Filed 8/27/14 P. v. Robinson CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. TERRANCE LAMAR ROBINSON, Defendant and Appellant.	B249678 (Los Angeles County Super. Ct. No. BA402109)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norm J. Shaprio, Judge. Affirmed.

Debra Fischl, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Terrance Lamar Robinson of second degree burglary of a vehicle. (Pen. Code, § 459.)[1] Robinson contends the evidence does not support the jury's verdict. We affirm.

FACTS

On September 1, 2012, Jeremy Hamey and some friends went to a USC football game at the Coliseum. Hamey drove a Nissan Pathfinder SUV that he purchased a few weeks earlier. Hamey parked his vehicle on a public street, about three or four blocks from the entrance to the stadium. Hamey and his friends set up a small electric grill, a table, chairs, a canopy, and a cooler, and "tailgated" for about two hours before walking to the Coliseum.[2] The rear tailgate of the SUV was open during this time. A number of people, one of whom was Robinson, repeatedly approached Hamey and his friends while they were by the SUV, asking for recycling material and beer.

When it was time to go into the game, Hamey and his friends put the grill, canopy and other items back inside Hamey's SUV. Hamey used his remote key "several times" to lock his SUV while he was walking away from the vehicle. Hamey knew the car was locked because the horn would sound each time he pressed the lock button on his remote. Hamey's "custom" was to make sure that he locked the SUV when parking.

Shabtay Aks owned a recycling company on Martin Luther King Boulevard, near the area of Browning Boulevard and Vermont Avenue. People park in the area for football games at the Coliseum. On September 1, 2012, at about 3:45 p.m., one of Aks's employee told him that "somebody [was] breaking into a parked car" on the street.[3]

---

[1] All further section references are to the Penal Code except as otherwise noted.

[2] Hamey and his friends were the only people having a tailgate party in the area where he parked his vehicle. Other people parked vehicles in the area, and went directly to the stadium. The September 2012 game was the first time Hamey went to a football game at the Coliseum.

[3] The trial court instructed the jury not to consider the employee's comment about "somebody breaking into a parked car" as proof of the charged crime, but only for the effect the statement had on Aks's actions on the day in question.

Aks looked and, from a distance of 20 to 25 feet away, saw Robinson looking into the rear of an SUV whose rear tail gate was open.[4]

Los Angeles Police Department Officer Magdalena Chun and her partner worked the University Park Task Force, which was responsible for crime suppression around the USC campus. On September 1, 2012, Officer Chun went to the area of Browning and Vermont in response to a radio call that two men were breaking into an SUV. The radio call described the persons as a male Black wearing a gray jumpsuit, and a male Black wearing a purple shirt. Officer Chun arrived at the scene within "seconds" of receiving the radio call. When she arrived at the scene, Officer Chun saw Robinson, who was wearing a gray jumpsuit, standing around a fold-out table with fold-out chairs, about 10 yards from an SUV with the rear tailgate open. Officer Chun exited her patrol car, approached Robinson, and asked him to come over for a second. As Robinson was walking toward Officer Chun, he said something to the effect, "I took the stuff because they told me to set up for a barbeque."

The officers detained Robinson and placed him in handcuffs. At a field show-up, Aks identified Robinson. When Officer Chun inspected the SUV, she saw that it was locked, except for the rear tailgate, which was unlocked and open. There was a canopy secured inside a bag on the ground behind the back of the SUV. Officer Chun saw no signs of forced entry into the SUV.[5] One of Officer Chun's fellow officers contacted Hamey about the incident.

In the first quarter of the football game, Hamey received a text message from the police reporting the incident. After being contacted by the police, Hamey and two of his friends went back to the area where he parked, and Hamey identified his SUV and his

---

[4] At trial, Aks said he could not identify Robinson, but recalled that he had told police officers on the day of the incident that a person whom they had in custody was the one who had been standing by the back of the open SUV. On the day of the incident, Aks was "sure" of his identification.

[5] At trial, Officer Chen testified that she could "not recall" whether Robinson possessed burglar's tools or car keys.

personal property. Hamey noticed that the grill was missing from the back of his SUV. A Sirius Satellite Radio had been ripped from the SUV's dashboard, and a GPS that had been near the front windshield was missing. Additional items were missing from the compartment between the front seats, including Hamey's business cards, and cards that looked like credit cards, but were not, such as his parking pass.

