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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re I.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.H.,

Defendant and Appellant.

A145692

(Alameda County
Super. Ct. No. SJ12019647)

The minor, I.H., appeals from a dispositional order following the juvenile court’s sustaining of an allegation that he was in possession of a stolen vehicle in violation of Penal Code section 496d. On appeal, the minor challenges the legality of his arrest and the substantiality of the evidence to support sustaining the allegation. We affirm.

BACKGROUND

As Police Officer Joseph Turner was driving north toward a four-way intersection, he saw a black car, in the west bound lane, stopped at the intersection. As the officer approached the intersection, the black car pulled back a few feet. Because the car was not blocking the intersection or significantly over the limit line, Turner found this backward motion strange, and, given his training and experience, he thought the driver was trying to avoid being seen. As the officer drove through the intersection, he looked

at and memorized the car's license plate number, quickly ran the number through a database, and, as he approached the next block, determined the car had been reported stolen. He made a U-turn, turned on his lights, and saw the black car pull back further from the intersection and out of sight behind some houses. The officer soon saw the car, which had come to rest after crashing into a fence about one block back from the intersection.

When Officer Turner, still in his vehicle, was about 25 yards from the stopped car, he saw a young Black male next to the driver's side with a "bushy sort of small, afro haircut" and a "dark, black, hooded sweatshirt." The male hopped the nearby fence and disappeared from view. Officer Turner did not get a look at his face. Nor did Turner see the driver's side door open.

As the first male escaped, another male exited the passenger side door, leaving it ajar. He also was Black, but was taller and wore a red hooded sweatshirt. The second male ran down the street, away from the approaching officer, and then into some yards.

Officer Turner called for backup and set up a perimeter to monitor the area and catch the two males. One of the assisting officers saw a Black male with a black hooded sweatshirt emerge from the perimeter area and run to the next block. That officer pursued, but the male disappeared into nearby yards.

After Officer Turner expanded the perimeter, he received word that another officer heard a dog barking and a fence breaking near the new perimeter boundary. To flush out the suspect, a canine officer announced the use of a search dog over a police car PA system, asking the suspect to give himself up and warning the suspect and others the dog might bite. At this point, a male—the minor—slowly emerged from the perimeter. Officers aimed their firearms at him in a "low-ready" position, but he was cooperative. His skin tone was black, he had a short, bushy afro-style haircut, and wore a black hooded sweatshirt with what appeared to be a light-colored design on the front.

Officer Turner recognized this individual as the male who had been by the driver's side of the black car and who had first run from the car. Not only was the skin tone, hair style, and clothing a match, so was this person's height. He also appeared sweaty and tired, as if he had been running, and seemed downcast. The minor was arrested.

The black car, still running, was inspected, and a generic, unstamped key was found half way in the ignition. It operated the car's engine, but could not open the car's trunk.

After a hearing, the juvenile court found probable cause for the arrest, denied the minor's motion to suppress evidence incident to the arrest, and found the minor committed a violation of Penal Code 496d, knowing receipt of a stolen vehicle.

DISCUSSION

Probable Cause to Arrest

The minor challenges his arrest on the ground the pursuing officers, including Turner, had no reasonable basis to connect him with the person Turner saw near the driver's side of the black car. (See *In re J.G.* (2010) 188 Cal.App.4th 1501, 1505; *In re Antonio B.* (2008) 166 Cal.App.4th 435, 442.)

Probable cause to arrest “ ‘exists when the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a crime.’ ” (*In re J.G.*, *supra*, 188 Cal.App.4th at pp. 1505–1506.) “ ‘[T]he possibility of an innocent explanation does not vitiate probable cause and does not render an arrest unlawful.’ ” (*Id.* at p. 1504.)

“ ‘ “On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court's ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court that are supported by substantial evidence and independently determine whether the facts support the court's legal conclusions.” [Citation.]’ [Citation.]” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.)

As defendant notes, Officer Turner never saw the fleeing suspect's face and no evidence in the car connected the vehicle to the minor.

However, the law does not require a police officer to have collected particular categories of information before he or she may entertain an "honest and strong suspicion" of criminal activity. (See *People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742 [there is "[n]o exact formula"].) In this case, the officer saw two males driving a reportedly stolen car, evade pursuit, crash the car, and flee the scene. The officer saw one suspect, wearing a black sweatshirt, standing directly next to the driver's side before he fled. After setting up a perimeter and giving chase, the police found a male who looked sweaty and tired, who was wearing a black sweatshirt, and whose height and hairstyle were similar to that of the male Officer Turner saw standing at the driver's side. Given the totality of the circumstances, there was probable cause for the minor's arrest.

