

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JORGE R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE R.,

Defendant and Appellant.

D060391

(Super. Ct. No. J220-274)

APPEAL from an order of the Superior Court of San Diego County, Andrew Kurz, Temporary Judge (pursuant to Cal. Const., art. VI, § 21), and Polly H. Shamoon, Judge. Affirmed.

The juvenile court adjudged 17-year-old Jorge R. a ward of the court under Welfare and Institutions Code section 602 based on a true finding that he had received a stolen vehicle. The court reduced the offense to a misdemeanor and placed Jorge on

probation. Jorge appeals, contending substantial evidence did not support the court's true finding. We find his argument unavailing and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Andres Reyna owned a silver, four-door, Honda Civic that he usually parked on the street in front of the apartment complex where he lived with his companion, Girelli Ahumada-Conde. Between midnight and 12:30 a.m. on February 13, 2011, Reyna learned that the car was missing and contacted the police. Reyna had not given anyone permission to use or be in his car.

National City Police Officer Christopher Cameon took a report concerning the stolen vehicle. While on patrol at around 1:19 a.m., Officer Cameon saw the stolen silver Honda, but could not see the driver. Before he could initiate a traffic stop, the silver Honda turned and pulled over to the curb. All four doors swung open and five people ran from the car.

Officer Cameon pursued Jorge, who was one of the people running from the driver's side of the silver Honda. Officer Cameon, however, did not see from which driver's side door Jorge exited. Officer Cameon chased Jorge, shouting at him to stop. Eventually, other officers arrested Jorge, but were unable to apprehend the other four occupants of the silver Honda.

Officer Cameon picked up Ahumada-Conde at her home to identify the silver Honda, which she did. At that time, Officer Cameon noticed a red Honda Accord parked

directly in front of Ahumada-Conde's residence. A records check revealed that the red Honda was stolen.

Jorge spoke to Officer Cameon after the arrest. Jorge stated that he met his friend, Felipe, at a party. Felipe left the party with some girls and arranged for Jorge to get a ride in a red Honda with three of Felipe's friends, one of whom was named Pitufo. Via cell phone, Jorge and Felipe agreed to meet at a 7-Eleven. Felipe's friends dropped Jorge off at the 7-Eleven, where he met Felipe and the girls. About 20 to 30 minutes later, Felipe's friends returned driving a silver Honda instead of the red Honda. Jorge talked to them about the silver Honda and learned it was stolen. The group, including Jorge, decided to drive around town with the girls. Felipe and the girls were in one car, while Jorge and Felipe's friends followed them in the silver Honda.

At one point, the car in which Felipe and the girls were in broke down. Jorge and the others in the silver Honda worked on the car for a while and got it running again. Jorge got back into the silver Honda, which continued to drive around town, following the girls and Felipe. A short time later, Pitufo, who was driving the silver Honda, saw a police car coming up behind them. Pitufo stopped the car and yelled at everyone to get out and run. They all did so, including Jorge.

DISCUSSION

To establish the crime of receiving stolen property, the People must prove (1) the property was stolen, (2) the defendant knew it was stolen, and (3) the defendant had possession of it. (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 728 (*Anthony J.*)) Jorge

concedes that the car was stolen and that he was aware of this fact. Jorge contends the evidence did not prove him guilty beyond a reasonable doubt of receiving a stolen vehicle because there was no evidence that he possessed the car.

