2016 IL App (1st) 161507-U

FOURTH DIVISION
November 3, 2016

No. 1-16-1507

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ORLANDO W., a Minor,	)	Appeal from the
	)	Circuit Court of
Minor-Appellee,	)	Cook County.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	No. 16 JD 00682
	)	
v.	)	
	)	
Orlando W.,	)	Honorable
	)	Kristal Rivers,
Respondent-Appellant.)	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove that respondent committed the offense of Possession of a Stolen Motor Vehicle where he was observed driving the complainant's recently stolen vehicle, and, when police officers attempted to curb the vehicle, he fled while driving at a high rate of speed, ran red lights, and crashed into a pole, before fleeing on foot.

¶ 2 Respondent, Orlando W., a minor, appeals from the trial court's judgment adjudicating him a delinquent minor and making him a ward of the court. The court found that the State had

proved respondent committed the offense of possession of a stolen motor vehicle, and ordered respondent committed to the Department of Juvenile Justice (DJJ) for a period of three months. The court additionally ordered respondent to return to court to consider a disposition of intensive probation or a further order of commitment to the DJJ, depending upon respondent's conduct while committed.

¶ 3 In this appeal, respondent contends that the State failed to establish that the vehicle in his possession was stolen from and owned by Robert McKay. Alternatively, respondent asserts that the State failed to prove beyond a reasonable doubt that he knew the vehicle he was driving was stolen.

¶ 4 The record shows that on March 21, 2016, the State filed a petition for the Adjudication of Wardship alleging that respondent, born November 3, 1999, committed the offense of Aggravated Possession of a Stolen Motor Vehicle (Aggravated PSMV) (625 ILCS 5/11-204.1(a) (West 2014) and Possession of a Stolen Motor Vehicle (PSMV) (625 ILCS 5/4-103(a)(1) (West 2014). The following evidence was adduced at respondent's delinquency proceedings.

¶ 5 Robert McKay testified that on March 15, 2016, he was driving a gray 2004 Porsche Cayenne bearing license plates 770 THZ, from work to his home located on North Kolmar Avenue in Chicago. When he arrived around 9 p.m., it was very windy and raining heavily, so McKay ran from the car to his home. While rushing to get into his front door, McKay realized he did not have his keys, but was able to let himself in the back door using a spare key. Later, around 9:30 p.m., McKay went back outside to look for his keys. He saw the car in the driveway at that time, but was unable to find his keys. When McKay awoke the next morning, the car was no longer in his driveway. McKay called the Chicago Police Department when he arrived at work, and the responding officer who came to speak with him "took the report." On March 18,

2016, McKay was contacted by the police, who "told [him] that the car was damaged badly, however, they caught the people that had stolen it." McKay did not know a person with respondent's name, and he had not given him permission to be inside his vehicle.

¶ 6 Chicago police officer Mark Reno testified that on March 18, 2016, at 9:05 p.m. he was on patrol with his two partners, Officers Martine and Darling. They were stopped at a red light in a police vehicle at the intersection of Ewing and 95th Street when they observed a vehicle run a red light traveling about 60 miles per hour in a 30-35 mile per hour zone. Officer Reno described that vehicle as a gray, Porsche sports utility van with license plates, "770THZ." The vehicle hit a curb, and crashed into a street pole, cutting the pole in half. The vehicle then went airborne, hit a dirt mound, and came to a stop in a parking lot, just inches from a pick-up truck. The officer testified that there was a "plume of smoke" coming from the area near the car, and there was dirt and debris all around. The vehicle's airbags had been deployed and the front of the vehicle was "very beat up" after the collision. Officer Reno then observed two individuals flee from the vehicle on foot. Officer Reno began to chase the driver, and identified himself as a police officer while attempting to stop the fleeing individual. He chased that person for about 45 seconds to a minute, and was able to apprehend him. He identified respondent in court as the driver of the car and the person he chased on foot.

