

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ESQUIEL TERRANCE BONILLA,

Defendant and Appellant.

H037405

(Santa Clara County  
Super. Ct. No. C1086292)

Defendant Esquiel Terrance Bonilla appeals from a judgment of conviction entered after the jury found him guilty of receiving a stolen vehicle (Pen. Code, §§ 496d/666.5), resisting arrest (Pen. Code, § 148, subd. (a)(1)), and possession of controlled substance paraphernalia (Health & Saf. Code, § 11364). Defendant admitted that he had previously been convicted of unlawful taking of a vehicle (Veh. Code, § 10851), had suffered one prior serious felony conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12), and had two prison priors (Pen. Code, § 667.5, subd. (b)). He was sentenced to six years in state prison and filed a timely notice of appeal.

**I. Statement of Facts**

On August 1, 2010, Horatius Puntanilla reported that his 1998 Nissan Altima was stolen from a handicapped parking space in a Safeway parking lot. He had left his mother and the keys in the car when he went into the store. However, his mother entered

the store without taking the keys. When they returned to the parking lot, the car was gone. Puntanilla had not given anyone permission to use his car.

Alicia Cuevas testified that defendant is the father of her two children. Her relationship with defendant ended in 1998 and she no longer had contact with him. However, defendant came to her house when she was not at home. On August 25, 2010, Cuevas called Rylinda Bonilla, defendant's sister, to find out why defendant had come to her house. Rylinda Bonilla told her that defendant had been driving a stolen car for more than a month. She asked Cuevas to call 911. As Cuevas was talking to the 911 dispatcher, Rylinda Bonilla called Cuevas on another line and told her that the license plate number was 6HQH396 and the car was parked on Regan Street, which is near defendant's mother's house. Cuevas provided the dispatcher with this information.<sup>1</sup>

Rylinda Bonilla denied that she saw defendant driving a Nissan Altima. She also denied seeing the car parked near her mother's house on Regan Street. She denied that she spoke to Cuevas about the car.

At about 5:00 a.m. on August 26, 2010, Detective Chris Martin received a call from Officer Mike O'Neal regarding a stolen Nissan Altima. O'Neal had responded to a call at an address that involved a stolen Nissan Altima and defendant was identified as a suspect. At about 10:00 a.m., Martin and his partner Detective Navarro drove in an unmarked vehicle around the area where the incident was reported, but did not find the car. At about 1:28 p.m., Sergeant Matthew Christian informed Martin that he had found the stolen car. Christian, Martin, and Navarro set up surveillance near the car. At about 3:10 p.m., Martin saw defendant, who was carrying a black duffle bag and a leaf blower, walking toward the stolen car. They radioed Christian, who saw defendant open the rear

---

<sup>1</sup> Cuevas called 911 three times between 9:00 and 10:00 p.m. on August 25, 2010. Portions of the audio tapes of these calls were played for the jury. The trial court instructed the jury that it could consider this evidence only to assess whether a conversation occurred between Cuevas and Rylinda Bonilla.

driver's side door and put items into the car. Defendant then opened the front driver's side door and began entering the car. Christian notified Martin and Navarro.

Martin and Navarro activated their red and blue flashing lights as they approached the Altima. They exited their vehicle, showed their badges and said, "stop, police," several times. Defendant began running. Defendant was about to jump over a gate, but he stopped when he saw that Navarro was pointing a Taser at him. The officers ordered him to get down on the ground and to put his arms out. However, defendant kept trying to push himself up. It took the officers about 45 seconds to a minute to put handcuffs on defendant because he was not cooperating.

The Altima's ignition switch had been dislodged from the ignition housing. A nail file, screwdriver, or any sharp, narrow metal object could start the ignition of the stolen car. The police did not recover the keys to the car. Martin searched defendant and found a glass pipe in his pocket. No fingerprints were retrieved from the stolen car.

## **II. Discussion**

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant has submitted written argument on his own behalf.

Defendant contends that the trial court erred in calculating his presentence conduct credits pursuant to Penal Code section 4019.<sup>2</sup>

Defendant spent 380 days in custody between his arrest on August 26, 2010, and his sentencing hearing on September 9, 2011. The January 25, 2010 version of section 4019 was in effect while defendant was in custody. (Former § 4019; Stats. 2009, 3d Ex.Sess. 2009–2010, ch. 28, § 50, eff. Jan. 25, 2010.)

---

<sup>2</sup> All further statutory references are to the Penal Code unless stated otherwise.