The minor's arrest was not, as he claims, based simply on a similarity of vague physical traits. As we have explained, it is the constellation of events that the officers observed that night, that provided probable cause for the minor's arrest. That there may have been innocent explanations for the minor emerging from the yard—such as a fear of dogs—does not undermine the officer's real-time assessment of the situation or that there was probable cause to arrest. (*In re J.G.*, *supra*, 188 Cal.App.4th at p. 1504.)

Sufficiency of the Evidence

"When the sufficiency of the evidence is challenged on appeal, we apply the familiar substantial evidence rule. We review the whole record in a light most favorable to the judgment to determine whether it contains substantial evidence, i.e., evidence that is credible and of solid value, from which a rational trier of fact could find beyond a reasonable doubt that the accused committed the offense." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 859.)

"As with all challenges to the sufficiency of the evidence, we must begin with a legal question, the minimum factual showing to establish the offense." (*In re Ryan D.*,

supra, 100 Cal.App.4th at p. 859.) To show receipt of stolen property, “the People must prove (1) the property was stolen; (2) the defendant knew it was stolen; and (3) the defendant had possession of it.” (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 728.)

The minor does not dispute the black car was stolen. He contends, however, there was insufficient evidence that he knew it was stolen or was in possession of the car. Both contentions are grounded on his assertion there was insufficient evidence he was the driver, and, as a mere passenger, there was no reason to believe he knew the car was stolen or had possession of it.

The minor is correct that mere presence in or near a stolen object does not equal possession. (*In re Anthony J.*, *supra*, 117 Cal.App.4th at p. 728.) However, being the driver of a car is generally sufficient evidence of possession. (See *People v. Land* (1994) 30 Cal.App.4th 220, 224.)

As the People point out, the pursuing officer saw the minor by the driver’s side, and saw the other occupant exit from the passenger’s side. In the midst of fleeing the police, it would have been most peculiar for the minor to do anything other than exit the vehicle from the nearest door and flee without delay and without moving around the car—just as the person exiting from the passenger’s side was observed to exit and flee.

Defendant claims photos introduced at the hearing show a portion of the front driver’s side of the black car was “within a few inches” of a white brick wall and the car was “jammed right next to the wall” making it impossible for anyone to exit from the driver’s side door.¹ He also points out the investigating officer taking the photographs did not determine anything about the maneuverability of the driver’s side door. Thus, the minor’s posited version of events is that he was the passenger, he exited from the passenger’s side of the car first, and the other male, who was driving, exited through the

¹ Although the minor cited to the photos in his appellate briefs, the photos were not part of the clerk’s transcript. Nor were they transmitted to this court. In response to our request that they be transmitted, the trial court did so.

passenger's side second, after climbing from the driver's seat into the passenger's seat. In the meantime, the minor claims he went around to the driver's side of the car so he could leap the nearby fence.

Contrary to the minor's assertion, the photographs do not establish that the black car was wedged against the fence such that the driver's side door would not open sufficiently for the driver to exit the car. At best, the photos are ambiguous as to whether the driver's side door was impeded, and if so, how far. On appeal, our task is not to resolve the parties' conflicting versions of events, but to indulge every reasonable inference the trier of fact could have drawn from the evidence. (See *People v. Mendez* (2010) 188 Cal.App.4th 47, 56; *People v. Vasco* (2005) 131 Cal.App.4th 137, 161 [“ ‘ ‘ ‘the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment’ ” ’ ”]; see also *People v. Stanley* (1995) 10 Cal.4th 764, 792–793 [while the trier of fact must “ ‘acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, . . . it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt’ ”].)

The circumstantial evidence and reasonable inferences to be drawn therefrom, including the evidence as to the minor's position by the car and the path of his escape, in contrast to the other male's different route of escape route—provide sufficient support for the juvenile court's implicit finding the minor was the driver. This, in turn, provides ample basis for the court's sustaining the allegation the minor knowingly possessed the stolen vehicle.

DISPOSITION

The order of the juvenile court is affirmed.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A145692, *In re I.H.*