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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

TAYLOR BRUCE SHEETS,

Defendant and Appellant.

C072708

(Super. Ct. No. 62108233C)

A jury found defendant Taylor Bruce Sheets guilty of knowing receipt of a stolen vehicle (Pen. Code, § 496d) and he admitted having served a prior prison term (Pen. Code, § 667.5, subd. (b)). The trial court sentenced him to two years of incarceration plus an additional year for the prior prison term, to be served in the county jail.

On appeal, defendant contends his conviction should be reversed (1) for insufficiency of the evidence, and (2) because he received ineffective assistance of counsel. Disagreeing, we shall affirm the judgment.¹

FACTS

In July 2011 Richard Mau's 2004 Honda ATV (quad) was stolen from a repair shop in Placer County. Sometime before August 10, 2011, Placer County Sheriff's Detective Douglas Bostian (assigned to an auto theft task force) was covertly listening to a jail phone conversation between inmate Shane White and a female. White told the female "there was a quad up at Nicol's place that was hot and that it needed to be taken care of." Bostian was familiar with a Nicol Walker through past investigations and her residence was "known to house stolen property." Bostian confirmed that Walker was still on probation.

Around 1:30 or 2:00 p.m. on August 10, 2011, Bostian and other officers went to Walker's residence to conduct a probation search. Walker's residence sits atop a hill in Colfax and has a driveway 80 to 100 yards long. A white sedan was parked just off the driveway and a pickup was parked in front of it. A trailer was parked about 40 yards from the sedan, and near the trailer was a stripped quad, which was later identified as Mau's stolen vehicle. Defendant, Elsa Sheets, Samantha Dean, and Lindsey Carter, each of whom had dirty hands, were walking from where the trailer was located toward the sedan. Dean told Bostian the white sedan was hers, that she had driven to Walker's with defendant and Carter to help defendant "with a quad, to put a motorcycle back together."

Several of the stripped parts from the quad were in the trunk of Dean's car, and other parts were found in a plastic bag near the quad. About three feet from the quad was a tool box and various hand tools were in the area. A cell phone, which defendant

¹ We note that we have a received a document reflecting that the trial court granted defendant's postjudgment request for additional custody credits.

admitted was his, was also nearby. Lying on the seat of the quad was an electric reciprocating saw of a type that could be used to cut up plastic parts from a quad.

On defendant's cell phone was a text message from Walker to defendant dated August 9, 8:45 p.m. The text read: "I need that quad out of here as soon as possible. Got fucked with by the cops in town today. I wouldn't be surprised if they showed up here sometime in the near future." At 11:02 a.m. on August 10, defendant sent Walker a text asking, "You home today." The reply was "Yup." Defendant responded, "Be there soon."

Walker testified at trial, denying that she knew the quad was stolen, but admitting she was on probation after pleading either guilty or no contest--she could not remember which--to knowing receipt of stolen property in connection with the very same quad. She confirmed that the texts referenced *ante* were between defendant and herself and admitted a prior felony conviction for vehicle theft.

DISCUSSION

I

Sufficiency of the Evidence

Defendant contends his conviction for knowing receipt of stolen property must be reversed because the evidence is insufficient to prove he possessed the quad or that he knew it was stolen. The record is to the contrary.

“ ‘To determine the sufficiency of the evidence to support a conviction, the appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Jurado* (2006) 38 Cal.4th 72, 118.)

The court read CALCRIM No. 1750 to the jury. It provides in relevant part: “To prove that the defendant is guilty of [receipt of a stolen vehicle], the People must prove that: [¶] 1. The defendant bought, received, sold, aided in selling, concealed or withheld

from its owner, or aided in concealing or withholding from its owner, a motor vehicle that had been stolen; [¶] AND [¶] 2. When the defendant received the motor vehicle, he knew that the motor vehicle had been stolen. [¶] . . . [¶] To *receive property* means to take possession and control of it. Mere presence near or access to the property is not enough. Two or more people can possess the property at the same time. It is enough if the person has control over it or the right to control it, either personally or through another person.” (Italics in original.)

