2018 IL App (2d) 160266-U
No. 2-16-0266
Order filed September 27, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TRAVEON O. PARHAM, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-552 Honorable Fernando L. Engelsma, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: One conviction for vehicle theft conspiracy based on aggravated unlawful possession of a stolen motor vehicle must be vacated, and we remand for the trial court to determine which conviction should be vacated. The judgment of the circuit court of Winnebago County is otherwise affirmed.

¶ 2 On February 24, 2013, defendant, Traveon O. Parham (age 16), crashed a stolen vehicle into Karen Shafer's vehicle and killed her. Before colliding with Shafer, defendant, along with two passengers, drove at a high rate of speed and ignored two traffic signals, attempting to elude a police officer who had signaled to him to stop. Defendant's two passengers suffered severe

injuries. After the collision, defendant exited the vehicle and fled the scene, but was apprehended by witnesses.

¶ 3 Following a bench trial, defendant was convicted of three counts of vehicle theft conspiracy (625 ILCS 5/4-103.1(a) (West 2012)), aggravated driving under the influence (DUI) causing death (625 ILCS 5/11-501(d)(1)(F) (West 2012)), aggravated DUI without a valid driver's license (625 ILCS 5/11-501(d)(1)(H) (West 2012)), failure to stop after an accident involving death (625 ILCS 5/11-501(d)(1)(H) (West 2012)), and aggravated fleeing to elude a peace officer (625 ILCS 5/11-204.1(a)(3) (West 2012)). The trial court sentenced defendant to 24 years' imprisonment, and it denied defendant's motion to reconsider the sentence.

¶ 4 Defendant raises three issues on appeal: (1) the State failed to prove that he and his passengers agreed to perform the elements establishing vehicle theft conspiracy based on aggravated unlawful possession of a stolen motor vehicle; (2) alternatively, only one of the three convictions for vehicle theft conspiracy may stand, where the State alleged the existence of only one continuing agreement; and (3) the trial court erred in imposing consecutive sentences on his convictions, where the offense of vehicle theft conspiracy was completed before the occurrence of bodily injury. For the following reasons, we vacate one conviction for vehicle theft conspiracy, remand for the trial court to determine which conviction should be vacated, and otherwise affirm.

¶ 5 I. BACKGROUND

¶ 6 The critical facts are undisputed. At trial, evidence of other crimes included that, on March 31, 2012, defendant and Corey Butler were in South Beloit, Illinois, driving a stolen vehicle, when three squad cars pursued them, trying to stop the vehicle as it headed toward the Illinois border. Defendant, the driver of the stolen vehicle, tried to evade the police until he

abandoned the car. The speed limit was 30 or 35 miles per hour, but police pursued the vehicle at 85 miles per hour before ending the pursuit. Defendant and Butler were later arrested near the stolen vehicle, which was located shortly after the pursuit ended.

¶ 7 On February 6, 2013, Latrell Hightower, Butler, and defendant stole a black Jeep from an owner's driveway in Rockford. The keys had been left inside the vehicle.

¶ 8 On February 17, 2013, defendant and Butler went to a church parking lot in Rockford and checked for unlocked cars.

¶ 9 On February 23, 2013, Tyler Mannery, one of defendant's friends or associates, stole from a Rockford University parking lot a red, 2000 Pontiac Grand Am belonging to Eric Moritz. The keys had been left inside the vehicle.

¶ 10 Collectively, Butler's, Hightower's, and Mannery's testimonies established that, on Sunday, February 24, 2013, in Rockford, Hightower picked up defendant and Butler in a blue Hyundai that he had stolen, in January 2013, from a restaurant in Rockford. They went to Mannery's house. They then went to a church parking lot, where they stole a 2007 Chevrolet GMC Suburban belonging to Kristopher Eschemeyer (the keys had been left inside the vehicle) and checked car doors, entering the cars and stealing their contents if unlocked. After leaving the parking lot, they again visited Mannery, parking the Suburban behind some apartments. According to Mannery, defendant and Hightower asked Mannery to "go hit some stains," meaning burglaries, but he did not go with them. Therefore, defendant, Hightower, and Butler left behind the blue Hyundai, which had a flat tire, and Mannery gave them a red Grand Am that he testified he had previously stolen from Rockford University (although Hightower claimed that Mannery got it from Hightower and defendant, the previous night, when they took it from the college).

