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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
ROBERT JAMES HEBERLE,
Defendant and Appellant.

A145957

(Solano County
Super. Ct. No. FCR308703)

Robert James Heberle was tried before a jury and convicted of a felony count of receiving a stolen motor vehicle and a misdemeanor count of resisting a peace officer. (Pen. Code, §§ 496d, subd. (a), 148, subd. (a)(1).) He appeals from the judgment sentencing him to prison for the two-year middle term.¹ Appellant contends the evidence was insufficient to support the receiving count because it showed only that he had been a passenger in the stolen vehicle and did not show he exercised the requisite dominion and control. We affirm.

BACKGROUND

The following evidence was adduced at trial:

At 8:00 p.m. on July 16, 2014, Solano County Sheriff’s Deputy Asish Chandra was on routine patrol near Solano Community College in Fairfield, looking for persons who were not supposed to be on the property during evening hours. He saw a white

¹ Appellant had suffered a prior serious felony conviction for robbery and was not eligible for a jail sentence under the Criminal Justice Realignment Act of 2011. (Pen. Code, § 1170, subd. (h)(3); *People v. Griffis* (2013) 212 Cal.App.4th 956, 961–965.)

Dodge van parked near a creek near the football field, which was unusual because authorized staff did not usually work at that hour. As Chandra approached the van in his patrol vehicle, he noticed a yellow light on the top of the van with a wire running from the light through the windshield to the passenger compartment. This seemed odd because official vehicles do not usually have loose wires hanging from their lights.

Appellant walked up from the creek and stopped one to two feet away from the van. Deputy Chandra asked him what he was doing and appellant, looking confused, responded, "I'm out here with my friend." Chandra instructed appellant to "call [his] friend out" and left his patrol vehicle to speak to appellant. Appellant ran across the creek.

Deputy Chandra looked inside the van and saw the ignition was "punched," suggesting the van had been stolen. He radioed dispatch to report that a subject had fled and asked that the owner of the van be contacted. It was determined that the van belonged to a social services organization in Vacaville and had been stolen earlier that afternoon. Appellant was detained nearby by Deputy Stephen Terry, who saw appellant running through a field. Terry described appellant as out of breath and wet "from head to toe." Other deputies searched the area but found no one.

After learning the van was stolen, Deputy Chandra searched it and found two cell phones, sunglasses, a boogie board and a gallon of paint thinner, none of which belonged to the employee of the social services organization who had last driven the van. Appellant admitted owning one of the cell phones. He told Deputy Chandra that a friend named Joe McGraw had picked him up in the van and driven them from Vacaville to the community college to hunt for wild pigs. Appellant said he had fallen asleep while McGraw was driving, and when he woke up he was in Fairfield and recognized Rockville Road. He did not remember how they got to the college. Chandra, who was familiar with the area, had never seen wild pigs or heard of people hunting for wild pigs.

The prosecution also presented evidence under Evidence Code section 1101, subdivision (b), of a 2013 incident in which appellant was stopped while driving a stolen motorcycle with a damaged ignition and no ignition key. Appellant told the officer who

stopped him that someone named Eric owned the motorcycle, but he could not provide Eric's last name or address.

DISCUSSION

A conviction for receiving stolen property requires proof that (1) the property was stolen; (2) the defendant knew the property was stolen, and (3) the defendant had possession of the stolen property. (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*)). Appellant argues his conviction of receiving a stolen vehicle must be reversed because the evidence was insufficient to show he possessed the stolen van. We disagree.

The possession of stolen property may be actual or constructive and need not be exclusive. (*Land, supra*, 30 Cal.App.4th at p. 223.) “Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property.” (*Land, supra*, 30 Cal.App.4th at p. 224.) However, “mere presence near the stolen property, or access to the location where the stolen property is found is not sufficient evidence of possession, standing alone, to sustain a conviction for receiving stolen property.” (*Ibid.*)

When reviewing the sufficiency of the evidence on appeal, we apply the well-established and “highly deferential” substantial evidence standard. (*People v. Lochtefeld* (2000) 77 Cal.App.4th 533, 538.) “The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.) We do not reweigh the credibility of witnesses or substitute our own view of the evidence for that of the jury. (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347.) That the evidence might be reasonably reconciled with a contrary result does not warrant a reversal of the judgment. (*Ibid.*) “The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432.)

Appellant argues that being a passenger in a stolen vehicle is not enough to sustain a conviction of receiving stolen property. He cites *Land, supra*, 30 Cal.App.4th at page 225, in which the court considered “under what circumstances, a passenger in a stolen car, knowing the car is stolen, may be properly found to have possession or dominion and control over the stolen vehicle.” The court in *Land* concluded that while dominion and control could not be inferred from mere presence or access, “strong evidence of the passenger’s guilty knowledge and a close relationship to the driver or thief, or evidence of a defendant’s conduct indicating control, may give rise to an inference of possession.” (*Id.* at p. 227.) Appellant argues the evidence in this case shows only that he was a passenger in a stolen van driven by his friend Joe McGraw, and no additional circumstances supported a determination he exercised control over the van.

The problem with appellant’s argument is that a rational jury could have concluded appellant was the sole occupant and driver of the stolen van. Appellant was the only person seen near the van and his cell phone was later found inside. No one else was found during a search of the area. Joe McGraw was never found at the scene or produced at trial, and the jury was entitled to disbelieve appellant’s attempt to shift the blame to his purported friend. Appellant’s flight from the scene also tended to show his consciousness of guilt, which in turn tended to show he was the one who had driven the stolen van to the creek. Viewed in the light most favorable to the judgment, the evidence supported a determination that appellant had dominion and control over the stolen van.

DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, ACTING P.J.

BRUINIERS, J.

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