SIXTH DIVISION
SEPTEMBER 14, 2018

1-16-1716

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 11082
	)	
CARNELL OLIVER,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a stolen motor vehicle is affirmed where the evidence sufficiently established that he knew the vehicle was stolen.

¶ 2 Following a bench trial, defendant-appellant Carnell Oliver was convicted of possession of a stolen motor vehicle and sentenced to six years' imprisonment as a Class X offender. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt

because it failed to show that he knew that the vehicle he was driving was stolen. For the following reasons, we affirm the judgment of the circuit court of Cook County.[1]

¶ 3 BACKGROUND

¶ 4 Defendant was initially represented by private counsel. Shortly before trial, defendant elected to represent himself *pro se*, and did so throughout the trial.

¶ 5 At trial, Leicester Farmer testified that about 9 p.m. on June 18, 2015, he parked his 2000 BMW 528 (the vehicle) in front of his house on South Prairie Avenue in Chicago and locked it. Farmer was the only person who had keys to the vehicle. About 1:50 p.m. the next day, Farmer returned to the spot where he had parked the vehicle and discovered that it was gone. Farmer reported the stolen vehicle to the Chicago police. On July 1, 2015, the police notified Farmer that they had recovered the vehicle. Farmer subsequently identified the vehicle at the police station. There was no exterior damage, nor any indication of forced entry. The police showed Farmer a black key that they recovered from the ignition and told him such keys were used by car thieves. The key did not belong to Farmer, and he had never seen it before. Farmer further testified that he did not know defendant and never gave him permission to possess or drive the vehicle. On cross-examination, Farmer acknowledged that he did not see defendant steal the vehicle.

¶ 6 Chicago police officer Carter testified that about 7:18 p.m. on July 1, 2015, he and his partner, Officer Anaya, were on routine patrol on Ohio Street when he observed a silver and black BMW parked next to a park. The officers were a couple of hundred feet away from the BMW. Defendant, the only occupant of the BMW, exited the vehicle and walked to the basketball court inside the park. Defendant left the vehicle running with music playing. There

[1] Defendant's separate appeal from the denial of his *pro se* "Motion to Vacate Void Judgment/Conviction" is pending before this court in case number 1-16-2784.

were three men on the basketball court with defendant. No other people were in the park. The officers entered the license plate number of the BMW into their computer, which indicated that the vehicle had been reported stolen on June 18th.

¶ 7 Officers Carter and Anaya approached defendant and asked him if the BMW was his. He responded that it was. Officer Anaya asked defendant "[h]ow come it's coming back hot?" Defendant replied that was "odd," and gave the officers a peculiar look. The officers asked defendant for his name and identification. Defendant then said that the car was in his uncle's name. The officers asked defendant for his uncle's name, which did not match Farmer's name in their computer. The officers then requested defendant to come to their squad car for further investigation. After a moment, defendant "bolted in the other direction," fleeing from the park. Officer Carter chased after defendant and apprehended him about one block away.

¶ 8 Officer Carter inspected the BMW and found a set of keys hanging from the ignition. The key inside the ignition was a black "jiggler skeleton key." He explained that a "jiggler key" is usually made of plastic and fits many different ignitions. At the police station, defendant waived his *Miranda* rights and spoke with the officers. When asked what he was doing in the vehicle, defendant replied "I know it wasn't mine." Defendant stated that the key ring was his, but claimed the "jiggler key" was not his and he "had no clue how it got there." Officer Carter testified that no one else approached or exited the BMW, and he did not observe any other person run from the park.

¶ 9 After the State rested, defendant presented testimony from three witnesses. His girlfriend, Laura Robeson, testified that at 7 p.m. on July 1, 2015, she was at the park with defendant and her friends. Defendant and Robeson arrived together in Robeson's car. There were about 12

people in the park. Robeson observed a silver BMW pull up and park in front of the park. A young man with a dark complexion exited the BMW and walked towards Harding Avenue. Robeson had never seen the BMW or the man who exited it before. No one else was in the vehicle. Less than a minute later, the police arrived and asked people if they knew who owned the BMW. Robeson and her friends said they did not know the man. The police said that they were going to check the names of everyone there, and whoever had a case or had been to jail would be the owner of the BMW. When the police asked defendant for his name, he fled and the police chased him. She further testified that she had never seen defendant drive a BMW.

¶ 10 Similar to Robeson, Lavedia Rice and DeWayna Hubbard both testified that they were at the park at 7 p.m. on July 1, 2015, when they observed a silver BMW pull up in front of the park. A man with a dark complexion exited the BMW and ran. Rice added that the man left the BMW running. Both women testified that the police arrived and asked if anyone knew who owned the BMW. Everyone replied "no." The police said that they were going to check the names of everyone there, and someone would be charged with owning the vehicle. There were 10 to 15 people in the park at the time. The women testified that they never saw defendant near the BMW. Both women acknowledged that when the police approached defendant, he fled.

¶ 11 In closing arguments, the State argued that the circumstantial evidence, including the "jiggler key" and defendant's flight from police, established that he knew that the vehicle was stolen. Defendant argued that he was never in the vehicle, and that Officer Carter was a "dirty" officer who lied and pinned the case on him. Alternatively, defendant argued that the State did not prove that he knew the vehicle was stolen.

¶ 12 The trial court found that Officer Carter's testimony was corroborated by the other evidence, particularly the "jiggler key," which indicated that the person driving the vehicle knew there were "issues" with the validity of the key and ownership of the car. The court found that defendant was the driver of the vehicle, and found him guilty of possession of a stolen motor vehicle.

