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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LI SUNG SE,

Defendant and Appellant.

B270998

(Los Angeles County  
Super. Ct. No. PA084496)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael J. O’Gara, Judge. Affirmed as modified.

William L. Heyman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant, Li Sung Se, appeals from a conviction following a jury trial of driving or taking a vehicle without consent in violation of Vehicle Code section 10851, subdivision (a), a felony. The jury was unable to reach a verdict on a misdemeanor methamphetamine possession charge and it was dismissed. (Health & Saf. Code, § 11377, subd. (a).) The trial court found the evidence insufficient to support a prior prison term allegation. (Pen. Code, § 667.5, subd. (b).) We modify the judgment to omit a \$10 fine imposed under Penal Code section 1202.5, subdivision (a). We affirm the judgment in all other respects.

## II. THE EVIDENCE

The car was stolen in San Francisco. The owner did not give defendant permission to drive the car. The owner remained in possession of the only key. Two days later in Los Angeles, at 1:30 a.m., Deputy Erica Martinez responded to a suspicious person call. She found defendant sitting in the driver's seat of the stolen car, which was parked in a residential neighborhood. Deputy Martinez pulled in behind the stolen car. She was driving a marked, black and white patrol car. Defendant stepped out of the stolen car. While doing so, defendant left the driver's door of the stolen car open and began walking briskly across the street. Defendant was shoeless. There was no key in the ignition. The ignition of the stolen car had been "punched," so there was no place to put a key. There were wires hanging from below the dash on the driver's side of the stolen car. The wires

had been stripped and tied together. Deputy Martinez described the stolen car as “hot-wired.” Deputy Martinez did not take any photographs of the stolen car’s condition. Defendant said he had used a key to start the stolen car. But Deputy Martinez examined the keys in defendant’s possession. None of them appeared to be a car key. Defendant told Deputy Martinez he had purchased the car in San Francisco for \$250 two days earlier and had driven it to Los Angeles. Defendant did not know the name, address or telephone number of the seller. He could not describe the seller.

Defendant testified he had rented the stolen car from a friend. He did not suspect the car was stolen. Defendant did not know the friend’s “real name.” But defendant knew the friend’s address. And the friend’s telephone number was on defendant’s cellular telephone. Defendant admitted he did not so advise Deputy Martinez. Defendant denied attempting to walk away from Deputy Martinez.

### III. DISCUSSION

#### A. Sufficiency of the Evidence

##### 1. Defendant’s contention and standard of review

Defendant challenges the sufficiency of the evidence to support the conviction. He argues there is no substantial evidence that he intended to permanently or temporarily deprive the owner of the stolen car’s possession or title, an element of the charged offense. (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1574; *People v. Green* (1995) 34 Cal.App.4th 165, 180.) The

applicable standard of review is as follows: “In reviewing a challenge to the sufficiency of the evidence under the due process clause of the Fourteenth Amendment to the United States Constitution and/or the due process clause of article I, section 15 of the California Constitution, we review the entire 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 have found the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Cole* (2004) 33 Cal.4th 1158, 1212; accord, *People v. Rundle* (2008) 43 Cal.4th 76, 137, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Further, our Supreme Court has explained: “We neither reweigh the evidence nor reevaluate the credibility of witnesses. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. (*Ibid.*) If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*Ibid.*)” (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639; accord, *People v. Hajek* (2014) 58 Cal.4th 1144, 1260.)

## 2. Governing law

The requisite intent may be inferred from all the facts and circumstances. (*People v. O'Dell*, *supra*, 153 Cal.App.4th at p. 1577; *People v. Green*, *supra*, 34 Cal.App.4th at p. 181.) It is well established that possession of a stolen car under suspicious circumstances is sufficient to sustain an unlawful taking conviction. (*People v. McFarland* (1962) 58 Cal.2d 748, 754; *People v. Green*, *supra*, 34 Cal.App.4th at pp. 180-181; *People v. O'Dell*, *supra*, 153 Cal.App.4th at p. 1574; *People v. Windham* (1987) 194 Cal.App.3d 1580, 1590; *People v. Clifton* (1985) 171 Cal.App.3d 195, 199; *People v. Malamut* (1971) 16 Cal.App.3d 237, 241; *People v. Miles* (1969) 272 Cal.App.2d 212, 218; see *People v. Grimes* (2016) 1 Cal.5th 698, 731; *People v. Seumanu* (2015) 61 Cal.4th 1293, 1351, fn. 13.) Knowledge the vehicle was stolen is not an element of the offense; it is merely one factor evidencing an intent to deprive the owner of possession and title. (*People v. O'Dell*, *supra*, 153 Cal.App.4th at p. 1574; *People v. Green*, *supra*, 34 Cal.App.4th at p. 180; *People v. Hallman* (1973) 35 Cal.App.3d 638, 641.) A jury may also infer intent to deprive and consciousness of guilt when an accused attempts to flee law enforcement officers. (*People v. O'Dell*, *supra*, 153 Cal.App.4th at p. 1577; *People v. Green*, *supra*, 34 Cal.App.4th at p. 181; *In re Robert V.* (1982) 132 Cal.App.3d 815, 821.)

### 3. Application to the present case

Substantial evidence supports the jury's finding defendant had the required intent. The car was stolen in San Francisco. Defendant was in possession of the stolen car two days later. He admitted he had driven the car from San Francisco to Los Angeles. He walked away from the car, shoeless, after Deputy Martinez pulled over behind him in a marked patrol vehicle. The ignition had been punched. In other words, there was no place to put a key. The car had been hot wired. Defendant was not in possession of a key to the ignition. Defendant claimed to have rented the car from a friend, but he could not identify or describe that person.

#### B. The Penal Code Section 1202.5 Fine

The trial court orally imposed a \$40 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)) and "all other court required fees." The abstract of judgment includes a \$10 local crime prevention programs fine under Penal Code section 1202.5, subdivision (a). Penal Code section 1202.5, subdivision (a) states, "In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 470, 484, 487, subdivision (a) of Section 487a, or Section 488, or 594, the court shall order the defendant to pay a fine of ten dollars (\$10) . . . ." Vehicle Code section 10851, subdivision (a) is not an offense to which the fine applies. Imposition of the fine was therefore legally unauthorized. (*People v. Jefferson* (2016) 248 Cal.App.4th 660, 663.) The judgment must be modified and the abstract of judgment amended to omit that fine.

#### IV. DISPOSITION

The judgment is modified to omit the \$10 crime prevention programs fine (Pen. Code, § 1202.5, subd. (a).) The judgment is affirmed in all other respects. Upon remittitur issuance, the superior court clerk is to prepare an amended abstract of judgment that omits the fine and deliver a copy to the Los Angeles County Sheriff.

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TURNER, P.J.

We concur:

BAKER, J.

KIN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.