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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

A138291

(Contra Costa County
Super. Ct. No. J12-00632)

J.M., a minor, appeals from the jurisdictional and dispositional orders of the juvenile court, entered pursuant to Welfare and Institutions Code section 602¹ after the juvenile court sustained the allegation that the minor received stolen property, in violation of Penal Code section 496, subdivision (a). The minor contends that juvenile court should have suppressed evidence obtained in a warrantless search of his apartment by the arresting police officers. He also contends that there is insufficient evidence to support a finding he possessed stolen property. Finding neither contention persuasive, we affirm the juvenile court's orders.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

PROCEDURAL BACKGROUND

On April 25, 2012, the Contra Costa County District Attorney filed a section 602 wardship petition alleging the minor committed first degree residential burglary (Pen. Code, §§ 459/460, subd. (a); count one), receiving stolen property (Penal Code, § 496, subd. (a); count two), and theft of a vehicle (Veh. Code, § 10851, subd. (a); count three).

On July 12, 2012, the minor filed a motion to suppress evidence pursuant to section 700.1. The juvenile court held a combined suppression/jurisdiction hearing on February 11, 2013. Following the presentation of evidence and argument of counsel, the court denied the motion to suppress and sustained count two of the petition (receiving stolen property), and dismissed count one (burglary) and count three (vehicle theft).

On February 27, 2013, the court adjudged the minor a ward of the court and placed him on probation subject to various terms and conditions, including enrollment in a drug treatment program. The minor filed a timely notice of appeal on March 29, 2013.

FACTUAL BACKGROUND

City of Concord Police Officer Mark Robison was on vehicle patrol on April 8, 2012. Around 4:00 p.m., a citizen flagged him down and told him she saw a blue van with a broken window being driven recklessly and that the van went into the parking lot at 1441 Detroit Avenue. Officer Robison entered the parking lot to investigate and drove past a blue van. Observing the van in his mirrors, he noticed it had a broken window on the passenger side and saw a person with long hair sitting in front of the van. Robison turned around and drove back, but when he got to the van nobody was in it. Dispatch informed Robison the van had been reported as stolen.

Things heated up for Officer Robison at this point. First, a young man and his mother approached and told him they were the owners of the van and it had been stolen about 15 minutes earlier. Next, a person named Sandy Castro approached and told Officer Robison she had seen the van being driven through the parking lot in a reckless manner, watched the van park and observed the driver of the van. Then a person named Gwen Shropshire approached and told Robison her apartment had been burglarized. Robison told Shropshire another officer would take her report and directed his attention

to Castro. As Robison was speaking with Castro, a Honda Accord turned into the parking lot and drove past. Castro told Robison she had seen the driver of the Honda talking to the driver of the van earlier, and she believed the van driver and the Honda driver were somehow related.

Meanwhile, City of Concord Police Officer Jeff Ross arrived on the scene and accompanied Gwen Shropshire back to her apartment to investigate the reported burglary. Ross observed that the front door to the apartment had been kicked in and the apartment had been ransacked. Shropshire reported several items missing, including a computer monitor and tower, as well as several long raincoats and leather coats, a Giants baseball jacket, a Coach purse, and assorted items of jewelry.

After concluding his investigation at Shropshire's apartment, Officer Ross went back to where Officer Robison was conducting the vehicle theft investigation. Robison told Ross about the Honda Accord identified by Castro, which had parked nearby, and asked Ross to speak with the driver. Ross saw the sole occupant of the Honda Accord exit the vehicle and asked to speak with him. The person identified himself as Jose Casares and told Ross he lived at apartment number 331 with the minor. Ross arrested Casares for being an unlicensed driver without means of identification, searched his person pursuant to the arrest, and found a pair of gloves and two full-face knit caps with spaces cut out for the eyes—the type worn by perpetrators of violent “street type robberies.”

Officer Robison joined Ross at the scene, saw Casares had been detained and proceeded to search the Honda. Robison saw some paperwork lying on the floor in the rear of the car. When he retrieved the paperwork, Robison saw the minor's name written on it. When Robison ran the minor's name in the crime management system on his computer, he obtained a photograph and information showing the minor lived in an apartment situated very close to Shropshire's apartment. Also, Robison noted the person in the photograph had long hair like the person he saw earlier in front of the stolen van, and also matched the description of the van driver provided by Sandy Castro.

