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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY RAY CAMPBELL,

Defendant and Appellant.

E053300

(Super.Ct.No. RIF10000903)

OPINION

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge.

Affirmed.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Emily R. Hanks, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Danny Ray Campbell was charged by information with taking or driving a vehicle without consent (Veh. Code, § 10851, subd. (a), count 1) and

receiving a stolen vehicle (Pen. Code, § 496d, subd. (a), count 2).<sup>1</sup> The information also alleged that he had served three prior prison terms (Pen. Code, § 667.5, subd. (b)), and that he had one prior strike conviction (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). A jury found defendant guilty of count 2, but not guilty of count 1. He admitted the prior conviction allegations. The court sentenced defendant to a total term of five years eight months in state prison.

On appeal, defendant's sole contention is that there was insufficient evidence to support his conviction for receiving stolen property. We affirm.

#### FACTUAL BACKGROUND

On the morning of February 19, 2010, Tuan Thompson parked his Honda motorcycle on the sidewalk in front of his girlfriend's home. He and his girlfriend were planning on riding the motorcycle to Los Angeles, so he turned the motorcycle on to warm it up for the trip. He went inside the house to get his jacket. After he grabbed his jacket, he stopped to talk to his girlfriend and her mother. His girlfriend's mother was standing next to a window and saw someone sitting on Thompson's motorcycle. She told Thompson, who looked out the window and then ran outside. The person on his motorcycle, later identified as defendant, was wearing a helmet and had the motorcycle in gear, ready to go. Defendant put the motorcycle in gear and began to drive across the lawn. Thompson chased after him, caught up to him, pulled him off the motorcycle, and put him in a headlock. He punched defendant in the face, and defendant's helmet

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

“popped off.” Defendant ran off, and Thompson chased him. Thompson caught up to him at the end of the block, but then fell on the ground. Defendant kept running. A man driving by pulled up to Thompson, and Thompson told him to open his car door. The man complied, and Thompson jumped into the car and told the man to chase after defendant. When they caught up to defendant, Thompson got out of the car, grabbed defendant, and threw him on the ground. Defendant resisted, escaped, and followed a woman inside her house. Thompson chased defendant, who tried to shut the door. Defendant punched Thompson in the face several times to keep him from coming inside the house. The driver who had previously helped Thompson approached them and helped Thompson apprehend defendant. They detained him until the police arrived.

Thompson did not know defendant, and he never gave him permission to use his motorcycle.

### ANALYSIS

#### There Was Sufficient Evidence to Support Defendant’s Conviction for Receiving Stolen

#### Property

Defendant’s sole argument on appeal is that there was insufficient evidence to support his conviction for receiving stolen property. He contends that the evidence was insufficient to sustain the conviction for two reasons: (1) he was acquitted of stealing the motorcycle and, therefore, the motorcycle was not stolen; and (2) if it was stolen, it was stolen by defendant, “which precludes a conviction for receiving the stolen item from himself.” We conclude that the evidence was sufficient.

Our standard of review is well settled. “In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses 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. [Citations.] Reversal on this ground is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]” (*People v. Villegas* (2001) 92 Cal.App.4th 1217, 1223.) “The standard of review is the same when the prosecution relies on circumstantial evidence. [Citation.] Circumstantial evidence may be sufficient to prove the defendant’s guilt beyond a reasonable doubt. [Citation.]” (*People v. Vu* (2006) 143 Cal.App.4th 1009, 1024.)

“To sustain a conviction for receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property. [Citations.]” (*People v. Land* (1994) 30 Cal.App.4th 220, 223.) Section 496d, of which defendant was convicted, requires the stolen property in question to be a “motor vehicle, trailer, special construction equipment, or vessel.” (§ 496d, subd. (a).)

Here, there was sufficient evidence to establish each of the elements of receiving stolen property. The evidence showed that the motorcycle had been stolen. “The elements of theft by larceny are: (1) the defendant took possession of personal property owned by someone else; (2) the defendant did so without the owner’s consent; (3) when the defendant took the property, he or she intended to deprive the owner of it

permanently; and (4) the defendant moved the property, even a small distance, and kept it for any period of time, however brief. [Citations.]” (*People v. Catley* (2007) 148 Cal.App.4th 500, 505.) Defendant took possession of Thompson’s motorcycle when he sat on it and drove it away. Thompson never gave defendant permission to borrow the motorcycle. Driving away on a stranger’s motorcycle and fleeing from the owner provided circumstantial evidence that defendant intended to permanently deprive Thompson of the motorcycle. The motorcycle was moved when defendant drove it across the lawn in front of Thompson’s girlfriend’s house. As to the remaining elements of receiving stolen property, defendant knew the motorcycle was stolen because he stole it. Finally, defendant had possession of the stolen motorcycle when he sat on it and drove it across the lawn.

