Filed 10/31/18 In re T.L. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re T.L., a Person Coming Under the Juvenile Court Law.	B285612 (Los Angeles County Super. Ct. No. TJ22589)
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. T.L., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Catherine J. Pratt, Judge. Affirmed as modified.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Juvenile defendant T.L. appeals from the judgment finding him to be a ward of the juvenile court under Welfare & Institutions Code section 602 for driving or taking a vehicle without consent of its owner, in violation of Vehicle Code section 10851, subdivision (a) (section 10851(a)). He contends there was insufficient evidence to support the conviction. We disagree and therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *Procedural Background*

The Los Angeles County District Attorney (the People) filed a petition under Welfare & Institutions Code section 602, charging defendant with one count of driving or taking a vehicle without consent in violation of section 10851(a). Defendant was 15 years old at the time of the charged incident.

The court held an adjudication hearing on October 5, 2017. At the conclusion of the hearing, the court found the allegations in count one true and sustained the count as a misdemeanor. The court sentenced defendant to home probation and set a maximum period of confinement of five years and four months.

Defendant timely appealed.

II. *Evidence at Adjudication*

Jorge Fajardo, deputy sheriff with the Los Angeles Sheriff's Department, testified that he was on patrol on May 27, 2017 when he conducted a license plate check of a late 1990's silver Acura Integra. The check revealed the car had been stolen, so he

pulled the car over. Defendant was driving. Deputy Fajardo ordered defendant to step out of the vehicle; defendant complied and was detained in the back of the sheriff's vehicle.

Deputy Fajardo retrieved a silver key from the Acura's ignition. He testified that the key "appeared to be shaved or reproduced." He also explained that he believed it was reproduced because he could not start the car with it, open the car doors, or open the trunk. There were no markings on the key to identify it as an Acura key. He also testified that in his experience, shaved or refurbished keys "are inoperable for the other parts of the vehicle," other than the ignition. He did not find the same to be true of spare keys.

After his arrest, defendant told Deputy Fajardo that his cousin lent him the car and that his cousin told him, "Just don't get pulled over or get in trouble with it, or anything to that nature." Deputy Fajardo then testified, "I asked him, 'Didn't you think that was odd[?]' He answered, 'Yeah. I know, I know. It's weird. But I don't care. I still drove it, anyways.'" Defendant then wrote and signed the following statement, which was read into the record by Deputy Fajardo: "My cousin lend [*sic*] me the car yesterday. I've been driving it for a day. He said, 'Don't get pulled over and be careful.' I thought something was up, but I didn't know."[1]

On cross-examination, Deputy Fajardo acknowledged that the key had ridges on the side and was therefore not an edge-shaved key. The Acura's steering column and ignition did not

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[1]Deputy Fajardo originally testified that he thought defendant's written statement said, "I didn't care or didn't know." However, on cross-examination, Deputy Fajardo acknowledged that defendant wrote "I didn't know," not "I didn't care."

appear to have been manipulated. There were no scratches or evidence of illegal entry. The interior of the vehicle was in "fair" condition and did not appear to have been ransacked.

Maria[2] testified that she owned the Acura. She did not know defendant and never gave him permission to drive her car. The key found with defendant was not her car key and she never gave it to defendant. She stated that she loaned the car on about May 25 to her sister and brother-in-law. But she also testified that they had borrowed it for "months." Maria acknowledged that, at the time of the incident, she did not know whether her sister and brother-in-law had given anyone else permission to drive the car. However, her sister had reported the car stolen. Maria testified they (her sister and brother-in-law) called her and said the car was stolen the same day they made the stolen car report.

The parties stipulated that if called as a witness, defendant's mother would testify that she had a spare key to her car that looked similar to the key at issue here, and that at some point defendant might have used it.

DISCUSSION

I. *Substantial Evidence*

Defendant contends there was insufficient evidence to support his conviction. In reviewing the sufficiency of the evidence, we determine whether after viewing "'the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" (*People v. Holt* (1997) 15 Cal.4th 619, 667.)

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[2]Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to the victim in this case by first name to protect her personal privacy interests.

We do not weigh the evidence or decide the credibility of the witnesses. We draw all reasonable inferences in favor of the judgment. "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

In order to establish a violation of section 10851(a), the prosecution must prove "that the defendant drove or took a vehicle belonging to another person, without the owner's consent, and that the defendant had the specific intent to permanently or temporarily deprive the owner of title or possession." (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574 (*O'Dell*); see also *People v. Green* (1995) 34 Cal.App.4th 165, 180 (*Green*); *People v. Windham* (1987) 194 Cal.App.3d 1580, 1590.) Thus, knowledge that the vehicle was stolen is not an element of the offense; however, such knowledge may constitute evidence of the defendant's intent to deprive the owner of title and possession. (*O'Dell, supra*, 153 Cal.App.4th at p. 1574; *Green, supra*, 34 Cal.App.4th at p. 180.)