¶ 11 After leaving Mannery's house, defendant, Butler, and Hightower went "riding around" in the Grand Am until they decided to go to a church parking lot. Defendant was driving. After stopping the car in the church parking lot, defendant and Hightower exited the car and searched the vehicles. When they returned to the car and were driving out of the parking lot, Butler saw a police car behind them. Hightower saw that the lights and sirens were on. Defendant did not stop. Hightower asserted that, after the police car had pulled behind them and the officer had activated the lights and siren, he told defendant to "scoot over and slow down," and defendant "scooted over." Butler testified that defendant ran a red light and crashed the car.

¶ 12 Winnebago County Sheriff's Deputy Angie Tetzlaff testified that she was on patrol when she heard a radio dispatch concerning a suspicious person in a church parking lot. She responded and saw a man peering into the driver's side window of a parked vehicle. As she approached, the man looked in her direction and ran, getting into the driver's seat of a red, Pontiac Grand Am. Tetzlaff activated her vehicle's siren and lights, but the Grand Am did not stop. She followed the Grand Am out of the parking lot, and watched it drive through a stop sign. After turning, the Grand Am went into the oncoming lane of traffic. After the Grand Am returned to the correct lane, Tetzlaff turned off the lights and siren and notified the dispatcher that she was discontinuing the pursuit. She estimated that she was driving around 50 to 60 miles per hour and that defendant was driving around 65 to 70 miles per hour; the speed limit was 40 miles per hour. Tetzlaff saw the Grand Am drive through a stop light and crash into a vehicle in the intersection. At the scene, Tetzlaff exited her car and ran to see if everyone was okay. Defendant was attempting to exit the car, and she ordered everyone to stay inside the car. Defendant still exited, and she ordered him not to run. Defendant ran, and several citizens

pursued him. Additional witnesses also testified to defendant's speed, failure to stop at the stop sign and traffic signal, flight, and eventual apprehension.

¶ 13 As mentioned, defendant hit Karen Shafer's vehicle. Shafer, who was driving home from church, died from blunt trauma of the abdomen and chest caused by a motor vehicle crash. Butler and Hightower were both injured in the collision (a ruptured spleen and a brain bleed, respectively), requiring stays in the hospital for two or three days. Defendant was also treated and transported to the hospital, where tests revealed the presence of THC in his system. The Suburban was later recovered two blocks from defendant's house.

¶ 14 Defendant was charged by a 29-count indictment. Three counts are relevant to the issues on appeal. Specifically, counts VI, VII, and XII all charged vehicle theft conspiracy. Counts VI and VII alleged that defendant agreed with Hightower and Butler to commit *aggravated* unlawful possession of a stolen motor vehicle, in that, while driving the Grand Am, knowing it to be stolen, defendant willfully disobeyed a peace officer's direction to stop the vehicle and fled (Class 1 felonies). The difference between the two counts: (1) count VI alleged flight that included driving at least 21 miles per hour over the speed limit; while (2) count VII alleged flight that included disobeying two or more traffic control devices. In contrast, count XII alleged that defendant agreed with Hightower and Butler to commit unlawful possession of a stolen motor vehicle (*i.e.*, non-aggravated) when he possessed the Suburban (again, *earlier* that same day), knowing it to be stolen (Class 2 felony).

¶ 15 As previously mentioned, the trial court found defendant guilty of all three counts of vehicle theft conspiracy. In addition, it convicted defendant of aggravated DUI causing death, aggravated DUI without a valid driver's license, failure to stop after an accident involving death, and aggravated fleeing to elude a peace officer. In announcing its ruling, the court found that the

other-crimes evidence pertaining to South Beloit in 2012, was relevant to intent in the present fleeing and conspiracy offenses and further reflected that "this began" before February 24, 2013. In addition, the court noted that other-crimes evidence concerning additional vehicle thefts, vehicle burglaries, and possession of stolen motor vehicles were relevant to the charges of possession of stolen motor vehicles, the conspiracy offenses, and the motive for fleeing on February 24, 2013.

