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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. CONROY TURNER, Defendant and Appellant.	2d Crim. No. B291479 (Super. Ct. No. MA069404) (Los Angeles County)

Conroy Turner appeals her conviction by jury of unlawfully driving a vehicle (Veh. Code, § 10851, subd. (a)) and grand theft (Pen. Code, § 487, subd. (c)[1] with special findings that she used a deadly weapon (§ 12022, subd. (b)(1)) and inflicted great bodily injury (§ 12022.7, subd. (a)). The trial court sentenced appellant to seven years eight months state prison. We affirm.

[1] All further statutory references are to the Penal Code unless otherwise stated.

Facts

In 2016, appellant moved in to Vince Monaco's house. She helped with the household chores and provided other services in exchange for room and board. Two months later Monaco asked appellant to move out. That night Monaco fell asleep and was awakened by appellant. She attacked him with a baseball bat. She struck him on the head and said "'I'm going to fuckin' kill you.'" She came close to doing so.[2] Appellant fled in Monaco's 2003 BMW.

A Kansas state trooper stopped appellant the next day and arrested her for driving the stolen BMW.

At trial, Monaco said the BMW was "black-on-black" and "one of the models that everyone wanted [to get] at that time. *It was a special car*. It [was] hard to get." (Italics added.) He was not specifically asked about the dollar value of the BMW automobile.

Appellant said that Monaco attacked her and after defending herself, she grabbed his car keys and fled in the BMW. Appellant decided to go to Florida and drove for 30 hours before she was stopped in Kansas. Appellant said the BMW was an expensive car to maintain. "[O]ne tire is like $500 a service [and] it would take a lot, like [$]3- or $4,000 just to really fully service the car." Appellant said that Monaco was short on money and that she gave Monaco $300 to make his monthly car payment because she "didn't want them to repo the car."

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[2] Appellant was acquitted of attempted murder. Photos of Monaco show that he was severely beaten with the baseball bat and perhaps a heavy vase.

Grand Theft – Substantial Evidence

Appellant claims that her felony grand theft conviction should be reduced to misdemeanor petty theft because the evidence does not support the finding the BMW was worth more than $950. As in any substantial evidence case, we draw all reasonable inferences and resolve all conflicts in favor of the judgment. (*People v. Tafoya* (2007) 42 Cal.4th 147, 170.) "The test is whether substantial evidence supports the [jury's] decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) It is not our function to reweigh the evidence nor are we a second trier of fact. (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1246.) The jury may not speculate as to the facts but it may draw reasonable inferences therefrom. (*People v. Bohana* (2000) 84 Cal.App.4th 360, 369.) A judgment predicted thereon is presumptively correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

A person commits felony grand theft if he or she takes property worth more than $950 from the person of another. (§§ 487, subd. (c), 490.2, subd. (a).) Theft in other cases is petty theft, a misdemeanor. (§ 488.) Value may be proven by opinion evidence or circumstantial evidence. (See *People v. Zamudio* (2008) 43 Cal.4th 327, 357–358 [circumstantial evidence and reasonable inferences may be substantial evidence supporting conviction].) The value for theft crimes is "'reasonable and fair market value.'" (*People v. Romanowski* (2017) 2 Cal.5th 903, 914.) "Fair market value" means the highest price obtainable in the market place, not the lowest or average price (*People v. Pena* (1977) 68 Cal.App.3d 100, 104) and the property owner is a competent witness to testify about its fair market value. (*People*

v. More (1935) 10 Cal.App.2d 144, 145; see, e.g., *People v. Haney* (1932) 126 Cal.App. 473, 475-476 [owner of stolen saddle and harness allowed to testify to items' current value based on cost and use]; *People v. Coleman* (1963) 222 Cal.App.2d 358, 361 [owner of stolen mechanics' tools; same].) Jurors may also rely on their common knowledge when determining the fair market value. (*People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1366 ["jurors could rely on their common knowledge that late-model BMWs have a substantial market value"].)

Monaco testified that the BMW was "special" and "hard to get." The video of the Kansas car stop shows that the BMW is in good condition. Appellant drove it 30 hours from Lancaster to Kansas. The fair inference drawn by the jury was that the car had four good tires, a mechanically sound engine, and a mechanically sound drivetrain. A BMW is a luxury automobile and "ain't no" Ford or Chevy. A reasonable juror could infer that Monaco wasn't paying $300 a month on a car loan to keep a junker. The jury was expressly instructed that it could not convict for grand theft unless if factually found the BMW was worth more than $950. (See CALCRIM No. 1801.) It took no leap of logic for the jury to expressly so find.

