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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN T. COLLINS,

Defendant and Appellant.

A129131

(Contra Costa County
Super. Ct. No. 05-100210-4)

Defendant Brian T. Collins appeals from a judgment entered after a jury found him guilty of receiving stolen property, in violation of Penal Code Section 496.¹ Defendant's appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requests that we conduct an independent review of the record. Defendant was informed of his right to file a supplemental brief and did not file such a brief. Having independently reviewed the record, we conclude there are no issues that require further briefing, and therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 4, 2010, the Contra Costa County District Attorney filed an information charging defendant in count 1 with first degree burglary of a residence inhabited by Nackie Aldrich (§§ 459/460, subd. (a)); in count 2 with receiving stolen property (§ 496, subd. (a)); and in count 3 with unlawfully taking Aldrich's vehicle, a Toyota RAV-4 (Vehicle Code section 10851, subd. (a)). The information also alleged that for purposes

¹ All statutory references are to the Penal Code unless otherwise stated.

of section 667.5, subdivision (b), defendant suffered a prior conviction with a prison term and failed to remain free of custody for a period of five years before committing the current offenses. The information further alleged that defendant had suffered seven prior felony convictions and on that basis was ineligible for probation, pursuant to section 1203, subdivision (e)(4).

A jury trial commenced on May 5, 2010. Ken Bartizal, testifying for the prosecution, stated that Nackie Aldrich is his good friend. They belong to the same church and are in a lot of groups together. During the week of January 11, 2010, Bartizal stayed at Aldrich's four bedroom home in Walnut Creek, house sitting while Aldrich was out of town. Aldrich's Toyota RAV-4 was parked in the garage while Bartizal was house sitting.

Bartizal also testified that Bryan Jones lives with his grandparents in Bartizal's neighborhood, that he has known Jones for about eight months, and considers him a "neighborhood friend" whom he helps out occasionally. On January 11, 2010, Bartizal met Jones at the local store. Jones asked Bartizal if he could stay overnight with Bartizal in order to "give his grandfather a break." Bartizal agreed, and the two returned to Aldrich's house. Later in the evening, Bartizal drove Jones back to the store so Jones could buy cigarettes. Jones was in the store for about 10 minutes before returning to the car alone. After Bartizal and Jones got back to Aldrich's house, Bartizal went to the bathroom. While he was in the bathroom, Bartizal could hear Jones talking to someone. When Bartizal went back into the living room, he saw Jones talking with defendant at the front door. Jones said to Bartizal, "This is Brian Collins. . . . Can he spend the night?" Bartizal was uncomfortable having two guests in Aldrich's house but reluctantly agreed defendant could stay because Jones said defendant had nowhere else to go. About 5:00 a.m. on the morning of January 12, Bartizal got up to "check on" Jones and defendant. He found the two of them in the laundry room, from which a door leads into the garage. Bartizal thought it was odd they were in the laundry room. A few hours later, all three left the house in Bartizal's vehicle and he dropped Jones and defendant off before going to class.

About 9:00 a.m. on the morning of January 13, Bartizal answered the doorbell at Aldrich's house, and found two women on the doorstep. They said, "Hi, is Bryan here?" They told Bartizal they were "supposed to meet Bryan here. He's supposed to give us a ride." One of the women asked to use the restroom, so Bartizal let them into the house. After the woman used the restroom, she went into the kitchen and was talking to someone on her cell phone. Bartizal offered to give the women a ride because he did not want anyone else showing up at the house. The round trip to Martinez, where he dropped the women off, took about 20 minutes. When Bartizal got back, the first thing he noticed was that the garage door was open and Aldrich's Toyota RAV-4 was missing. Bartizal called the police. Before police arrived, Bartizal discovered that the house cordless phone was missing and that the bag containing his wallet and other items was gone. Bartizal gave a statement to the police about the events of that morning.

Within an hour of the police leaving the house, Bartizal received a call that they had located the car. Bartizal drove to the location and saw Aldrich's RAV-4 parked on the street in the wrong direction. Police showed Bartizal items found in the vehicle. He identified his bag, which still contained most of its contents. Bartizal also recognized the cordless phone from Aldrich's house as well as Aldrich's jewelry box, and items of jewelry he had seen Aldrich wearing before. Police also showed Bartizal a small manila envelope containing a diamond ring, which he identified as belonging to Aldrich.

Other prosecution witnesses included Contra Costa County Deputy Sheriff Kevin Cook. Cook testified that on the morning of January 13, 2010, he responded to an address after receiving an anonymous tip about a possible stolen vehicle. Upon arrival, Cook located a Toyota RAV-4 and confirmed it had been reported as stolen. Cook set up surveillance of the vehicle from a position nearby. Shortly thereafter, Cook saw the RAV-4 driving by at a high rate of speed in the direction of the freeway. Cook set off in pursuit with his lights and siren activated but lost the RAV-4 when he had to slow for a red light. Next, Cook heard on the radio that the vehicle has been located by other officers. When Cook arrived at the location, he saw defendant being taken into custody. Just around the corner, about 150 feet from where defendant was apprehended, Cook saw

the RAV-4 parked on the wrong side of the street with the driver's door open, the engine still running, and the keys in the ignition. Among the items Cook found in the vehicle was a cell phone. Cook's partner turned the cell phone on and it displayed several photographs of defendant. Cook saw Deputy Hamlin search defendant before placing him in Cook's vehicle. On defendant's person, Hamlin found a small manila envelope containing a diamond ring with a gold band.

