1213 (1977).

**¶7** Ornelas admitted he had entered the home through a broken window—a fact long held sufficient to establish the intent required to commit a burglary. *See State v. Malloy*, 131 Ariz. 125, 130, 639 P.2d 315, 320 (1981) (noting jury could have found intent to commit burglary from fact defendant broke window); *State v. Belyeu*, 164 Ariz. 586, 591, 795 P.2d 229, 234 (App. 1990) (jury can infer felonious intent to commit burglary from fact defendant entered by breaking window); *State v. Taylor*, 25 Ariz. App. 497, 499, 544 P.2d 714, 716 (1976) ("An inference of the intent necessary for conviction of burglary may be drawn when unauthorized entry into the premises is gained by force."); *see also State v. Rood*, 11 Ariz. App. 102, 103-04, 462 P.2d 399, 400-01 (1969) (defendant entering home by walking through unlocked door insufficient to establish felonious intent for burglary conviction; court noting "entry by force or through a window" could support inference of criminal intent).

**¶8** Moreover, Ornelas was found with the victim's kitchen door key, a fact that also supports an inference of an intent to commit a felony or theft in the victim's home. *See State v. Talley*, 112 Ariz. 268, 269, 540 P.2d 1249, 1250 (1975) ("Evidence that an individual was found in the possession of property from the building may support an inference that he

had the requisite intent to commit a crime at the time he entered the premises."); *cf. Belyeu*, 164 Ariz. at 591, 795 P.2d at 234 (although broken window alone sufficient to establish intent, fact defendant took key to utility room once inside residence additional fact supporting conviction). Because, based on the evidence presented, a rational jury could have found the elements of burglary beyond a reasonable doubt, we find no error.

**¶9** Ornelas's conviction and sentence are affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge