2018 IL App (3d) 160325-U

Order filed September 6, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0325
v.	)	Circuit No. 15-CF-767
	)	
ANDREW ERIC HALEY,	)	Honorable
	)	John P. Vespa,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence at trial was sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant intended to permanently deprive the victim of the use or benefit of her car.

¶ 2 Defendant, Andrew Eric Haley, was found guilty of unlawful possession of a stolen motor vehicle. On appeal, he argues that evidence adduced at trial was insufficient to sustain that conviction. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by indictment with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)), unlawful possession of a weapon by a felon (UPWF) (*id.* § 24-1.1(a)), possession of a stolen firearm (*id.* § 24-3.8(a)), and unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). The court bifurcated the proceedings such that the jury would only hear evidence of defendant's prior felon status, for the purposes of the UPWF charge, at a separate stage, following the trial on the other three charges.

¶ 5 At trial, Chantrice Parrish testified that on November 10, 2015, she was living in a rented bedroom within a house owned by Earl Flatt. At some point earlier in 2015, Flatt allowed his nephew, defendant, to live in the house as well. Parrish had to leave for work at 7:30 a.m. on November 10. That morning, she was awakened by the sound of someone walking down the basement stairs leading to her bedroom. When she looked up, she saw defendant coming down the stairs with a gun.

¶ 6 Parrish testified that defendant pointed the gun at her and threatened to kill her. She described the gun as small and black. Defendant demanded that Parrish give him the keys to her car, as well as her cell phone. Defendant took Parrish's cell phone and car keys from a nearby table, and then forced Parrish up the stairs. Parrish testified that defendant told her "that he did something bad and that he needed to get out of town." Defendant took Parrish to a room on the second floor of the house and forced her into a closet. He instructed her not to come out until he had left.

¶ 7 Parrish testified that defendant returned shortly thereafter because her car would not start. Parrish stated that defendant told her "to get down there to fix the car so he could leave." Parrish explained that her car, a black Oldsmobile Cutlass Supreme, required a special maneuvering of

the gear selector before it would start. Parrish started her car and then defendant drove away. Parrish ran inside the house and called the police from Flatt's phone.

¶ 8 Parrish testified that she described her car for the police when they arrived. While she did not know her license plate number, she did relay that a bungee cord was holding the trunk closed. She could not remember the type of cell phone she had, but knew that it had a green case. Parrish also took the responding officers into the house to show them the closet where defendant told her to stay. Upon reentering the house, Parrish noticed for the first time that the door to Flatt's bedroom had been kicked in.

¶ 9 On cross-examination, Parrish testified that she had once given defendant a ride in her car, but she had never let him borrow it. She had to work at 8 a.m., and then had to go to school at 1 p.m., immediately after leaving work. Defendant did not give her anything in exchange for her car. In the eight years that she had lived in Flatt's house, she had witnessed a number of other people live there for various periods of time.

¶ 10 Shelia Wright testified that defendant, who was once her boyfriend, stayed at her residence on the night of November 9, 2015, into the morning of November 10. Wright testified that she and defendant had an altercation that evening, after which defendant told Wright "he was going to his uncle's house to get a gun and to find a car to leave." Sometime after making that remark, defendant left Wright's residence.

¶ 11 Michael Bischoff of the Peoria Police Department was dispatched to Flatt's residence, arriving at 5:59 a.m. Once there, Bischoff encountered Parrish, who he described as "visibly upset and crying." Based on the information provided to him by Parrish, he reported a stolen vehicle described as a black Oldsmobile Cutlass Supreme with a bungee cord holding the trunk

closed. Bischoff retrieved the vehicle's license plate number after entering Parrish's driver's license information into a computer. He confirmed that the vehicle was registered to Parrish.

¶ 12 On cross-examination, Bischoff testified that Parrish never mentioned the trick she used to start her car or that she had started the car for defendant. Though Parrish also reported her cell phone stolen, the only details she provided about the phone were that it was green and had a flat screen.