¶ 16 As relevant to the issues on appeal, the court found that the total circumstances under which defendant obtained control over the Grand Am reflected that defendant knew it was stolen. As to count XII, vehicle theft conspiracy based on possession of a stolen motor vehicle (the Suburban), the court noted that "although neither co-conspirator[] were [*sic*] asked directly about such an agreement when they testified, the agreement can be found by the totality of the surrounding circumstances, including the proof of other crimes." Acknowledging that mere presence, alone, is insufficient to establish an agreement, the court continued that, here, presence along with the other-crimes evidence established an agreement and that "this was not merely a joyriding situation." The court noted that the conspiracy was reflected by the prior flight in a stolen vehicle in South Beloit; the multiple auto thefts involving the identical three parties; and the organized process of switching cars, within a short time, to go to the next site so that they could burglarize and steal cars before the police were wise to the now-stolen car. Further:

> "[T]his was an ongoing criminal enterprise that these three co-conspirators were involved in. I, therefore, find that an agreement has been shown beyond a reasonable doubt, and the overt act or acts consist of the taking and exerting control over the various vehicles and using the various vehicles to transport co-defendants to different—at least two different church parking lots ***.

***

> [T]his was all a common scheme and design. That is to say, a vehicle was stolen, kept for a short period of time, then another vehicle was stolen. *** [T]his was the method used by all three. They would check cars, see if keys were in them and other things of value."

¶ 17 With respect to the Suburban, the court found that Butler stole it and drove it with defendant or Hightower inside when they went to get the Grand Am. Reiterating that this was a criminal enterprise with a common scheme and design, the court found that defendant was in the vehicle and accountable for the conduct of others. "This Pontiac [*sic*] Suburban was but a tool to accomplish their criminal endeavors that were performed on multiple occasions. [Defendant] was not merely present in the Suburban. They dropped it off, and he took control of the Pontiac [Grand Am]."

¶ 18 With respect to counts VI and VII, again charging vehicle theft conspiracy, but with an underlying charge of *aggravated* unlawful possession of a stolen motor vehicle, the court again found an agreement and an overt act, in furtherance of that agreement, through the taking of the vehicle. Later, with respect to a different charge, the court found that defendant's intent or goal when driving the Grand Am at a high rate of speed, disobeying traffic control devices, and fleeing, was to elude the police and not get caught.

¶ 19 The trial court sentenced defendant to 24 years' imprisonment, in part finding that, with respect to counts VI and VII, defendant's acts in fleeing from Tetzlaff, driving more than 20 miles per hour over the speed limit, and disobeying two traffic devices constituted overt acts in furtherance of the agreement. The court found that the offenses in counts VI and VII were not

complete until the collision, which caused serious injuries and, therefore, rendered them triggering offenses requiring mandatory consecutive sentencing.

¶ 20 The court denied defendant's motion to reconsider the sentence. In part, the court rejected defendant's argument that the conspiracy offenses did not result in serious bodily injury, triggering consecutive sentences, because the conspiracy was complete when the vehicle was stolen. The court expressed that the events here reflected that a community cannot adequately protect itself when "a gang of people decide they want to steal cars and not stop for police. This all would have been avoided if people just stop for the police. That's all it takes. *** But instead you drive like a maniac and cause someone's death." The court found that the conspiracy caused the severe bodily injuries:

> "[I]t becomes even more dangerous.
>
> I mean three guys sitting around conspiring to take a motor vehicle isn't a big problem. It's when the cops come and you decide to blow some stop signs, decide to accelerate at a high rate of speed and put people in danger, that's where the consecutive sentencing comes in. It's when that proximately causes the harm."

The court reiterated that the conspiracy was not complete until the time of collision, when the injuries were sustained. Defendant appeals.

¶ 21 II. ANALYSIS

¶ 22 A. Sufficiency—Aggravated Unlawful Possession of a Stolen Motor Vehicle

¶ 23 On appeal, defendant notes first that, in counts VI and VII, he was charged with vehicle theft conspiracy in that he and his co-conspirators agreed to commit aggravated unlawful possession of a stolen motor vehicle. However, defendant argues, the State failed to prove beyond a reasonable doubt an essential element of the offense of aggravated unlawful possession

of a stolen motor vehicle, namely, that all three men, "prior to taking possession of the vehicle," agreed that defendant would willfully disobey a police officer's directive to stop. Accordingly, defendant contends that, without establishing an *agreement* between the three co-conspirators for defendant to willfully disobey the police officer's directives, a requirement of *aggravated* unlawful possession of a stolen motor vehicle, his convictions for vehicle theft conspiracy alleged in counts VI and VII must be reversed. In other words, defendant contends, the State did not prove the existence of a conspiracy to commit the aggravating acts; therefore, the convictions must be reversed or reduced (which would implicate concurrent, rather than consecutive, sentencing).

