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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND DANIEL CAMPOS,

Defendant and Appellant.

B235283

(Los Angeles County
Super. Ct. No. KA093184)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Mike Camacho, Judge. Affirmed.

Thomas K. Macomber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Raymond Campos of receiving stolen property and being under the influence of a controlled substance, methamphetamine. (Pen. Code, § 496, subd. (a); Health & Saf. Code, § 11550, subd. (a).) The trial court found Campos suffered a prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)), and a prior conviction with a prison term (Pen. Code, § 667.5, subd. (b)). The trial court sentenced Campos to an aggregate term of six years in state prison. We affirm.

FACTS

The Crimes

In December 2010 through January 2011, Silvia Ford was the registered owner of a Toyota Camry. Her daughter, Christa Cortez, was the primary driver of the car. During the late-night to early-morning hours of December 12-13, 2010, Cortez was walking with Arthur Camacho near Badillo Street and Azusa Avenue in Covina when a white Camaro with Campos and others drove up. Campos exited the car hankering to fight Camacho.¹ After a brief confrontation, Camacho and Cortez returned to Camacho's house. At about 3:30 a.m., Cortez looked out the window and saw the white Camaro pulled up next to her family's Camry. Cortez saw a passenger get out of the Camaro, get into the driver's seat of the Camry, and drive it away. Cortez could not see the face of person who took the Camry. Cortez did not give Campos permission to drive the car, and did not give him a key to the car. Ford did not give Campos permission to drive the car, and not give him a key to drive the car.

At approximately 1:45 a.m., on January 25, 2011, Los Angeles County Sheriff's Department Deputies Christopher Carlson and Richard Laflin observed a Toyota Camry parked partially blocking the driveway of a residence on Garo Street, in Hacienda Heights. Deputy Laflin approached the driver's side of the vehicle and spoke with Campos, who was seated in the driver's seat. Laflin noticed Campos's speech was rapid, he was licking his lips, and he appeared nervous and anxious. Laflin formed the opinion that Campos might be under the influence of a stimulant drug, and asked him to step out

¹ Defendant and appellant Campos was Cortez's former boyfriend.

of the car. Meanwhile, Deputy Carlson approached the passenger side of the Toyota and saw a glass pipe with round bowl, and burned residue in the bowl, next to the emergency brake handle. Carlson then began to perform a drug recognition examination of Campos. Campos's eye reactions, pulse rate, speech and behaviors (for example, licking his lips) indicated to Deputy Carlson in his experience that Campos was "under the influence of a central nervous stimulant." He was taken into custody at that point. At the station, when Carlson asked Campos to give a urine sample, Campos replied with words to the effect, "Why; you guys already know that I'm high."

The Criminal Proceedings

In April 2011, the People filed an information charging Campos with four counts as follows: (count 1) receiving stolen property (Pen. Code, § 496, subd. (a)); (count 2) unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd (a)); (count 3) misdemeanor being under the influence of a controlled substance, to wit, methamphetamine (Health & Saf. Code, § 11550, subd. (a)); and (count 4) misdemeanor possession of paraphernalia used for smoking a controlled substance (Health & Saf. Code, § 11364, subd. (a)). Further, the information alleged that Campos suffered a prior strike conviction (Pen. Code, §§ 667, subs. (b)-(i); 1170.12, subs. (a)-(d)), and a prior conviction with a prison term (Pen. Code, § 667.5, subd. (b)).

The case was called for trial in June 2011, at which time Campos made an oral motion to suppress all evidence, including all observations by police, on the morning of January 25, 2011. Campos argued that parking a car at the curb, even if partially blocking a residential driveway, is not a violation of the Vehicle Code. As a result, the police did not have authority to approach him for the purpose of issuing a parking citation. The trial court denied the motion to suppress, ruling (1) there had been no initial traffic stop because Campos was already parked when the police first decided to check out what was happening, (2) the police lawfully made an initial "contact" with the occupants of the car because police lawfully may walk up to a person for any reason or no reason; and (3) the ensuing actions by the police were lawful because of the outward signs of drug intoxication openly observed by the officers after the initial, lawful contact.