¶ 13 Defendant was represented by counsel for posttrial motions and sentencing. At the hearing on defendant's motion for a new trial, defense counsel argued that there was no evidence that defendant knew that the "jiggler key" was not authentic, and therefore, he should have been convicted of the lesser offense of criminal trespass to a vehicle. The trial court replied that if that had been defendant's theory, he might have been convicted of the lesser offense. However, defendant had argued at trial that he was never in the vehicle and that Officer Carter committed perjury. The court stated that the case was a "credibility test," and denied defendant's motion. The trial court sentenced defendant to six years' imprisonment as a Class X offender based upon his criminal history. This appeal followed.

¶ 14 ANALYSIS

¶ 15 We note that we have jurisdiction to review this matter, as defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014).

¶ 16 On appeal, defendant contends that that the State failed to prove him guilty beyond a reasonable doubt because it failed to show that he knew that the vehicle he was driving was stolen. Defendant argues that there is no evidence that he stole the vehicle, and that the vehicle had no damage to indicate it was stolen. He further argues that the State did not show that the "jiggler key" was inherently suspicious, or that he knew it was not an authentic key. Defendant

asserts that his statement that he received the vehicle from his uncle, as well as his reaction that it was "odd" that the computer indicated it was "hot," shows that he did not know that it was stolen.

¶ 17 The State responds that the totality of the evidence proved that defendant knowingly possessed the stolen car. The State points out that defendant changed his story as to who owned the vehicle, admitted that the key ring belonged to him, and fled the scene.

¶ 18 As a preliminary matter, defendant asserts that the proper standard of review in this case is *de novo*. Defendant states that he accepts the trial court's credibility findings for purposes of this appeal, and therefore, his issue presents a question of law as to whether the settled set of facts met the reasonable doubt standard. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004) (whether the uncontested facts at trial were sufficient to prove the elements of the offense was reviewed *de novo*). Here, however, the facts at trial were heavily contested and the trial court found that this case was a "credibility test." Moreover, whether defendant had knowledge that the vehicle was stolen is a question of fact for the trier of fact to decide. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23. Defendant is asking this court to draw inferences from the evidence, which is also a duty of the trial court, in his favor. Accordingly, *de novo* review is not appropriate. *People v. Ford*, 2015 IL App (3d) 130810, ¶ 16.

¶ 19 When a defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and

does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 20 To prove defendant guilty of possession of a stolen motor vehicle in this case, the State was required to show that he was in possession of Farmer's 2000 BMW 528, knowing that it was stolen or converted, and that he was not entitled to possession of the vehicle. 625 ILCS 5/4-103(a)(1) (West 2014). Direct evidence that defendant knew that the vehicle was stolen is not necessary as his knowledge may be inferred from the surrounding facts and circumstances which would lead a reasonable person to believe the vehicle was stolen. *Frazier*, 2016 IL App (1st) 140911, ¶ 23. Because the acquisition and disposition of vehicles is strictly controlled by law, it may be inferred that a person who exercises exclusive unexplained possession over a stolen vehicle has knowledge that such vehicle is stolen. 625 ILCS 5/4-103(a)(1) (West 2014). Defendant may attempt to rebut that inference, but he " 'must offer a reasonable story or be judged by its improbabilities.' " *People v. Jacobs*, 2016 IL App (1st) 133881, ¶ 53 (quoting *People v. Abdullah*, 220 Ill. App. 3d 687, 691 (1991)). Although the condition of the vehicle is a significant factor the court considers when determining whether defendant had knowledge that the vehicle was stolen, the trier of fact weighs that evidence along with the other evidence presented. *Id.* ¶ 59. Evidence that defendant fled may also be considered to infer that he had knowledge that the vehicle was stolen. *People v. Whitfield*, 214 Ill. App. 3d 446, 454 (1991).

¶ 21 Here, the record shows that the evidence was sufficient for the trial court to infer from the surrounding circumstances that defendant knew the vehicle was stolen. Officer Carter testified

that defendant was the only occupant of the vehicle. Defendant therefore had exclusive possession of the stolen vehicle. From this evidence alone, the court could infer that defendant knew the vehicle was stolen. Officer Carter further testified that defendant changed his story as to who owned the vehicle and then fled from police. These circumstances allowed the court to infer that defendant knew the vehicle was stolen.

¶ 22 In addition, the police found a key ring with a "jiggler key" in the ignition of the vehicle. Although defendant claimed he did not know how the "jiggler key" got there, he did acknowledge to police that the key ring belonged to him. Moreover, the police asked defendant what he was doing in the vehicle, and defendant replied "I know it wasn't mine." Defendant therefore admitted that the vehicle was not his. Under these facts, it is inconsequential that the vehicle had no exterior damage.

¶ 23 It is significant to note that at trial, where defendant represented himself *pro se*, his theory was not that he had no knowledge that the vehicle was stolen, but instead, that he was never in the vehicle, and that Officer Carter lied and pinned the case on him. The trial court found that Officer Carter's testimony was credible and corroborated by the other evidence, particularly the "jiggler key," which indicated that the person driving the vehicle knew that it was stolen. The court further found that defendant was the driver. Whether defendant knew that the vehicle was stolen was a question of fact for the trial court to decide. *Frazier*, 2016 IL App (1st) 140911, ¶ 23. The record shows that the trial court considered all of the circumstantial evidence and inferred that defendant had knowledge that the vehicle was stolen. We find no reason to disturb that determination.

¶ 24 CONCLUSION

¶ 25 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.