¶ 24 The State asserts that defendant forfeited this argument but, in any event, that it must be rejected. We disagree that this argument is forfeited. While defendant's argument, if successful, would primarily impact consecutive sentencing, defendant is correct that the premise of the argument concerns sufficiency of the evidence, which cannot be forfeited. See, *e.g.*, *People v. Peppers*, 352 Ill. App. 3d 1002, 1008 (2004) (a defendant may attack the sufficiency of the evidence at any time; the issue cannot be forfeited). When a defendant challenges the sufficiency of the evidence, we consider whether, viewing the evidence in a light most favorable to the State, the finder of fact could have the essential elements of the crime beyond a reasonable doubt. See, *e.g.*, *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 25 As relevant here, an individual commits vehicle theft conspiracy when, with intent to commit aggravated unlawful possession of a stolen motor vehicle, he or she agrees with another to commit that offense. 625 ILCS 5/4-103.1(a) (West 2012). The State must prove that the accused or a co-conspirator committed an overt act in furtherance of the agreement and that the accused was part of a common plan or scheme to engage in the unlawful activity. *Id.* It is an

aggravated offense for a person: who is driving a vehicle, is not entitled to possession of that vehicle, knows the vehicle is stolen, and:

> "who has been given a signal by a peace officer directing him to bring the vehicle to a stop, to willfully fail or refuse to obey such direction, increase his speed, extinguish his lights *or otherwise flee or attempt to elude* the officer. ***." (Emphasis added.) 625 ILCS 5/4-103.2(a)(7)(A) (West 2012).

An agreement to commit aggravated unlawful possession of a stolen motor vehicle is a Class 1 felony. 625 ILCS 5/4-103.1(c) (West 2012).

¶ 26 Here, defendant's argument focuses on the alleged lack of proof of an *agreement* between defendant, Hightower, and Butler that defendant would willfully disobey a police officer's directive to stop.[1] Specifically, defendant argues: "Because the State failed to prove that the defendant and his alleged co-conspirators agreed that the defendant would willfully disobey a police officer's directive to stop—the essential element of the offense of aggravated unlawful possession of a stolen motor vehicle—the defendant's convictions for vehicle theft conspiracy, as alleged in [c]ounts VI and VII of the indictment, must be vacated or reduced to a Class 2 felony." We quote this argument to note that we partly agree with its premise, *i.e.*, that an essential element of the aggravated offense is willfully disobeying the police officer's directive

[1] It is interesting that defendant asserts that the trial court's comments regarding *his* decisions to flee police by ignoring traffic signals, accelerating at a high rate of speed, and putting people in danger should *reduce* his criminal responsibility, simply because his passengers allegedly did not first agree with his decisions. The more typical argument would be for a passenger to assert that he or she did not agree with the driver's actions and, thus, he or she cannot be guilty of conspiracy. In any event, we reject defendant's arguments.

to stop. More specifically, however, an essential element is a showing that, after having been directed to stop, the defendant willfully acted to flee or otherwise attempted to elude the officer. 625 ILCS 5/4-103.2(a)(7)(A) (West 2012). Indeed, the statute provides a list of acts that reflect willful refusal, such as increasing speed, but the list is clearly non-exhaustive and, as relevant here, violating traffic signals would fall into the broader category of "otherwise flee[ing] or attempting to allude." *Id.* Thus, to the extent defendant's arguments here start to veer into a suggestion that the State needed to prove not just an agreement to flee and elude, but, further, an agreement to do so *specifically* by increasing speed to more than 20 miles over the speed limit and by disregarding two traffic signals, we reject that notion. Rather, the question is simply whether the evidence was sufficient for the trial court to find, beyond a reasonable doubt, an agreement to flee or otherwise attempt to elude the officer, once directed to stop. We note, however, that we would, in any event, find the evidence was also sufficient for the court to have found, beyond a reasonable doubt, an agreement to drive more than 20 miles over the speed limit and to ignore traffic signals.