Robison passed information regarding the minor to Officer Ross and Ross contacted the Contra Costa County Juvenile Hall intake unit. Ross spoke with Deputy Andrea Sosa at the intake unit, who confirmed the minor was on active probation for vehicle theft. Officer Ross asked Casares for permission to search the apartment; Casares agreed and gave Ross a key. Ross, accompanied by Officer Robison and Sergeant Stevenson, went to the apartment occupied by Casares and the minor. Ross knocked on the door loudly and announced he was there to conduct a probation search. After knocking and announcing three times without any reply, Ross used the key to open the door and the officers entered the apartment. Upon entering, Ross found a person subsequently identified as Gustavo Mendez standing directly behind the door; it was clear to Ross that Mendez had heard him knocking, but chose not to answer. Ross forced Mendez against the wall and held him there while Sergeant Stevenson went into the living room, where he found the minor asleep on a couch.

After Mendez and the minor were detained and handcuffed, Ross went into the first bedroom accessible from the hallway. He found several items indicating the bedroom belonged to the minor, including a sign on the wall bearing the minor's last name and several pieces of paper lying on the television stand bearing the minor's full name. Also, Ross found several of the items stolen from Shropshire's apartment earlier that day strewn around the bedroom, including a computer monitor and hard drive, several leather jackets, a Coach purse and several pieces of jewelry. Ross returned the stolen items to Shropshire before transporting the minor to juvenile hall.

Andrea Sosa testified that on April 8, 2012, she was employed as a probation counselor at juvenile hall. As a probation counselor, her duties included processing minors upon their admission to and release from juvenile hall. Sosa was also part of the emergency response team that communicated with police officers in the field requesting information on minors in order to screen them for admission to juvenile hall. On April 8, Sosa received a call from Officer Ross requesting information on the minor's probationary status. The standard procedure in responding to such a request is to enter the minor's name in the RUMBA database system. The first screen that appears indicates

the minor's status, such as ward pending, nonward, inactive or vacated, as well as any terms and conditions applying to the minor, such as search and seizure, drug or alcohol testing, restitution or curfew hours. The RUMBA database is maintained by agencies within Contra Costa County, not by the state. According to the information on the RUMBA database, the minor was a ward on probation with conditions allowing search and seizure and imposing drug and alcohol testing. Sosa relayed the information on the minor to Officer Ross. Later that evening, Sosa saw the minor when he arrived at juvenile hall in police custody. The minor told Sosa he was no longer on probation, but Sosa found no information in the computer system to corroborate his claim. In fact, the minor's probation terminated in October 2011, and he was no longer on probation at the time of his arrest on April 8, 2012.

DISCUSSION

A. *Exclusionary Rule*

Under the California Constitution, challenges to the admissibility of evidence obtained by police searches and seizures are reviewed under federal constitutional standards. (Cal. Const., art. I, § 28, subd. (d); *People v. Willis* (2002) 28 Cal.4th 22, 29; *People v. Woods* (1999) 21 Cal.4th 668, 674.) The high court's most recent pronouncement on the federal constitutional standards governing the exclusionary rule was delivered in *Herring v. United States* (2009) 555 U.S. 135 (*Herring*).

In *Herring*, investigator Mark Anderson learned Bennie Herring had driven to the Coffee County Sheriff's Department to retrieve something from his impounded truck. Anderson asked the Coffee County Warrant Clerk, Sandy Pope, to check for any outstanding warrants for Herring's arrest. When Pope found none, Anderson asked Pope to check with Sharon Morgan, her counterpart in neighboring Dale County. Morgan checked the Dale County computer database and told Pope it showed there was an active arrest warrant for Herring's failure to appear on a felony charge. Pope relayed this information to Anderson and asked Morgan to fax over a copy of the warrant as confirmation. Acting on the information received from Dale County, Anderson and a deputy pulled Herring over after he left the impound lot and arrested him. A search

incident to the arrest revealed methamphetamine in Herring's pocket and a pistol in his vehicle. (*Herring, supra*, 555 U.S. at p. 137.)

Meanwhile, when Morgan went to the files to retrieve the warrant to fax to Pope, she was unable to find it. Morgan called a court clerk and learned the warrant had been recalled five months earlier. Normally, when a warrant is recalled the court clerk's office or the judge's chambers calls Morgan, who then enters the information in the sheriff's computer database and disposes the physical copy; however, for some reason the information about the recall of the warrant for Herring did not appear in the database. Morgan immediately called Pope to alert her of the mixup and Pope contacted Anderson by radio, but by then Herring had already been arrested and found with the gun and drugs. (*Herring, supra*, 555 U.S. at p. 138.)

