

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

954

KA 19-02223

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FREDERICK GIPSON, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BHAGYASHREE GUPTA OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered October 9, 2019. The judgment convicted defendant, upon a nonjury verdict, of burglary in the second degree and petit larceny.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon a bench trial, of burglary in the second degree (Penal Law § 140.25 [2]) and petit larceny (§ 155.25). The conviction arises from an incident in which defendant broke into his cousin's home and stole a necklace, purse and video game system. Although no one was home at the time and there were no witnesses to the break-in, video footage of defendant entering the home was captured on the victim's home surveillance system, and defendant subsequently admitted to a police detective that he entered the victim's home and removed certain items.

Defendant contends that Supreme Court erred in admitting the surveillance video footage in evidence at trial inasmuch as the victim's testimony was insufficient to authenticate the footage because she did not witness the events recorded. We reject that contention. "The decision to admit or exclude video[ footage] evidence generally rests . . . within a trial court's founded discretion" (*People v Patterson*, 93 NY2d 80, 84 [1999]; see *People v Cardoza*, 218 AD3d 1291, 1292-1293 [4th Dept 2023], lv denied 40 NY3d 996 [2023]). A proper foundation authenticating surveillance video footage may be laid by, inter alia, eliciting "the testimony of a witness to the recorded events or of an operator or installer or maintainer of the equipment that the video[ footage] accurately represents the subject matter depicted" (*Patterson*, 93 NY2d at 84).

Operators and maintainers of a surveillance video system include residents of a dwelling who are familiar with the system installed in their place of residence (see *People v Little*, 139 AD3d 1356, 1357 [4th Dept 2016], *lv denied* 28 NY3d 933 [2016]; see also *People v Jones*, 208 AD3d 1632, 1632 [4th Dept 2022], *lv denied* 39 NY3d 986 [2022]; *People v Oquendo*, 152 AD3d 1220, 1221 [4th Dept 2017], *lv denied* 30 NY3d 982 [2017]). Here, the court did not abuse its discretion in admitting the home surveillance video footage based on testimony from the victim that she was familiar with the surveillance system and that the video footage was not altered and fairly and accurately depicted the events that were recorded.

Defendant also contends, with respect to his burglary conviction, that the evidence is legally insufficient to establish that he entered the victim's dwelling with an intent to commit a crime within the premises. We reject that contention. In burglary cases, the defendant's intent to commit a crime within the premises may be inferred beyond a reasonable doubt from the defendant's conduct and the surrounding circumstances, including the defendant's "unexplained presence on the premises" (*People v James*, 114 AD3d 1202, 1205 [4th Dept 2014], *lv denied* 22 NY3d 1199 [2014] [internal quotation marks omitted]), "[t]he fact that [the] defendant used force in obtaining entry" (*People v Bergman*, 70 AD3d 1494, 1494 [4th Dept 2010], *lv denied* 14 NY3d 885 [2010]), and the fact that the defendant damaged or disturbed the victim's belongings while inside the dwelling (see *People v Owens*, 204 AD2d 1055, 1056 [4th Dept 1994]). Here, the People submitted evidence establishing that defendant did not have permission to be in the victim's dwelling, that he obtained entry by breaking a door, and that, once inside, he took several items belonging to the victim and her children and left with those items (see *Little*, 139 AD3d at 1356; see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]). Additionally, viewing the evidence in light of the elements of burglary in the second degree in this nonjury trial and deferring to the court's determinations on credibility (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention that the verdict with respect to burglary in the second degree is against the weight of the evidence (see generally *Bleakley*, 69 NY2d at 495; *People v Sabines*, 121 AD3d 1409, 1410-1411 [3d Dept 2014], *lv denied* 25 NY3d 1171 [2015]).

Finally, we reject defendant's contention that the period of postrelease supervision imposed is unduly harsh and severe.