Defendant contends the evidence did not establish that he was driving Maria's car without consent. He points to Maria's testimony that she loaned the car to her sister and brother-in-law and argues there was insufficient evidence to establish that they, as Maria's "agents," did not give permission to someone else (including defendant) to drive it. We are not persuaded. Maria testified that she did not know defendant or give him permission to drive her car. She also did not recognize the key defendant was using on the car. Moreover, her sister reported the car

stolen.[3] From this evidence, the factfinder could reasonably infer that Maria's sister and brother-in-law had not given anyone (including defendant) permission to drive the car.

Defendant also argues that even if he lacked consent, there was insufficient evidence to show that he possessed the specific intent to deprive the owner of possession. Specific intent to deprive the owner of possession of his car may be inferred from all the facts and circumstances of the particular case. (*Green, supra*, 34 Cal.App.4th at p. 181.) "Once the unlawful taking of the vehicle has been established, possession of the recently taken vehicle by the defendant with slight corroboration through statements or conduct tending to show guilt is sufficient to sustain a conviction of Vehicle Code section 10851." (*Green, supra*, 34 Cal.App.4th at p. 181; see also *O'Dell, supra*, 153 Cal.App.4th at p. 1574 ["Possession 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."]; *People v. Windham, supra,* 194 Cal.App.3d at p. 1590; *People v. Clifton* (1985) 171 Cal.App.3d 195, 199; accord *People v. McFarland* (1962) 58 Cal.2d 748, 754 (*McFarland*).) "Our Supreme Court has indicated that the slight corroboration that permits an inference that the possessor knew that the property was stolen may consist of no explanation, of an unsatisfactory explanation, or of other suspicious circumstances

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[3]To the extent defendant now challenges as hearsay the testimony by Maria about what her sister told her, he forfeited that objection by failing to raise it below. (See, e.g., P*eople v. Doolin* (2009) 45 Cal.4th 390, 448; *People v. Roa* (2017) 11 Cal.App.5th 428, 452–453.)

that would justify the inference." (*O'Dell, supra*, 153 Cal.App.4th at p. 1575, citing *McFarland, supra*, 58 Cal.2d at p. 754.)

The juvenile court found beyond a reasonable doubt that defendant was "driving a car he knew was stolen," citing the statements by his cousin and defendant's acknowledgement that he "thought something was up, but [he] didn't know." We agree that there is sufficient corroborating evidence, along with the fact that defendant was in possession of the car, to support the conclusion that defendant knew the car was stolen. Deputy Fajardo testified that he believed the key used by defendant was illegitimately reproduced, as it did not bear any Acura markings and was inoperable on the car except for the ignition. In fact, Deputy Fajardo could not get the key to work in the ignition either, although it appeared that was how defendant started the car. Moreover, defendant was found driving the car the same day it was reported stolen. Defendant also admitted that his cousin told him not to get pulled over with the Acura, and that defendant thought that statement was "weird" and it meant "something was up," but he drove the car anyway. Based on the totality of these circumstances, the court was entitled to infer that defendant intended to permanently or temporarily deprive the owner of possession of her car.

Defendant contends this case lacks the circumstantial evidence of intent present in cases such as *Green* and *O'Dell*. In *Green, supra*, 34 Cal.App.4th at pp. 172-173, 181, the court rejected a substantial evidence challenge based on evidence that the defendant was discovered driving the car within four days after it had been stolen, the car had a cracked steering column, and it appeared to be operated using a screwdriver. In *O'Dell, supra*, 153 Cal.App.4th at p. 1577, the court affirmed a conviction

under section 10851(a) where the defendant ran from the stolen vehicle as officers approached, and officers recovered tools commonly used by car thieves from inside the vehicle. Defendant notes the absence of evidence in this case of any tampering with the vehicle or flight from police. But the presence of certain types of evidence in other cases does not translate into an absolute requirement for a finding of intent. As the courts did in *O'Dell* and *Green*, we look to "all the facts and circumstances of the particular case," to determine whether the evidence supports the juvenile court's finding of specific intent. (*Green, supra*, 34 Cal.App.4th at p. 181; *O'Dell, supra*, 153 Cal.App.4th at p. 1577.) Here, viewing the evidence in the light most favorable to the judgment, we conclude substantial evidence supports the court's conclusion that defendant drove the Acura with the intent to deprive the owner of the car.

II. *Maximum Term of Confinement Should be Stricken*

Defendant also contends the court erred by setting a maximum term of confinement, as he was placed on home probation.

"When a minor is removed from the physical custody of his parent or custodian as a result of criminal violations sustained under Welfare and Institutions Code section 602, the court must specify the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense or offenses. (Welf. & Inst.Code, § 726, subd. (c).)" (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) On the other hand, where, as here, the minor is *not* removed from the physical custody of his parents, the juvenile court is not required to specify a maximum term of physical confinement in its dispositional order. (See *In re*

Ali A. (2006) 139 Cal.App.4th 569, 574 [finding that specified maximum term of confinement was "of no legal effect"].)

Accordingly, defendant requests that we strike the declaration of the maximum term of confinement from the dispositional order. Respondent agrees. We therefore strike the reference to a maximum period of confinement.

DISPOSITION

The maximum confinement term set by the juvenile court is stricken. The judgment is affirmed in all other respects.

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COLLINS, J.

We concur:

MANELLA, P. J.

MICON, 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.