

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL BOLDEN,

Defendant and Appellant.

2d Crim. No. B233574
(Super. Ct. No. NA087961)
(Los Angeles County)

SECOND ORDER
MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on September 25, 2012, be modified as follows:

On page 7, in the last sentence of the second full paragraph beginning with “She testified that carbon copies” and ending with “the proprietor” is deleted and the following sentence is inserted in its place:

She testified that carbon copies were provided in this instance and that she visited the pawn shop and viewed the property described on those slips.

There is no change in judgment.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL BOLDEN,

Defendant and Appellant.

2d Crim. No. B233574
(Super. Ct. No. NA087961)
(Los Angeles County)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on September 25, 2012, be modified as follows:

1. On page 3, the third sentence in the first full paragraph, beginning with "The slips included" is deleted and the following sentence is inserted in its place:

"The slips included Bolden's thumbprint, his signature, and the serial numbers of the pawned items."

2. On page 3, the second sentence in the third full paragraph, beginning with "He said he did not" is deleted and the following sentence is inserted in its place:

"He said, "I didn't see them take nothing."

3. On page 8 the first full paragraph is deleted and the following paragraph is inserted in its place:

Bolden contends that there was not sufficient evidence of the value of the stolen property to support a conviction for grand theft because no one testified to its numeric value, and that the court should have instructed the jury on fair market value using CALJIC No. 14.26.

4. On page 8, a new paragraph is inserted following the paragraph that begins "No witness" and ends with "jewelry." The new paragraph reads:

Neither side requested CALJIC No. 14.26. Bolden did not object to the instructions the court gave on the elements and degrees of theft. The standard instruction on degrees of theft has since been revised to include the test for determining fair market value. (CAL CRIM No. 18.01.) But even if the court had a sua sponte duty to include it, the error was harmless because the evidence was overwhelming that the value of the property exceeded \$950.

5. On line 12 of the last paragraph that begins on page 8 and ends on page 9, insert a new sentence following the words "taken or received together." The new sentence reads:

Bolden told detectives he found Jacqueline Ramirez's "stuff" at the Rhythm Lounge "like a year ago," but he did not remember where he got Alberto Ramirez's property, saying, "Probably at my job."

6. On page 9, line 2, insert the words "on separate occasions" between the words "purse" and "separate" so that the sentence reads:

Counts 3 and 5 involve receipt of Alberto Ramirez's EBT card and Jacqueline Ramirez's purse on separate occasions, separate offenses against multiple victims.

There is no change in judgment.

Appellant's petition for rehearing is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL BOLDEN,

Defendant and Appellant.

2d Crim. No. B233574
(Super. Ct. No. NA087961)
(Los Angeles County)

Samuel Bolden appeals a judgment after conviction by jury of first degree burglary (Pen. Code, § 459),¹ grand theft of personal property (§ 487, subd. (a)), and three counts of receiving stolen property (§ 496, subd. (a)). Bolden admitted he served two prior prison terms. (§ 667.5, subd. (b).) The trial court sentenced Bolden to nine years in state prison, consisting of six years for the burglary, plus one for the prison term, and consecutive eight-month terms for each of the three counts of receiving stolen property. The court stayed sentence on the grand theft count pursuant to section 654. We affirm.

¹All statutory references are to the Penal Code unless otherwise stated.

FACTUAL AND PROCEDURAL BACKGROUND

Bolden and two companions met Tiara Simmons and Erin Liston at a restaurant lounge. They shared drinks and conversation.

Simmons invited Bolden and his companions to her apartment. She cooked for them. They ate, drank, and played video games. Liston went to sleep in a bedroom.

Simmons went into a bathroom for 25 minutes. When she came out, Bolden and his companions were gone. Her 42-inch flat-screen television, two cell phones, a laptop, a Sony PlayStation 3, several videogames, two credit cards, her tote bag, and some jewelry were also gone. Liston later discovered that items were missing from her purse, including cash, a cell phone, and a governmental electronic benefits transfer (EBT) card.

A surveillance camera captured several images of Bolden walking in and out of Simmons' apartment building. In one image he is with a companion who is holding Simmons' tote bag and a plate of food.

Fifteen days later, an officer searched Bolden during a traffic arrest. The officer found Simmons' two missing credit cards and Liston's EBT card. There was also an EBT card that belonged to Alberto Ramirez. There was a military identification card, a driver's license, and a Costco card that belonged to Jacqueline Ramirez.

Bolden told the officer that he was a bouncer at a club. He said, "[P]eople leave their stuff behind. People find stuff and give it to me so I can return it back to the people."

Jacqueline Ramirez testified that her purse was stolen at a Denny's restaurant when she was distracted by an altercation. Her military identification card, driver's license, and Costco card were inside the purse.

A Long Beach police detective searched the police department's pawn records for any items pawned by Bolden. The court admitted five pawn slips that

showed Bolden pawned Simmons' television, her PlayStation, two of her videogames, and her Blackberry cell phone over a period of two weeks after they were stolen. There was also a slip showing Bolden pawned a Samsung cell phone that had been stolen from Violeta Covian.

