

No. 1-12-1879

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 20501
)	
SHARRON GREEN,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* Evidence was sufficient to find defendant guilty of possession of a stolen motor vehicle; knowledge and intent were properly inferred from keeping a rental vehicle for over a month after payment ran out and demand for its return was made, and court could reasonably find defendant's explanation improbable. Sentence was not excessive.

¶ 2 Defendant-Appellant, Sharron Green, rented a Dodge Avenger from Enterprise Car Rental in Columbus, Ohio, for four days – September 28, through October 1, 2010. When he failed to return the car by November 1, Enterprise reported it stolen. Green was arrested while

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driving the car in Chicago on November 4, 2010, and was later charged with possession of a stolen motor vehicle (PSMV) and theft. After a bench trial, he was found guilty of both offenses and sentenced as a Class X offender but only on the PSMV charge, to 8 ½ years in prison.

¶ 3 On appeal, Green challenges the sufficiency of the evidence to convict as well as the length of his sentence. Finding no error on either point, we affirm.

¶ 4 At Green's bench trial, Enterprise risk manager Mark Cimaroli testified that Green rented the Dodge from the Columbus, Ohio Enterprise office on September 28, 2010. Green paid by credit card a \$250 deposit towards the rental fee and rented the Dodge through October 1. When the Dodge was not returned to Enterprise on October 1, Enterprise applied the balance of Green's deposit as it was sufficient to cover rental through October 4. But when the Dodge was not returned on October 4, Enterprise phoned Green to ask for its return; Green promised to appear and make an additional payment. When he had neither done so nor returned the Dodge by October 8, Enterprise sent a signature-required letter to Green informing him "that he was no longer authorized to drive the vehicle" and demanding that he inform Enterprise of the Dodge's whereabouts so Enterprise or the police could recover it. Enterprise received confirmation that Green signed for the letter on October 11. Green did not make an additional payment or return the Dodge in the remainder of October 2010, and Enterprise reported the Dodge stolen to the Columbus police on November 1. Chicago police informed Cimaroli that they found the Dodge on November 4. Enterprise listed the value of the Dodge in October 2010 as approximately \$17,500.

¶ 5 Police officer Dennis Graber testified that he stopped Green on the evening of November 4 because Green was not wearing a seatbelt. When a record search showed that the Dodge Green

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was driving had been reported stolen in Ohio, he was arrested. A rental agreement showing the initial rental period was in the Dodge. When Officer Graber asked Green "what's the deal with the car," Green replied that "he realized he kept the car longer than he should have."

¶ 6 At the close of the State's case, Green moved for a directed finding, arguing that there was no evidence that he knew the Dodge was stolen or intended to permanently deprive Enterprise of the Dodge. Green's motion was denied.

¶ 7 Green testified that he lived in Columbus in September 2010 and rented a car from Enterprise for a business trip to Chicago. He paid a \$250 deposit by credit card to rent the car until October 1, and was told that he could extend the rental either online or at an Enterprise office. As he had additional business in Chicago, he tried on October 1 to extend his rental online until November 5 using the information he provided Enterprise earlier. Green believed that the extension was successful. On cross-examination, Green admitted that on October 11 he received, signed for, and read the letter from Enterprise demanding return of the vehicle. He phoned the Enterprise office in Columbus where he rented the Dodge and informed an Enterprise employee named "Mike" that he had extended rental online; he was told that there was a problem with his account, his credit card had been declined and he had to provide additional payment. Green admitted he made no additional payment based on his claimed belief that he had already paid to extend the rental through November 5th as well as his understanding that he could pay for the car when he returned to Columbus on the 5th. Green also admitted that after receiving the October 11 letter, he realized that his extension payment had been unsuccessful because a check he had deposited into his account had "bounced." He later phoned Enterprise again and spoke to the same employee as on the 11th. He was told that there would be no issue so long as

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he made an additional payment by November 5. But before he could make that payment, Green was stopped by police on November 4, at which time he showed the officer the rental agreement; he denied telling an officer that he kept the Dodge "a little longer than [he] should have."

¶ 8 Cimaroli testified in rebuttal that Enterprise records showed no contact with Green after October 4. Enterprise rents cars on "a pre-payment basis," and it is not Enterprise's policy "to allow a renter to continue to possess a car without paying for it," so that Green was unauthorized to possess the Dodge "once the deposit was used up."

¶ 9 The court found defendant guilty of PSMV and theft. The court noted that Green had no proof beyond his testimony that he extended rental online, and there was evidence that "they don't do business like that. You pay for the car up front." The court found unconvincing Green's testimony that he believed he could keep the Dodge until November 5.

¶ 10 Green filed and amended a post-trial motion, arguing, among other things, insufficiency of the evidence. Following arguments, the motion was denied.

¶ 11 The pre-sentencing investigation report (PSI) detailed Green's prior convictions: attempted eavesdropping for which he received 364 days' jail in 2009, armed robbery for which he was sentenced to 20 years' imprisonment in 1998, criminal trespass to vehicles for which he was placed probation in 1997, and a 1992 sentence of six years' imprisonment for aggravated unlawful restraint, armed robbery, and PSMV. Green was born in 1975 and raised primarily by his mother in neighborhoods he described as "horrible." His relationship with his estranged father was "not too close," and he alleged physical abuse by his father as well as neglect. He has custody of his 14 year-old son and reported spending most of his free time with him. He has never married and has resided with either his mother or his fiancée. He completed elementary

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school, did not complete high school due to juvenile detention, and received his high school equivalency certificate and mechanic's certificate while incarcerated. He had some unskilled employment and was otherwise supported by his girlfriend. He reported good physical health and a period of depression treated by Zoloft. Green admitted to drinking alcohol daily, to the point that it concerned his fiancée, and to marijuana use. Green was a member of the Black Gangsters and achieved the rank of "general," but left the gang 14 or 15 years earlier while in prison.

