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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
JAMAR COLLINS,  
  
Defendant and Appellant.

C068714  
  
(Super. Ct. No.  
07F09047)

A jury found defendant Jamar Collins guilty of multiple counts of robbery, charges arising from his possession of a handgun, and receiving stolen property. The jury also found firearm enhancements in connection with the robbery counts to be true. Defendant admitted a prior strike offense and the court sentenced him to a total of 31 years in prison.

On appeal, defendant contends his conviction for possession of a handgun by a felon must be reversed because it was not supported by substantial evidence. He also contends his conviction for receiving stolen property must be reversed

because it is based on some of the same property as the robbery convictions.

We agree with the People there was sufficient evidence to support defendant's conviction for possession of a handgun by a felon. We find merit in the second contention, however, and conclude defendant cannot be convicted of receiving the same property he was also convicted of stealing. Accordingly, we will reverse his conviction for receiving stolen property (on which his sentence was stayed pursuant to Penal Code section 654) and will otherwise affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

Two deputy sheriffs on patrol stopped the car defendant was driving because one of its brake lights was out. During a lawful search of the car, one of the deputies found a wallet containing identification and bank cards that belonged to people other than defendant and his passenger. The deputy determined that the cards belonged to victims of a recent robbery.

During the search, one of the deputies asked defendant for the ignition key to open the glove box, which was locked. Defendant turned over a set of keys on a key ring, but none of them were car keys. He told the deputy the car key might have fallen off the ring, but the deputy could not find it on defendant or anywhere nearby. The deputy then forced the glove box open and found a gun inside. The deputies arrested defendant for possessing that gun.

The deputies needed the car key to tow the car, and they eventually got it from defendant's passenger, who had been hiding it in the waistband of her pants.

## DISCUSSION

### I

#### *Sufficiency Of The Evidence*

Defendant contends his conviction for possession of a handgun by a felon must be reversed because it was not supported by substantial evidence. We agree with the People that there was sufficient evidence to support the conviction.

### A

#### *Standard Of Review*

When a defendant challenges the sufficiency of the evidence to support a criminal conviction, "[t]he test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment (order) to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the [defendant] guilty beyond a reasonable doubt. In making such a determination we must view the evidence in a light most favorable to [defendant] and presume in support of the judgment (order) the existence of every fact the trier could reasonably deduce from the evidence.'" (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52, quoting *In re Oscar R.* (1984) 161 Cal.App.3d 770, 773.)

"Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the jury." (*People v. Hicks* (1982) 128 Cal.App.3d 423, 429.)

B

*The People Presented Sufficient Evidence To  
Support Defendant's Conviction For  
Possession Of A Handgun By A Felon*

Defendant contends there was no substantial evidence he was in either actual or constructive possession of the gun and that, "[a]t most, the evidence established that [he] was in the car in which a handgun was found and perhaps that he even knew that it was there." We disagree.

"A defendant possesses a weapon when it is under his dominion and control." (*People v. Peña* (1999) 74 Cal.App.4th 1078, 1083.) "Possession may be actual or constructive. Actual possession means the object is in the defendant's immediate possession or control. A defendant has actual possession when he himself has the weapon. Constructive possession means the object is not in the defendant's physical possession, but the defendant knowingly exercises control or the right to control the object." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831, citing *Peña*, at pp. 1083-1084.)

"Dominion and control are essentials of possession, and they cannot be inferred from mere presence or access. Something more must be shown to support inferring of these elements. Of

course, the necessary additional circumstances may, in some fact contexts, be rather slight. [Citations.] It is clear, however, that some additional fact is essential." (*People v. Zyduck* (1969) 270 Cal.App.2d 334, 336.)

Defendant contends "there was no evidence linking [him] to the handgun other than the fact that it was inside the car in which he was driving." He is mistaken. There was also evidence that he affirmatively tried to hide the gun from the police. Specifically, the evidence showed that despite the fact he was driving the car, when the police asked for the ignition key to unlock the glove box (in which the gun was stashed), defendant did not have the key. Instead, the key turned up hidden in the passenger's waistband. From these facts, the jury could reasonably infer not only that defendant was aware of the gun in the glove box, but that when the police pulled him over he took the key from the ignition and gave it to his passenger to hide so that the police could not open the glove box and find the gun. This evidence of defendant's attempt to hide the gun from the police was sufficient to support a finding that, at the very least, he had dominion and control over the gun and thus constructively possessed it.