There is a short answer to the dissent: the jury, sitting as trier of fact, drew rational inferences from the evidence concerning the car's value. It was not speculating. By the defense theory (the prosecutor's failure of proof and the jury's speculation), this BMW should be for sale at the 99-cent store. $950, at one time, was a lot of money. Not anymore. If it were a requirement that the value of the car was over $9500, we might agree with the dissent's "speculating theory." Common sense compels the conclusion that the jury correctly found, beyond a

reasonable doubt, that this 2003 BMW automobile is worth more than $950.

Unlawfully Driving a Vehicle

Appellant contends that, pursuant to section 654, she cannot be convicted of both the theft of the BMW and unlawfully driving it. Section 654 is inapplicable. It concerns "only multiple punishment, not multiple convictions." (*People v. Correa* (2012) 54 Cal.4th 331, 336.) Dual convictions are proper. (*People v. Ceja* (2010) 49 Cal.4th 1, 6 [section 654 applies only to sentencing].)

Vehicle Code section 10851, subdivision (a), prohibits both unlawfully taking and unlawfully driving a vehicle. (*People v. Garza* (2005) 35 Cal.4th 866, 871 (*Garza*).) But a defendant convicted of unlawfully driving a vehicle may be convicted of theft of the same vehicle if there is a "substantial break" between the initial taking and the subsequent driving. (*People v. Kehoe* (1949) 33 Cal.2d 711, 715.) Here, there was a "substantial break" between the taking and subsequent driving and traffic stop 30 hours later in Kansas. (See, e.g., *Garza*, *supra*, at pp. 872, 882 [substantial break where vehicle recovered six days after theft, two or three blocks away]; *People v. Calistro* (2017) 12 Cal.App.5th 387, 391-392, 403 [substantial break where vehicle recovered five hours after theft, less than five miles away].)

Appellant argues the theft was not complete because she had not yet reached her destination in Florida. But a "taking is complete when the taker reaches a place of *temporary* safety." (*Garza*, *supra*, 35 Cal.4th at p. 880, italics added.) Appellant stopped at several rest areas along her journey and none of the rest stops were part of the original taking. Substantial evidence supports the conviction for unlawful driving.

Disposition

The judgment is affirmed
NOT TO BE PUBLISHED.

YEGAN, J.

I concur:

GILBERT, P. J.

TANGEMAN, J.:

I respectfully dissent. In my view, the jury's finding that the fair market value of Monaco's BMW exceeded $950 was speculation. Jurors were told nothing about the car other than its make, age, and color: not its model, not its mileage, not its condition. Monaco's testimony that the BMW was "special" and "hard to get" in 2003 told jurors nothing about the car 13 years later. Neither did the video of the traffic stop, which showed the car only from the rear.

While jurors may have been able to infer, based on the $300 monthly car payments, that the BMW was worth more than $950 when Monaco financed it, there was no evidence of when the financing occurred. Nor could jurors have rationally inferred the BMW's value based on the costs of servicing it: While a $4,000 service fee may indicate that a car is expensive, it may also indicate that a car is in need of significant repair. Because the jury's finding was "'merely the product of conjecture and surmise,'" substantial evidence does not support Turner's felony grand theft conviction. (*People v. Memro* (1985) 38 Cal.3d 658, 695, overruled on separate point by *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2.)

People v. Ortiz (2012) 208 Cal.App.4th 1354 (*Ortiz*) is inapposite. First, *Ortiz* did not consider whether there was sufficient evidence of the value of a vehicle; it considered whether there was sufficient evidence that the defendants kidnapped their victims to facilitate a carjacking. "It is axiomatic that cases are not authority for propositions not considered." (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.)

Second, in *Ortiz*, the jurors knew the make and model of the car: a 2007 BMW 530i, which was less than two years old at

the time of the carjacking. (*Ortiz*, *supra*, 208 Cal.App.4th at p. 1365.) The jurors could thus "rely on their common knowledge that late-model BMW's have substantial market value." (*Id*. at p. 1366.) Here, in contrast, jurors did not know the model of Monaco's BMW. And the car was 13 years old when Turner took it. The value of a car that age is considerably less apparent than one just two years old. Turner's theft conviction should be reduced to a misdemeanor. (*In re D.N.* (2018) 19 Cal.App.5th 898, 903-904.)

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TANGEMAN, J.

Kathleen Blanchard, Judge

Superior Court County of Los Angeles

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