¶ 13 Felix Carr testified that he was working for the Arkansas Highway Patrol on November 11, 2015. At approximately 7:30 a.m., Carr was exiting Interstate 55 when he observed a black Oldsmobile on the southbound service road fail to yield. Carr proceeded to stop the vehicle.

¶ 14 Carr made contact with defendant, who was the driver of the vehicle. Carr asked defendant for his driver's license, registration, and proof of insurance. Defendant provided Carr only with his driver's license and the owner's manual to the vehicle. Carr returned to his squad car to run the Oldsmobile's license plate number, at which point he discovered that it matched the description of a vehicle reported stolen in Peoria. Carr called for backup, then began approaching defendant to ask him to step out of the vehicle. As Carr approached, defendant made a sudden movement, which caused Carr to retreat. Defendant fled in the Oldsmobile, driving onto the interstate in the wrong direction. During the ensuing chase, defendant drove through a cotton field and eventually hit an embankment. After hitting the embankment, defendant alighted from the vehicle and proceeded on foot through a ditch. He was eventually apprehended by other officers. No firearm was recovered.

¶ 15 Brian Terry of the Peoria Police Department testified that he conducted the follow-up investigation at Flatt's house on November 10. He observed that the door to Flatt's bedroom had been pried open where there had been a deadbolt lock. Terry also observed that someone had

searched through Flatt's bedroom. Drawers were open and certain items had been moved that Flatt had not moved. Terry noted that only Flatt's bedroom appeared to have been ransacked; the remainder of the house appeared normal. Terry conceded on cross-examination that he had not previously seen Flatt's room or house before that day.

¶ 16 Amanda Chalus of the Peoria Police Department testified that she spoke with Parrish "a few hours after the incident occurred," at approximately 9 a.m. Chalus noted that Parrish was "very anxious and upset" when she spoke with her. Parrish told Chalus that the attacker was Flatt's nephew. Parrish initially reported that Flatt had let defendant into the house that morning. Chalus spoke to Parrish again four days later. Parrish was much calmer at that time. Chalus testified that Parrish did not tell her until that second meeting that she had actually started her car for defendant.

¶ 17 Flatt testified that defendant was his nephew, and that he had lived at Flatt's house for about a month in the fall of 2015. Parrish was living in his basement on November 10, 2015. Flatt left for work at approximately 5:35 a.m. Flatt testified that he let defendant into the house on the morning of November 10 as he was leaving for work. Flatt stated: "When I opened the door, he was coming in, and I said, I'll see you later on, nephew. I'll see you this afternoon. That was it. I caught the bus up there on the corner." Later, while he was at work, Flatt received a phone call from Parrish, who was crying. She told him that defendant had broken into the house and put a gun to her head.

¶ 18 When Flatt returned to his house, he noticed that "[s]tuff [was] scattered all over everywhere," his bedroom door had been broken, and a gun was missing from his bedroom. He also noticed that some rings and watches were missing. While Flatt had numerous other renters

in the past, only he and Parrish were living in the house at the time in question. Flatt testified that no one knew about his gun and that he never talked about it with defendant.

¶ 19 Defendant testified that he was "between residen[ces]" on November 10, 2015. That morning, he went to Flatt's house to retrieve some of his clothes and to borrow Parrish's car. Defendant knew his uncle's schedule, and timed his visit so that he could meet Flatt at the door. Flatt let defendant into the house at approximately 5:30 a.m. Defendant testified that he went to the basement, but did not have a gun. He was unaware that his uncle had a gun. Defendant was only holding his cell phone when he entered the basement, which he was using to provide illumination.

¶ 20 Defendant asked Parrish if he could borrow her car. He offered her a quantity of crack cocaine in exchange, because he was aware that she used drugs. He had never borrowed her car before, though she had given him rides on occasion. Parrish accepted the trade, but told defendant that she needed to leave for work at 7:30 a.m. Defendant testified: "She was under the impression [that] I would be back sooner." Defendant denied telling Parrish that he had done something bad and that he needed to leave town.

