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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. ALEJANDRO MADRID, Defendant and Appellant.	C066353 (Super. Ct. No. SF107607A)

A jury found defendant Alejandro Madrid guilty of second degree robbery (Pen. Code, § 211)[1] and receiving a stolen motor vehicle, to wit the getaway car used in the robbery (§ 496d, subd. (a)). In a bifurcated proceeding, the trial court found true allegations defendant had two prior serious or violent felony convictions. (§§ 1170.12, subd. (b), 667, subds. (a) and (d).) The trial court sentenced defendant to 25 years to life for the robbery and a concurrent 25 years to life for receiving a stolen motor vehicle, stayed pursuant to section 654.

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[1] Undesignated statutory references are to the Penal Code.

Defendant's sole contention on appeal is that his conviction for receiving a stolen motor vehicle must be reversed because there is insufficient evidence he knew the car, in which he was merely a passenger, was stolen, or that he had possession of it. We agree and shall reverse the judgment as to that offense.

FACTUAL AND PROCEDURAL BACKGROUND

Shortly before 6:00 p.m. on March 5, 2008, Delores Pfaff and her daughter drove Pfaff's 1981 Oldsmobile to the Food King grocery store to pick up some boxes. Pfaff left the keys in the ignition. When they returned a short time later, the car was gone. A witness reported seeing a "Mexican female" drive away in the car.

The following afternoon, defendant entered the Bank of Agriculture and Commerce, walked up to a teller window, and demanded money.[2] He had a toy gun sticking out of his pants and was wearing what appeared to be a fake beard. After tellers provided defendant with approximately $6,000, he left the bank with a handful of money, ran down the street, and got into the passenger side of Pfaff's missing Oldsmobile, which was driven by Jimmy Narvaez.

After receiving a report of the robbery and the Oldsmobile's location, police located the car and followed it into a parking lot, where it pulled into a parking space. A police officer saw Narvaez outside the car and ordered him to get down on the ground. The officer did not see where defendant had gone. A witness observed defendant throwing money and some clothing under a nearby car. Shortly thereafter, officers saw defendant and another man running down a nearby street. Both were detained. Defendant told officers he did not know the other man.

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[2] Because defendant does not challenge his second degree robbery conviction, we assume he committed that offense in our recitation of the facts and do not dwell on the facts related thereto.

The Food King, near where Pfaff's car was taken, is located in the same shopping center as the methadone clinic frequented by Pfaff's daughter, defendant, and Narvaez. Pfaff's daughter knew defendant "from years ago" and the two were "reacquainted" at the clinic; she also had seen Narvaez there but did not know him or his name. The clinic is open from 7:00 a.m. to 12:00 p.m. Sometimes clients of the clinic, including Pfaff's daughter and defendant, hung out at the clinic after receiving "their dose." Pfaff's daughter did not think defendant had any idea the Oldsmobile belonged to her mother. Pfaff's daughter did not drive that car.

DISCUSSION

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Under this standard, the court does not " ' "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*People v. Hatch* (2000) 22 Cal.4th 260, 272, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319 [61 L.Ed.2d 560, 573].)

Defendant was convicted of receiving a stolen motor vehicle in violation of section 496d, subdivision (a), which states in part: "Every person who buys or receives any motor vehicle . . . that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle . . . from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment . . . ." Consequently, to sustain a conviction for receiving a

stolen motor vehicle, the prosecution must prove that (1) the vehicle was stolen; (2) the defendant knew the vehicle was stolen; and (3) the defendant had possession of the stolen vehicle. (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*).) Defendant argues there is no substantial evidence to support the jury's verdict with respect to the second and third elements: knowledge and possession.

"Knowledge that property was stolen can seldom be proved by direct evidence and resort must often be made to circumstantial evidence. However, no distinction is made between direct and circumstantial evidence in the degree of proof required. [Citation.] 'Possession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt. [Citations.]' " (*People v. Vann* (1974) 12 Cal.3d 220, 224, quoting *People v. McFarland* (1962) 58 Cal.2d 748, 754.)

Possession of the stolen property may be actual or constructive, and it need not be exclusive. (*Land, supra,* 30 Cal.App.4th at p. 223.) Physical possession also is not required; it is sufficient if the defendant acquires a measure of dominion or control over the stolen property. (*Id.* at pp. 223-224.) However, mere presence near the stolen vehicle or access to the location where it is found, standing alone, is not sufficient. (*Id.* at pp. 224-225.) Likewise, "[p]resence in the passenger seat is not enough to show possession of a stolen automobile [citations]." (*People v. Zyduck* (1969) 270 Cal.App.2d 334, 335-336; see also *Land, supra,* 30 Cal.App.4th at p. 228.) "[A]dditional factual circumstances are necessary . . . ." (*Land, supra,* 30 Cal.App.4th at p. 228.)