In October 2012, the People filed an information charging Robinson with second degree burglary of a vehicle. (Pen. Code, § 459.) The charge was tried to a jury in March 2013, at which time the prosecution presented evidence establishing the facts summarized above. Robinson did not present any defense evidence. The case was submitted to the jury on the charged offense, and on the lesser included offense of misdemeanor tampering with a motor vehicle (Veh. Code, § 10852).

On March 21, 2013, the jury returned a verdict finding Robinson guilty of the charged offense of burglary of a vehicle. (§ 459.) The trial court thereafter found that Robinson had suffered two prior convictions, one of which qualified as a strike. The court sentenced Robinson to a total aggregate term of four years as follows: a mid-term of two years, doubled for the prior strike. The court imposed fines and fees which are not relevant to Robinson's appeal.

Robinson filed a timely notice of appeal

DISCUSSION

Robinson contends the jury's guilty verdict must be reversed because the evidence was not sufficient to sustain the jury's finding he committed a burglary of a vehicle. We disagree.

Standard of Review

When presented with a claim on appeal that the evidence is insufficient to sustain a jury's guilty verdict, we apply the well-established substantial evidence test standard of review. Under this standard, we review the entire record in the light most favorable to the verdict, determining whether it contains evidence that is reasonable, credible, and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Tafoya* (2007) 42 Cal.4th 147, 170.) We do not reweigh

conflicting evidence nor do we assess the credibility of the witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We draw all reasonable inferences from the evidence in support of the verdict. (*People v. Wader* (1993) 5 Cal.4th 610, 640.) When the record contains evidence reasonably justifying a jury's finding, reversal is not warranted on the ground that the evidence "might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.]" (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

"Locked" Vehicle

Burglary of a vehicle requires the entry of a vehicle "when the doors are locked." (See § 459; and see CALJIC No. 14.58.) The published cases construe this as more than a temporal factor, and connect the entry of the vehicle to the locked state of the vehicle in that the entry of the vehicle must overcome or bypass the locked state of the vehicle. At the same time, however, the cases do not require either a "forced entry in the usual sense of the word" or "use of burglary tools" for a burglary of a vehicle to be accomplished. (See *In re James B.* (2003) 109 Cal.App.4th 862, 868.) Instead, burglary of a vehicle is accomplished by an entry of a vehicle achieved by "altering" of the vehicle's locked physical condition. For example, by smashing a window or illegally unlocking it. (*People v. Mooney* (1983) 145 Cal.App.3d 502, 505.) Reaching through a vehicle's open window to take items from inside a vehicle is not burglary of a vehicle. (*People v. Woods* (1980) 112 Cal.App.3d 226, 228-230.) Opening a vehicle's unlocked door, then using a latch lever inside the vehicle to open the trunk, and taking items from the trunk, is not a burglary of a vehicle because the defendant did not do any act to circumvent or alter a "locked" part of the vehicle. (*People v. Allen* (2001) 86 Cal.App.4th 909, 912, 914-916.) But reaching through a vehicle's open window to get hold of a vehicle's door locking mechanism, unlocking and opening the vehicle, and taking an item is a burglary of a vehicle because the defendant "altered the locked state" of the vehicle to gain entry to the vehicle to achieve the taking of the item. (*In re James B.*, *supra*, 109 Cal.App.4th at p. 871.)

Here, Robinson contends the evidence at his trial was not sufficient to support the jury's guilty verdict because it does not support a finding that he entered a vehicle "when the doors [were] locked" as that language has been construed in the cases. Specifically, he argues the prosecution's evidence did not show that Hamey locked the window within the rear tailgate of his vehicle. Robinson argues that if he only took items from Hamey's vehicle after gaining entry via the unlocked window within the rear tailgate, he did not enter through a locked entry point of the vehicle. Thus, there was no burglary of the vehicle. We are not persuaded.

On direct examination, Hamey testified about the tailgating, then continued: "We packed everything up, put it all into the car. And me not being familiar with the area, especially, I can remember locking [my vehicle] several times [by using the push-button remote key] on my way away from the car." Hamey testified about the way the remote key lock worked, and the car would honk in response to a successful lock. Hamey remembered locking the car that day. Hamey testified it was his "normal practice" to lock his car. As his SUV was fairly new, it was his "custom" to "take care to make sure [he] locked the vehicle" before he left it.