¶ 7 Chicago Police Officer Montes testified that on March 18, 2016, he was on patrol around 9:05 p.m. with Officer Paransa in a marked squad car. While Officer Paransa was driving, Officer Montes noticed two young African-American males in a Porsche Cayenne with license plates "770THZ" and a headlight out, driving toward the squad car around "1001 and Yates" Boulevard. The officers made a U-turn to drive behind the Porsche, activated their sirens and lights, and attempted to curb the vehicle. The driver of the Porsche did not stop, but instead

proceeded through two stop signs and a red light at South Chicago and Harbor. The officers chased the vehicle for "maybe minutes, if that," before their Sergeant ordered them to stop the chase. Shortly thereafter, the officers relocated to 95th and Ewing, where they saw that the same Porsche Cayenne had crashed into a city pole. Officer Montes said: "It had crashed out, hit a city pole. It was completely damaged. *** The whole front end of the vehicle was smashed into -- and then we saw the light pole -- I saw the light pole on the floor." The keys to the vehicle were recovered from inside the car.

¶ 8 Upon the respondent's request, the court directed a finding in favor of the respondent on the Aggravated PSMV charge, but denied a directed finding on the PSMV charge. Respondent rested without the presentation of any evidence. The court then found that it had an opportunity to hear each of the witnesses testify and concluded that the "the State has proven Count II of the charge, possession of a stolen motor vehicle. There will be a finding of guilty and the minor will be a ward of the Court."

¶ 9 Respondent appealed that judgment, and in this court, he challenges the sufficiency of the evidence to sustain his conviction. A challenge to the sufficiency of the evidence establishing an adjudication of delinquency is governed by the same constitutional challenges as a criminal conviction. See *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007), citing *In re Winship*, 397 U.S. 358, 368 (1970) ("The constitutional safeguard of proof beyond a reasonable doubt applies during the adjudicatory stage of juvenile delinquency proceedings."). As a result, we must determine "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." *Jackson v. Virginia*, 443 U.S. 307, 313 (1979) (emphasis in original).

¶ 10 Circumstantial evidence that proves the elements charged beyond a reasonable doubt will support a criminal conviction. *In re Nasie M.*, 2015 IL App (1st) 151678, ¶ 24. Circumstantial evidence is proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience. *Id.*, citing *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010). In determining the reasonableness of an inference, the trier of fact need not look for all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id*., citing *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). Instead, all the evidence as a whole must satisfy the trier of fact that the defendant is guilty beyond a reasonable doubt. *Id*., citing *People v. Edwards,* 218 Ill. App. 3d 184, 196 (1991).

¶ 11 It is well established that the trier of fact is in the best position to assess credibility, and it is not the function of a reviewing court to retry a respondent. *In re Austin M.*, 2012 IL 111194, ¶ 107. Accordingly, a delinquency finding will not be reversed on appeal, unless the proof was so improbable, implausible, or unsatisfactory that reasonable doubt exists as to respondent's guilt. *In re Keith C*., 378 Ill. App. 3d 252, 257 (2007).

¶ 12 The offense of PSMV is defined under Section 4-103 (a)(1) of the Illinois Vehicle Code, which provides, in relevant part:

> "It is a violation of the Chapter for (1) A person not entitled to the possession of a vehicle *** to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted ***." 625 ILCS 5/4-103 (a)(1) (West 2014).

¶ 13 In order for respondent to have been adjudicated delinquent for this offense, the State was required to prove beyond a reasonable doubt: (1) that he possessed the vehicle; (2) that he was

not entitled to possession of the vehicle; and (3) that he knew that the vehicle was stolen. *People v. Cox*, 195 Ill. 2d 378, 387 (2001). In this case, respondent challenges the State's proof on the second and third elements.

