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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN JAMES VERILE,

Defendant and Appellant.

G051537

(Super. Ct. No. 14WF2131)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
David A. Hoffer, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and
Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant John James Verile challenges his conviction for unlawful taking of a vehicle on two grounds. First, defendant contends the trial court erred by denying his motion to suppress a statement he made to the police before he was read his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). We conclude the questioning occurred while defendant was temporarily detained for investigation, and was limited to the purpose of identifying a suspect or obtaining sufficient information to confirm or dispel the police officer's suspicions. Therefore, defendant was not subject to a custodial interrogation, and the motion to suppress was properly denied.

Second, defendant contends there was insufficient evidence to support his conviction. We disagree. There was substantial evidence from which the jury could reasonably conclude that defendant drove or took the vehicle in question.

Therefore, we affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

About 5:00 p.m. on May 27, 2014, defendant stabbed Durrell Smith in the neck. At the time, Smith and defendant were inside a liquor store on the corner of Euclid Street and Westminster Avenue in Garden Grove. When Smith fought back, defendant ran out of the liquor store, through a neighboring grocery store, and headed north on Euclid Street.

Less than an hour later, Garden Grove Police Officer Robert Kilver responded to the intersection of Euclid Street and Westminster Avenue. He observed a 1997 red Audi in the left turn lane; no one was in the car, and the keys were in the ignition. Kilver encountered Cu Ngo near the back of the driver's side of the car. Ngo gave Kilver a description of the same individual involved in the earlier stabbing, and indicated where that individual had gone. The Audi was registered to Ngo's father, Viet

Van Nguyen. Nguyen had never met defendant and had not given him permission to drive or use the car.

Shortly thereafter, Garden Grove Police Officer Aaron Coopman saw defendant walking northbound on Euclid Street, about a quarter-mile from the liquor store at which Smith was stabbed. Because defendant matched the description of the suspect in the liquor store stabbing and the individual described by Ngo, Coopman decided to stop and detain defendant.

Coopman ordered defendant to the ground and placed him in handcuffs. Coopman was alone at the time, and believed defendant could be armed, given the nature of the earlier crime. Coopman told defendant he was not under arrest, but “was only being detained.” Coopman performed a patdown search of defendant and asked him if he had any weapons. Defendant told Coopman he had a kitchen knife, which Coopman located and removed from defendant’s left pocket.

Coopman noticed that defendant was sweating and was out of breath. While Coopman was handcuffing defendant, he noticed blood on one of defendant’s hands and asked defendant if he had been in a fight; defendant said no. Defendant did not respond when Coopman asked where he had come from. Coopman felt defendant was being evasive during the questioning, and appeared nervous. Coopman asked these questions because he believed defendant was a suspect in Smith’s stabbing and the incident involving Nguyen’s car.

Coopman again asked if defendant had been in a fight. Defendant said “something to the effect of if you promise you’re not going to take me in, indicating take me to jail.” Coopman responded that he could not promise defendant anything but needed to know where defendant “had come from.” Defendant then stated “he had seen a nice car with keys in it and decided to take it.” Coopman asked defendant where the vehicle had been located and what it looked like. Defendant moved his head in a southwest direction, toward the intersection where Kilver had encountered Ngo.

Defendant did not make any further statements, and a police backup arrived soon thereafter.

Following a jury trial, defendant was convicted of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1) [count 1]), and unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a) [count 3]).¹ The trial court sentenced defendant to a prison term of three years eight months. Defendant timely filed a notice of appeal.

DISCUSSION

I.

MOTION TO SUPPRESS

Before trial, defendant filed a motion pursuant to Penal Code section 1538.5 to suppress evidence. The trial court denied the motion after a hearing. Immediately before trial, defendant made another motion to exclude evidence, which was also denied after a hearing.

“In reviewing the trial court’s denial of a suppression motion on *Miranda-Edwards* grounds, ‘it is well established that we accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.’ [Citation.]” (*People v. Gamache* (2010) 48 Cal.4th 347, 385.)

“[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against

¹ At the close of the prosecution’s case-in-chief, the trial court granted the prosecution’s motion to dismiss a claim for misdemeanor battery (Pen. Code, § 242 [count 4]). The trial court granted defendant’s motion for judgment of acquittal, pursuant to Penal Code section 1118.1, of a claim for attempted second degree robbery (*id.*, §§ 664, subd. (a), 211, 212.5, subd. (c) [count 2]).

self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. . . . Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” (*Miranda, supra*, 384 U.S. at p. 444, fn. omitted.)

Custodial interrogation occurs when a reasonable person in the suspect’s position would feel that his or her freedom of action was restrained to a “degree associated with formal arrest.” (*Berkemer v. McCarty* (1984) 468 U.S. 420, 440.) Whether a suspect was in custody is assessed based on the totality of the circumstances. “Although no one factor is controlling, the following circumstances should be considered: ‘(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.’ [Citation.] Additional factors are whether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect’s freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were ‘aggressive, confrontational, and/or accusatory,’ whether they pressured the suspect, and whether the suspect was arrested at the conclusion of the interview. [Citation.]” (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403-1404.)