¶ 27 Defendant argues that there is insufficient evidence of an agreement to the aggravated crime because the court's comments: (1) that defendant decided to ignore a stop sign, accelerate at a high rate of speed, and put people in danger; and that (2) "three guys sitting around conspiring to take a motor vehicle isn't a big problem," reflect that it found that only *defendant* made specific decisions, not that he and his co-conspirators agreed, prior to the collision, that he would do so. Defendant notes that an agreement is critical to establishing conspiracy, and mere knowledge of an illegal act does not suffice to give rise to an inference of conspiracy. See, *e.g.*, *People v. Testa*, 261 Ill. App. 3d 1025, 1027-28 (1994). While we do not disagree with these concepts, we note that conspiracy is premised on complicit liability and all co-conspirators may

be responsible for the actions of one another. See 725 ILCS 5/8-2(a) (West 2012) ("A person commits the offense of conspiracy when, with intent that an offense be committed, he or she agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of that agreement is alleged and proved to have been committed by him or her *or by a co-conspirator*.") (Emphasis added.). Further, an agreement between co-conspirators may be inferred from all surrounding facts and circumstances. See, *e.g.*, *Testa*, 261 Ill. App. 3d at 1028. Here, we disagree with defendant's interpretation of the court's comments and, further, disagree that the evidence showed only mere acquiescence to the aggravating elements.

¶ 28 First, considering the evidence in the State's favor, we cannot find that the court's comments that defendant decided to ignore a stop sign, accelerate at a high rate of speed, and put people in danger in any way reflected a finding that defendant bore sole responsibility for the actions in the police pursuit. To be sure, defendant was the driver and, as such, he committed the act of speeding and ignoring the signals. However, the court considered the evidence as a whole, including that of other crimes, to find that the common design included an intention and agreement by all to flee and avoid apprehension. For example, the court specifically explained that it found the fleeing offense in South Beloit, which involved defendant and Butler, relevant to the conspiracy offenses here. In that crime, defendant and Butler were pursued at 85 miles per hour in a 30 or 35 mile-per-hour speed limit zone, *i.e.*, they attempted to elude police by driving more than 20 miles over the speed limit. The court further found that the conspirators displayed an organized effort to evade detection as an ongoing part of their criminal scheme, as the evidence reflected that they would steal a car, then quickly exchange it for another stolen car, to avoid being detected by police in a recently-stolen vehicle.

¶ 29 Second, we do not agree that the court's comment that "three guys sitting around conspiring to take a motor vehicle isn't a big problem," reflects that it did not find necessary an agreement to the aggravated portions of counts VI and VII. Indeed, in context, the court's quoted comments reflect that it was expressing that, with respect to community safety, the danger increases when the aggravating factors are present. We do not agree that the court's comment reflects that it found defendant *solely* responsible for the aggravating factors, to the exclusion of any agreement by the co-conspirators to those factors.

¶ 30 Finally, the evidence was sufficient for the court to reasonably infer, from all circumstances, that Butler and Hightower agreed with defendant's efforts to elude Tetzlaff. In addition to the other-crimes evidence concerning flight, Butler testified that he saw the squad car behind them and Hightower testified that he saw the squad car's lights and siren on, yet neither testified that they told defendant to *stop*. Indeed, although Hightower asserted that he told defendant to "scoot over and slow down," he did not testify that he told defendant to stop. Moreover, his comment to "scoot over" does not necessarily reflect a request that defendant pull over for the police. Indeed, although not completely clear, the court could have reasonably found that Hightower's comment to "scoot over" simply referenced the period when defendant was driving in the oncoming lane of traffic, as Hightower testified that his comment was made after the police car had pulled behind them and the officer activated the lights and siren. Also, Tetzlaff testified that defendant pulled into oncoming traffic after leaving the parking lot and ignoring a stop sign. Further, Hightower testified that defendant *did* "scoot" over; as defendant certainly did not pull over completely for the officer, it is, therefore, reasonable to infer that Hightower's request concerned only defendant's position in the wrong lane, and that it did not reflect a broader request to terminate the flight or his agreement thereto. Even if the agreement

was, initially, only to possess a stolen vehicle, the foregoing evidence was sufficient to infer that the agreement *evolved* to include fleeing, in order to further the objective of that conspiracy and retain possession. See, *e.g.*, *People v. Denson*, 2013 IL App (2d) 110652, ¶ 16 (where the court found that the criminal conspiracy, which started as an enterprise for robbery, had led not to mere robbery, but also to murder; as the enterprise had changed, so, too, did the necessary actions for concealment of their crime; therefore, statements made after the crimes pertained to concealment and furthered the efforts to conceal the defendants' actions), *aff'd* 2014 IL 116231, ¶ 28. Thus, the foregoing evidence, viewed in the State's favor, was sufficient for the court to find the essential agreement for the aggravated crime that formed the basis of counts VI and VII.

