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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re M.P., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

F061479

(Kern Super. Ct. No. JW121580-2 &  
Tulare Sup. Ct. No. JJD065064)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Louie L. Vega,  
Judge.

R. Randall Riccardo, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Michael P. Farrell, Assistant Attorney General, Charles A. French and Raymond  
L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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\*Before Wiseman, Acting P.J., Poochigian, J., and Franson, J.

On November 17, 2010, the Tulare County Juvenile Court found that appellant, M.P., was a person described in Welfare and Institutions Code section 602 after it sustained allegations charging appellant with receiving a stolen vehicle (count 1/Pen. Code, § 496d) and resisting arrest (count 2/Pen. Code § 148(a)(1)), arising out of a November 2, 2010, incident. Because appellant was a resident of Kern County, the matter was then transferred to the Kern County Superior Court for disposition.

The Kern County Superior Court accepted transfer of the matter from and declared count one to be a felony. At the December 14, 2010, disposition hearing, the court committed appellant to Camp Erwin Owen.

On appeal, appellant contends the evidence is insufficient to sustain the court's true finding with respect to his adjudication for receiving a stolen vehicle. We find merit to this contention, vacate the disposition, and remand the matter for a new disposition hearing. In all other respects, we will affirm.

### **FACTS**

At appellant's jurisdictional hearing, Jose Zapata testified that on November 2, 2010, at approximately 10:15 p.m., while getting ready to leave work for the night, he saw his Dodge Neon in his employer's parking lot in Shafter. At 10:30 p.m., he noticed that his Dodge Neon was missing from the lot. Zapata had left the vehicle unlocked with the keys inside.

Tulare County Sheriff's Deputy James Gong testified that he was on patrol in the Lindsay-Strathmore area when he heard that a pursuit from the Pixley area was headed his way. Gong was traveling north on Road 192 when the Neon passed him on the driver's side traveling at a speed in excess of 100 miles. Gong illuminated the car as it passed him, saw that it contained three Hispanic males, and began pursuing it. Gong pursued the car approximately two minutes before the Neon attempted to turn at Avenue 192, skidded, and crashed into a concrete wall. All three subjects fled.

California Highway Patrol Officer Hipolito Pelayo testified that at approximately 11:20 p.m., he was in the Pixley area when he joined the pursuit of the stolen Neon. After the Neon crashed, appellant was brought out of an orchard and placed in the back of a patrol car. Pelayo spoke with appellant at the Porterville substation. Appellant told Pelayo that he had been picked up at a gas station in Delano and had been seated in the rear seat. Appellant knew the vehicle was stolen but did not know by whom. Appellant stated that he did not care that he had been in a stolen car because he had run away from home and was running from his probation officer and needed a place to stay. Appellant also stated that he knew the other passenger, Jose Z., because they had attended the same high school in Bakersfield, but he did not know the driver, who was later identified by Pelayo as John M.<sup>1</sup>

### **DISCUSSION**

Appellant contends the evidence does not support the court's finding that he received the stolen Neon because it was insufficient to show that he possessed it. !(AOB: 5.)! We must agree.

“In determining the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment to determine ‘whether it discloses substantial evidence—that is, 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.’” (*People v. Russell* (2005) 129 Cal.App.4th 776, 786, fn. omitted.)

In order to prove a charge of receiving a stolen vehicle, the prosecutor had to prove that (1) the vehicle was stolen; (2) the defendant knew the vehicle was stolen; and

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<sup>1</sup> Officer Pelayo determined that John M. was the driver of the Neon during the pursuit.

(3) the defendant had possession of the stolen vehicle. (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*.)

“Possession of the stolen property may be actual or constructive and need not be exclusive. [Citations.] Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property.” (*Land, supra*, 30 Cal.App.4th at pp. 223-224, fn. omitted.)

“[M]ere presence near the stolen property, or access to the location where the stolen property is found is not sufficient evidence of possession, standing alone, to sustain a conviction for receiving stolen property.” (*Land, supra*, 30 Cal.App.4th at p. 224.) “Something more must be shown to support inferring of [dominion and control]. Of course, the necessary additional circumstances may, in some fact contexts, be rather slight.” (*People v. Zyduck* (1969) 270 Cal.App.2d 334, 336.)

“[T]here is no single factor or specific combination of factors which unerringly points to possession of [a] stolen vehicle by a passenger.” (*Land, supra*, 30 Cal.App.4th at p. 228.) However, “... an inference of possession may arise from a passenger’s presence in a stolen automobile when that presence is coupled with additional evidence that the passenger knew the driver, knew that the vehicle was stolen, and intended to use the vehicle for his or her own benefit and enjoyment. Those facts could lead a jury to infer that it is more probable than not that the passenger had both the intention and the capacity to control the stolen vehicle. A jury might infer that such a passenger could exert control over the vehicle, an inference that would support a finding of constructive possession....” (*Id.* at p. 227.)

In *Land*, the defendant (Land) and a friend were drinking in his backyard. The friend left and returned with a white car, and suggested to Land that they drive to another town. Once in the car, the friend told Land the car was stolen. When they arrived in the other town, the friend (who was driving) stopped at a store and stole some food. He got

back into the car, and they drove around some more, before the friend said he intended to steal a man's red car. They stopped the man, shot him in the back, and drove away in the red car. Land was later charged, among other things, with the theft of the white car (Veh. Code, § 10851, subd. (a)), and with receiving the white car (Pen. Code, § 496, subd. (a)). The jury found him not guilty of the theft, but convicted him of the receiving offense. (*Land, supra*, 30 Cal.App.4th at pp. 222-223.) The issue on appeal was “under what circumstances, [may] a passenger in a stolen car, knowing the car is stolen, ... be properly found to have possession or dominion and control over the stolen vehicle.” (*Id.* at p. 225.)