Sufficiency of the evidence claims are reviewed under the same standard in juvenile and adult criminal cases. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) The critical inquiry is "'whether, after reviewing 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.'" (*Ibid.*, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) The standard of appellate review is the same in cases in which the People rely primarily on circumstantial evidence and it is the trier of fact, not the appellate court, which must be convinced of the defendant's guilt beyond a reasonable doubt. (*People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

We view the entire record in the light most favorable to the judgment to determine whether it contains reasonable, credible, and solid evidence to support the trier of fact's finding. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

"Possession" of stolen property may be actual or constructive and need not be exclusive. (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*.) Physical possession is not required; it is sufficient "if the defendant acquires a measure of control or dominion over the stolen property." (*Id.* at p. 224.) Dominion and control cannot be inferred from

mere presence or access; rather, "[s]omething 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.' [Citation.]" (*Id.* at p. 225.) Whether a passenger can be in possession of a stolen vehicle "turns on the unique factual circumstances of each case." (*Id.* at p. 228.) The critical issue is whether the facts are sufficient for a reasonable trier of fact to infer that the passenger "was in a position to exert control over the vehicle" and thus constructively possessed the stolen vehicle. (*Ibid.*)

For example, in *Land*, the reviewing court found substantial evidence from which a reasonable trier of fact could infer that the defendant constructively possessed the stolen vehicle, even though he was merely a passenger, noting that the defendant and the driver drank and did drugs together, were friends, the car was stolen near the defendant's residence and they drove it within an hour of the theft, the defendant knew the car was stolen, they used the vehicle for their own benefit and enjoyment, they used the car in a joint criminal enterprise that evening, and the defendant made no effort to disassociate himself from his friend or the stolen vehicle although he had ample opportunity. (*Land, supra*, 30 Cal.App.4th at p. 228.)

In contrast, in *Anthony J.*, the reviewing court concluded there was insufficient evidence that the minor possessed a stolen vehicle. (*Anthony J., supra*, 117 Cal.App.4th at p. 729.) The minor was a passenger in the backseat of a stolen vehicle for about 20 to 30 minutes and was one of four people that ran from the vehicle when a patrol car drove

nearby. (*Id.* at pp. 722-724.) The minor had seen the driver of the vehicle before, but did not know him well or know that the vehicle was stolen. (*Ibid.*)

Here, the juvenile court found that Jorge knew the car was stolen, had a plan with the others in the car to follow girls in another car, and when the other car broke down, they stopped and then continued with the enterprise. Accordingly, it impliedly concluded that the facts of this case were more akin to *Land*, than to *Anthony J.* The evidence, while not overwhelming, supported this finding.

Although Jorge was not a close friend of Pitufu, the driver of the silver Honda, or the other three people in the car, these individuals were friends of Felipe. Moreover, Jorge had plenty of time to get acquainted with these individuals and presumably felt comfortable with them as he had two opportunities to leave. He could have left during the wait at the 7-Eleven or when the other car broke down, but he chose to stay. Also, after Jorge called Felipe while riding in the red Honda and agreed to meet him at a 7-Eleven, Jorge presumably communicated this plan to the three other individuals in the red Honda because the meeting later occurred. This suggests Jorge had some measure of control over the three individuals even though they were not close friends.

These other individuals then left the 7-Eleven to abandon the red Honda, stole the silver Honda and then returned to the 7-Eleven in the silver Honda. Knowing that the silver Honda was stolen, Jorge expressly joined a "plan" to "drive around with the girls." He participated in this plan until the other car broke down. Jorge and the others in the silver Honda worked on the car for a while and got it running again. Jorge got back into

the silver Honda, which continued to drive around town following the girls as he and the others had previously planned. This evidence suggests Jorge was not merely present or had access to the stolen car, but that he joined in a plan with the driver of the stolen car to use it for his own benefit and enjoyment.

Unlike *Land*, there is no evidence that Jorge and the other individuals in the silver Honda intended to commit crimes using the car. (*Land, supra*, 30 Cal.App.4th at pp. 222-223.) Nonetheless, the evidence clearly shows that Jorge and the other individuals in the silver Honda shared a joint purpose of benefiting and enjoying the stolen car until they saw the police and abandoned it. The evidence here, as in *Land*, supports an inference of constructive possession and cannot be deemed insufficient as a matter of law. (*Land, supra*, at p. 228.)

DISPOSITION

The order of the juvenile court is affirmed.

McINTYRE, J.

WE CONCUR:

McDONALD, Acting P. J.

O'ROURKE, J.