Defendant does not challenge the adequacy of the jury instructions, but instead argues that the evidence was insufficient to establish he “exercised dominion or control over the [quad] or knew that it was stolen.” We disagree.

The evidence showed that Walker texted defendant: “I need that quad out of here as soon as possible. Got fucked with by the cops in town today. I wouldn’t be surprised if they showed up here sometime in the near future.” From this evidence alone, the jury could reasonably conclude that defendant would understand Walker wanted that quad removed from her property before the police came *because* the quad was stolen. Indeed, it is difficult to conceive of another explanation for the text. And because defendant received the text and reacted as though he understood the urgency, the text is evidence of defendant’s knowledge.²

Also from the texts between Walker and defendant, the jury could reasonably infer defendant went to Walker’s residence to remove the quad as Walker had asked him to do. In order to do so, he was assisting in its dismantling and loading into another car. When law enforcement arrived at Walker’s a few hours after defendant, they encountered defendant and his female companions walking from the location of the stripped quad toward a white sedan. In the trunk of the sedan were some of the parts stripped from the

² Defendant’s reaction to the text also supports our conclusion that the text is his adoptive admission; see our analysis of defendant’s hearsay claim in Part II, *post*.

quad. Near the quad was a reciprocating saw and tools which could be used for dismantling the quad. Defendant's cell phone was also nearby. All four individuals' hands were dirty as if they had recently carried vehicle parts. The most reasonable conclusion, if not the only conclusion, to be drawn from these facts is that defendant and his companions were caught in the act of stripping the quad and carrying its parts to the sedan. Consequently, substantial evidence shows defendant's possession and control of the quad.

Defendant's reliance on *People v. Zyduck* (1969) 270 Cal.App.2d 334 (*Zyduck*), *People v. Jolley* (1939) 35 Cal.App.2d 159 (*Jolley*), and *People v. Martin* (1973) 9 Cal.3d 687 (*Martin*), to support his insufficiency arguments is misplaced.

In *Zyduck*, the defendant was convicted of receiving a stolen chain saw. (*Zyduck, supra*, 270 Cal.App.2d at p. 335.) The sole evidence supporting the conviction was that defendant was in the front passenger seat of a vehicle stopped by police, and in the back seat was a chain saw which had been stolen the previous day. The appellate court held the evidence was insufficient, concluding that mere presence in a car owned and driven by another, in which stolen property is readily visible, is not enough to prove possession of property or knowledge that property was stolen. (*Id.* at pp. 335-336.)

In *Jolley*, the defendant was convicted of receiving stolen automobile tires. (*Jolley, supra*, 35 Cal.App.2d at pp. 160-161.) The evidence established that defendant was in the business of regrooving tires, and stored a substantial number of used tires in his garage at home. Defendant's brother and a former employee took two stolen vehicles to defendant's garage, replaced the (stolen) tires with used tires from the garage, and left the stolen tires in the garage. Defendant's brother and the former employee testified defendant was not complicit in their crimes and that he did not know the vehicles were stolen. (*Id.* at pp. 160-162.) The appellate court held that the mere presence of the stolen tires in defendant's garage was insufficient to establish defendant's possession of the tires or his knowledge that the tires were stolen. (*Id.* at pp. 162-163.)

In *Martin*, a police officer saw Martin park a station wagon that contained stolen business machines and then drive off in a second car. Martin returned to the station wagon in a vehicle driven by Prizant. Martin retrieved one of the stolen business machines from the station wagon and placed it in the trunk of Prizant's vehicle. Martin and Prizant were then arrested. Prizant was convicted of receiving the stolen business machines placed in his car (count 1) and contained in the station wagon (count 2). (*Martin, supra*, 9 Cal.3d at pp. 691, 696.) Our Supreme Court held the evidence sufficient to support count 1, but insufficient to support count 2, because there was no evidence Prizant possessed the machines in the station wagon nor was there evidence that he aided and abetted Martin in his receiving, concealing, or withholding the machines. (*Id.* at pp. 695-696.)