The defense objected to the pawn slips on "foundation" grounds. The trial court overruled the objection. The slips included Bolden's thumbprint, his driver's license number, his signature, and the serial numbers of the pawned items. The detective visited the pawn shop, viewed the items, and met with victims to confirm that the items were the same as those reported stolen. The detective explained that pawn shops are required by law to take photo identification and fingerprints from each person who pawns an item, and they must provide a carbon copy of their records to the police department. The police department keeps those records on file.

Covian testified that her purse was stolen when she was at the Rhythm Lounge. The purse contained her cell phone, among other things. The owner of the lounge testified that Bolden was a patron and had never worked there.

In a videotaped interrogation, Bolden admitted that he pawned Simmons' television and PlayStation. He said he did not know the items were stolen. He said he left Simmons' apartment before his companions took anything.

At trial, Bolden testified that he did not know his companions were stealing anything when they were at the apartment. His companions were his brother and his cousin. He said Simmons was in the bathroom a long time because she was having sexual relations with him, and he left while his companions were having sexual relations with her.

Bolden testified that he pawned Simmons' television, PlayStation and Blackberry cell phone, some videogames, and Covian's cell phone after his brother gave them to him. He said people give him lost cards because they know he is a club promoter. His brother also gave him Simmons' credit cards and Liston's EBT card.

He said he took Jacqueline Ramirez's purse from the Denny's restaurant because he mistakenly thought it was his friend's purse. He said he did not use any of the cards.

During Bolden's direct examination, the trial court instructed Bolden twice to answer questions. Bolden initially refused to name his cousin, and the court instructed him to answer. Bolden did not directly answer his attorney's question about how many times Simmons went to the bathroom, and the court again instructed him to answer. Bolden interrupted the court, and the court said, "Here is the deal. When the judge is talking, you listen. I'm like E.F. Hutton, you cannot talk over me. . . . [Y]ou have to answer. You can't say, 'I don't want to answer that question.' If you do, the jury may think you are trying to hide something."

During Bolden's cross-examination, the trial court asked Bolden a series of questions about his familiarity with Simmons' apartment building and unmonitored exits. Bolden responded that he had visited "random girls" there. The court commented, "All right. Did you hear that? Two random girls two years earlier, one year earlier, staying at the fourth or fifth floor?"

The trial court also asked Bolden a series of questions about his claim that people gave him lost credit cards. The court asked whether he was the "designated lost and found person." The court said, "The reason why I ask you that is because like in the courtroom with my jurors, if they drop their credit card or something and you found it, you would give it to the bailiff. You wouldn't keep it and wait for them to come back for jury duty?"

The trial court also asked Bolden about the military identification card: "You don't have the backside of this? The backside of this says you are supposed to return it back to the U.S. Government, you didn't do that?" Bolden's counsel did not object to the questions or comments. The court questioned prosecution witnesses also.

The trial court instructed the jury on inferences to be drawn from possession of stolen property pursuant to CALJIC No. 2.15. There was no objection to the instruction.

DISCUSSION

Claim of Instructional Error

Bolden contends that CALJIC No. 2.15 unconstitutionally reduced the prosecutor's burden of proof by instructing the jury that the fact of possession of recently stolen property is sufficient to prove guilt of theft or burglary if accompanied by "slight" corroborating evidence.² We disagree.

Bolden did not object to the instruction in the trial court. We may nevertheless review the instruction if his substantial rights were affected. (§ 1259; *People v. Prieto* (2003) 30 Cal.4th 226, 247.)

An individual may be found guilty of a crime only upon proof beyond a reasonable doubt of every fact necessary to establish guilt. (*In re Winship* (1970) 397 U.S. 358, 364.) But "requiring only slight corroborating evidence in support of a permissive inference, like the one that possession of stolen property creates, neither changes the prosecutor's burden of proving every element of the offense nor otherwise violates the right to due process if . . . the conclusion is one that common sense and reason can justify 'in light of proven facts before the jury.'" (*People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1035-1036.) Here, common sense and

²CALJIC No. 2.15 provides, "If you find that a defendant was in [conscious] possession of recently [stolen] [extorted] property, the fact of that possession is not by itself sufficient to permit an inference that the defendant is guilty of the crime Before guilt may be inferred, there must be corroborating evidence tending to prove defendant's guilt. However, this corroborating evidence need only be slight, and need not by itself be sufficient to warrant an inference of guilt. [¶] As corroboration, you may consider [the attributes of possession--time, place and manner,] [that the defendant had an opportunity to commit the crime charged,] [the defendant's conduct,] [[his] [her] false or contradictory statements, if any,] [and] [or] [other statements [he] [she] may have made with reference to the property] [a false account of how [he] [she] acquired possession of the stolen property] [any other evidence which tends to connect the defendant with the crime charged]."

reason justified the jury's conclusion because Bolden possessed recently stolen property in a suspicious time, place and manner; he had the opportunity to commit the charged crimes; and he gave implausible explanations for the manner in which he acquired the property.