A custodial interrogation does not occur where an officer temporarily detains a suspect for investigation and the questioning is limited to the purpose of identifying a suspect or obtaining sufficient information to confirm or dispel the officer’s suspicions. (*People v. Farnan* (2002) 28 Cal.4th 107, 180.) The officer must use the least intrusive investigative methods ““reasonably available to verify or dispel the officer’s suspicions in a short period of time.”” (*In re Antonio B.* (2008) 166

Cal.App.4th 435, 440.) If the officer reasonably believes the suspect “poses a present physical threat to the officer or others, the Fourth Amendment permits the officer to take “necessary measures . . . to neutralize the threat” without converting a reasonable stop into a de facto arrest.” (*People v. Pilster, supra*, 138 Cal.App.4th at pp. 1405-1406.) Whether the investigative stop has escalated to a de facto arrest is determined based on the facts of the case. (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 384-385.)

In this case, defendant had not been formally arrested. Defendant’s statement about Ngo’s father’s car was made two to three minutes after the first contact between defendant and Coopman. Defendant was detained on the side of the public road during the daytime, and not in the patrol car or at a police station. There was a one-to-one ratio of officers to suspects, and Coopman handcuffed defendant because of the nature of the crimes he was investigating and the very real possibility that defendant was armed. Coopman did not yell, although he raised his voice sufficiently to be heard above the passing traffic; he did not draw his gun. Coopman’s questions were limited to asking if defendant had been in a fight, and where defendant had come from. When defendant stated that he had taken a car with keys in it, Coopman asked for a description of the car to confirm that it was the car involved in the incident with Ngo. Coopman’s detention of defendant was limited in time and scope and was for the purpose of identifying a suspect in the two recent crimes and obtaining sufficient information to confirm or dispel Coopman’s suspicions about defendant’s involvement. The trial court did not err in denying the motion to suppress defendant’s statements to Coopman.

Defendant cites *People v. Bejasa* (2012) 205 Cal.App.4th 26, 40, in which the appellate court concluded the defendant was in custody when he made incriminating statements in response to police interrogation without *Miranda* warnings. That court used the same factors from *People v. Pilster* that we analyzed *ante*. (*People v. Bejasa, supra*, at pp. 35-36.) The defendant in that case was involved in a car accident in which a passenger in his car was seriously injured. (*Id.* at p. 30.) When a police officer arrived,

the defendant admitted he was on parole. (*Ibid.*) The officer searched the defendant and found two syringes, one of which contained methamphetamine. (*Ibid.*) The officer handcuffed the defendant, placed him in the backseat of a squad car, and told him he was being detained for a possible parole violation. (*Ibid.*)

When five additional officers arrived, the defendant was released from the squad car and his handcuffs were removed. (*People v. Bejasa, supra*, 205 Cal.App.4th at pp. 31, 33.) An officer interviewed the defendant, using questions designed to determine whether the defendant had been driving under the influence, and performed field sobriety tests, which the defendant failed. (*Id.* at p. 31.) The defendant was arrested. (*Ibid.*) He was not given his *Miranda* rights until he arrived at the jail. (*Ibid.*)

The appellate court concluded the defendant's statements after he was removed from the squad car and the results of his field sobriety tests were improperly admitted, but that the error was harmless. (*People v. Bejasa, supra*, 205 Cal.App.4th at p. 31.) Of significance to the present case, the appellate court in *People v. Bejasa* concluded that the defendant had not been restrained for an unduly long time, when a total of 22 minutes passed between the arrival of the first police officer at the scene and the arrival of the officer who actually interviewed and tested the defendant. (*Id.* at p. 36.) At the time the defendant was restrained, only one or two officers were present at the scene; several more officers arrived before the defendant was interviewed. (*Ibid.*) The appellate court also relied heavily on the defendant's incriminatory statements before he was restrained, and the police officer's quick decision to handcuff the defendant after he admitted being on parole and being in possession of methamphetamine. (*Id.* at p. 37.) Further, the police officer did not merely state the defendant was being detained, but rather that he was being "detained for a possible parole violation." (*Ibid.*) "The word 'detained,' by itself, cannot abrogate the likelihood of custodial pressures. A reasonable person would probably not be comforted by the fact that the officer used the word 'detained' and mentioned only a 'possible' crime. Here, defendant had just admitted that

he was on parole and had been using and carrying methamphetamine. In this context, a reasonable person would understand the officer's statement to mean that he or she was not free to leave." (*Ibid.*) Finally, the appellate court noted that although the defendant's handcuffs were removed before the questioning and testing began, "[t]he removal of the restraints was not enough to ameliorate the custodial pressures that likely remained from the initial confinement. Furthermore, defendant was released from the police car only after numerous officers had arrived at the scene. The ratio of officers to suspect had increased to at least seven to one, thus increasing the custodial pressure on defendant." (*Id.* at p. 38, fn. omitted.)