¶ 21 Parrish took her keys and came upstairs with defendant. Defendant testified that he never saw Parrish's cell phone. Defendant went outside to start the car. He testified that he and Parrish never went to the second floor of the house and he never stuck Parrish in a closet. Defendant testified that while he was able to start the car, he was unable to properly shift it into drive, because of an issue with the car. He returned to the house. Parrish explained the issue with her car, then went outside with defendant. She sat in the front seat of the car as she demonstrated for defendant how to work the gears. Parrish exited the car, hugged defendant, and told him to be safe. Defendant then left in the car.

¶ 22 Defendant testified that he was intentionally vague with Parrish regarding when he would return the car. He testified: "I know that she probably took it that I would be back in enough time for her to get to work. I knew she probably was under that assumption, yes." Defendant assumed that Parrish would call him before she reported the car stolen. Defendant affirmed that he intended to return the car "at some point."

¶ 23 On cross-examination, defendant testified that he walked to Flatt's house from his former girlfriend's house that morning. He needed a car to purchase drugs. Defendant testified: "I had an inside tip on *** a cheaper supply somewhere else, so I was about to make this run right now early in the morning and be back before daytime." His drug supplier was in Memphis, Tennessee. Defendant's plan was to "stall [Parrish] out" when she called asking where he was with her car. He believed that if he offered her some extra drugs, "she would be cool with that." He conceded that it was a "strong possibility" that Parrish would report the car stolen. He did not attempt to call Parrish at any point because, as he testified: "I don't call her unless she calls me."

¶ 24 Defendant testified that it was a six-hour drive to Memphis and that he wanted to return by 2 or 3 p.m. that day. He explained that he was in Arkansas at 7:30 the next morning because he had gotten lost after the completion of his drug deal. He initially pulled over for Carr because he believed he would only receive a ticket for failing to yield. Defendant testified, however, that he could not afford to let Carr search the car, because it contained drugs. He further testified that if he thought the car was stolen, he never would have stopped for Carr in the first place. He only fled after Carr asked him to step out of the car.

¶ 25 In rebuttal, Parrish testified that she did not let defendant borrow her car in exchange for crack cocaine. She testified that she had never purchased or used crack cocaine in her life.

¶ 26 The jury found defendant not guilty of both armed robbery and possession of a stolen firearm. However, it found defendant guilty of unlawful possession of a stolen motor vehicle. Following the return of those verdicts, the State dismissed the charge of UPWF. The circuit court sentenced defendant to 14 years' imprisonment.

¶ 27 ANALYSIS

¶ 28 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of unlawful possession of a stolen motor vehicle. Specifically, defendant asserts that the State failed to prove that he intended to permanently deprive Parrish of the use of her car. He maintains that Parrish's testimony was the only evidence from which the jury could conclude that he knew the car to be stolen, and that the jury necessarily rejected that testimony when it found him not guilty of armed robbery and possession of a stolen firearm.

¶ 29 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 30 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). " 'Where evidence is presented and such evidence is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution.' " *Saxon*, 374 Ill. App. 3d at 416 (quoting *People v. McDonald*, 168 Ill. 2d 420, 447 (1995)). The trier of fact is not required to accept or otherwise

seek out any explanations of the evidence that are consistent with a defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 233 (2006); see also *Saxon*, 374 Ill. App. 3d at 416-17.

¶ 31 A person commits a Class 2 felony under the Illinois Vehicle Code where he possesses a motor vehicle that he knows to have been stolen while not entitled to have such possession. 625 ILCS 5/4-103(a)(1) (West 2014). Thus, in order to sustain a conviction for that offense, the State must prove beyond a reasonable doubt that defendant (1) possessed the vehicle, (2) was not entitled to possess the vehicle, and (3) knew the vehicle was stolen. *People v. Anderson*, 188 Ill. 2d 384, 389 (1999). Here, defendant argues that he could not have known Parrish's car to be stolen, because it was not stolen.