Finding no California cases on the subject, the court reviewed decisions from other jurisdictions for guidance about “the type and quantum of evidence sufficient to find a passenger in a stolen vehicle guilty of receiving that stolen car.” (*Land, supra*, 30 Cal.App. 4th at p. 225.) It distilled from these cases the rule that “strong evidence of the passenger’s guilty knowledge [that the car was stolen] and a close relationship to the driver or thief, or evidence of a defendant’s conduct indicating control, may give rise to an inference of possession.” (*Id.* at p. 227.)

“From the foregoing we learn the fact a person is a passenger in a stolen vehicle will not necessarily preclude a conviction for receiving stolen property. It is also clear from these decisions additional factual circumstances are necessary to establish a passenger has possession or control of the stolen car. However, these decisions indicate there is no single factor or specific combination of factors which unerringly points to possession of the stolen vehicle by a passenger. If anything, these decisions emphasize the question of possession turns on the unique factual circumstances of each case.

“ ... We conclude the record in this case contains additional facts beyond mere presence or access, which when coupled with his status as a passenger, give rise to the inference [Land] had constructive possession of the stolen vehicle.

“The evidence established the driver and [Land] were friends. They drank together, did drugs together, and presumably knew each other well. [Land] knew the car was stolen. The car was stolen near [Land’s] residence and they drove in it within the hour of its theft. They used the vehicle for their own benefit and enjoyment. The car was instrumental in their joint criminal enterprise that evening. They first used the car to transport them to [another town] to commit the theft at [a food] store. Then they used the car in the robbery, assault and attempted murder of [the man in the red car].

*“From the facts of [Land’s] close relationship to the driver, use of the vehicle for a common criminal mission, and stops along the way before abandoning it (during which [Land] apparently made no effort to disassociate himself from his friend or the stolen vehicle) a reasonable juror could infer [Land], as the passenger, was in a position to exert control over the vehicle. This inference, in turn, would support a finding of constructive possession.” (Land, supra, 30 Cal.App.4th at p. 228, italics added.)*

By contrast, in the present case, there is no “strong evidence” from which it can be inferred that appellant exercised dominion and control over the Neon or was otherwise in constructive possession of the stolen vehicle. Although appellant was a passenger in the Neon within an hour after it was stolen, unlike *Land*, there is no evidence in the record that appellant knew the driver, that the car was used in a common mission to commit criminal offenses or otherwise, or that the car made any stops after picking up appellant which would have provided appellant with an opportunity to disassociate himself from the other car occupants or the stolen car. Further, although appellant admitted to Officer Pelayo that he knew the car was stolen, there was no evidence indicating when or how he found out and, unlike the passenger in *Land*, appellant was a passenger in the stolen vehicle for a very brief period of time.

Respondent relies on *Land* to argue that the following factors support the court’s finding that he exercised dominion and control over the stolen vehicle: 1) appellant admitted he knew the Neon was stolen; 2) he was riding in it a short time after the theft; 3) the Neon was used for his beneficial use and enjoyment; and 4) his flight from police

officers indicates a consciousness of guilt. We disagree that these circumstances showed that appellant exercised dominion and control over the stolen Neon.

Although appellant admitted that he was aware the Neon was stolen, it is unclear from the record when or how he found out. Further, since the car was operated with a key, all the record shows is that apparently at some point prior to getting out of the car, appellant concluded the car was stolen. Moreover, in *Land*, the court implicitly found that the defendant's presence in the car with knowledge that it was stolen was insufficient by itself to conclude that he exercised dominion and control over the car. (*Land, supra*, 30 Cal.App.4th at p. 224.)

Further, the "beneficial use and enjoyment" referred to in *Land* was the mutual use made of the vehicle in that case by the defendant passenger and the driver to facilitate their commission of several criminal offenses. In contrast, here, the only discernable beneficial use and enjoyment appellant received from the stolen Neon was being allowed to briefly ride in the car. Respondent contends that appellant made beneficial use of the car to evade his parents and his probation officer. However, the record is unclear whether appellant's boarding of the stolen car had anything to do with evading either his parents or probation officer. Accordingly, we reject respondent's contention that appellant used the car for his beneficial use and enjoyment beyond receiving a brief ride in it.

We also find insignificant the short period of time between the theft of the Neon and when appellant got inside, because it does not tend to show that appellant exercised dominion and control over the stolen Neon.

Moreover, appellant's flight is of limited probative value in determining whether he possessed the car because it was readily attributable to appellant's desire to evade his parents and his probation officer or his apprehension that he might be charged with some type of criminal offense by virtue of his presence in a car he knew was stolen. Therefore,

we conclude that the evidence is insufficient to sustain the court's true finding on the receiving a stolen vehicle charge. (Cf. *In re Anthony J.* (2004) 117 Cal.App.4th 718, 729 [evidence insufficient to show passenger constructively possessed car where "[t]here were no facts showing that [the passenger] and the driver were friends, that they had engaged in criminal activity together in the past, that he was a passenger shortly after the vehicle was stolen, or that [the passenger] and the driver jointly used the vehicle to commit crimes".].)

### **DISPOSITION**

The court's true finding of receiving a stolen vehicle is reversed and disposition is vacated. The matter is remanded to the trial court for a new disposition hearing. In all other respects, the judgment is affirmed.