After Herring was indicted for illegally possessing the gun and drugs, he moved to suppress the evidence on the ground his initial arrest was illegal because the warrant had been rescinded. Herring's motion was denied in federal district court and the Eleventh Circuit affirmed, ruling "the evidence was admissible under the good-faith rule of *United States v. Leon*, 468 U.S. 897[, 104 S.Ct. 3405] (1984)." (*Herring, supra*, 555 U.S. at pp. 138–139.) The high court granted certiorari to resolve a conflict in the lower courts regarding the "exclusion of evidence obtained through similar police errors, [citation]" (*Id.* at p. 139.)

Preliminarily, the high court cautioned that a Fourth Amendment violation does not automatically trigger the exclusionary rule, noting that "exclusion 'has always been our last resort, not our first impulse,' [citation], and our precedents establish important principles that constrain application of the exclusionary rule." (*Herring, supra*, 555 U.S. at p. 140.) Specifically, the exclusionary rule "is not an individual right"; rather the focus is "on the efficacy of the rule in deterring Fourth Amendment violations in the future." (*Id.* at p. 141.) Also, "the benefits of deterrence must outweigh the costs" and the rule will not apply if it provides only "marginal deterrence." (*Ibid.*)

Additionally, "[t]he extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct."

(*Herring, supra*, 555 U.S. at p. 143.) Indeed, an “ ‘important step in the calculus’ ” of applying the exclusionary rule is “ ‘an assessment of the flagrancy of the police misconduct.’ ” (*Ibid.*) Noting the exclusionary rule was developed to deter “intentional conduct that was patently unconstitutional,” (*ibid.*), the high court concluded: “To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” (*Id.* at p. 144.)

Turning to the case at bar, the high court concluded, the error leading to the warrantless search was not “reckless or deliberate,” (*Herring, supra*, 555 U.S. at p. 140), but was the result of “isolated negligence attenuated from the arrest.” (*Herring, supra*, 555 U.S. at p. 137.) Whereas, not “all recordkeeping errors by the police are immune from the exclusionary rule[,] the conduct at issue was not so objectively culpable as to require exclusion.” (*Id.* at p. 146.) As pertinent here, the high court stated that “[i]n a case where systematic errors were demonstrated, it might be reckless for officers to rely on an unreliable warrant system,” but “there is no evidence that errors in Dale County’s system are routine or widespread.” (*Id.* at p. 147.) Absent such a showing, “the Eleventh Circuit was correct to affirm the denial of the motion to suppress.” (*Ibid.*)

This case—involving police error resulting in the seizure of evidence in a warrantless search—is governed squarely by *Herring*. The minor argues, however, that *Herring* mandates application of the exclusionary rule in this case because the officers acted recklessly based on information provided by an unreliable computer system. We disagree, and like the high court in *Herring* concluded the conduct at issue is not “so objectively culpable as to require exclusion.” (*Herring, supra*, 555 U.S. at p. 146.) As in *Herring*, there was no evidence in this case showing that the RUMBA computer database was beset with “systematic errors,” or that errors in the system are “routine or widespread.” (*Id.* at pp. 146–147.)

In this regard, the evidence showed the erroneous information on the minor's probationary status was retrieved from the RUMBA computer system by a probation counselor based at juvenile hall, Andrea Sosa, who was part of an emergency response team tasked with responding to calls from police officers in the field needing immediate information on the ward status of juveniles under police contact. Sosa testified that the RUMBA system is a countywide database containing information "that occurs in the courts [and] within the probation department [which] is submitted to clerks and the clerks then update the system on a regular basis." When Sosa entered the minor's name in the RUMBA system, it showed he had a search clause and that is the information she passed to Officer Ross. Sosa did not have access to the minor's actual probation file when she gave that information to Ross because juvenile hall only maintains a minor's file while the minor is actually in custody. If a minor makes a court appearance while out-of-custody, and the court thereafter enters an order, juvenile hall does not receive a copy of that order. However, when computer records are later updated, juvenile hall has access to abstracts of the orders with the information, but not the actual orders themselves.

Also, defense counsel asked Sosa if in her experience termination of a minor's probation on October 30th, 2011, would show up in the RUMBA system "in April 2012 when you looked at your database." Sosa replied that in her experience, "I can only safely assume that the information that I have access to is completely updated and accurate." Significantly, Sosa did not describe any prior experiences indicating the RUMBA system might be prone to errors of a routine, widespread or systemic nature. Accordingly, on this record, the officer's reliance on the information provided by Sosa from the RUMBA database was "objectively reasonable," and the juvenile court was correct to deny the minor's motion to suppress.² (*Herring, supra*, 555 U.S. at p. 147.)