Although Campos's motion was denied at the end of the evidence suppression hearing, the People moved to dismiss count 4, possession of a device for smoking drugs.² The trial court granted Campos's motion to bifurcate trial of the prior conviction allegations.

At trial, Christa Cortez, Silvia Ford, and Deputies Carlson and Laflin testified for the prosecution. Their testimony established the facts summarized above. A criminalist testified that Campos's urine sample tested positive for methamphetamine. Campos did not present any defense evidence. His defense counsel argued to the jury there was no evidence showing that Campos took the Toyota Camry as charged in count 2 (which the jury accepted), and that the evidence did not prove that Campos had the intent to retain control over the Camry as against Cortez for purposes of receiving stolen property as charged in count 1. Further, that the evidence, while showing he ingested an unknown amount of methamphetamine, was not believable as to the showing that he was under the influence of the drug.³

On July 6, 2011, the jury returned verdicts finding Campos guilty of receiving stolen property as charged in count 1, and misdemeanor being under the influence of methamphetamine as charged in count 3; the jury found Campos not guilty of unlawful

² The record suggests the prosecution may have decided, in light of the evidence that there had been three occupants in the car, it would have been difficult to prove the smoking device was possessed by Campos.

³ During her testimony, Cortez acknowledged that she had spoken with Campos after her family's Toyota had been taken. According to Cortez, she tried to call Campos a number of times, and she sent him a text, immediately after the car was taken. She left messages telling Campos to return the car, or she was going to call the police. Four or five hours later, she reported to police that the car had been taken. In the month that followed, before the car was recovered, Cortez continued to call Campos to tell him to return the car – in a series of short conversations, Cortez “told him if you know who took it, get my car. Bring it back to me, right.” Based on this testimony, Campos's trial counsel argued that Cortez had given “permission” to Campos to return her car. As to the under-the-influence evidence, Campos's counsel argued that the officers' testimony was embellished, and that it was not believable that a person who had taken drugs would openly state, “I'm high.”

driving or taking of a vehicle as charged in count 2. Campos thereafter waived trial on the prior conviction allegations, and admitted the allegations.

On July 29, 2011, the trial court sentenced Campos to state prison for the upper term of three years on count 1, doubled to six years for his prior strike conviction. The court struck the prior prison term allegation. The court imposed a term of 365 days in county jail as to count 3, concurrent. The court imposed restitution fines and penalty assessments and other fees pursuant to Penal Code sections 1202.4, 1202.44/1202.45 (parole, stayed); 1264, 1465.7, 1465.8; Health & Safety Code section 11372.5; and Government Code sections 73072; 70373; 7600; 7600.5; 76104.6; and 76104.7.

Campos filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Campos on appeal. Counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, setting forth the facts of the case and requesting we review the record on appeal for arguable issues. On March 6, 2012, we notified Campos by letter that he could submit any claims, arguments or issues which he wished our court to consider. On March 15, 2012, Campos filed a letter brief.

Campos contends Cortez's trial testimony proves that she "gave . . . permission to allow [him] to return her vehicle to her," making him "truly innocent of the charges and conviction of receiving stolen property." Campos's argument is not sufficient to reverse his conviction. His argument amounts to a request for us to review and reweigh the trial evidence, and reach a different conclusion than the jury. Under the binding standard of review, we may not second-guess the jury's factual decisions where they are supported by substantial evidence. (See, e.g., *People v. Farnam* (2002) 28 Cal.4th 107, 142-143; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We have reviewed Cortez's testimony in its entirety, and are satisfied that they jury reasonably determined that she never gave any permission to Campos to be in possession of her stolen car.

We have independently reviewed the record submitted on appeal, and are satisfied that Campos's appointed counsel has fulfilled his duty, and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.