2018 IL App (1st) 161525-U

No. 1-16-1525

Order filed September 14, 2018

SIXTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 60034
	)	
SHAWN ROBINSON,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was insufficient to prove defendant guilty beyond a reasonable doubt of aggravated possession of a stolen motor vehicle and aggravated fleeing or attempting to elude a peace officer.

¶ 2 Following a bench trial, defendant Shawn Robinson was found guilty of aggravated possession of stolen motor vehicle (625 ILCS 5/4-103.2(a)(7)(A) (West 2014)) and aggravated

fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2014)). The court merged the counts and sentenced defendant to five years in prison on aggravated possession of a stolen motor vehicle. On appeal, defendant contends that (1) the State failed to prove him guilty beyond a reasonable doubt of aggravated possession of a stolen motor vehicle because it did not prove that the car he was driving was the same car named in the charging instrument, (2) the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer because it did not prove that the officer was in uniform or that his emergency equipment was illuminated oscillating, rotating, or flashing red or blue lights, and (3) various assessed fines, fees, and costs were improperly imposed. We reverse defendant's convictions.

¶ 3 At trial, the parties stipulated that Milo Young would testify that, on December 30, 2014, he was the owner of a 2007 Ford Taurus. At 12:30 p.m. that day, Young left his vehicle parked, unlocked, and running so he could warm it up. When Young came back to his vehicle, he saw an unknown person driving off with it. Young would testify that he did not know defendant and he never gave him or anybody else permission to use his vehicle. The court admitted into evidence a certified copy of Young's vehicle registration record.

¶ 4 Chicago police officer Vincent Ryan testified that, on January 1, 2015, at about 8:50 p.m., he was on routine patrol and saw a four-door green Ford fail to use a turn signal. Ryan turned on his police car's emergency equipment to attempt to curb the vehicle. The Ford vehicle began to swerve and accelerated. Ryan continued to pursue it. The vehicle drove erratically, failed to stop at two stop signs, and went the wrong direction on a street. The vehicle eventually

turned into an alley and struck a cement pole and an iron fence, after which it came to a complete stop. Ryan placed the driver, identified in court as defendant, into custody.

¶ 5 Ryan ran the license plate attached to the green Ford vehicle through the LEADS system, which showed that the vehicle had been reported stolen. At the police station, Ryan read defendant his *Miranda* warnings and defendant indicated he understood them. Ryan asked defendant where he got the vehicle. Defendant told Ryan he purchased it for $70 because it was cold outside and he did not want to take the bus. Defendant stated that the person he bought the vehicle from told him "to be careful because the vehicle was hot."

¶ 6 Ryan contacted the owner of the vehicle and alerted him that his car had been found. The following exchange occurred when the State asked Ryan about the owner's identity:

> "[ASSISTANT STATE'S ATTORNEY]: Did you alert the owner of the vehicle that his car had been found?
>
> [THE WITNESS]: Correct, yes.
>
> [ASSISTANT STATE'S ATTORNEY]: And is the owner of that vehicle –
>
> THE COURT: There's already a stipulation to this. I don't need hearsay that I'm not going to consider. I'm only going to consider the stipulation.
>
> I don't need hearsay."

¶ 7 On cross-examination, Ryan testified that, when he first saw the Ford Taurus, he had no reason to believe it was stolen. The vehicle did not have any broken windows, the keys were in the ignition, and the steering column was intact. There was nothing about the vehicle that indicated to Ryan that the car had been stolen. Ryan did not realize it was a stolen vehicle until he ran it through the LEADS system.

¶ 8 Before closing argument, the court noted that it wanted the parties to address the fact that the *Miranda* warnings were never put forth in the record and Officer Ryan testified about defendant's statement after he was arrested. The State argued that Ryan testified that he issued *Miranda* warnings to defendant and defendant understood them but that, even without defendant's statement, there was sufficient evidence to prove him guilty beyond a reasonable doubt. During defense counsel's argument, the court stated that it was not going to consider defendant's statement. The court found defendant guilty of aggravated possession of a stolen motor vehicle and aggravated fleeing or attempting to elude a peace officer. The court merged the counts and subsequently denied defendant's motion for a new trial. The court sentenced defendant to five years in prison on aggravated possession of a stolen motor vehicle.