The two leading California cases on the question of when a passenger in a stolen vehicle may be found to have possession of it are *Land* and *In re Anthony J.* (2004) 117 Cal.App.4th 718 (*Anthony J.*). In *Land*, the issue was "whether, and 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." (*Land, supra,* 30 Cal.App.4th at p. 225.) There, the defendant and the driver of the stolen vehicle were

friends who drank and used drugs together. (*Id.* at p. 228.) The defendant drove around as a passenger in the vehicle, knowing it was stolen. (*Id.* at pp. 222-223.) After they had been driving for some time, the driver said he wanted to rob somebody, and stole food from a convenience store. (*Id.* at p. 222.) They resumed driving the car, then intentionally bumped another car, robbed and shot the driver of the other car, leaving him for dead, and took off in the shooting victim's car. (*Id.* at pp. 222-223.) The court found that the stolen vehicle was "instrumental in their joint criminal enterprise," and concluded that based on the defendant's "close relationship to the driver, use of the vehicle for a common criminal mission, and stops along the way before abandoning it," the defendant was in a position to exert control over the vehicle. (*Id.* at p. 228.)

The court reached the opposite conclusion in *Anthony J.*, *supra*, 117 Cal.App.4th at p. 729. There, the defendant was a passenger in the backseat of a stolen vehicle for approximately 20 to 30 minutes. (*Id.* at pp. 723-724.) Unlike the defendant in *Land*, the defendant in *Anthony J.* did not know the driver of the vehicle well or know that the vehicle was stolen. (*Ibid*.) Rather, "[t]he only evidence presented . . . was that four young men got out of a car, they ran as a patrol car drove nearby, a set of keys was found near them when they were detained, and the driver of the vehicle was identified by a witness, but [the defendant] was not. There were no facts showing that [the defendant] and the driver were friends, that they had engaged in criminal activity together in the past, that he was a passenger shortly after the vehicle was stolen, or that [the defendant] and the driver jointly used the vehicle to commit crimes." (*Id.* 729.) "[T]he People's case at most demonstrated mere presence by [the defendant] in the stolen vehicle." (*Ibid*.)

Here, there is no direct evidence or any circumstantial evidence from which the jury reasonably could infer defendant knew the Oldsmobile was stolen. There is no evidence defendant stole the car. To the contrary, a witness told Pfaff's daughter that a "Mexican female" drove away in the car. As the People point out, the car was stolen near

the methadone clinic where defendant received daily doses of methadone. However, the clinic closed at noon and the car was stolen around 6:00 p.m. Although defendant regularly hung out at the clinic after he received his dose of methadone, there is no evidence he stayed there hours after the clinic closed, much less that he was anywhere near the clinic on the evening of March 5, 2008, when the car was stolen. There also is no evidence that defendant and Narvaez's relationship was such that defendant would know the car did not belong to Narvaez. Contrary to the People's assertion, evidence the two men planned the robbery together does not support a finding defendant knew the car was stolen. While using a stolen car as a getaway car is not uncommon and may have assisted them in concealing their identity from police, those facts alone do not support an inference defendant stole the car or knew that it was stolen. Nor is there any physical evidence that would have suggested to defendant that the car was stolen, i.e. there is no evidence the steering column had been tampered with or of any other damage to the car. To the contrary, the evidence is that the keys were in the ignition at the time the car was stolen, and the car was returned undamaged. There is no evidence defendant knew the car belonged to Pfaff. Pfaff's daughter testified she did not drive that car and did not believe defendant knew it belonged to her mother. While the People are correct that defendant fled from police and that such conduct tends to show guilt, defendant had just robbed a bank and was in the process of fleeing from that crime when he exited the car. Thus, the jury reasonably could not infer defendant knew the car was stolen from the fact he fled from police.

Nor is there any evidence to support a finding defendant possessed the car. The only evidence is that defendant was a passenger in the car for a brief period of time. Unlike the defendant in *Land*, there is no evidence defendant (1) knew the car was stolen, (2) had a close relationship with the driver,(3) rode in the car within an hour after it was stolen, or (4) spent a considerable amount of time in the car. Although the car was

involved in their joint criminal enterprise, Narvaez was the driver, and there is no evidence defendant directed Narvaez's actions during the time he was in the car.

Whether considered individually or together, the evidence does not support a finding defendant knew the car was stolen or that he possessed it. Accordingly substantial evidence does not support defendant's conviction for receiving a stolen motor vehicle.

DISPOSITION

Defendant's conviction for receiving a stolen motor vehicle (count 2) is reversed.

BLEASE, Acting P. J.

We concur:

HULL, J.

ROBIE, J.