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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. ADAM SAMUEL WEATHERSPOON, Defendant and Appellant.	C050357 (Super. Ct. Nos. CRF04-6698 & CRF00-6620)

Defendant Adam Weatherspoon pleaded no contest to a charge of possessing cocaine base for sale, and was granted probation. While still on probation, he was charged with unlawfully driving or taking a vehicle, transportation of cocaine base and possession of cocaine base for sale. A jury found him guilty of the vehicle charge and transportation charge, but were unable to reach a verdict on the charge of possession for sale. The trial court sentenced defendant to a total of nine years.

Defendant argues the evidence was insufficient to sustain his conviction on the vehicle charge, he received ineffective assistance of counsel, and the trial court's imposition of consecutive sentences divorced from any factual determination by the jury violated his Sixth and Fourteenth Amendment rights. We find no error and shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2000, defendant pleaded no contest to a charge of possession of cocaine base for sale. On January 18, 2001, he was granted probation for a period of three years, which was later extended to January 18, 2005.

On October 21, 2004, West Sacramento Police Officer Nathan Steele was on patrol in his vehicle when he noticed a 2005 Chevrolet Malibu Classic parked in the parking lot of a Motel 6. A check of the license plate number revealed that the car had been reported stolen two days earlier. Approximately 20 minutes later, at 1:30 p.m. defendant drove away in the car, accompanied by another man and a woman.

Steele followed the Malibu as it entered the freeway and continued eastbound. By this time another patrol unit had responded as well. Steele activated his lights and siren to stop the Malibu, but instead of pulling over the driver, defendant, began "flipping [them] off."

Defendant exited the freeway and drove approximately a half mile before pulling into a parking lot. Multiple officers had arrived and had their guns pointed at the individuals in the car. Steele told them to put their hands in the air, at which

point defendant "flipped [them] off again." Defendant then said, "The car is not stolen." At that point no one had mentioned anything about the vehicle being stolen.

Defendant was hostile and uncooperative. He began making furtive movements with his hands, so Steele pointed a taser at him and told him he would be tasered if he did not comply. Steele placed defendant under arrest and searched him. Defendant had 11 pieces of individually wrapped cocaine base in his right front pants pocket.

Defendant waived his *Miranda*[1] rights and told Steele he had obtained the Malibu from his "God sister" whose name he did not know. He later said his God sister was named Lisa, that she was a prostitute, and that she would "rip off" her clients. He said that was how she had obtained the car. When Steele suggested defendant must have known the car was stolen, defendant "back-peddled" and said he did not know the car was stolen.

The Malibu had been rented from Alamo Car Rental. Steele asked defendant if he had rented the car and had any rental paperwork. Defendant replied, "No." The rental documents for the Malibu indicate it was rented by Lawrence McIntosh on October 16, 2004, and was to have been returned on October 20, 2004. A copy of the rental agreement for the Malibu was located by a lieutenant of the Yolo County jail in a bag belonging to defendant. The parties stipulated that the Yolo County District

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[1] *Miranda* v. *Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

Attorney's office had been unsuccessful in locating Lawrence McIntosh.

The jury found defendant guilty of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) and transportation of cocaine base (Health & Saf. Code, § 11352, subd. (a)), but were unable to reach a verdict on the charge of possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) The trial court found true a sentence enhancement for a prior drug conviction (Health & Saf. Code, § 11370.2, subd. (a)) based upon defendant's no contest plea in the 2000 case. The sentence enhancement provides for a consecutive three-year term. (Health & Saf. Code, § 11370.2, subd. (a).)

The trial court sentenced defendant to a total aggregate term of nine years, consisting of four years for the offense of transporting cocaine base, three years for the enhancement, eight months for the vehicle charge, and 16 months for the charge of possessing cocaine base (to which defendant pleaded no contest in 2001). All terms were consecutive.

DISCUSSION

I

Sufficiency of the Evidence

Unlawfully driving or taking a vehicle occurs when a person drives or takes a vehicle without the consent of the owner with the intent to permanently or temporarily deprive the owner of title or possession of the vehicle. (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1736; Veh. Code, § 10851, subd. (a).) Defendant argues there was insufficient evidence to prove

defendant drove the Malibu without the consent of the owner or that he had the specific intent to deprive the owner of possession.