¶ 9 Defendant first contends on appeal that the State failed to prove him guilty beyond a reasonable doubt of aggravated possession of a stolen motor vehicle because the State failed to prove that the car he was driving was the same car named in the charging instrument, *i.e.*, Milo Young's 2007 Ford Taurus.

¶ 10 When reviewing the sufficiency of the evidence on appeal, the question is whether, "after viewing 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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). We will not substitute our judgment for that of the fact finder on issues concerning the weight of the evidence or the credibility of the witnesses. *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 11. To sustain a conviction for an offense, the State must prove all of its elements beyond a reasonable doubt. *People v. Rankin*, 2015 IL App (1st) 133409, ¶ 15. We may reverse a conviction if the evidence is so unsatisfactory

as to justify a reasonable doubt of the defendant's guilt or when proof of an element is wholly lacking. *Robinson*, 2013 IL App (2d) 120087, ¶ 11.

¶ 11 To prove defendant guilty of aggravated possession of a stolen motor vehicle, as charged here, the State must prove that defendant was the driver or operator of a vehicle, he was not entitled to possession of that vehicle, and he knew it was stolen or converted. 625 ILCS 5/4-103.2(a)(7)(A) (West 2014). The State must also prove that he was given a signal by a peace officer directing him to bring the vehicle to a stop and he willfully failed or refused to obey the direction, increased his speed, extinguished his lights or otherwise fled or attempted to elude the officer. *Id.*

¶ 12 The State is not required to prove ownership of a stolen vehicle. *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992). However, the State must prove that someone other than the defendant had a superior interest in the car identified in the charging instrument. *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990). The State may establish this element by circumstantial evidence and reasonable inferences drawn therefrom. *Fernandez*, 204 Ill. App. 3d at 109. If the State uses evidence of ownership to establish superior interest, it must present evidence that the defendant possessed the same vehicle that was owned by the complainant. *Smith*, 226 Ill. App. 3d at 438. As an alternative to proving ownership, the State may present chain of custody evidence linking the recovered vehicle to the one named in the charging instrument, which may provide a basis for a proper inference of identification. *Smith*, 226 Ill. App. 3d at 438.

¶ 13 We find that defendant's conviction must be reversed because the evidence did not establish that the car defendant was driving was the same car named in the charging instrument, *i.e.*, Milo Young's 2007 Ford Taurus. The evidence established that Young's car shared the same

make (Ford) and model (Taurus) with the car defendant possessed. However, the evidence did not show that they shared the same year or color. Ryan testified defendant possessed a four-door green Ford but Young's stipulation did not establish the color of his car. The parties stipulated that Young's car was a 2007 Ford Taurus, but Ryan did not testify about the year of the car defendant was driving. Thus, the evidence showing that the cars shared the same make and model was insufficient to prove that the car defendant possessed was Young's stolen car. See *People v. Walker*, 193 Ill. App. 3d 277, 279 (1990) (evidence showing the make and model of a stolen vehicle, without more, is insufficient to prove ownership); *People v. Stone*, 75 Ill. App. 3d 571, 574 (1979) ("courts have been wary when the only testimony with respect to the identity of the car is a description of the year and make of the automobile"); *People v. Williams*, 24 Ill. 2d 214, 215 (1962).