Robinson argues this evidence is not sufficient because the evidence otherwise was "undisputed that there was no forced entry," there was no evidence of an "alarm going off, no tool marks or other damage to [Hamey's] vehicle, and no broken glass."[6] Robinson asserts that "no burglary tools were found on [Robinson]'s person or anywhere near the vehicle." Robinson also notes that Hamey testified he could not state unequivocally that, by locking the vehicle with the remote key, the rear window would be locked. Robinson asserts that Hamey testified the rear window's locking mechanism was not activated by the remote key used to lock the car. According to Robinson, Hamey testified that he could not positively state what effect the locking of the car with the remote had on the rear window because he had always just opened the whole back hatch or door, as opposed to opening the window separately while the hatch remained closed.

---

[6] Hamey testified at trial that his vehicle did not have an alarm. Of course, alarm or not, the triggering of an alarm is not an element of the offense of burglary of a vehicle.

We find the trial evidence sufficient to support the guilty verdict because it supports an inference that the rear window was locked. The evidence showed that Hamey never separately opened the window within the tailgate from the time he purchased the vehicle. He always opened the entire rear tailgate. In addition, when he and his friends left his vehicle, he made sure the windows were up and that he activated the remote key several times to lock the vehicle. A trier of fact could reasonably infer from this evidence that the window in the tailgate was locked. Although it might have been possible to infer that the window was unlocked the issue on appeal is whether the evidence would support an inference in favor of the verdict, not a different inference. There was no evidence to create a suspicion that the window in the tailgate was unlocked.

More importantly, assuming that it was true that the window in the tailgate had not been locked, this does not mean as a matter of law that no burglary of a vehicle occurred. The evidence established that Hamey locked his vehicle with his remote key when he left for the game. The evidence also showed, through witness Aks's observation as the crime was unfolding, and the state of the vehicle when Officer Chun arrived on the scene, that Robinson had opened the entire rear tailgate of Hamey's vehicle during the incident. So, even assuming that Robinson initially gained access to the inside of Hamey's vehicle via an "open window," the evidence would still support the conclusion that he unlocked the rear tailgate to gain access to the items in the vehicle, as the evidence showed the tailgate was opened during the incident. As explained in *In re James B.*, *supra*, 109 Cal.App.4th 862, a burglary is accomplished when a person reaches through an open window to unlock a vehicle's locking mechanism. (*Id*. at p. 871.) It is the act of "altering of the locked state" of the vehicle which provides the element required under section 459. Here, the evidence established that the locked state of Hamey's vehicle was altered during the incident. The evidence is sufficient to support the jury's guilty verdict as to the issue of an entry into a "locked" vehicle.

Deprive Property "Permanently"

Robinson next contends the evidence is insufficient to support the jury's verdict because it does not support the jury's finding that Robinson intended to deprive Hamey of his property "permanently." We disagree.

A defendant's intent is rarely susceptible of direct proof. For this reason, the law allows intent to be inferred from the circumstances surrounding a charged offense, and recognizes that a jury's reasonable inferences are sufficient to constitute substantial evidence of intent. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139; *People v. Bloom* (1989) 48 Cal.3d 1194, 1208; *People v. Pre* (2004) 117 Cal.App.4th 413, 420.)

Here, the evidence and the reasonable inferences which may be drawn from the evidence support findings that Robinson had an opportunity to target and "case" Hamey's vehicle by repeatedly approaching Hamey and his friends during their tailgate party, that Robinson knew that Hamey would be leaving for the football game, and that he was unlikely to return to his SUV for some time. The evidence supported an reasonable inference that Robinson started the crime very shortly after Hamey and his friends left for the game.[7] The evidence showed that Robinson moved items from the SUV to a location approximately 10 yards from the SUV, and that some items taken were already gone from the area before police arrived on the scene. The vehicle had been rifled for other items of value. When police approached Robinson, he lied about what he was doing, showing a consciousness of guilt. It is not remarkable that the jury found that Robinson intended to deprive Hamey of his property permanently, and that the only reason he did not succeed was because police responded quickly to the scene. The jury's finding on the element of intended permanence of deprivation is supported by substantial evidence.

---

[7] The police contacted Hamey during the first quarter of the game. Before that time, a call had been placed to police, a radio call went out, Officer Chun responded and started her investigation, and, then, Hamey was contacted.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.