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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEFF JAMES WRIGHT,

Defendant and Appellant.

In re

JOSEFF JAMES WRIGHT,

on Habeas Corpus.

B281649

(Los Angeles County  
Super. Ct. No. KA100291)

B287280

APPEAL from an order of the Superior Court of Los Angeles County. Yvette Verastegui, Judge. Affirmed; petition denied.

Jenny Macht Brandt, 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, Senior Assistant

Attorney General, Steven E. Mercer, Acting Supervising Deputy Attorney General, and Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.

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The trial court found that defendant Joseff James Wright violated probation in case No. KA100291, and sentenced him to a county jail term of four years. On appeal, defendant contends the admission of hearsay evidence at his probation revocation hearing violated his due process right to confrontation and that he was denied effective assistance of counsel by defense counsel's failure to object. Defendant reiterates his claim of ineffective assistance of counsel in a petition for a writ of habeas corpus, which we agreed to consider concurrently with this appeal. We affirm.

### **FACTS**

In May 2013, defendant entered a no contest plea to unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a); count 1) and unlawful taking of a vehicle with a prior conviction (Pen. Code, § 666.5; count 2),<sup>1</sup> and admitted that he had suffered a prior prison term (Pen. Code, § 667.5). He was sentenced to a term of four years in prison, execution of his sentence was suspended, and defendant was placed on five years of formal probation. Defendant was ordered to obey all laws, among other conditions of his probation.

On April 30, 2014, defendant failed to appear for a probation progress hearing, and his probation was revoked. At the May 26, 2015 probation revocation hearing, probation was

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<sup>1</sup> Defendant was later permitted to withdraw his plea to count 2, and that count was dismissed.

reinstated on similar terms, after defendant admitted violating his probation.

Defendant again failed to appear for a progress hearing on June 2, 2016, and his probation was revoked again. Defendant had picked up a new case, case No. SA092633, alleging violations of Penal Code sections 666.5 (felony theft of an automobile) and 532a, subdivision (1) (providing a false statement regarding financial condition). On January 10, 2017, the trial court conducted a combined probation revocation hearing and preliminary hearing on the new case.

The following evidence was adduced at the hearing: Los Angeles Police Detective Juvey Mejia testified that he received a report from L'Tanya Bragg that a 2015 Hyundai Azera had been stolen on December 10, 2015, from Alamo Rental in Inglewood. On February 10, 2016, the License Plate Recognition System received a "hit" on the car at a Roadway Inn in Gardena. Detective Mejia went to the location to investigate. Within a couple of hours he saw defendant approach the stolen vehicle, enter it using a key, and drive it a short distance. Defendant completed a U-turn, and parked the car on the opposite side of the street. Defendant then walked into the Roadway Inn.

Detective Mejia's partner, Deputy Figueroa, went to the hotel office to find out if defendant was registered as a guest. The front desk called defendant down, under the pretense that he had to complete some paperwork. Defendant was arrested. He had the car keys in his possession at the time of his arrest.

When defendant asked why he was being arrested, Detective Mejia told him that he was being arrested pursuant to a stolen vehicle investigation for a car he rented in December. Defendant told Detective Mejia that he had not seen the car since

December, and did not know where it was. He had only used the car for one day after he rented it before it “disappeared.” He had not reported the car missing to the police or the rental agency.

The rental application that defendant provided to the agency was admitted into evidence. It included inaccurate information, including a false name, date of birth, address, and telephone number. When Detective Mejia confronted defendant about the false information on the rental application, defendant said he had made some “typos.”

When Detective Mejia told defendant he had seen him driving the car, defendant changed his story, and told Detective Mejia that the car had been returned to him in the first week of February. Defendant admitted that he had “lied” to Detective Mejia earlier when he said he did not know where the car was. He told Detective Mejia that he had not reported the car stolen because he did not want to get blamed for stealing the car.

