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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.

LOUIS GARCIA,

Defendant and Appellant.

B275237

(Los Angeles County
Super. Ct. No. SA089734)

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

Pamela J. Voich, 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, Paul M. Roadarmel, Jr. and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

The charges in this case arose out of an extended car chase. Louis Garcia was convicted of unlawful driving (Veh. Code, § 10851), evading a peace officer while driving recklessly (Veh. Code, § 2800.2), carrying a loaded firearm in public (Pen. Code, § 25850, subd. (a)), hit and run with property damage (Veh. Code, § 20002, subd. (a)), and firearm possession by a felon (Pen. Code, § 29800). The jury found true the allegations that Garcia had committed the crimes for the benefit of a criminal street gang with respect to the unlawful driving and firearm charges (Pen. Code, § 186.22, subd. (b)(1)). The trial court sentenced Garcia to eleven years, four months in prison.

On appeal, Garcia contends no substantial evidence supports (1) the unlawful driving conviction, (2) the firearm convictions, or (3) the gang allegations. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2015, Garcia led police on a vehicle pursuit in a stolen car. The car eventually burst into flames, and Garcia and a passenger, Daniel Marquez, exited. They were arrested. An information was filed charging Garcia as described above. It was alleged that the crimes were committed for the benefit of, at the direction of, and in association with a criminal street gang, and that Garcia had three prior convictions. Garcia pled not guilty.

At trial, the owner of the stolen car, Jacquelyn C., testified that, on the evening of January 6, 2015, she had parked her Nissan Sentra in front of her house. The next morning, the car was gone, and she filed a police report. She had not given anyone permission to drive the car, and she still had her car keys. She did not know Garcia or Marquez.

Highway patrol officer Daniel Allen testified that, the following day, he saw a Nissan Sentra make a left-hand turn in front of oncoming traffic. He activated his lights and siren, but the Sentra did not stop. The Sentra ran through stop signs, exceeded the speed limit, and drove through red lights. While driving through an intersection, the Sentra collided with a van and then drove on. The Sentra started to smoke heavily and slowed down. Officer Allen observed a silver object and blue rag get thrown out of the driver's window. Approximately 14 minutes into the chase, the Sentra burst into flames and stopped.

Garcia exited the driver's seat and laid down on the ground. Marquez got out of the right side of the car. A news van and numerous pedestrians were nearby. A news helicopter was circling overhead. Officer Allen placed Garcia in handcuffs and was searching him when Garcia asked to remove his shirt. Garcia repeated the request three times and told Officer Allen he wanted to "show his ink."

At the station, Officer Allen told Garcia he was going to take his photo. In response, Garcia removed his shirt and raised his arms and fists on either side of his head. There was a "Lil Watts" tattoo on his chest, an "H" tattoo on his right arm, and a "Hawthorne" tattoo on his left arm. He also had a "Hawthorne" tattoo over his eyebrow and a "Lil Watts" tattoo between his upper lip and nose.

Officers searched the area where Officer Allen had seen objects thrown out of the Sentra during the chase. They found a loaded revolver and a blue handkerchief on the ground. The handgun was not registered.

The prosecutor's gang expert, Hawthorne city police officer Bradley Jackson, testified that he had met with Garcia multiple

times, and Garcia had admitted to being a member of the Lil Watts gang. Officer Jackson had also met with Marquez who had admitted to membership in the gang. According to Officer Jackson's testimony, Lil Watts is a Hawthorne criminal street gang. Members of the gang commonly have tattoos of "Hawthorne" or "Lil Watts." Garcia's tattoos of "H," "Hawthorne" and "Lil Watts" were related to Lil Watts. The gang's primary activities include vandalism, robbery, assaults, shootings, murders, stealing cars, burglary, and narcotics offenses. Responding to a hypothetical question based on the facts of this case, Officer Jackson opined that the crimes were committed for the benefit of, at the direction of, and in association with the gang with the specific intent of promoting the gang.

The defense's gang expert, Martin Flores, testified that gang tattoos do not necessarily indicate current membership in a gang, but only that an individual was at some time a member of a gang. In response to a hypothetical based on the facts of this case, Flores opined that the offenses were not committed for the benefit of, at the direction of, and in association with the gang.

The jury convicted Garcia on all charges and found the gang allegations true as to the unlawful driving and firearm charges. The jury was unable to reach a verdict on the gang allegations as to the hit and run and evading a peace officer charges. The court declared a mistrial as to those allegations. The court found the prior conviction allegations true and sentenced Garcia to state prison for eleven years, four months. He timely appealed.

