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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. ISRAEL LUGO, Defendant and Appellant.	B254686 (Los Angeles County Super. Ct. No. BA418148)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Deborah S. Brazil, Judge. Affirmed.

Carlos Ramirez, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, Corey J. Robins, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Israel Lugo (defendant) was convicted of unlawful driving or taking of a vehicle with a prior conviction (Pen. Code, § 666.5[1]). On appeal, defendant contends that there was insufficient evidence to support his conviction. We affirm the judgment.

BACKGROUND

A. Factual Background

1. Prosecution Evidence

Mario Garcia worked at a recycling site in Oxnard. On November 5, 2013, he drove his truck to work, and parked it about 20 feet from where he was working. He worked alone that day. At about 1:00 p.m., Garcia put up a sign indicating that he was going to lunch, and was about to walk to his truck when a person "resemble[ing]" defendant asked Garcia to help him with his recyclables. Garcia described the person as being between five feet, six inches and five feet, eight inches tall, and weighing between 160 and 170 pounds. Garcia did not see anyone else present at that time.

Garcia told the person that he would help him but said that he would "be right back. I'm going to my vehicle." Garcia went to his truck, opened it, and placed his keys on the floorboard. Garcia returned from his vehicle and helped the person for about eight minutes. Garcia gave the person a voucher for his recyclables and told him that he could cash the voucher at a store located to the left. Garcia's vehicle was located to the right, and person began to walk to the right.

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[1] All statutory citations are to the Penal Code unless otherwise noted.

Garcia closed and locked the business door. After 10 to 15 seconds, Garcia turned around and saw that his truck "was being taken." Garcia did not give anyone, including defendant, permission to take his truck that day.

Garcia testified that the person who took his truck "was sticking his head out of the truck window." Garcia saw "a flash of [the person's] profile," and testified that he was 60 percent certain that the person was defendant. Garcia testified that he "saw an individual driving away with [his] vehicle that resembled [defendant]." Garcia believed that the person who took his vehicle was the same person as the one Garcia helped with his recyclables. After Garcia saw his truck being driven away and determined the direction it went, he called the Oxnard Police Department and reported that his truck had been stolen.

On November 6, 2013, Los Angeles Police Department Officers Kris Cummings and David Riddick were on patrol and saw Garcia's stolen truck being driven by defendant. Defendant eventually turned into a parking lot and stopped the vehicle. The officers pulled behind Garcia's vehicle, activated their forward facing red light, approached the vehicle on foot, ordered defendant out of the vehicle, and took defendant into custody. The officers recovered "the keys" from the vehicle. The officers determined that defendant's home address was located in the city of Oxnard, he weighed 160 pounds, and he was five feet, five inches tall.

2. Defendant's Evidence

Defendant did not testify and presented no testimony on his behalf.

B. Procedural Background

The District Attorney of Los Angeles County filed an information charging defendant with unlawful driving or taking of a vehicle with a prior conviction in violation of section 666.5. Section 666.5 concerns, inter alia, a prior conviction for, and a subsequent violation of, Vehicle Code section 10851, subdivision (a)–the unlawful driving or taking of a vehicle. The District Attorney alleged that defendant had been

previously twice convicted of unlawfully driving or taking a vehicle in violation of Vehicle Code section 10851, subdivision (a); had suffered a prior conviction for a serious or violent felony as defined by sections 667, subdivision (d), and 1170.12, subdivision (b); and had served a prior prison term as defined by section 667.5, subdivision (b). [2]

Following trial, the jury found defendant guilty as charged, and defendant admitted the prior conviction allegations. The trial court denied defendant's motion to strike his prior strike offense. The trial court sentenced defendant to state prison for a term of seven years, consisting of a mid-term of three years for unlawful driving or taking of a vehicle with a prior conviction, doubled under the "Three Strikes" law, plus one year pursuant to section 667.5, subdivision (b).[3] The trial court awarded defendant custody credit, and ordered him to pay various fees, fines and penalties. Defendant filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

"'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains 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.' [Citation.]" (*People v. Avila* (2009) 46 Cal.4th 680, 701.) "We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence. [Citation.]" (*People v. Medina* (2009) 46 Cal.4th 913, 919.) "A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient

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[2] Defendant has not challenged the pleading or jury verdict.

