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

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY JASON SEARLES-HARRIS,

Defendant and Appellant.

F062672

(Super. Ct. No. BF135376A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Kenneth C. Twisselman II, Judge.

Aaron Williams, 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, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

A jury found appellant guilty of receiving a stolen motor vehicle (Pen. Code, § 496d).¹ Appellant waived his right to a jury trial on an allegation that he had served a prior prison term (§ 667.5, subd. (b)). That allegation was tried to the court without a jury and found to be true. Prior to trial, appellant entered no contest pleas to misdemeanor charges of driving without a license (Veh. Code, § 14601.1, subd. (a)) and possession of narcotics paraphernalia (Health & Saf. Code, § 11364), and admitted the truth of allegations that he had twice previously been convicted of violations of Vehicle Code section 14601.1.

Appellant moved for a new trial on the ground that the jury's verdict finding him guilty of receiving a stolen motor vehicle was "contrary to law or evidence." (§ 1181(6).) Specifically, he contended that the verdict was contrary to the evidence because the evidence was insufficient to establish that he knew the vehicle he was driving when he was stopped by police was stolen. The court denied the motion and then sentenced appellant to a prison term of four years.

On this appeal he contends that the court erred by applying the wrong standard in deciding his motion for a new trial. He contends that the court erroneously applied the "substantial evidence" standard applicable to a section 1181.1 motion for acquittal or to an appellate court's review of the sufficiency of the evidence to support a judgment, and that the court instead should have made an independent determination of whether the evidence was sufficient to prove to the judge himself, beyond a reasonable doubt, each element of the crime charged. As we shall explain, we agree with appellant.

FACTS

In announcing its ruling on appellant's motion for a new trial, the court stated:

¹ All further statutory references are to the Penal Code unless noted otherwise.

“In considering the motion for new trial with regard to whether the evidence -- whether there is substantial evidence to support the jury’s verdict, the Court is examining the entire record in the light most favorable to the judgment to determine whether it discloses substantial 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.

“And having done so, the Court does find that the evidence in this case does reasonably justify the findings of the jury. And I do not find that there is any good cause to grant this motion based upon insufficient evidence to support the verdict. The court, obviously, is considering both direct evidence as well as circumstantial evidence. So on that ground the motion is denied.”

DISCUSSION

In *Porter v. Superior Court* (2009) 47 Cal.4th 125, the California Supreme Court explained that the substantial evidence test is applied by a trial court ruling on a section 1118.1 motion for judgment of acquittal and by an appellate court in determining whether evidence is legally sufficient to sustain a verdict, but is not to be applied by a trial court ruling on a motion for a new trial.

“In ruling on [a section] 1118.1 motion for judgment of acquittal, the court evaluates the evidence in the light most favorable to the prosecution. If there is any substantial evidence, including all inferences reasonably drawn from the evidence, to support the elements of the offense, the court must deny the motion. (*People v. Mendoza* (2000) 24 Cal.4th 130, 175; see also *People v. Harris* (2008) 43 Cal.4th 1269, 1286.) In considering this legal question, ‘a court does not “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.’ [Citation.] Instead, the relevant question is whether, after viewing 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.” [Citation.]’ (*People v. Lagunas* (1994) 8 Cal.4th 1030, 1038, fn. 6 (*Lagunas*)). This test is the same as that used by appellate courts in deciding whether evidence is legally sufficient to sustain a verdict. (*Ibid.*; see also *People v. Harris*, at p. 1286.) ... [¶]

“A grant under section 1181(6) is different. The court extends no evidentiary deference in ruling on a section 1181(6) motion for new trial. Instead, it independently examines all the evidence to determine whether it is sufficient to prove each required element beyond a reasonable doubt *to*

the judge, who sits, in effect, as a ‘13th juror.’ (*Lagunas, supra*, 8 Cal.4th at p. 1038 & fn. 6; see also *People v. Davis* (1995) 10 Cal.4th 463, 523–524; *People v. Serrato* (1973) 9 Cal.3d 753, 761 (*Serrato*), overruled on another ground in *People v. Fosselman* (1983) 33 Cal.3d 572, 583, fn. 1.) If the court is not convinced that the charges have been proven beyond a reasonable doubt, it may rule that the jury’s verdict is ‘contrary to [the] ... evidence.’ (§ 1181(6); see *People v. Veitch* (1982) 128 Cal.App.3d 460, 467–468.) In doing so, the judge acts as a 13th juror who is a “holdout” for acquittal....” (*Porter v. Superior Court, supra*, 47 Cal.4th at pp. 132–133, fn. omitted.)

Our California Supreme Court has repeatedly held that, in ruling on a motion for a new trial made on the ground that the verdict is contrary to the evidence, the court “should consider the proper weight to be accorded to the evidence and then decide whether or not, in its opinion, there is sufficient credible evidence to support the verdict.” (*People v. Robarge* (1953) 41 Cal.2d 628, 633; *People v. Davis, supra*, 10 Cal.4th at p. 524; *People v. Fuiava* (2012) 53 Cal.4th 622, 729–730.) The trial court here expressly stated that it determined whether there was evidence “such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” !(8 RT 902.)! It did not determine whether the evidence was “sufficient to prove each required element beyond a reasonable doubt *to the judge*, who sits, in effect, as a ‘13th juror.’” (*Porter v. Superior Court, supra*, 47 Cal.4th at p. 133.)

“The [court’s] determination of a motion for a new trial rests so completely within the court’s discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears.” (*Jiminez v. Sears, Roebuck & Co.* (1971) 4 Cal.3d 379, 387.) (In accord, see also *People v. Williams* (1988) 45 Cal.3d 1268, 1318; *People v. Davis, supra*, 10 Cal.4th at p. 524; *People v. Fuiava, supra*, 53 Cal. 4th at p. 730.) However, “[s]uch an abuse of discretion arises if the trial court based its decision ... on an incorrect legal standard [citations].” (*People v. Knoller* (2007) 41 Cal.4th 139, 156.) That is what happened here. “Where the trial court decides the case

by employing an incorrect legal analysis, reversal is required” (*Dyer v. Department of Motor Vehicles* (2008) 163 Cal.App.4th 161, 174.)

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with directions to hear and determine anew appellant’s motion for a new trial in accordance with the views expressed in this opinion. If the trial court grants the motion, it shall proceed accordingly to retry appellant. If the trial court modifies the verdict, it shall enter the verdict and sentence appellant accordingly. If the trial court denies the motion, it shall reinstate the judgment and sentence. (See *Porter v. Superior Court, supra*, 47 Cal.4th at p. 133.)