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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO BERA,

Defendant and Appellant.

A140974

(Alameda County  
Super. Ct. No. C172029)

Ricardo Bera appeals from a judgment following a jury trial. His court-appointed counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 to determine whether there are any arguable issues on appeal. Bera has also filed a brief arguing he is factually innocent of the crimes found proven by the jury. We have reviewed the record and the convictions are supported by substantial evidence. There are no issues requiring further review and we affirm.

PROCEDURAL BACKGROUND

Bera was charged with unlawful driving or taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), and receiving stolen property in violation of Penal Code section 496, subdivision (a). The information also alleged that Bera's convictions should be enhanced due to his two prior convictions of second degree burglary of a vehicle in violation of Penal Code section 459, a conviction for accessory to a felony in violation of Penal Code section 32, and pursuant to Penal Code section 667.5 his service of three terms in state prison within five years of the offenses for which he was prosecuted in this case. Following a jury trial, Bera was found guilty of unlawful

taking or driving a vehicle and of receiving stolen property. The prior crimes and prison term enhancements were tried to the court and found true.

Bera was sentenced to the mid-term of three years in prison for unlawful driving or taking of a vehicle. His sentence of one year for receiving stolen property was stayed pursuant to Penal Code section 654. He also received a one-year enhancement pursuant to Penal Code section 667.5 due to his prior service of a term in state prison. In a related proceeding, he received eight months because his conduct also violated probation. He thus received a total prison term of four years, eight months. The court imposed applicable fines and fees in legal measure. Bera's appeal was timely.

#### FACTUAL BACKGROUND

Two Highway Patrol officers were working an assignment with the stolen vehicle task force in Oakland on the afternoon of May 29, 2013. Their police cruiser was equipped with an electronic license plate reader and an audio visual recording system. In the vicinity of International Boulevard and High Street, the electronic license plate reader signaled that it detected a license plate registered to a vehicle that had been reported stolen. It was a Honda Accord travelling in the opposite direction on International Boulevard.

The officers made a U-turn on International and followed the Honda as it made a left turn from International onto 46th Avenue. The Honda pulled over to the right curb on 46th Avenue and the driver got out of the car. The officer who was not driving kept watching the Honda while they were following it. Although he lost sight of the car for about three to five seconds, he saw the defendant exit the car from the driver side door, and apprehended him as he was approaching a metal gate adjoining the sidewalk. The victim identified the Honda as his car and testified it was taken without his permission. The jury was also shown a video from the cruiser's video recording system. It shows the Honda on International Boulevard turn left onto 46th Avenue, and a man in a white t-shirt exit the driver's side door just as the Highway Patrol cruiser pulls up 46th.

## DISCUSSION

In his supplemental brief, Bera argues that this is a case of mistaken identity and that he was not the driver of the Honda. He says he tried to explain this to the arresting officers, and that his girlfriend who was in the vicinity of his arrest tried to tell the officers that she saw another man running up the street away from the Honda. His argument requires us to review the record to see if his conviction is supported by substantial evidence.

An appellate court applies the substantial evidence rule when, as here, the appeal challenges the trier-of-fact's resolution of disputed factual questions. In such a situation, the appellate court must review the record, and draw any reasonable inferences therefrom, in the light most favorable to the judgment and will uphold the judgment where the record contains substantial evidence to support it. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.) In exercising substantial evidence review, an appellate court does not evaluate the credibility of the witnesses but defers to the trier of fact. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Similarly, the court does not reweigh the evidence, but will uphold a judgment that is supported by substantial evidence, even if substantial evidence to the contrary also exists. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630–631).

Here, despite Bera's claim of innocence, there was substantial evidence in support of the verdict. The officers testified that they saw Bera driving the stolen Honda and apprehended him just as he got out of the car. The video shows a man described as Bera get out and move quickly around the car to the area where Bera, just seconds later, was apprehended.

Bera's conviction is supported by substantial evidence. There was no error. Our review of the entire record reveals no issue that requires further briefing.

## DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.