¶ 12 At the June 2012 sentencing hearing, the State sought a "significant" sentence based on Green's criminal history. Green argued that the only harm from his offense was financial harm to Enterprise, that he has a son who would suffer hardship from being deprived of his father, that he received "custodial training" while in jail, and that he has a history of drug and alcohol abuse. Green thus sought leniency, but conceded that he was subject to Class X sentencing. The court ascertained from Green that he was in prison when his son was born and was incarcerated for the first eight years of his son's life. Based on his criminal background, the court found Green subject to Class X sentencing for the Class 2 felony of PSMV and, without mentioning the theft charge, sentenced him on PSMV alone to eight and one-half years' imprisonment. The court remarked that Green would "do approximately four years" in prison on the sentence, noting that he had been in custody for approximately two years. Per the mittimus, Green was entitled to 580 days' credit for presentencing detention.

¶ 13 Green's motion to reconsider his sentence was denied, and this appeal followed.

¶ 14 On appeal, Green first contends that the evidence was insufficient to find him guilty of PSMV beyond a reasonable doubt, and raises the related contention that his conviction for theft

of property exceeding \$10,000 in value must be reduced. With respect to the latter issue, we note that the record is clear that although Green was found guilty of both PSMV and theft, he did not receive a separate sentence on the theft charge. Therefore, we need not consider any claimed error with respect to that charge.

¶ 15 A person commits the offense of possession of a stolen motor vehicle when "not entitled to the possession of a vehicle [he does] receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted." 625 ILCS 5/4-103(a)(1) (West 2010). Whether a defendant had such knowledge may be established by proof of circumstances that would cause a reasonable person to believe that the property was stolen. *People v. Miller*, 2013 IL App (1st) 110879, ¶ 55. While an inference of guilt arising from stolen property may be rebutted by a defendant's reasonable explanation, the trier of fact is not required to accept the defendant's version of events but may determine its reasonableness -- its probability or improbability -- in light of the surrounding circumstances. *Id.*; *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990).

¶ 16 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. Because it is the role of the trier of fact to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trier of fact on issues involving the weight of evidence or witness credibility. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together

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satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt regarding the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 17 Here, taking the evidence in the light most favorable to the State, we cannot conclude that no reasonable finder of fact could find Green guilty of PSMV. While Green testified to believing that he extended his rental of the Dodge through November 5, the court could reasonably find from Cimaroli's testimony -- both to Enterprise policy in general and to its records and actions regarding the Dodge in particular -- that Green could not make such an extension online and did not receive the purported assurances by phone. It was also not unreasonable for the court to find that Green admitted to keeping the Dodge longer than he should when he presented the police with a rental agreement that showed the rental period expired on October 1st. Moreover, it was reasonable for the trial court to conclude that this statement contradicted Green's purported belief that his possession of the Dodge was rightful through November 5 -- that is, cast further doubt on his provided explanation -- rather than somehow negating or refuting intent to permanently deprive Enterprise of the Dodge. In sum, (1) Green's possession of the Dodge for a month beyond the rental covered by his deposit, after Enterprise sent and Green received the letter demanding its return and declaring his further possession unauthorized, are circumstances that would cause a reasonable person to believe that

the Dodge was stolen, and (2) it was reasonable under the circumstances for the court to consider Green's explanation improbable.

¶ 18 Green also contends that the court abused its discretion by sentencing him to eight and one-half years' imprisonment.

¶ 19 PSMV is a Class 2 felony. 625 ILCS 5/4-103(b) (West 2010). The mandatory Class X offender statute provides that a defendant over 21 years old convicted of a Class 1 or Class 2 felony, after two separate and sequential convictions for felonies of Class 2 or greater "shall be sentenced as a Class X offender." 730 ILCS 5/5-4.5-95(b) (West 2010). A Class X felony is punishable by 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). As noted, Green does not dispute that the trial court was required to sentence him as a Class X offender.

¶ 20 A sentence within statutory limits is reviewed for an abuse of discretion, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 22 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court is in a superior position to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits.

Snyder, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *People v. Powell*, 2013 IL App (1st) 111654, ¶ 32; *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *Brewer*, 2013 IL App (1st) 072821, ¶ 57.

¶ 23 Here, it is apparent from the record that the court was not "dismissive" of Green's intention to take care of his son, as he argues, but instead drew a reasonable contrast between Green's love and desire to care for his son and his repeated offenses and imprisonments that separated him from his son for over half his son's life. The record also belies Green's assertion that "according to his record, he has not committed a crime since 2007;" his PSI shows a 2009 conviction (in a case with a 2009 arrest date and case number) for attempted eavesdropping punished by 364 days in jail. Lastly, contrary to defendant's contention that it is "surely" improper, this court has repeatedly held that the trial court may consider good-time credit in fashioning a sentence. See *People v. Reedy*, 295 Ill. App. 3d 34, 37 (1998), and cases cited therein. Taking the record as a whole, we conclude that the court did not abuse its discretion in imposing a sentence near the low end of the applicable Class X range.

¶ 24 Accordingly, the judgment of the circuit court is affirmed.

¶ 25 Affirmed.