On this point, *People v. Taylor* (1984) 151 Cal.App.3d 432 is instructive. In *Taylor*, the defendant took his girlfriend's father's car without permission and when spotted the next day by police fled at high speed. (*Id.* at p. 434.) "Minutes after the car sped away, police saw a gun thrown from the passenger window into bushes." (*Ibid.*) The defendant was ultimately apprehended

after crashing the car. (*Id.* at p. 435.) On appeal, the defendant "suggest[ed] the evidence he possessed the gun was insufficient as a matter of law," but the appellate court concluded he was "wrong," explaining as follows: "The trial court was aware the gun was thrown from the passenger side of the car and Taylor was the driver. The court noted, however, the gun was thrown soon after the chase began and Taylor's driving represented an unequivocal attempt to avoid capture. A conviction may be supported by circumstantial evidence of constructive possession. The mere fact the evidence supports an inference Taylor did not personally possess the gun does not require reversal. [Citation.] There was sufficient evidence Taylor had constructive possession of the firearm." (*Id.* at p. 436.)

It is true, as defendant notes, that "there was no evidence [here defendant] was driving evasively," but that is a distinction without a difference. Just as Taylor's driving represented "an unequivocal attempt to avoid capture," which (in defendant's words) "demonstrate[d] that he was conscious of his own guilt in possessing the gun," here defendant's attempt to hide the key to the glove box from police represented an unequivocal attempt to prevent the police from finding the gun stashed there, which, too, demonstrated consciousness of guilt sufficient to support a finding of possession.

Defendant implies there could have been two separate keys involved here, one that operated the ignition and one that opened the glove box, because neither deputy "affirmatively

stated that the ignition key and the key that opened the glove compartment were one and the same." The record, however, reveals no hint there was more than one key. To the contrary, although neither deputy directly stated as much, the record clearly shows the key found on defendant's passenger fit both the ignition and the glove box. Thus, when defendant gave the key to his passenger to hide in her waistband, he evidenced knowledge of the gun sufficient to support a finding of possession. Indeed, in undertaking an effort to hide the gun from police (by hiding the key to where the gun was stashed), defendant exercised dominion and control over the gun and thus constructively possessed it. Accordingly, the evidence was sufficient to support his conviction.

## II

### *Convictions For Robbery And Receiving Stolen Property*

Defendant contends his conviction for receiving stolen property must be reversed because it is based on some of the same property as the robbery convictions.<sup>1</sup> We agree.

A defendant may not be convicted of stealing and of receiving the same property. (*People v. Allen* (1999) 21 Cal.4th 846, 853; *People v. Jaramillo* (1976) 16 Cal.3d 752, 757; Pen. Code, § 496.) "[I]n the absence of an instruction on the question, it is the conviction for theft or a theft-related

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<sup>1</sup> Curiously, the People do not address this argument.

offense which has the preclusive effect and not vice versa.”  
(*People v. Stewart* (1986) 185 Cal.App.3d 197, 207; see also  
*People v. Stephens* (1990) 218 Cal.App.3d 575, 586-587 [the  
defendant was convicted of stealing and receiving the same  
property, “appropriate remedy then is to reverse only . . . the  
conviction for receiving stolen property, and let stand the  
conviction for robbery which was supported by substantial  
evidence”].) Thus, we shall reverse defendant’s conviction for  
receiving stolen property, on which his sentence was stayed  
pursuant to Penal Code section 654.

DISPOSITION

Defendant’s conviction of receiving stolen property is  
reversed. In all other respects, the judgment is affirmed. The  
trial court shall prepare an amended abstract of judgment  
reflecting this disposition and forward a certified copy to the  
Department of Corrections and Rehabilitation.

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ROBIE, Acting P. J.

We concur:

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DUARTE, J.

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HOCH, J.