Defendant argues that he could not be convicted of receiving stolen property because he was the one who stole the motorcycle. He cites section 496, subdivision (a), which states that a person may not be convicted of stealing and receiving the same property. He then cites the rule against dual convictions, which he explains is based on the premise that “a theft conviction operates as a bar to a receiving conviction because it is ‘logically impossible for a thief who has stolen an item of property to buy or receive that property from himself.’” We agree with defendant, in that a person may not be *convicted* of both theft of property and receiving the same stolen property. However, there is no prohibition against the thief being convicted *only* of receiving the stolen property.

“The Legislature amended section 496 in 1992 by adding the following two sentences: ‘A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.’” (*People v. Allen* (1999) 21 Cal.4th 846, 857 (*Allen*)).

The court in *Allen* explained the amendment as follows: “[T]he second sentence of the 1992 amendment codifies the ‘narrow’ application of the common law rule invoked in [*People v.*] *Jaramillo* [(1967)] 16 Cal.3d 752, 757 [that a defendant may not be convicted of stealing and receiving the same property]. The second sentence declares that ‘no person may be convicted both pursuant to this section and of the theft of the same property.’ (§ 496.) The sentence thus prohibits, as the ‘narrow’ common law rule also prohibited, dual *convictions* of any person of both an offense ‘pursuant to this section [§ 496]’—viz., buying, receiving, concealing, withholding, or selling stolen property—and the offense of stealing the same property. [¶] The first sentence of the 1992 amendment addresses the ‘broad’ application of the common law rule; but rather than codifying that application, the sentence effectively abrogates it. As noted, the first sentence declares that ‘A principal in the actual theft of the property may be convicted pursuant to this section.’ (§ 496.) The sentence thus authorizes a conviction for receiving stolen property *even though the defendant also stole the property*, provided he has not actually been convicted of the theft.” (*Allen, supra*, 21 Cal.4th at p. 857, italics in original.) Thus, pursuant to the 1992 amendment of section 496, “‘the fact that the defendant stole the property no longer bars a conviction for receiving, concealing or withholding the same property.’ [Citation.]” (*Ibid.*)

Consistent with the current law, the jury in this case was instructed that it could not convict defendant of both theft under Vehicle Code section 10851 and receiving the same stolen property. At defendant's request, the jury was instructed with CALCRIM No. 3516, as follows: "The defendant is charged in Count 1 with unlawful taking or driving a vehicle, and in Count 2 with receiving stolen property. *These are alternative charges.* If you find defendant guilty of one of these charges, you must find him not guilty of the other. You cannot find the defendant guilty of both. Nor can you find him guilty of both the lesser offense to Count 1 and the lesser offense to Count 2." (Italics added.) The jury followed the instruction and only convicted defendant of count 2.

Defendant claims that he "was acquitted of stealing the vehicle and therefore the vehicle was not stolen." However, contrary to this claim, his acquittal on count 1 does not mean the jury concluded the motorcycle was not stolen. Rather, the jury was properly instructed with CALCRIM No. 3516 and, accordingly, it convicted defendant of only one of the alternative counts. Although defendant insists that he "cannot be guilty of receiving because he was the alleged thief who was acquitted of stealing," the fact that he stole the motorcycle did not bar his conviction under section 496d. (*Allen, supra*, 21 Cal.4th at p. 857.)

Defendant further asserts that it is well established that "[c]ommission of the theft *excludes* the possibility of a receiving conviction." He cites *People v. Ceja* (2010) 49 Cal.4th 1, 6, in support of this claim, but his reliance on *Ceja* is misplaced. In that case, the trial court failed to instruct the jury that a defendant could not be convicted of stealing and receiving the same property, and the jury convicted the defendant of both petty theft

and receiving the property. (*Id.* at p. 3.) The Court of Appeal reversed the petty theft conviction. (*Ibid.*) The question before the Supreme Court then was, “when a defendant has been improperly convicted of stealing and receiving the same property, what is the appropriate remedy?” (*Id.* at p. 5.) The Supreme Court reversed, holding that the proper remedy for the improper dual conviction was to reverse the receiving conviction. (*Id.* at pp. 3-4.)

The jury in the instant case, unlike in *Ceja*, was properly instructed that it could not find defendant guilty of both stealing and receiving the same property. The jury properly followed the instruction.

#### DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.