¶ 14 Regarding the second element, respondent specifically contends that because there was no evidence of the car's title, registration, or a comparison of the vehicle identification number of McKay's car with the stolen car, the State did not show that he possessed a vehicle belonging to McKay. He maintains that there was no evidence that the car recovered was ever traced back to its alleged owner, McKay, and that McKay never testified to actual ownership of the vehicle respondent possessed.

¶ 15 Viewing the evidence, as recounted above, in the light most favorable to the prosecution, we find that the State established beyond a reasonable doubt that the car respondent was driving on March 18, 2016, was owned by McKay. McKay testified extensively that "his vehicle," a gray 2004 Porsche Cayenne with license plates 770THZ, was taken from his driveway just a few days before respondent was observed driving it. On the evening of March 15, 2016, McKay said he misplaced his car keys. On March 18, 2016, respondent was observed driving, and later crashing a gray Porsche Cayenne, bearing license plates 770THZ into a pole. Based upon all of the testimony presented, we conclude that there was more than sufficient evidence presented at the trial linking the car respondent was in possession of with the car 2004 Porsche Cayenne with license plates 770THZ that McKay described during his testimony. We thus conclude that a rational trier of fact could conclude that McKay was the owner of the Porsche that respondent was driving and in possession of on March 18, 2016.

¶ 16 Although respondent contends that McKay never explicitly said he owned the Porsche, this fact is not determinative. Under the *Jackson* standard of review, all reasonable inferences

from the evidence must be allowed in favor of the State. See e.g., *People v. Baskerville*, 2012 IL 11056. Throughout his testimony, McKay affirmatively acknowledged on multiple occasions that a gray 2004 Porsche Cayenne with license plates 770THZ was "his vehicle," and was asked multiple questions about "his vehicle." For example, McKay was asked "What time did you arrive home with your vehicle?" to which he replied: "Approximately, 9:00 p.m." When asked where he parked "your vehicle" that night, McKay testified "directly in front of my house". When asked if he exited "his vehicle" that night, McKay responded: "I did." When asked if "your car" was still parked in the driveway at 9:30 p.m., McKay said "Yes. It was." McKay was also asked whether "your car damaged in any way" at 9:30 that evening, and he indicated: "Not at all." Finally, when asked whether respondent was given permission to be inside "your vehicle" on March 18, 2016, McKay responded, "No."

¶ 17 From this testimony, it can reasonably be inferred that the car recovered by the police was owned by McKay. Moreover, PSMV only requires showing that someone other than respondent has a superior interest in the vehicle (*People v. Smith*, 226 Ill. App. 3d 433, 438 (1992)), and this element may be proven by circumstantial evidence and the reasonable inferences to be drawn therefrom (*People v. Tucker*, 186 Ill. App. 3d 683, 691 (1989); *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990)). In this case, there was the additional testimony from both McKay and the recovering officers that respondent was driving a specific make, model, and color of a car with license plates matching those belonging to McKay's recently stolen automobile. See *Balthazar*, 187 Ill. App. 3d at 968-69 (holding that the circumstantial proof in a PSMV prosecution can include matching the descriptions of the vehicle, and the damage done to it, from the owner and the police that recovered the vehicle). There was also testimony concerning the recent damage caused by respondent crashing the vehicle into a street

pole, which coincided with the police informing McKay his stolen vehicle had been recovered, but had been extensively damaged. McKay confirmed that the damage was not present when the car was stolen from his driveway. McKay also verified that he observed his car in a photograph after it was recovered by the police. This evidence established beyond a reasonable doubt that respondent possessed the complainant's stolen vehicle.

¶ 18 The cases respondent relies upon are distinguishable. In *Fernandez*, 204 Ill. App. 3d at 106-07, the parties stipulated that if the owner of the car would testify, she would testify that the car was stolen and she had not given the defendant permission to drive her 1984 red Mazda RX7 with a specific vehicle identification number. However, the only live testimony presented by the State about the vehicle the defendant was in possession of came from a woman who phoned the police after she discovered that the person she was renting a space to in her garage was dismantling a red Mazda there. *Id*. at 107. In addition, the indictment did not identify the Mazda other than a 1984 model owned by the complainant. *Id.* at 109. Because of the lack of proof, the appellate court found that the link between the victim's car and the car found by the witness was "inadvertently omitted," and reversed the defendant's conviction. *Id*. at 109.