¶ 31 B. Vehicle-Theft-Conspiracy Convictions

¶ 32 Next, defendant argues that the three convictions for vehicle theft conspiracy (counts VI, VII, and XII), must be reduced to only one conviction because the State alleged the existence of only one continuing agreement between defendant, Butler, and Hightower to steal vehicles and other property. The State concedes that only one conviction should stand for counts VI and VII, as those acts concerned the same conspiracy, and it asserts that this court must remand to the trial court to determine which of those two counts should be the one vacated. See *People v. Artis*, 232 Ill. 2d 156, 177 (2009) (where it cannot be determined which of two or more convictions based on a similar act is the more serious offense, remanded to the trial court to make that determination). However, the State contends that the evidence was sufficient for the trial court to find a separate conspiracy as to count XII. We agree.

¶ 33 We determined above that the evidence was sufficient to prove the existence of an agreement to perform the elements of aggravated unlawful possession of a stolen motor vehicle, thus, supporting one of the vehicle-theft-conspiracy convictions alleged in counts VI and VII.

Given the State's concession that one of those convictions should be vacated and our determination that the evidence supports affirming the other, the only remaining question is whether the court could have found the existence of a different conspiracy in count XII, such that the conviction may also stand. Again, count XII charged defendant with conspiracy in that he agreed with Hightower and Butler to commit unlawful possession of a stolen motor vehicle with respect to possession of the Suburban. Defendant argues that the court's comment that the "Pontiac [*sic*] Suburban was but a tool to accomplish their criminal endeavors that were performed on multiple occasions" reflects that there was only one ongoing criminal enterprise and, therefore, that there can be only one vehicle-theft-conspiracy conviction. Defendant quotes *People v. Edwards*, 337 Ill. App. 3d 912, 924 (2002) " '[w]here co-conspirators agree to work in furtherance of a common goal or purpose, there is but one conspiracy' " and further asserts that the court in *Edwards* recognized that one agreement may involve many separate transactions, and the parties to the agreement might change over time, but that does not mean there were separate conspiracies to commit each transaction. *Id.* The State disagrees, arguing that *Edwards* is distinguishable and, further, that the court there also noted that, when conspirators have different interests and distinct goals, the court may find the existence of multiple conspiracies. *Id.* Here, the State argues, the evidence viewed in its favor was sufficient for the trial court to find multiple conspiracies with similar, but distinct, purposes. We agree with the State.

¶ 34 The facts in *Edwards* concerned a street gang's agreement to distribute drugs in a particular geographical area; the indictment included only one conspiracy count, although it listed therein several offenses that the defendants committed in furtherance of the conspiracy. The jury found the defendants guilty of various alleged offenses listed within the conspiracy count. The defendants argued on appeal that there was a "fatal variance" between the

indictment, alleging a single conspiracy, and the trial evidence, establishing multiple conspiracies. The appellate court rejected the defendants' argument, noting that the defendants had shared a single, common goal to distribute drugs in a specific geographical area. *Id.* Although the drug-distribution conspiracy involved multiple drug transactions, each function and transaction furthered the objective of distributing drugs in the area. *Id.* at 925. The court determined that, viewing the evidence in the State's favor, there was sufficient evidence to support the jury's finding of a single conspiracy and, therefore, there was no fatal variance between the indictment and the trial evidence. *Id*.

¶ 35 Here, in contrast, defendant was *charged* with multiple conspiracies, in separate counts. Further, as the State notes, there were no facts to show that defendant, Hightower, and Butler had a master plan involving a particular location or overarching purpose, as was seen in *Edwards*. Rather, as the State observes, the evidence reasonably showed them to be "recidivist criminals who showed a predilection for stealing cars and committing motor vehicle thefts of parked cars." Viewing the evidence in the State's favor, the court could have reasonably found that the evidence showed that the agreements arose almost as impulses, if and when the opportunity presented itself, to possess a stolen car and use it to commit car burglaries.