¶ 14 Further, the evidence failed to establish a sufficient link between the vehicle defendant possessed and Young's vehicle through other matching identifiers. There was no evidence presented that the vehicles shared the same license plate number, vehicle identification number, or any other unique characteristics, such as similarly damaged areas or descriptions of the interior. See *Stone*, 75 Ill. App. 3d at 574 (concluding that the evidence of ownership was insufficient, noting that the officer only testified that he found a green car and ran a check of the license plates but did not testify about what the license plate number was or as to any other matter identifying the car as the owner's). In addition, the evidence was insufficient to establish a chain of custody between Young's car and the car defendant possessed such that a proper inference of identification could be inferred. There was no evidence that the car defendant possessed was ever returned to Young or that Young ever observed his car after defendant was

arrested. See *People v. Hope*, 69 Ill. App. 3d 375, 380 (1979) (reversing the defendant's conviction for possession of a stolen vehicle, noting that there was no chain of custody testimony to show that the vehicle in which defendant was arrested was later returned to, and accepted by, the owner of the vehicle named in the charging instrument).

¶ 15 Accordingly, we conclude that the evidence was insufficient to establish a sufficient link between the vehicle described in the charging instrument and the vehicle defendant possessed or to establish a chain of custody from which a proper inference of identification could be made. See *Fernandez*, 204 Ill. App. 3d at 108-09 (reversing the defendant's conviction for possession of a stolen motor vehicle, finding that the evidence identifying the car in the indictment to the car the defendant possessed and the chain of custody evidence was insufficient, even when it appeared from the transcript that the link was inadvertently omitted). The State therefore has failed to prove defendant guilty beyond a reasonable doubt of aggravated possession of a stolen motor vehicle.

¶ 16 Defendant next contends, and the State correctly concedes, that the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer because the evidence did not establish that the officers who stopped him were in uniform or that the emergency equipment that they activated was illuminated oscillating, rotating or flashing red or blue lights.

¶ 17 To prove defendant guilty of aggravated fleeing or attempting to elude a peace officer, as charged here, the State must prove that he was the driver or operator of a motor vehicle and, after being given a visual or audible signal by a peace officer in the manner prescribed in subsection (a) of Section 11-204 of the Illinois Vehicle Code (625 ILCS 5/11-204(a) (West 2014)), he fled

or attempted to elude a peace officer, and such flight or attempt to elude involved disobedience of two or more official traffic control devices. 625 ILCS 5/11-204.1(a)(4) (West 2014). Subsection a of section 204 of the Illinois Vehicle Code provides that the peace officer giving the signal shall be in police uniform and, if the officer is driving in a vehicle when giving the signal, the vehicle shall display illuminated oscillating, rotating or flashing red or blue lights which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle. 625 ILCS 5/11-204(a) (West 2014).

¶ 18 The evidence at trial did not establish that Ryan and his partner were in police uniforms when Ryan turned on his emergency lights and signaled for defendant to stop. See *People v. Williams*, 2015 IL App (1st) 133582, ¶ 14 (to be guilty of fleeing or attempting to elude a peace officer, section 11-204(a) of the Illinois Vehicle Code requires a pursuing officer be in police uniform). Further, although Ryan testified he activated his "emergency equipment" when he signaled to defendant, he did not describe the emergency equipment. Therefore, the evidence did not establish that, when Ryan activated the emergency equipment, his vehicle displayed illuminated oscillating, rotating, or flashing red or blue lights as required by the statute. See *People v. O'Malley*, 356 Ill. App. 3d 1038, 1043-44 (2005) (noting that, under section 11-204(a) of the Illinois Vehicle Code, when an officer is giving a signal to stop in a vehicle, the signal must be in the form of illuminated oscillating, rotating, or flashing red or blue lights). Accordingly, because the evidence did not establish that Ryan or his partner were in police uniforms or that Ryan's vehicle displayed the requisite lights under the statute when Ryan signaled to defendant to stop, we reverse defendant's conviction for aggravated fleeing or attempting to elude a peace officer. See *People v. Murdock*, 321 Ill. App. 3d 175, 176-77 (2001)

(reversing the defendant's conviction for aggravated fleeing or attempting to elude a police officer, concluding that there was no evidence regarding the clothing the officer was wearing).

¶ 19 Given our disposition, defendant's challenge to the assessed fines, fees, and costs is now moot. For the reasons explained above, we reverse the judgment of the circuit court.

¶ 20 Reversed.