Detective Mejia interviewed Ms. Bragg the following day, and testified, without objection, to the substance of their interview. Ms. Bragg is the manager of the Alamo Rental, and had reported the car stolen. Ms. Bragg told Detective Mejia that defendant was “flagged” in the system, and was not allowed to rent cars with Alamo. If his correct information had been included in the rental application, he would not have been allowed to rent a car. Defendant was banned from renting cars because he had victimized Alamo before through identity theft, and had not returned the cars. Defendant’s rental contract required that he return the car on December 11, 2015. Defendant had not contacted the company or made any attempt to return the car.

The trial court found sufficient evidence that defendant had violated Penal Code sections 666.5 and 532a, subdivision (1), and ordered that defendant be held to answer for those offenses. The trial court also found defendant was in violation of his probation, and imposed the suspended sentence in case No. KA100291, to be served in county jail. Defendant timely appealed, and his request for a certificate of probable cause was granted.

### **DISCUSSION**

Defendant contends he was denied his due process right of confrontation because the trial court allowed Detective Mejia to testify to Ms. Bragg's hearsay statements without a showing of good cause. (See *People v. Arreola* (1994) 7 Cal.4th 1144, 1151.) He admits that trial counsel did not object, but argues that we should nevertheless reach the merits of his claim of error because it presents a pure question of law, and because trial counsel was ineffective for failing to object. He also admits that the rental application was properly admitted into evidence. He contends that the error was not harmless because Ms. Bragg's statements provided the only evidence that defendant violated Penal Code section 666.5 or 532a, subdivision (1). Respondent contends that any claim of error has been forfeited, and that defendant cannot demonstrate prejudice. We agree with respondent.

"[T]he failure to object to the admission of . . . hearsay at trial forfeits an appellate claim that such evidence was improperly admitted." (*People v. Stevens* (2015) 62 Cal.4th 325, 333.) Defendant attempts to save his claim of error by arguing on direct appeal, and in his petition for habeas corpus, that trial counsel was ineffective for failing to object.

"The test for determining whether a criminal defendant received ineffective assistance of counsel is well settled. The

court must first determine whether counsel's representation 'fell below an objective standard of reasonableness.' [Citation.] The court then inquires whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' [Citations.] 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*People v. Jones* (2010) 186 Cal.App.4th 216, 234-235.) When considering a claim of ineffective assistance of counsel, it is not necessary to determine whether counsel's performance was deficient before examining whether defendant was prejudiced by the alleged deficiencies. When assessing prejudice, "the 'reasonable probability' standard applies to the evaluation of . . . a claim of ineffective assistance of counsel, even when defense counsel's alleged error involves the failure to preserve the defendant's federal constitutional rights." (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1008-1009.)

It is unnecessary for us to consider whether counsel's performance was deficient because defendant cannot demonstrate prejudice. The trial court may revoke probation if it "has reason to believe . . . that the person has violated any of the conditions of his or her supervision . . . or has subsequently committed other offenses." (Pen. Code, § 1203.2, subd. (a).) A probation violation must be established by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445-447.) "The discretion of the court to revoke an order of probation is 'very broad.' " (*People v. Di Blasi* (1961) 198 Cal.App.2d 215, 220.)

Here, even without the challenged testimony, there is substantial evidence that defendant violated probation by stealing a vehicle from Alamo Rental. Detective Mejia saw him drive and park it. When arrested, defendant was in possession of

the car keys. Defendant told the detective several improbable and inconsistent stories about the car, and he admitted lying to the detective in his initial story. The rental application included false information, including defendant's name, address, driver's license number, and phone number. Defendant acknowledged the rental application was false, saying it contained "typos." He admits the rental application was properly admitted into evidence.

Detective Mejia's observations, defendant's admissions, and the rental application provided substantial evidence that defendant violated his probation. (See *People v. Monette* (1994) 25 Cal.App.4th 1572, 1575 [a court may revoke probation based only on a defendant's extrajudicial admissions]; see also Veh. Code, § 10851, subd. (a) ["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 . . . is guilty of a public offense."].) Therefore, defendant cannot establish a reasonable probability of a different outcome absent counsel's failure to object.

### **DISPOSITION**

The order revoking probation is affirmed. The petition for habeas corpus is denied.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.