DISCUSSION

1. *Standard of Review*

“[I]n reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, on review of the entire record in the light most favorable to the judgment, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. [Citations.] . . . In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

2. *The Unlawful Driving Conviction is Supported by Substantial Evidence*

Garcia argues the unlawful driving conviction (Veh. Code, § 10851, subd. (a)) is not supported by substantial evidence because there was no evidence he intended to deprive Jacquelyn C. of possession of her car. We disagree as there was sufficient evidence of both intent and the absence of consent.

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”

There “are two ways of violating section 10851: the defendant can either ‘drive’ or ‘take’ the vehicle.” (*People v. Smith* (2013) 57 Cal.4th 232, 242.) Thus, a “person can violate section 10851(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).’” (*People v. Garza* (2005) 35 Cal.4th 866, 876.)

“To establish a defendant’s guilt of violating Vehicle Code, section 10851, subdivision (a), the prosecution is required to 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. [Citation.] Knowledge that the vehicle was stolen, while not an element of the offense, may constitute evidence of the defendant’s intent to deprive the owner of title and possession.” (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1574 (Italics added).) “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. [Citation.]” (*Ibid.*)

Here, the evidence strongly suggested that Garcia drove Jacquelyn C.’s car without her permission with the intent to either permanently or temporarily deprive her of possession. (See *People v. Windham* (1987) 194 Cal.App.3d 1580, 1590 [“The specific intent to deprive the owner of possession of his car may be inferred from all the facts and circumstances of the particular case. [Citations.]’ [Citation.]”].) On January 7, 2015, Jacquelyn C. reported to the police that her car was missing. She had not given anyone permission to drive the car and she did not know Garcia or Marquez. She still had all of her car keys, which

suggested that whoever was driving the car had started the car by some other method. The next day, Garcia was observed by the police to be driving the car. He fled the scene when Officer Allen attempted to pull him over. (See *In re Robert V.* (1982) 132 Cal.App.3d 815, 821 [“The flight upon detection or apprehension is sufficient to show specific intent to deprive the owner of possession.”].) This was substantial evidence that Garcia drove the car without Jacquelyn C.’s permission and with the intent to deprive her of possession.¹

3. *The Firearm Convictions are Supported by Substantial Evidence*

Garcia argues the firearm convictions (Pen. Code, §§ 25850, subd. (a) & 29800, subd. (a)(1)) are not supported by substantial evidence because there was no evidence he was in physical possession of the gun or that he should have known Marquez possessed the gun. We conclude there was sufficient evidence by which the jury could conclude that Garcia had actual or constructive possession of the gun.

Penal Code section 25850, subdivision (a) provides, “A person is guilty of carrying a loaded firearm when the person

¹ At trial, the defense put Lisbeth Delgado on the stand and asked her whether she had been with Garcia on January 8, 2015, and had seen him “recei[ve]” a vehicle. Delgado invoked her Fifth Amendment right against self-incrimination and refused to answer questions. Garcia now argues that Delgado’s refusal to answer questions “strongly supports an inference that she was directly involved” in the theft of Jacquelyn C.’s car. In fact, it is speculation; there is no evidence in the record supporting an inference that Delgado stole the car. Nor would such evidence have exculpated Garcia as the evidence established the car’s rightful owner did not give him permission to drive the car.

carries a loaded firearm on the person or in a vehicle while in any public place” Penal Code section 29800, subdivision (a)(1) provides that any person who has been convicted of a felony “who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.” Knowledge is an element of both offenses. (See *People v. Jeffers* (1996) 41 Cal.App.4th 917, 922; *People v. Jefferson* (2015) 238 Cal.App.4th 494, 502.)

Here, there was evidence a gun was thrown from the driver’s window while Garcia was driving the car. Officer Allen observed a silver object and blue rag fly out of the driver’s window while Garcia was attempting to flee the police. When officers returned to the area, they found a loaded revolver and blue handkerchief. The objects were ejected from the stolen car only after it had started to slow down and smoke heavily due to damage from its collision with the van. This evidence suggested that, when it appeared to Garcia that he could not escape from the police because of damage to the car, he attempted to rid himself of incriminating evidence—the gun—by throwing it out of the window. This was sufficient evidence Garcia had actual possession of the firearm.

Although Garcia argues that the jury could have drawn a different inference from the evidence—namely that Garcia had suddenly discovered a gun in the car and immediately thrown it out the window—it is for the trier of fact to resolve conflicting inferences from the evidence. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) On appeal, we “must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court’s findings and decision, resolving every conflict in favor of the judgment.” (*Ibid.*)

Garcia argues that video of the car chase established that the gun was thrown out of the backseat of the car. A party relying on trial exhibits must arrange to have them transmitted to the appellate court. (Cal. Rules of Court, rule 8.224(a)(1).) Here, Garcia did not transmit the video exhibit to this court. However, even if the video established that it was Marquez who threw the gun out of the car, there is substantial evidence Garcia had constructive possession of the firearm.