¶ 19 Similarly, in *Hope*, 69 Ill. App. 3d 375, 380 (1979), the State produced evidence that a white 1976 Oldsmobile 98 had been reported stolen "sometime between" May 20, 1976, and July 8, 1976, and that defendant was arrested on July 8, 1976, driving a white vehicle of the same make, model and year. However, the license plates on the car defendant had been driving corresponded to a 1971 Dodge Dart. *Id*. at 376. In these circumstances, the appellate court reversed the defendant's conviction, noting that any evidence linking the car defendant was driving with the car reported stolen was "clearly lacking." *Id*. at 380.

¶ 20 Unlike *Fernandez* and *Hope*, the record here contains evidence that both the car that was stolen from McKay, and the car defendant was found in possession of, had the same license plate number, thus establishing a link between the two cars. We thus find *Fernandez* and *Hope* to be factually distinguishable from the case at bar.

¶ 21 Moreover, the fact that keys were in the car, corroborated McKay's testimony that the vehicle was stolen from his driveway, because McKay testified that, in a rush to get into his home, he left his keys somewhere between the car and his front door. It could reasonably be inferred from this testimony that the car was stolen from McKay's driveway because the keys were mistakenly left inside the vehicle that evening. There was also testimony that McKay was contacted on March 18, by police when his stolen Porsche Cayenne was recovered, although it was damaged extensively upon its being recovered. In finding respondent delinquent and making him a ward of the court, the trial court was permitted to consider all the surrounding circumstances and facts. *Abdullah*, 220 Ill. App. 3d at 692.

¶ 22 Respondent further contends that the State never proved that he knew the vehicle he possessed was stolen, because the car did not have any evidence of tampering, such as a pulled ignition or any other damage from which his guilty knowledge could be inferred. We disagree.

¶ 23 We reject respondent's suggestion that there must be damage to a car's ignition or steering column in order to prove that a respondent knew that a vehicle is stolen. Significantly, respondent cites no specific authority for this proposition, because, we believe it is not an accurate or complete statement of Illinois precedent. While evidence of a pulled ignition or damaged steering column may circumstantially show knowledge that a vehicle is stolen, it is not the only way such knowledge may be established; and while the condition of a vehicle is one of

the factors courts consider in determining whether or not a defendant had knowledge of a vehicle's theft, it is certainly not the exclusive factor.

¶ 24 In Illinois, the legislature has taken great care to develop a statutory remedy to discourage the theft of motor vehicles. Section 4-103(a)(1) of the Vehicle Code which defines the offense of PSMV, also provides an inference that a person exercising exclusive and unexplained possession of a stolen vehicle has knowledge that the vehicle is stolen. The statutory language provides: "It may be inferred, therefore that a person exercising exclusive unexplained possession over a stolen or converted vehicle *** has knowledge that such vehicle *** is stolen or converted, regardless of whether the date on which such vehicle *** was stolen is recent or remote." 625 ILCS 5/4-103(a)(1) (West 2014); See also *Abdullah*, 220 Ill. App. 3d at 690. Accordingly, under the plain language of the statute, it can be inferred that respondent knew that the vehicle he possessed was stolen.

¶ 25 Although respondent claims he did not have exclusive possession of the vehicle because there was a passenger in the car, he again cites no specific authority for this proposition, other than to reference the statute. We find this singular reference to the statute's citation unpersuasive. See *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000) ("The rule that possession must be exclusive does not mean that the possession may not be joint; if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession." (citations omitted)); *People v. Santana*, 161 Ill. App. 3d 833, 837 (1987) ("A person has actual possession over a thing when he has immediate and exclusive control over it. The fact that numerous people may be present does not affect the exclusivity of control. The term “exclusive” is relative and joint possession is sufficient to constitute exclusive possession." (citations omitted)).