¶ 36 We disagree with defendant's assertion that the court's comment that the "Pontiac [*sic*] Suburban was but a tool to accomplish their criminal endeavors that were performed on multiple occasions" reflects that there was only one ongoing criminal enterprise. Rather, as noted when it mentioned endeavors that were performed on multiple occasions, the court could have found that there was a pattern of behavior, over time and in different locations (*e.g.*, South Beloit and Rockford), to steal vehicles where the keys were left inside. However, there was no evidence reflecting that, although defendant and the co-conspirators committed these types of crimes on

multiple occasions, there existed an overarching purpose to, for example, burglarize churches in a certain area of Rockford. Indeed, the agreements would sometimes involve these three men, but sometimes others, and they did not always commit all of the acts together. As such, the court could have found that, after stealing the Suburban, defendant, Hightower, and Butler terminated that conspiracy when they parked the Suburban and abandoned it. They then regrouped, went to see Mannery, and asked if he would like to join them in committing some burglaries, thus, beginning a new conspiracy by getting into a different stolen car (the Grand Am) and setting off in a new direction. We agree with the State that, viewing the evidence in a light most favorable to it, the court could have reasonably found that defendant and his co-conspirators engaged in similar behavior twice on February 24, 2013, once involving the Grand Am and once involving the Suburban, but that each incident constituted a separate conspiracy.

¶ 37 Thus, we affirm the count-XII conviction. In light of the State's concession, we agree that one of the convictions based on counts VI and VII must be vacated, but we remand for the trial court to determine which one.

¶ 38 C. Consecutive Sentencing

¶ 39 Finally, defendant argues that the trial court erred in imposing consecutive sentences on his convictions, where the offense of vehicle theft conspiracy was completed before the occurrence of bodily injury. Defendant asserts that the court erroneously found that vehicle theft conspiracy proximately resulted in Shafer's death and severe bodily injury to his co-conspirators. Rather, defendant argues, the death and injuries occurred during the commission of the aggravated DUI, whereas the offense of vehicle theft conspiracy was complete the moment that he took possession of the Grand Am and, therefore, *before* the collision. As such, defendant

asserts that the conspiracy convictions cannot serve as triggering offenses requiring consecutive sentences. We reject defendant's argument.

¶ 40 Consecutive sentences are mandatory when one of the offenses for which the defendant has been convicted was a Class 1 felony "and the defendant inflicted severe bodily injury." See 730 ILCS 5/5-8-4(d)(1) (West 2014). Our supreme court has held that the severe bodily injury must be inflicted during commission of the relevant Class 1 felony. *People v. Whitney*, 188 Ill. 2d 91, 99 (1999). Here, defendant's only Class 1 convictions were those pertaining to counts VI and VII. Although one of those convictions will be vacated, the question is whether the sentence on the remaining Class 1 conviction should run consecutive to, or concurrent with, the other convictions, with the exception of his sentence for failure to stop after an accident. We agree with the State that the conspiracy charged in counts VI and VII, based on possession, did not end until the three conspirators were deprived of possession, *i.e.*, after the collision.

¶ 41 We disagree that the possession conspiracy ended when defendant accepted the Grand Am from Mannery, such that the conspiracy was not the proximate cause of Shafer's death and Butler's and Hightower's severe injuries. Defendant cites no relevant authority to support his argument that, although conspiracies to commit theft, burglary, or robbery may continue beyond the completion of those crimes, a conspiracy based upon *possession* of a stolen vehicle ends when possession is obtained. Indeed, citing *United States v. Kissel*, 218 U.S. 601 (1910), defendant concedes that a conspiracy continues until abandonment or success. A possession conspiracy may continue past the point of obtaining possession. As we discussed above, here, even if the conspiracy was, initially, only to possess a stolen vehicle, the evidence was sufficient to infer that the agreement *evolved* to include fleeing, in order to further the objective of that conspiracy and *retain* possession. It is nonsensical that, here, the possession ended upon

obtaining the stolen vehicle; rather, that is simply when possession commenced. Here, we agree with the State that the conspiracy to possess a stolen motor vehicle did not terminate until after the crash, when defendant fled the vehicle. As such, defendant's commission of the Class 1 felony caused death and severe bodily injury and, therefore, consecutive sentencing remains appropriate.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we conclude that one conviction for vehicle theft conspiracy based on aggravated unlawful possession of a stolen motor vehicle must be vacated, and we remand for the trial court to determine which conviction should be vacated. The judgment of the circuit court of Winnebago County is otherwise affirmed.

¶ 44 Affirmed in part; judgment vacated in part and remanded with directions.