¶ 32 The Criminal Code of 2012 defines "stolen property" as "property over which control has been obtained by theft." 720 ILCS 5/15-6 (West 2014). The jury in this case was instructed that "[a] person commits the offense of theft when he knowingly obtains unauthorized control over property and intends to deprive the owner permanently of the use or benefit of the property." Illinois Pattern Jury Instructions, Criminal, No. 13.01 (approved July 18, 2014). Accordingly, in order to prove that defendant knew Parrish's car was stolen, it had to be proven that it actually was stolen. In order to do so, the State had to prove that defendant obtained the car by theft. Defendant argues that he could not have obtained the car by theft because he never intended to permanently deprive Parrish of the use of her car.

¶ 33 On the face of the trial record, there is plainly sufficient evidence to show that defendant intended to permanently deprive Parrish of the use of her car. Parrish testified that defendant pointed a gun at her head and demanded that she give him the keys to her car. She testified that defendant told her that he needed to leave town. Moreover, Wright testified that defendant told

her that he needed a car so he could "leave." A rational juror could infer from this evidence that defendant had no intention of ever returning Parrish's car. Defendant does not dispute that Parrish's testimony, taken at face value, would be sufficient to establish beyond a reasonable doubt that he intended to permanently deprive Parrish of the use of her car.

¶ 34 However, defendant argues that "due to [Parrish's] inconsistent statements, no rational trier of fact could have accepted her testimony as proof beyond a reasonable doubt." In support of this conclusion, defendant emphasizes that Parrish did not initially tell either Bischoff or Chalus that she actually started her car for defendant. He also points out that Parrish's testimony that defendant took the car at gunpoint directly conflicted with his own testimony, and that Parrish's testimony on that point was undermined when defendant was not found to be in possession of a gun when he was apprehended.

¶ 35 We reject defendant's invitation to reweigh the jury's credibility determination. A reviewing court will not normally substitute its own judgment for that of the factfinder, especially with respect to credibility determinations. *People v. Locascio*, 106 Ill. 2d 529, 537 (1985). The record shows no apparent motive for Parrish to lie, and defendant does not suggest one. She called the police and reported the car stolen immediately, which casts doubt upon defendant's version of events. Bischoff, Chalus, and Flatt each testified that Parrish was crying or distressed in the immediate aftermath of defendant taking her car. Moreover, her testimony was partially corroborated by Wright's testimony that defendant expressed an intent to acquire a gun and a car. On these facts, the conclusion that Parrish was credible and truthful is not so unreasonable as to overcome our strong deference to the factfinder. See *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 36 Defendant contends, however, that the jury's not guilty verdict on the charge of armed robbery "provides persuasive support for his argument that no rational trier of fact could have accepted [Parrish's] testimony as proof beyond a reasonable doubt." Defendant asserts that the acquittal necessarily indicates that the jury found defendant's own testimony credible and Parrish's testimony was not. He thus argues that this court, too, should find Parrish incredible, and that without Parrish's testimony, there is insufficient evidence showing that defendant intended to permanently deprive Parrish of the use of her car.

¶ 37 Our supreme court has consistently cautioned against the type of reasoning invoked here by defendant. In *People v. Dawson*, 60 Ill. 2d 278, 280-81 (1975), the court, quoting a prior federal case, explained why it is unwise to draw any inferences from an acquittal in a multicount indictment: " 'The very fact that the jury may have acquitted of one or more counts in a multicount indictment because of a belief that the counts on which it was convicted will provide sufficient punishment [citation] forbids allowing the acquittal to upset *or even to affect* the simultaneous conviction.' " (Emphasis added.) (quoting *United States v. Carbone*, 378 F.2d 420, 422 (2d Cir. 1967)); see also *People v. Barnard*, 104 Ill. 2d 218, 227 (1984) ("We do not know what prompted the jury's not guilty verdict on the armed-violence count. It could have been an expression of lenity which, of course, does not render the verdicts legally inconsistent."); *cf. People v. Jones*, 207 Ill. 2d 122, 148 (2003) (citing lenity as among the reasons for not allowing defendants to challenge logically or legally inconsistent verdicts).

