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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JIMMY R. BROWN, Defendant and Appellant.	B234091 (Los Angeles County Super. Ct. No. BA 366386)

APPEAL from a judgment of the Superior Court of Los Angeles County, Leslie A. Swain, Judge. Affirmed.

Esther K. Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Jimmy R. Brown appeals from a judgment of conviction after a jury found him guilty of receiving stolen property. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), appellant's counsel filed an opening brief requesting that this court review the record and determine whether any arguable issues exist on appeal.[1] We have reviewed the entire record and find no arguable issue. We affirm.

FACTUAL BACKGROUND

Appellant rear-ended the car of Patrick Rogers on December 30, 2009, at approximately 7:30 p.m. Rogers got out of his car and went to the driver's side window of appellant's car, where appellant was in the driver's seat. Besides appellant, there were three people in appellant's car. One was an infant child, one was a male in his 40's, and one was a male teen.

Rogers asked if appellant was okay, and appellant responded affirmatively. Appellant was conscious but appeared to be bleeding on his head. He said he did not need the paramedics. Appellant said he had auto insurance, and Rogers wanted to go back to his car to get his own insurance information so that they could exchange. Before he could do that, appellant said he wanted to go elsewhere to exchange information. Appellant told Rogers to follow him. Rogers refused. Appellant tried to start his car and leave, but Rogers reached into his car and took his keys out of the ignition. He either threw them on the ground or put them in his pocket.

A fight then started. Appellant and the other two males in appellant's car had exited the car. Rogers was hit on the head with a stick twice. Rogers did not see who hit him with the stick. Right before he was hit, appellant had exited his car and was standing in front of Rogers. Appellant did not have the stick. Rogers was also hit by an unknown assailant with fists. Rogers tried to strike back, and he and appellant started fighting. Rogers fell to the ground, and the male in his 40's who was in appellant's car kicked

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[1] On January 27, 2012, appellant filed a petition for a writ of habeas corpus (No. B238716), in pro. per. We directed the clerk of this court to transmit a copy of the petition to appellant's counsel in this appeal. A separate order will be filed in the habeas matter.

Rogers in the head. Rogers was repeatedly kicked and punched when he fell. A bystander eventually broke up the fight and the police arrived. Later, when Rogers was at home, he noticed his wallet (which contained $800), cellular phone, some compact discs (CD's), and mail from the Department of Motor Vehicles (DMV) were missing. The CD's were in the console of his car between the driver and passenger seat.

Appellant was arrested at the scene of the accident and patted down for weapons. They did not find any weapons. The police did not conduct a full search of appellant. Full searches are typically not done in the field because officers do not want to remove property from the suspect that can get lost, and there is no reason to remove anything in the field other than weapons. Two transporting officers then arrived at the scene and took appellant to the police station. Before transporting him, one officer patted him down again. The officer did not remove CD's found in appellant's pocket, but left them there to remove once they reached the station. At the station, the officer removed and bagged the CD's and some DMV paperwork in appellant's pocket.

Rogers identified the CD's and DMV paperwork that night at the police station as his. His cellular phone and wallet were never discovered.

Appellant was treated at USC Medical Center on December 31, 2009, by Dr. Karla Odell. He complained of difficulty breathing and swallowing after hitting his neck on the dashboard in a car accident. Dr. Odell discovered that appellant was suffering from fractured cartilage in his voicebox and a hematoma, or collection of blood, in the same area. These were causing airway obstruction. Appellant's injuries were treated and he was released from the hospital.

The defense called Dr. Steven Gabaeff as an expert witness. He was not appellant's treating physician and had never met appellant. His opinions were based on having reviewed the police reports in the matter, the medical reports from the jail and the USC Medical Center, the preliminary hearing transcript, and Rogers's criminal record. Dr. Gabaeff opined that a person in a car accident like appellant's would suffer a concussion and a throat injury similar to appellant's. He further opined that a person

suffering these injuries would most likely be incapacitated immediately following the accident and would be incapable of performing intentional acts.

PROCEDURAL BACKGROUND

The information charged appellant with second degree robbery, assault by means likely to produce great bodily injury, and receiving stolen property. The information further alleged that appellant had three prior convictions for robbery. The jury found appellant not guilty of second degree robbery and assault but guilty of receiving stolen property. Appellant waived trial on his prior convictions and admitted them. The court granted his motion to strike two of the prior convictions in the interest of justice. The court sentenced him to a total of six years in state prison, which was double the upper term of three years for receiving stolen property because of appellant's prior strike.

DISCUSSION

We appointed counsel to represent appellant on this appeal. After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *Wende*, *supra*, 25 Cal.3d at page 441. On January 19, 2012, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. We received appellant's supplemental brief on February 6, 2012.

We have examined the entire record and appellant's contentions, including the sealed transcripts for two *Marsden*[2] hearings and one *Pitchess*[3] hearing. We are satisfied that no arguable issues exist and that appellant's counsel has fully satisfied her responsibilities under *Wende*. (*Smith v. Robbins* (2000) 528 U.S. 259, 279-284; *Wende, supra*, 25 Cal.3d at p. 441; see also *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

Appellant contends that the trial court erred in denying his first *Marsden* motion because the trial court was "unaware" of the fact that appellant and his counsel were

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2 *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

3 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

embroiled in such an irreconcilable conflict that ineffective representation was likely to result. The law governing *Marsden* motions is well settled. "'"When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations]." [Citations.]'" (*People v. Memro* (1995) 11 Cal.4th 786, 857.) We review denials of *Marsden* motions under an abuse of discretion standard. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1085.)

Having reviewed the transcript of the *Marsden* hearing, we do not find that the court abused its discretion. The court permitted appellant to explain his basis for requesting new counsel and to relate specific instances of what he felt was inadequate performance. Appellant disagreed with some strategic decisions counsel made, but tactical disagreements "do not by themselves constitute an 'irreconcilable conflict.' [Citation.] Indeed, a 'defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense.'" (*People v. Cole* (2004) 33 Cal.4th 1158, 1192.)

Appellant also contends sufficient evidence did not support his conviction because the prosecution failed to establish that the stolen property was discovered in appellant's pocket and that appellant knew the items were stolen. Reviewing the whole record in the light most favorable to the judgment below, we disagree. The crime of receiving stolen property requires that (1) the particular property was stolen, (2) the defendant was in possession of the stolen property, and (3) the defendant knew the property was stolen. (*People v. Reyes* (1997) 52 Cal.App.4th 975, 984.) "Knowledge that property was stolen can seldom be proved by direct evidence. . . ." (*People v. Vann* (1974) 12 Cal.3d 220, 225.) "A long line of authority . . . establishes that proof of knowing possession by a defendant of recently stolen property raises a strong inference of the other element of the

crime: the defendant's knowledge of the tainted nature of the property. This inference is so substantial that only 'slight' additional corroborating evidence need be adduced in order to permit a finding of guilty." (*People v. Anderson* (1989) 210 Cal.App.3d 414, 421.) Here, the transporting officer who booked appellant at the station testified that he found the stolen property -- CD's and Rogers's DMV mail -- in appellant's pants pocket. He did not remove the property from appellant's person at the scene of the accident, but left it there to remove once they reached the station. Rogers testified that the stolen items were in his car's center console when the accident occurred, and they were found on appellant shortly after the accident. The evidence showed that appellant was near Rogers's car -- he got out of his car and engaged in a fight with Rogers right next to his and Rogers's cars. The mail, at the least, had Rogers's name on it, suggesting that appellant would have known the mail belonged to Rogers. The evidence was sufficient to establish the elements of receiving stolen property.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.