Claim of Judicial Bias

Bolden contends that the trial court's conduct was partisan, and he was therefore denied his constitutional right to a fair trial under the Sixth and Fourteenth Amendments. He forfeited the contention because he did not object during trial. (*People v. Hines* (1997) 15 Cal.4th 997, 1041; *People v. Downey* (2000) 82 Cal.App.4th 899, 910.) Bolden has not demonstrated that objection would have been futile. The court had not suggested that defense counsel was making meritless objections or obstructing the trial, as was the case in *People v. Hill* (1998) 17 Cal.4th 800, 821, upon which Bolden relies.

Moreover, Bolden was not denied a fair trial. Some of the trial court's questions were asked during direct examination in an effort to assist defense counsel whose client was unresponsive to her questions. Some were asked during cross-examination and expressed incredulity. But the questions, viewed in context of the entire record, did not "creat[e] the unmistakable impression that it had allied itself with the prosecution in the effort to convict." (*People v. Raviart* (2001) 93 Cal.App.4th 258, 270.) Moreover, the questions and comments could not have deprived Bolden of a fair trial in view of the overwhelming evidence of his guilt and the inherent incredulity of his testimony.

Foundation for Admission of the Pawn Slips

Bolden contends that the pawn slips were inadmissible hearsay not subject to the business records exception because the prosecutor did not call the custodian of records of the pawn shop as a witness. He also contends their admission violated his constitutional right to confront witnesses against him. We disagree.

Bolden forfeited his confrontation clause objection because he did not raise it in the trial court. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1028, fn. 19.) Bolden preserved his foundation objection.

We overturn the trial court's discretionary determination that a record falls within the business record exception only if there is a clear showing of manifest abuse of discretion. (*People v. Martinez* (2000) 22 Cal.4th 106, 119-120.) There was no abuse here. The detective was qualified to identify the mode and preparation of the slips and her testimony provided substantial evidence to support a finding that the slips fell within the business records exception to the hearsay rule. (Evid. Code, § 1271.) A "qualified witness" for purposes of section 1271 is one who is knowledgeable about the documents. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 324.) The detective testified that she had dealt with the pawn shop and its records in the past and knew the pawn shop very well. She explained that the Business and Professions Code requires a particular mode and manner of preparation of pawn slips "when taking in items," and that carbon copies must be provided to the police department. She testified that carbon copies were provided in this instance and that she visited the pawn shop and reviewed the slips and the items with the proprietor.

The detective did not personally prepare the pawn slips, but a "[qualified] witness need not be the custodian or the person who created the record." (*Jazayeri v. Mao, supra*, 174 Cal.App.4th at p. 324.) It need not be the "person who gathered the information." (*People v. Mathews* (1991) 229 Cal.App.3d 930, 940.)

People v. Crabtree (2009) 169 Cal.App.4th 1293, 1313, upon which Bolden relies, is inapposite. There, an FBI agent sought to provide a foundation for admission of a Bath & Body Works mechanized sales receipt based on nothing more than common knowledge. There was "no attempt to spell out his 'qualifications.'" (*Ibid.*) Here, the detective explained about the specific mode and manner of preparation of the pawn slip records.

Evidence of Value of Property

Bolden contends that there was not sufficient evidence of the value of the stolen property to support a conviction for grand theft because no one testified to its numeric value. We disagree.

Grand theft requires the taking of property with a value exceeding \$950. (§ 487, subd. (a).) We review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence (evidence of reasonable, credible and solid value) based upon which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Osband* (1996) 13 Cal.4th 622, 690.)

No witness provided a numeric value for the items stolen from Simmons' home. But a reasonable jury could have concluded that the value exceeded \$950 based on substantial evidence that the items included a 42-inch flat-screen television, a PlayStation, various videogames, a Blackberry cell phone, and jewelry.

Consecutive Sentences and Section 654

The jury convicted Bolden of three counts of receiving stolen property, based on receipt of "EBT Cards" (count 3), a "CELL PHONE" (count 4), and "GOVERNMENT ID and CALIFORNIA DRIVER[S] LICENSE OF JACQUELINE RAMIREZ" (count 5). Bolden contends the trial court should have stayed the sentence on either count 3 or 5 pursuant to section 654 because they were based on receipt, on one occasion, of goods stolen from several owners and therefore constituted a single offense. (*People v. Smith* (1945) 26 Cal.2d 854, 859.) Bolden assumes that Alberto Ramirez's EBT card was stolen from Jacqueline Ramirez's purse. No testimony supports the assumption. There was no evidence that the two victims even knew each other. The items were photographed together when they were found in Bolden's possession following a traffic stop, but this does not establish that they were taken or received together. The prosecutor's comment, "we have one EBT card left that was supposed to be with Jacqueline Ramirez's things," is not

evidence. Counts 3 and 5 involved receipt of Alberto Ramirez's EBT card and Jacqueline Ramirez's purse, separate offenses against multiple victims. The court was not required by section 654 to stay one of the sentences.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Tomson T. Ong, Judge
Superior Court County of Los Angeles

Tamara Zivot, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Eric E.
Reynolds, William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.