Sergeant Ethan Katz, from the Contra Costa County Sheriff's Department, testified that he and his partner assisted Deputy Cook in the surveillance of the RAV-4 after it had been identified as stolen. They joined in the pursuit when the RAV-4 drove off. At some point, they lost sight of the RAV-4. A maintenance worker pointed out which way the RAV-4 had gone. As they turned into Tower Drive, Katz immediately noticed the RAV-4 parked the wrong way on the street. They drove past the vehicle, turned right, and immediately saw defendant walking quickly away from the scene. Katz and his partner yelled, "Sheriff's department. Stop." Katz jumped out of the police car with his weapon drawn, pushed defendant to the ground, and handcuffed him.

Last, the prosecution called California Highway Patrol Officer Jonathan Lockhart. Lockhart testified that on January 13, 2010, about 11:30 a.m., he left the Highway Patrol office and drove eastbound towards I-680 on Blum Road. Just then, he noticed a westbound vehicle approaching about 60 miles per hour. The posted speed limit on Blum Road is 35 miles per hour. Lockhart identified the vehicle as "a Toyota RAV-4, smaller SUV." As the vehicle sped past him going west, Lockhart noticed the male driver was "staring in the rear view mirror, and his eyes were huge." Lockhart also noticed that there were two female passengers in the vehicle, one in the front passenger seat and one seated in the middle of the rear seat. Within seconds, Lockhart saw a Contra Costa Sheriff's patrol car with its emergency lights activated, apparently in rapid pursuit of the RAV-4. After making a U-turn, Lockhart heard on his radio that a suspect had been detained, and proceeded to the location. Upon arrival, he saw defendant in the rear of a patrol car and identified him as the driver of the RAV-4. On cross-examination, Lockhart admitted that he saw the driver of the RAV-4 for about one second as their vehicles

passed going in opposite directions. He also admitted that the driver of the RAV-4 was wearing a beanie, and defendant was not wearing a beanie, and did not have a beanie with him, when he was arrested.²

At close of the evidentiary phase of the trial, defense counsel argued the prosecution had proved only that defendant was in the car some two hours after it was stolen, that “he and everyone else in the car fled on foot, and when he was detained, he had the ring in the manila envelope in his pocket. That’s all that’s been proved. For that reason, you should convict him on Count 2, receipt of stolen property, but by no means should you convict him of Count 1, the residential burglary, or Count 3, the unlawful taking or driving of the RAV-4.”

The jury obviously concurred with defense counsel’s view of the evidence because, on May 11, 2010, it returned a guilty verdict on count 2 and not guilty verdicts on counts 1 and 3. After the jury verdicts were returned, defendant waived the right to a jury trial on his prior convictions. Based on documentation offered by the prosecution, the trial court concluded that defendant’s prior prison conviction and the prior convictions listed for purposes of probation ineligibility had been “established to the court’s satisfaction.”

The trial court held a sentencing hearing on June 23, 2010. The trial court denied defendant’s request for probation and imposed the midterm of 2 years in state prison on count 2 (receipt of stolen property). In addition, the court imposed a consecutive 1-year term under section 667.5 for defendant’s prior prison term. The court awarded 162 days of actual credit with 162 days of custody credits for total presentence credits of 324 days, and imposed appropriate fines and fees. The abstract of judgment filed on June 28, 2010, accurately reflects the trial court’s oral pronouncement of judgment. Defendant filed a timely notice of appeal on June 24, 2010.

² Defendant did not testify at trial. The only defense witness was Bryan Jones. Jones testified that on several occasions Bartizal made sexual advances towards him and that on the evening of January 11, 2010, Bartizal offered him money for sexual favors. Jones testified he was relieved to meet defendant at the store, and asked defendant to come to Aldrich’s house to help shield Jones from Bartizal’s sexual advances.

DISCUSSION

We have reviewed the entire record and conclude there are no arguable issues that warrant further briefing. Defendant was ably represented at trial. Defendant's conviction for receipt of stolen property was supported by substantial evidence. Whereas, after receiving evidence at the bifurcated trial on defendant's priors, the trial court found the priors had been proved "to the court's satisfaction," we presume the court's finding was based on the correct standard of proof beyond a reasonable doubt. (See *People v. Mack* (1986) 178 Cal.App.3d 1026, 1032 ["It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties. (Citations.)"].) The trial court did not abuse its discretion in denying probation. There was no prosecutorial misconduct and no instructional or sentencing error. Appellant was adequately represented by counsel at every stage of the proceedings. There are no issues that require further briefing.

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.