Defendant argues the testimony of the Malibu's owner, Alamo Rental Car, was required to establish that the car was stolen, or that defendant did not have the owner's consent to drive the car. Defendant cites *People v. Rodgers* (1970) 4 Cal.App.3d 531, in which the court of appeal reversed an auto theft conviction where the owner's husband testified the vehicle had been stolen, but the owner did not testify. Here, however, there was specific evidence that defendant did not have the owner's consent to drive the Malibu.

The prosecution subpoenaed the rental records of the Malibu for the month of October 2004. The last person to rent the car was Lawrence McIntosh on October 16th. McIntosh's name was the only one listed on the rental agreement. The back of the rental agreement stated anyone but the "authorized driver" was prohibited from driving the vehicle. The agreement defined "authorized driver" as the licensed driver named on the front of the agreement. The agreement stated any changes were required to be in writing. Defendant was not named on the front of the agreement. Accordingly, he did not have the permission of the owner to drive the car.

Defendant argues subdivision (c) of Vehicle Code section 10851, which states: "In any prosecution for a violation of subdivision (a) . . . the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or

implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person[,]" necessarily includes the corollary that the owner's lack of consent cannot be implied from consent on a previous occasion. We are aware of no rule of construction, and defendant has specified none, which would necessarily imply such a corollary. Certainly in this situation, where there was no authorized lease of the vehicle for the date defendant was driving it, and where there was no authorization for defendant to drive the vehicle, the evidence was sufficient to show unauthorized use.

The evidence defendant had the intent to deprive the owner of possession of the vehicle was also sufficient. The jury could have inferred defendant's specific intent to deprive the owner of possession of the vehicle from defendant's inconsistent statements about the vehicle's ownership, whether it was stolen, and from the fact that defendant had the rental agreement in his possession indicating the Malibu had been rented to someone else and that the rental period had expired.

II

Effective Assistance of Counsel

Defendant argues his trial counsel was ineffective for failing to object to the admission of inadmissible hearsay testimony, namely officer Steele's statement that the Malibu had been reported stolen. To succeed on this argument, defendant has the burden of showing trial "'counsel's representation fell below an objective standard of reasonableness . . . under

prevailing professional norms[,]'" and that he suffered prejudice as a result of the ineffective representation. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216-217.) Prejudice is shown if there is a reasonable probability that the result would have been more favorable to defendant but for the unprofessional error. (*People v. Williams* (1997) 16 Cal.4th 153, 215.)

If the record on appeal shows no reason why trial counsel acted or failed to act in the challenged manner, the claim must be rejected on appeal unless there simply could be no satisfactory explanation or unless counsel was asked for an explanation and failed to give one. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.) The record here sheds no light on why trial counsel did not object to the evidence. The decision to object to inadmissible evidence is inherently a tactical decision, and failure to object seldom establishes incompetence. (*People v. Williams, supra,* 16 Cal.4th at p. 215.) Counsel could have concluded the evidence was not hearsay because it was being offered to explain officer Steele's action, or that the testimony was not prejudicial since defendant contended he thought he legitimately was in possession of the vehicle. On this record we cannot say that there simply could not be any satisfactory reason for failing to object to the introduction of the evidence. Defendant has not established incompetence.

III

Blakely Error

Defendant argues the trial court's decision to impose consecutive terms for counts one and two were divorced from any

factual determination by the jury and therefore violated his Sixth and Fourteenth Amendment rights, as construed by the United States Supreme Court in *Blakely v. Washin*gton (2004) 542 U.S. 296 [159 L.Ed.2d 403] and *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435]. The California Supreme Court rejected this argument in *People v. Black* (2005) 35 Cal.4th 1238, 1244. We are bound by this decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

DISPOSITION

The judgment is affirmed.

BLEASE, J.

We concur:

SCOTLAND, P. J.

MORRISON, J.