[3] Sentence enhancements in addition to the increased base term under section 666.5 do not constitute a prohibited "dual use" sentence. (*People v. Demara* (1995) 41 Cal.App.4th 448, 455.)

substantial evidence to support"' the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) "Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom." (*People v. Ugalino* (2009) 174 Cal.App.4th 1060, 1064.) "We 'must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]' [Citation.]" (*People v. Zamudio, supra*, 43 Cal.4th at pp. 357-358.) In determining whether substantial evidence supports a conviction, "we do not reweigh the evidence, resolve conflicts in the evidence, draw inferences contrary to the verdict, or reevaluate the credibility of witnesses." (*People v. Little* (2004) 115 Cal.App.4th 766, 771, citing *People v. Jones* (1990) 51 Cal.3d 294, 314.)

B. Applicable Law

Section 666.5, subdivision (a), provides in pertinent part, "Every person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code . . . , is subsequently convicted of [that] offense[] shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment." The District Attorney alleged that defendant had been previously twice convicted of unlawfully driving or taking a vehicle in violation of Vehicle Code section 10851, subdivision (a). "The Legislature's obvious purpose in enacting Penal Code section 666.5 was to increase the punishment for repeat offenders." (*People v. Carter* (1996) 48 Cal.App.4th 1536, 1541.) Thus, section 666.5, subdivision (a) "provides a greater base term for certain recidivists" who violate and have violated, inter alia, Vehicle Code section 10851. (*People v. Demara, supra*, 41 Cal.App.4th at pp. 452-453.) Section 666.5 "does not define a new offense, but simply increases the punishment for violation of section 10851, subdivision (a) by a recidivist." (*People v. Garcia* (2003) 107 Cal.App.4th 1159, 1165-1166.)

Vehicle Code section 10851, subdivision (a), provides in part, "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and

with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment." "'Vehicle Code section 10851 can be violated either by taking a vehicle with the intent to steal it or by driving it with the intent only to temporarily deprive its owner of possession (i.e., joyriding).' [Citation.]" (*People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 205.)

C. Analysis

Defendant argues that there was insufficient evidence to prove that he knew he was driving a stolen vehicle. Knowledge that the vehicle was stolen, however, is not an element of the offense. (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574.) To establish a defendant violated Vehicle Code section 10851, subdivision (a), and therefore section 666.5, the prosecution is required to prove that the defendant had the intent to permanently or temporarily deprive the owner of title or possession of the vehicle. (*People v. Moon* (2005) 37 Cal.4th 1, 26.) The defendant's knowledge that the vehicle was stolen, of course, may constitute evidence of the defendant's intent to deprive the owner of title and possession. (*People v. O'Dell*, *supra*, 153 Cal.App.4th at p. 1574.) And "[p]ossession of recently stolen property itself raises a strong inference that the possessor knew the property was stolen; only slight corroboration is required to allow for a finding of guilt. [Citation.]" (*Ibid.*) Section 666.5's "applicability is not limited to cases in which it can be determined that the prior and current violations of Vehicle Code section 10851 were based on the defendant's intent to commit theft." (*People v. Carter, supra,* 48 Cal.App.4th 1542-1543.)

The jury reasonably could find that defendant intended to deprive Garcia of title to or possession of the truck. Garcia believed that the person who took his truck without his permission was the same person he helped with his recyclables moments before. Garcia believed that the person he helped "resembled" defendant, and defendant's height and weight closely matched the description Garcia gave of the height and weight of the person he helped with his recyclables. Garcia did not see anyone present at the time other than the person who resembled defendant.

Garcia told the person that resembled defendant that Garcia would return to him after Garcia went to his truck. Garcia then went to his truck and placed his keys on the floorboard. Garcia, after coming back from his truck and giving the person who resembled defendant a voucher for his recyclables, told him that he could cash the voucher at a store located to the left. Instead of walking to the left, that person walked to the right, in the direction of Garcia's truck.

When Garcia turned around after closing and locking the business door, he saw that his truck "was being taken." Garcia did not give anyone permission to take his truck. Garcia saw the profile of the person who stole his truck, and testified that he was 60 percent certain that defendant was the person who took it. Defendant resides in the city of Oxnard, the same city in which Garcia's truck was stolen. The day after Garcia's truck was stolen, defendant was arrested while driving it far from the location of the theft. That defendant was in possession of recently stolen property suggests he knew it was stolen. These facts constitute sufficient evidence to support the conviction.

DISPOSITION

The judgment is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.