² Based on Sosa's testimony, the minor asserts the computer system records were not reliable because they were not updated on weekends and were not updated if a court order issued when a minor was out of custody. First, it is immaterial whether or not the system was updated over the weekend because the error in this case was caused by an information lag of almost six months, not over a weekend. Second, Sosa's testimony, as described above and viewed in a light favorable to the trial court's ruling, demonstrates

B. Sufficiency of the Evidence

The minor asserts that to convict him of receiving stolen property under Penal Code section 496, subdivision (a), the prosecution had to prove beyond a reasonable doubt he had possession and control of the property in question. The minor contends the prosecution failed to meet its burden of proof on this point and, thus, insufficient evidence supports the juvenile court’s finding he possessed stolen property. We disagree.

“ ‘The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment (order) to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt. In making such a determination we must view the evidence in a light most favorable to respondent and presume in support of the judgment (order) the existence of every fact the trier could reasonably deduce from the evidence. [Citations.]’ [Citation.]” (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.)

“[T]o sustain a conviction for receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property. [Citations.] [¶] Possession of the stolen property may be actual or constructive and need not be exclusive. [Fn. omitted.] [Citations.] Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property. [Citations.]” (*People v. Land* (1994) 30 Cal.App.4th 220, 223–224.) Possession “may be established by circumstantial evidence and any reasonable inferences drawn from such evidence. [Citation.]” (*People v. White* (1969) 71 Cal.2d 80, 83.) On the other hand, “mere presence near the stolen property, or access to the location where the stolen property is

that information regarding orders issued by the juvenile court when minors are out of custody is normally entered in the RUMBA system, and thereby made available to the probation counselors at juvenile hall. (See *In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236 [on appeal from the denial of a suppression motion, appellate court reviews the evidence in a light favorable to the trial court’s ruling].)

found is not sufficient evidence of possession, standing alone, to sustain a conviction for receiving stolen property. [Citations.]” (*People v. Land, supra*, 30 Cal.App.4th at p. 224.)

Here, substantial evidence supports a finding the minor possessed the stolen property. First, whereas the minor correctly points out the trial court discharged the burglary count against him, his assertion that no evidence linked him to the burglary is belied by the record. In this regard, the minor acknowledges Jose Casares was arrested for the burglary and when Casares was initially detained police found two full-face knit caps and a pair of gloves on his person. Paperwork with the minor’s name on it was found in Casares’ car and Casares admitted he shared an apartment with the minor. Moreover, the burglary was committed within hours of the time Casares and the minor were arrested.³ Sandy Castro told Officer Robison she saw Casares with the driver of the blue van earlier in the day, and her description of the van driver matched the photograph of the minor Officer Robison retrieved using the name he found on the paperwork in Casares’ car. As the minor notes, on this circumstantial evidence the prosecution was unable to establish beyond a reasonable doubt that he committed the burglary; nevertheless, we may consider it along with other evidence in assessing whether substantial evidence supports a finding he possessed stolen property. (*People v. Holt* (1997) 15 Cal.4th 619, 668 [“The standard of appellate review is the same when the evidence of guilt is primarily circumstantial.”].)

Second, and more importantly, possession may be imputed from evidence the stolen goods were found in the bedroom the minor occupied within the apartment. (See *People v. Rushing* (1989) 209 Cal.App.3d 618, 622 [“Actual or constructive possession is the right to exercise dominion and control over . . . the place where [the contraband] is found”]; see also *People v. White, supra*, 71 Cal.2d at p. 83 [“evidence that marijuana was found in defendant’s bedroom . . . raised a reasonable inference that the marijuana was his”].) And substantial evidence of the minor’s right to exercise dominion and

³ Gwen Shropshire testified the burglary occurred sometime after she left for work around 9:00 a.m. and before she returned home around 4:00 p.m.

control over the bedroom where the stolen goods were found is provided by Officer Ross' testimony there was a sign on the wall bearing the minor's last name and several pieces of paper lying on the television stand bearing the minor's full name.

In sum, the evidence recited above is sufficient to support the juvenile court's finding the minor possessed stolen property.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

Becton, J.*

We concur:

Margulies, Acting P.J.

Dondero, J.

* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.