Filed 4/12/12 In re J.I. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.I., a Person Coming Under the Juvenile Court Law.	B232463 (Los Angeles County Super. Ct. No. TJ19105)
THE PEOPLE, Plaintiff and Respondent, v. J.I., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Catherine J. Pratt, Commissioner. Affirmed.

Mary Bernstein, 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, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, David C. Cook, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

On November 23, 2010, the District Attorney of Los Angeles County filed a petition pursuant to Welfare and Institutions Code section 602 (section 602) in case number TJ19105 that alleged that defendant and appellant J.I. committed the felony offense of possession of a deadly weapon, brass knuckles. (Pen. Code, § 12020, subd. (a)(1).) On January 18, 2011, the District Attorney filed a petition pursuant to section 602 in case number TJ19139 that alleged that J.I. committed the felony offenses of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and receiving stolen property, a motor vehicle (Pen. Code, § 496d, subd. (a)). The juvenile court consolidated the petitions under case number TJ19105. The juvenile court found the allegations true, found the possession of a deadly weapon offense to be a misdemeanor, and placed J.I. home on probation in his mother's home.

On appeal, J.I. contends that the juvenile court erred in finding true the allegation that he received stolen property because, under the facts of this case, he could not be found to have both unlawfully driven or taken a vehicle and to have received the same vehicle as stolen property. We affirm.

BACKGROUND[1]

Vanessa Sotelo owned a Honda Accord, license plate number 6KIG978. At 11:00 p.m. on December 6, 2010, Sotelo parked her car at the corner of Santa Fe and Pine and locked the car's doors. Sotelo had not given anyone permission to drive her car. Sotelo did not know J.I. At 3:00 a.m. on December 7, 2010, two police officers awakened Sotelo and gave her a "report."

About 3:15 a.m., on December 7, 2010, Los Angeles County Sheriff's Department Deputy Mike Barraza saw J.I. parked in a Honda Accord, license plate number 6KIG978,

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1 Because J.I.'s challenge on appeal concerns the unlawful driving or taking of a vehicle and receiving stolen property offenses, we recite facts relevant to those offenses and not facts relevant to the possession of a deadly weapon offense.

at the corner of Tucker Street and Pearl Avenue in Compton.[2] J.I., whom Deputy Barraza described as the "driver," and another person, whom Deputy Barraza described as the "passenger," were in the car. When Deputy Barraza neared the car, J.I. and the passenger got out of the car. Deputy Barraza detained the passenger. Another deputy detained J.I. nearby at the corner of Chester and Peck. The juvenile court took judicial notice of a map of Compton which appeared to reflect that the intersection of Tucker Street and Pearl Avenue was about 2,000 feet from the intersection of Santa Fe and Pine where Sotelo parked her car.

Deputy Barraza advised J.I. of his *Miranda*[3] rights. J.I. stated that "he had no involvement in it, he did not know the passenger at all and that they were not together." When Deputy Barraza told J.I. that another deputy had seen J.I. and the passenger together, J.I. admitted that he was stealing the car for a joyride, and that he was giving the passenger a ride to see his girlfriend.

On his own behalf, J.I. testified that he was arrested at North Chester and Peck as he was walking home from his girlfriend's house. J.I. was taken to another location where Deputy Barraza took custody of him. Deputy Barraza did not advise J.I. of his *Miranda* rights and J.I. did not make a statement about what happened. J.I. denied that he stole a car.

DISCUSSION

J.I. contends that the juvenile court erred in finding true the allegation that he received stolen property because he could not be found to have both unlawfully driven or

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2 At the adjudication hearing, Deputy Barraza testified that he encountered J.I. at 3:15 *p.m.* on December 7, 2010. During the pendency of this appeal, the parties stipulated in the Superior Court that if called to testify, Deputy Barraza would testify that he encountered J.I. at 3:15 *a.m.* on December 7, 2010. We granted J.I.'s motion to augment the record with the reporter's transcript of that stipulation.

3 *Miranda v. Arizona* (1966) 384 U.S. 436.

taken a vehicle in violation of Vehicle Code section 10851, subdivision (a)[4] and to have received the same vehicle as stolen property in violation of Penal Code section 496d, subdivision (a)[5] based on the facts of this case. We disagree.

It is a "fundamental principle that one may not be convicted of stealing and of receiving the same property." (*People v. Jamarillo* (1976) 16 Cal.3d 752, 757.) "A person can violate [Vehicle Code] section 10851[, subdivision] (a) '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).' [Citations.]" (*People v. Garza* (2005) 35 Cal.4th 866, 876.) "A person who violates section 10851(a) by taking a car with the intent to permanently deprive the owner of possession, and who is convicted of that offense on that basis, cannot also be convicted of receiving the same vehicle as stolen property. [Citations.] If, on the other hand, a section 10851(a) conviction is based on posttheft driving, a separate conviction under [Penal Code] section 496[, subdivision] (a)

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4 Vehicle Code section 10851, subdivision (a) provides, "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."

5 Penal Code section 496d, subdivision (a) provides, "Every person who buys or receives any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle, trailer, special construction equipment, or vessel from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or three years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both."

for receiving the same vehicle as stolen property is not precluded. [Citations.]" (*Ibid.*) In *People v. Garza*, the Supreme Court used the term "posttheft driving" to refer to driving that occurred or continued after the theft of the car was complete. (*Id.* at p. 871.)

J.I.'s statement to Deputy Barraza was substantial evidence that J.I. was engaged in "posttheft driving" when Deputy Barraza encountered him in Sotelo's car at the corner of Tucker Street and Pearl Avenue. In his statement, J.I. said that he was stealing Sotelo's car to take if for a "joyride" and that he was giving the passenger a ride to see his girlfriend. The Supreme Court refers to a violation of Vehicle Code section 10851, subdivision (a) based on unlawful driving as "joyriding." (*People v. Garza, supra,* 35 Cal.4th at p. 876 ["A person can violate section 10851(a) '. . . by driving it with the intent only to temporarily deprive its owner of possession (i.e., joyriding).' [Citations.]"].) Thus, J.I.'s statement that he was stealing the car to take if for a "joyride" is substantial evidence that he intended only to temporarily deprive Sotelo of its possession—i.e. a driving violation of Vehicle Code section 10851, subdivision (a). Moreover, although J.I.'s statement that he "was stealing" the car might be construed as stating that he was, at that moment, engaged in the taking of the car and thus was not engaged in posttheft driving, his further statement that he was giving his passenger a ride to see his girlfriend is substantial evidence that he was engaged in posttheft driving—i.e. driving after the theft of the car was complete. (*People v. Garza, supra,* 35 Cal.4th at p. 871.) Accordingly, the juvenile court did not err in finding that J.I. violated Vehicle Code section 10851, subdivision (a), and received stolen property (Pen. Code, § 496d, subd. (a)).

DISPOSITION

The adjudication order is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.