¶ 38 In sum, a reviewing court should not draw any inferences or conclusions from a jury's decision to acquit a defendant on certain charges, because there is no way to know precisely what motivated that acquittal. This axiom is well demonstrated in the present case. Defendant asserts that the jury's acquittal on the armed robbery charge must show that the jury rejected

Parrish's testimony for its inconsistencies. Yet, it is at least as likely that the jury acquitted defendant of that charge (and of possession of a stolen firearm) out of the belief that a conviction for possession of a stolen motor vehicle would be sufficient, or out of some form of jury compromise. Similarly, the jury may have expressed lenity in refusing to find defendant guilty of an offense that required a firearm when no firearm was found. Simply put, the jury's acquittals in this case can easily be explained without any inferences regarding Parrish's credibility.

¶ 39 To be sure, defendant does not argue that his conviction should be reversed due to logically inconsistent verdicts. He merely contends that the logically inconsistent verdicts are persuasive in arguing that the jury acted irrationally in finding him guilty of unlawful possession of a stolen motor vehicle. This is largely a distinction without a difference, in that it still relies upon the false inference that the jury must have found Parrish incredible. Perhaps more importantly, defendant neglects the possibility that the jury acted irrationally in its acquittals, rather than its guilty verdict. As the United States Supreme Court stated when discussing inconsistent verdicts, "it is unclear whose ox has been gored." *United States v. Powell*, 469 U.S. 57, 65 (1984). We thus find that the purported inconsistencies in the jury's verdicts provides no support for defendant's argument that no rational trier of fact could have found Parrish credible. Indeed, a rational trier of fact could have found the essential elements of possession of a stolen motor vehicle beyond a reasonable doubt. See *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 40 We would be remiss if we did not point out in closing that the jury's verdicts in the present case were not necessarily inconsistent. That is, even a jury that completely discounted Parrish's testimony could still conclude beyond a reasonable doubt that defendant did not intend to return Parrish's car. Defendant himself testified that he knew Parrish needed her car by at

least 8 a.m. Even though defendant was about to embark on a 12-hour journey to Memphis and back, he allowed Parrish to believe he would have her car back in time for her to go to work and school. Defendant testified both that he wanted to return the car "before daytime" and that he wanted to be back by 2 or 3 p.m. Either of those, of course, would be wholly impossible based on defendant's own estimate of a six-hour drive between Peoria and Memphis. In fact, while defendant allowed Parrish to believe he was going to return the car in about two hours, he was just outside of Memphis 26 hours later when he was apprehended. Defendant's only explanation for the nearly full-day delay was only that he had gotten lost.

¶ 41 While defendant testified that he intended to return the car, the jury was free to find such testimony incredible, even if it found defendant's testimony that he did not possess a gun to be credible. *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004) ("[T]he trier of fact is free to accept or reject as much or as little as it pleases of a witness's testimony."). Defendant acquired Parrish's car only through deception. That deception was no white lie either; even in the best possible scenario, defendant would have returned the car 30 hours later than Parrish believed. "[I]ntent [to permanently deprive] may be inferred from fraudulent or deceptive acts that facilitated the theft." *People v. Kotero*, 2012 IL App (1st) 100951, ¶ 31. Moreover, it is unclear how defendant could have intended to return the car as he was speeding away from Carr, or as he prepared to abandon the car in a ditch in Arkansas. Intent to permanently deprive someone of their property "may be inferred from the lack of evidence of intent to return the property or to leave it in a place where the owner could safely recover it." *People v. Adams*, 161 Ill. 2d 333, 343-44 (1994). Accordingly, even a rational trier of fact who had rejected the notion that defendant acquired Parrish's vehicle at gunpoint could still conclude beyond a reasonable doubt that defendant

intended to permanently deprive Parrish of the use of her vehicle, and thus knew himself to be in possession of a stolen vehicle.

¶ 42 CONCLUSION

¶ 43 The judgment of the circuit court of Peoria County is affirmed.

¶ 44 Affirmed.