The prosecution's gang expert, Officer Jackson, testified that Garcia and Marquez were both members of the Lil Watts gang, that gang members typically share guns, that if two gang members are in a car with a gun, both of them would have access to it, and that before gang members would even get into a car with a gun, they would discuss where they would put the weapon so that both would have access to it. The jury was entitled to accept or reject the expert's opinion. (*Wells Truckways, Ltd. v. Cebrian* (1954) 122 Cal.App.2d 666, 678.) Evidence that the gun was thrown during the chase while Garcia was attempting to avoid capture was additional circumstantial evidence of his constructive possession of the firearm. (See *People v. Taylor* (1984) 151 Cal.App.3d 432, 436 [finding sufficient evidence of constructive possession by the driver where the gun was thrown from the passenger side of the car when "the gun was thrown soon after the chase began and [the defendant's] driving represented an unequivocal attempt to avoid capture"].)

4. *The Gang Allegations are Supported by Substantial Evidence*

Garcia contends the evidence was insufficient to support the gang allegations. In particular, he argues that (1) there was no "direct evidence" Garcia was an active gang member at the

time of the crimes, and (2) it is “uncertain” whether Garcia, in fact, told Officer Allen he wanted to “show his ink” because the claimed statement was not recorded. We conclude the gang allegations are supported by substantial evidence.

Penal Code section 186.22, subdivision (b)(1) authorizes a sentencing enhancement for felonies “committed for the benefit of, at the direction of, or in association with any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members.” “An expert’s opinion that a crime benefited a gang by enhancing its reputation for ‘viciousness’ or violence may be sufficient to raise an inference that the crime benefited the criminal gang. [Citations.]” (*People v. Garcia* (2016) 244 Cal.App.4th 1349, 1367–1368.)

Here, there was substantial evidence Garcia was an active gang member. His gang membership was evidenced by the prosecution expert’s testimony that Garcia had admitted to being a member in the Lil Watts gang, by Garcia’s gang-related tattoos, and by Garcia’s actions displaying those tattoos. Although the defense expert testified that gang tattoos did not necessarily indicate active membership in a gang, Garcia’s behavior highlighting the tattoos suggested he was an active member: Garcia asked to display his tattoos to bystanders and the media when he was arrested; and, at the police station, he voluntarily removed his shirt and struck a pose that revealed gang tattoos on his chest and arms. The jury could have reasonably inferred from these actions that Garcia was an active member of the Lil Watts gang.

Garcia next contends that it is “uncertain” whether he, in fact, ever asked Officer Allen to take off his shirt in order to “show his ink” because no statement was recorded. At trial,

Officer Allen testified that Garcia asked him to remove his shirt when he was arrested so Garcia could “show his ink,” which Officer Allen interpreted as a desire to show “his tattoos to the news and bystanders near the scene.” When we review a conviction for substantial evidence, we may not reweigh the factfinder’s credibility findings. (*People v. Young, supra*, 34 Cal.4th at p. 1181.) Here, the jury implicitly found Officer Allen to be credible even without a recording of the statement, and we may not reconsider this finding on appeal.

We conclude there was substantial evidence in support of the gang enhancements. With respect to the firearm charges, Officer Jackson opined that gang members use guns for their “daily activities,” share guns, and pass guns from one individual to another in order to avoid detection by law enforcement. He testified that Garcia was in the car with another Lil Watts gang member, Marquez, and that, when two members of a gang are in the car with a gun, both would have access to it. When given the hypothetical based on the facts of this case, Officer Jackson opined that the gang members carried the gun for offensive and defensive purposes in order to enhance their gang’s reputation for violence. Based on this testimony, the jury could reasonably infer that Garcia possessed the gun in association with and for the benefit of the gang. (See, e.g., *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 [where three gang members committed a crime together and there was no evidence they were “on a frolic and detour unrelated to the gang,” “the jury could reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members.”].)

With respect to the unlawful driving charge, Officer Jackson opined that stealing cars was among the primary activities of the Lil Watts gang, and that gangs use stolen cars to commit crimes. The evidence showed that Garcia led the police on an extended car chase while he was driving a stolen car with Marquez as passenger. When Garcia was arrested, he asked to display his gang tattoos to bystanders and media present. Officer Jackson opined that such a display of gang tattoos at the scene of the arrest would have helped the gang gain notoriety for brazenly committing crimes. From this evidence, a reasonable jury could conclude that Garcia unlawfully drove the car for the benefit of and in association with the gang.

As to the specific intent prong of the enhancements, the substantial evidence Garcia intended to and committed the charges with Marquez was sufficient to establish Garcia's specific intent to further criminal conduct by another gang member. (See *People v. Albillar* (2010) 51 Cal.4th 47, 68 ["[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members."].)

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.