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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.

ROBERT GABRIEL TOY,

Defendant and Appellant.

E055774

(Super.Ct.No. RIF10003488)

OPINION

APPEAL from the Superior Court of Riverside County. Patrick F. Magers, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Robert Gabriel Toy was charged by amended information
with the unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a), count 1),
and receiving stolen property, a motor vehicle (Pen. Code, § 496d, subd. (a), count 2).

The information also alleged 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 both counts. He admitted the prior strike conviction and moved the trial court to dismiss the strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The court denied defendant's request to strike the conviction. The court then sentenced defendant on count 1 to the middle term of two years in state prison, which was doubled pursuant to the strike conviction, for a total term of four years. The court struck count 2, noting that defendant could not be convicted of receiving stolen property if he was the actual taker. The court granted him 187 custody credits (125 actual plus 62 conduct).

Defendant filed a timely notice of appeal. We affirm.

FACTUAL BACKGROUND

At about 11:00 p.m. on July 30, 2010, Officer Anthony Watkins was driving by a gas station. He noticed a black truck parked at the front door of the gas station, with the driver's side door open, no one in the driver's seat, and someone sitting in the passenger seat. The scenario alerted him to a possible robbery, with the truck as the getaway vehicle. Officer Watkins pulled up to the truck and noticed that there was no license plate on the front of the truck, and a piece of white paper where the back license plate was supposed to be. He saw defendant walk out of the gas station and get into the driver's seat of the truck. Defendant started to drive away, but then stopped at the pumps. Officer Watkins started to talk to defendant and asked him where his plates were. Defendant said he just bought the car from a dealership, and he had not received the plates in the mail. Because the truck was an older model, Officer Watkins decided to

investigate further. Defendant did not have any paperwork to show ownership, so Officer Watkins ran the vehicle identification number. The report came back that the truck had been stolen earlier that day. The officer talked to the passenger and found out that he was on parole. Officer Watkins then held defendant and the passenger at gunpoint until backup arrived. Defendant and the passenger were handcuffed and taken to the police station for questioning.

After being read his *Miranda*¹ rights, defendant agreed to talk to Officer Watkins. Defendant changed his story and said he found the truck on Craigslist and bought it from a man named Jose Gutierrez. Defendant told him that his friend had the bill of sale and receipt.

The truck belonged to Dustin Anderson. Anderson had parked the truck in his driveway and dropped the keys onto the seat of the truck. He unloaded items from the truck to his house, and forgot to retrieve his keys. Early the next morning, the truck was missing. He reported it to the police. Anderson testified that he had bought the truck new at a dealership in 1999 and had owned it ever since. At trial, the prosecution presented the keys defendant had in his possession at the time Officer Watkins detained him (exhibit 7). Anderson identified the key ring and the keys as his.

ANALYSIS

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979)

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case and the following potential arguable issue: whether substantial evidence supported defendant's conviction. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MILLER
J.