Much more like the present case is *People v. Davidson* (2013) 221 Cal.App.4th 966, 968-969, in which the defendant was convicted of unlawful taking of a vehicle, and possession of a methamphetamine pipe. After having received a report of a white man in baggy pants pushing a stolen motorcycle down the street, the police officer observed the defendant pushing a motorcycle; when the defendant saw the officer, he changed direction and pushed the motorcycle behind a high profile vehicle. (*Id.* at p. 969.) The officer directed the defendant to put the motorcycle down, remove his backpack, and step toward the officer. (*Ibid.*) The defendant placed a screwdriver on the seat of the motorcycle, which caused the officer to fear for his safety. (*Ibid.*) The officer also thought the defendant was acting "'hanky' and looked like he was ready to flee." (*Ibid.*)

The officer handcuffed the defendant and ordered him to sit on the street curb. (*People v. Davidson, supra*, 221 Cal.App.4th at p. 969.) The officer told the defendant he was investigating a report of a stolen motorcycle, and asked the defendant, "[i]s this your vehicle?" The defendant said he found the motorcycle in bushes outside an industrial/office area. (*Ibid.*) The officer then arrested the defendant, conducted a patdown search, and discovered a pipe used for smoking methamphetamine. (*Id.* at p. 970.)

Under those facts, the appellate court concluded the defendant's statements were properly admitted, and did not violate *Miranda*. "Officer Coulter responded to a call that a man matching appellant's description was pushing a stolen motorcycle. He saw appellant push a new motorcycle down the street and try to hide behind a vehicle. Appellant had a flat-blade screwdriver that could be used as a weapon, was acting 'hanky,' and was handcuffed for officer safety purposes. Officer Coulter advised appellant that he was being detained while the police investigated a possible motorcycle theft, and asked: 'Is this your vehicle?' This single question was asked to confirm or dispel the officer's suspicions. A peace officer harboring the suspicion that a motor vehicle is perhaps stolen may inquire as to ownership. In these circumstances the Vehicle Code expressly allows an officer to ask for the registration of a vehicle. [Citations.] [¶] Appellant claims that handcuffing and asking him a question rendered it a custodial interrogation. But the court must consider all the circumstances surrounding the police encounter and no one factor is controlling. [Citation.] Handcuffing a suspect during an investigative detention does not automatically make it custodial interrogation for purposes of *Miranda*. [Citations.] Here it is obvious that the reason for the handcuffing was appellant's possessing a flat-blade screwdriver and the officer's belief that appellant was about to flee. [¶] Appellant was advised that he 'was being detained while we investigate[] this.' The detention lasted two minutes. Officer Coulter was alone, and appellant was questioned on a public sidewalk. 'This is a significant difference from interrogation at the police station, "which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek."' [Citation.]' [Citations.] Based on the totality of the circumstances the trial court reasonably concluded that it was not a custodial interrogation for *Miranda* purposes. [Citations.]" (*People v. Davidson, supra*, 221 Cal.App.4th at pp. 972-973.)

II.

SUFFICIENCY OF THE EVIDENCE

Defendant also argues that there was not sufficient evidence to support his conviction for unlawful taking of a vehicle. “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.’ [Citation.]” (*People v. Steele* (2002) 27 Cal.4th 1230, 1249.) We presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We may reverse for lack of substantial evidence only if “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

A conviction for unlawful taking of a vehicle requires proof that the defendant drove or took another person’s vehicle, without the owner’s consent, and with the intent to either temporarily or permanently deprive the owner of title to or possession of the vehicle; intent to steal the vehicle is not required. (Veh. Code, § 10851, subd. (a); *People v. Moon* (2005) 37 Cal.4th 1, 26.) Asportation of the vehicle must be proven, but “[a]ny removal, however slight, of the entire article, which is not attached either to the soil, or to anything not removed, is sufficient.’ [Citations.]” (*People v. White* (1945) 71 Cal.App.2d 524, 525.) Asportation may be established through circumstantial evidence. (*People v. Ragone* (1948) 84 Cal.App.2d 476, 479.)

In this case, there was substantial evidence to support the conviction for unlawful taking of a vehicle. Nguyen testified he kept his car in the front driveway of the family home. He further testified that he did not know defendant and had never given defendant permission to drive his car. Ngo testified that someone matching defendant’s description ran away from Nguyen’s car, which was located in a left turn lane on a major

street. When questioned nearby and soon after by Coopman, defendant said, “he had seen a nice car with keys in it and decided to take it.” It was reasonable for the jury to conclude, based on the foregoing, that defendant unlawfully took and drove Nguyen’s car before abandoning it at the intersection.

Defendant argues that it would have been reasonable for the jury to have concluded that the car broke down in the left turn lane, or that Ngo, rather than defendant, moved it. Defendant further argues that his statement to Coopman indicated what he intended to do, not what he did. We may not reverse a conviction based on insufficiency of the evidence unless it is clear “that upon no hypotheses whatever is there sufficient substantial evidence to support it.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) That standard cannot be met here.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

MOORE, J.