Under the 1982 version of section 4019, prisoners who complied with reasonable rules and regulations and did not refuse to satisfactorily perform labor as assigned could earn six days of credit for every four days actually served. (Former § 4019, subs. (b), (c), (f).) The January 25, 2010 version of the statute increased this amount to four days of credit for every two days served. (Former § 4019, subs. (b)(1), (c)(1), (f).) This version's more generous credit calculation did not apply, however, to prisoners required to register as sex offenders, committed for a "serious felony" (§ 1192.7), or with a prior conviction for a "serious" or "violent" felony (§§ 1192.7, 667.5). (Former § 4019, subs. (b)(2), (c)(2).) Those prisoners' credit was calculated at the former rate. (Former § 4019, subd. (f); Stats. 2009, 3d Ex.Sess. 2009–2010, ch. 28, § 50.) Since defendant was convicted of a "serious" felony, he was not eligible for four-for-two credit under the January 25, 2010 version of section 4019. (Former § 1192.7, subd. (c)(28); *People v. Briceno* (2004) 34 Cal.4th 451, 459; Former § 4019; Stats. 2009, 3d Ex.Sess. 2009–2010, ch. 28, § 50, eff. Jan. 25, 2010.) Thus, the trial court correctly calculated defendant's presentence conduct credits: 380 divided by 4 is 95, multiplied by 2 is 190 days of credit. (See *People v. Williams* (2000) 79 Cal.App.4th 1157, 1176.)

Defendant next contends that the trial court erred in denying his *Marsden*<sup>3</sup> motion.

After a defendant brings a *Marsden* motion to discharge his counsel, the trial court must conduct a hearing to determine whether counsel is rendering ineffective assistance or whether there is an irreconcilable conflict between defendant and counsel such that ineffective assistance is likely to result. (*People v. Vera* (2004) 122 Cal.App.4th 970, 979.) We review the trial court's denial of a *Marsden* motion under the abuse of discretion standard. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1085.)

Here, the trial court allowed defendant to state his concerns at the hearing. Defendant stated that trial counsel had represented him in a prior case. At that time,

---

<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

defendant pleaded guilty to a felony. However, when defendant “messed up on Prop 36 twice,” he was represented by another public defender and his conviction was dropped to a misdemeanor. Defendant also stated that he had not been given the preliminary hearing transcript that he had requested, trial counsel was telling him that he was going to lose his case, and trial counsel was “not good enough to handle [his] case.”

Trial counsel stated that he was ready for trial. He had discussed the preliminary hearing transcript and the 911 tape with defendant the previous week. He noted that police officers would be testifying as to the incident and he had explained to defendant that “juries tend to believe officers.” Trial counsel also explained to defendant his belief that if defendant testified, the jury would not believe him because he had four prior theft convictions. Trial counsel told defendant that he could cross-examine the officers about the lack of corroborating evidence but corroborating evidence was not required for a conviction. He also stated that he respected defendant’s decision to go to trial, but he believed that the likelihood of conviction was high. Trial counsel discussed defendant’s possible sentence if he should be convicted after a trial.

“To the extent there was a credibility question between defendant and counsel at the hearing, the court was ‘entitled to accept counsel’s explanation.’” (*People v. Smith* (1993) 6 Cal.4th 684, 696, quoting *People v. Webster* (1991) 54 Cal.3d 411, 436.) Since the trial court implicitly found counsel’s explanations credible, defendant has failed to show that the trial court abused its discretion in denying his motion.

Defendant also argues that the stolen car did not have his fingerprints, no keys to the car were in his possession, and he did not have registration for the car.

“‘On appeal 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—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]’” (*People v. Cravens* (2012) 53 Cal.4th 500, 507.) “The uncorroborated testimony of a single witness is

sufficient to sustain a conviction . . . .” (*People v. Scott* (1978) 21 Cal.3d 284, 296; see Evid. Code, § 411.) “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 (hereafter the knowledge element); and[ ] (3) the defendant had possession of the stolen property. [Citations.]” (*People v. Russell* (2006) 144 Cal.App.4th 1415, 1425.)

Here, Puntanilla testified that he had not given anyone permission to use his car. A few weeks after Puntanilla’s car was stolen, the officers saw defendant place his duffle bag and leaf blower in the car and start to enter the driver’s seat of the car, thereby exhibiting possession of the stolen property. That the ignition switch was hanging from a wire established that defendant knew the vehicle had been stolen. Thus, there was substantial evidence to support defendant’s conviction for receiving stolen property.

Defendant next contends that he told trial counsel that he was experiencing some health problems during trial and his counsel failed to inform the trial court, thereby demonstrating counsel’s bias against him.

This contention is not cognizable on appeal because it relies on facts outside the record on appeal. (*In re Rogers* (1980) 28 Cal.3d 429, 437, fn. 6.)

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

**III. Disposition**

The judgment is affirmed.

---

Mihara, J.

WE CONCUR:

---

Premo, Acting P. J.

---

Márquez, J.