The facts in *Zyduck*, *Jolley*, and *Martin* are eminently distinguishable from those we see here. Here, Walker's text to defendant suggested the quad was stolen and told defendant to remove it. Further, defendant was caught at Walker's house the next day in the act of stripping the quad and loading the parts into another car. This is not a case where the evidence suggested defendant's *non-involvement* in the possession of the stolen property, as in the cases explained above. Rather, in this case, the evidence strongly suggested that defendant was *directly* involved in possessing the quad, in a manner that suggested control over the quad and knowledge of its stolen nature. The evidence was sufficient.

II

Ineffective Assistance of Counsel

Defendant next contends his counsel was constitutionally ineffective for failing to object, on hearsay grounds, to the admission of Walker's initial text and to Bostian's testimony that Dean told him that Dean and her companions were at Walker's residence to assist defendant with the quad. He also faults his counsel for failing to request a limiting instruction on Walker's text.

“ ‘To establish a violation of the constitutional right to effective assistance of counsel, a defendant must show both that his counsel’s performance was deficient when measured against the standard of a reasonably competent attorney and that counsel’s deficient performance resulted in prejudice to defendant in the sense that it “so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” ’ [Citations.] . . . Counsel is not ineffective for failing to make frivolous or futile motions.” (*People v. Thompson* (2010) 49 Cal.4th 79, 122.)

Defendant first argues Walker’s initial text was relevant only if construed for its truth as implied hearsay, or “an implied assertion that the quad was stolen.” We agree that although requests and words of direction or authorization generally do not constitute hearsay, evidence of an express statement of a declarant may constitute hearsay if offered to prove not the truth of the statement itself but instead the implied truth behind the statement. (See *People v. Garcia* (2008) 168 Cal.App.4th 261, 289.) Here, Walker’s text implied that the quad was stolen. Thus, for purposes of this analysis, we agree that the text was hearsay.

Although defendant proceeds to argue that the text was not admissible as an exception to the hearsay rule, we disagree and conclude that the text was admissible as an adoptive admission. Evidence Code section 1221 defines an adoptive admission: “Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.”

Defendant argues the adoptive admission exception is not applicable to Walker’s text because there was no evidence by words or conduct that he adopted the message. This is so, defendant asserts, because he did not respond to the text until the following day, and when he did text Walker it was not clear that he was responding to Walker’s

prior text as he never stated his purpose in coming to see and never mentioned the quad. We are not persuaded.

Walker's text was sent at 8:45 p.m. on August 9. Defendant texted Walker at 11:02 a.m. the following day asking if she was home. At 11:35 a.m., Walker replied she was home, and at 11:36 a.m. defendant responded he would be there soon. Defendant was at Walker's residence and in the process of stripping or having just stripped the quad when Detective Bostian arrived between 1:30 p.m. and 2:00 p.m. These facts constitute words and conduct demonstrating defendant adopted Walker's implied assertion that the quad was stolen. Because the text constituted an exception to the hearsay rule, counsel had no basis to object and was not ineffective for failing to do so.³

Defendant next argues that counsel was ineffective for failing to object, on hearsay grounds, to Bostian's testimony that Dean told him that she and her companions were at Walker's residence to assist defendant with the quad.

“ ‘If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.’ ”
(*In re Alvernaz* (1992) 2 Cal.4th 924, 945.)

Defendant cannot establish prejudice. Given the evidence detailed *ante*, Dean's statement was simply cumulative to what was already obvious--that defendant was assisting with the quad. The exclusion of Dean's statement would not have resulted in a different outcome for defendant at trial.

³ Our conclusion obviates the need to analyze defendant's claim that counsel was ineffective for failing to request a jury instruction limiting the jury's consideration of the text to a non-hearsay purpose. Because the text was an adoptive admission, the jury was free to consider its contents for the truth and no limiting instruction was required.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

MURRAY, Acting P. J.

HOCH, J.