¶ 26 Based upon the statute's directive, we conclude that the trial court could infer that respondent had knowledge the vehicle he possessed was stolen. Knowledge is a question of fact, to be resolved by the trier of fact. *Abdullah*, 220 Ill. App. 3d at 692. "Where possession has been shown, an inference of defendant's knowledge can be drawn from the surrounding facts and circumstances." *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990). "A defendant may attempt to rebut the inference of guilty knowledge which arises from the possession of a stolen vehicle, but the defendant must offer a reasonable story or be judged by its improbabilities." *Abdullah*, 220 Ill. App. 3d at 691. In this case, there was no evidence presented by respondent to rebut this inference. Respondent's explanations, offered for the first time on appeal, are not substitutes to properly rebut the statute's permissible inference of knowledge.

¶ 27 The State's evidence, specifically as to knowledge, however, did not rest solely on the statutory inference which established that respondent was driving a vehicle that was stolen, but also upon the eyewitness testimony concerning respondent's efforts to flee when he was in possession of that stolen vehicle.

¶ 28 Flight from a stolen vehicle is evidence tending to show that a defendant knew that the vehicle was stolen. *People v. Smith*, 226 Ill. App. 3d 433, 436 (1992). In this case, there was testimony of two different police officers—whom the trial court found to be credible and whose testimony is not challenged by respondent on appeal—who observed respondent fleeing at two different times when these officers made efforts to stop him. Officer Montes testified that when he first noticed the Porsche Cayenne, the vehicle was being driven with a front headlight out. The officers made a U-turn and activated their sirens and lights. In response, respondent did not stop, but instead led the officers on a chase during which respondent committed several traffic violations.

¶ 29 Officer Reno testified about the vehicle's violent crash, minutes after that earlier chase, when he observed respondent exit from the driver's side of the stolen vehicle and attempt to elude the officer by running away, before he was apprehended by Officer Reno a short time later. This testimony of both officers concerning respondent's flight provided additional evidence of respondent's knowledge that the vehicle he possessed was stolen.

¶ 30 *People v. Gordon*, 204 Ill. App. 3d 123 (1990), upon which respondent relies, is factually distinguishable from the case at bar. In *Gordon*, the police discovered the stolen vehicle with defendant in the driver's seat, another individual, Chris Jackson, in the passenger seat, and a third person in the back seat. The owner of the vehicle testified that he was very close to Jackson, had often given Jackson permission to drive his automobile, and would not have reported the car stolen if he had known it was Jackson who had the vehicle. There was also evidence showing that the defendant had ridden with Jackson on at least one other occasion in that vehicle, that he thought it belonged to Jackson, and that Jackson had asked him to fix the radio of the car. *Id*. at 125. When the defendant was pulled over in the car, he did not try to flee. *Id*. at 128. The court in *Gordon* found this evidence insufficient to sustain defendant's conviction.

¶ 31 Here, we find no similar circumstances creating reasonable doubt of respondent's guilt. Unlike in *Gordon*, there was no evidence in this case that McKay had ever previously given the car to respondent or his passenger, and there was no evidence showing an innocent explanation for defendant's presence in the car. Finally, unlike the defendant in *Gordon*, respondent fled from police, evidencing his consciousness of guilt. *Smith*, 226 Ill. App. 3d at 436.

¶ 32 We thus conclude the evidence presented at respondent's trial established beyond a reasonable doubt that he was in possession of a motor vehicle, that the motor vehicle was stolen,

and that respondent knew it was stolen. Accordingly we affirm the finding of delinquency and the order adjudicating the minor/respondent, a ward of the court.

¶ 33 Affirmed.