

No. 1-08-0711

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
vs.)	No. 05 CR 9263
)	
JUAN ESPANOL,)	Honorable
)	Catherine M. Haberkorn.
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concurred in the judgment.

ORDER

HELD: In light of the evidence presented at trial, defendant was proven guilty of possession of a stolen motor vehicle beyond a reasonable doubt; furthermore, defendant's trial counsel was not ineffective for failing to tender a mistake of fact jury instruction.

Following a jury trial, defendant, Juan Espanol, was convicted of possession of a stolen motor vehicle and sentenced to 5 years' imprisonment. On appeal, defendant asserts that: (1) he was not proven guilty beyond a reasonable doubt; and (2) his trial counsel provided ineffective assistance by failing to tender a jury instruction on mistake of fact. We affirm.

I. BACKGROUND

On April 14, 2005, defendant was charged with one count of possession of a stolen motor

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vehicle. The case proceeded to a jury trial in January of 2008.

Christina Lopez testified that, at the time in question, March 18 through March 19, 2005, she lived with her mother and younger brother on the 4000 block of north Drake Avenue in Chicago. However, as her mother and brother were out of town, she was staying at her home with her boyfriend Nicholas and another friend, Vanessa. Christina was a student and she regularly drove a red Ford Probe vehicle owned by her mother to and from school. On March 18, 2005, she parked this vehicle in front of her home and locked it. The vehicle was distinguishable by a large red sticker in the front windshield, red-painted wheel rims, her student I.D. card hanging from the rearview mirror, a statue and a dried rose on the dashboard, and a cover over the steering wheel.

Shortly after 1:00 a.m. on March 19, 2005, Christina was awakened by Vanessa screaming that Christina's car was being stolen. Christina and Nicholas ran outside and saw the Ford Probe being driven down an alley. Christina yelled to the driver to stop, at which time she saw defendant stop the car, turn his head around to look at her, and then continue driving away. Christina and her boyfriend then got into Nicholas' car to try and catch up with the vehicle. They found the Ford Probe parked on Irving Park Road less than a block away. Christina then observed defendant walking away from her car toward a nearby bar. When Christina confronted defendant and asked him why he had stolen her mother's car, defendant replied, " 'What are you talking about? This is my friend's car.' " Defendant then quickly walked inside the bar.

While this was occurring, Vanessa had called the police and a Chicago Police Officer soon arrived. The police officer attempted to enter the bar, but was stopped at the bar entrance. While the officer waited for backup to arrive, defendant exited along with some other bar patrons.

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Christina identified defendant as the person who had stolen her car, and the police officer placed him under arrest. Christina testified that she did not know defendant or give him permission to drive the car.

Additionally, Christina stated that the Ford Probe was ultimately returned to her by the police in a much different condition than when she had parked it in front of her house. Specifically, there were now wires hanging underneath the steering wheel and near the radio. There was also damage to the driver-side door lock. A screwdriver that the police had found in the car did not belong to her.

Yolanda Lopez testified that she owned the red Ford Probe her daughter Christina regularly drove to and from school. On March 18 through March 19, 2005, she was out of town with her son and Christina was staying at home. Before leaving, Yolanda checked the inside of the Ford Probe and everything appeared in order. This is something Yolanda did every time she left before a trip. However, after the incident the car was in a different condition, with wires hanging down inside the cabin and the car no longer operating correctly when her key was placed in the ignition. Yolanda did not own a screwdriver that the police recovered inside the vehicle. Yolanda testified that she did not know defendant and did not give him permission to use her car.

Chicago Police Officer Biala testified that she was on duty and in full uniform when she was dispatched to Irving Park Road and Drake Avenue to respond to a report of an automobile theft in progress just after 1:00 a.m on March 19, 2005. Officer Biala was then directed to another location about a block away. When she arrived, she observed a red Ford Probe parked in a crosswalk on Irving Park Road, near Queen Albert's Bar and Restaurant. Christina Lopez was there and she stated that defendant had stolen the car and then ran inside the bar. Officer Biala's efforts to confront

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defendant were rebuffed by the bar's security guard, who indicated that the establishment was a private club with limited access. Officer Biala called for backup and waited outside the bar.

While she was waiting, she observed someone exit the bar. Christine identified defendant as the person who stole the vehicle and Officer Biala placed him under arrest. In a pat down, Officer Biala discovered a brass pipe in defendant's possession. After defendant had been secured, Officer Biala inspected the stolen vehicle. She testified that the driver's side door was damaged and appeared to have been tampered with. She also stated that there were a number of loose wires hanging inside the cabin of vehicle, the steering wheel column was cracked, and a screwdriver was sticking out of the ignition. Officer Biala testified that in her training and experience, it appeared that the car had been tampered with in order to operate the vehicle without a key. She testified that she never recovered any keys to the car.

After the State rested its case, the defense presented testimony from Jesus Percoliza, a social acquaintance of defendant. The two men had known each other for about five years, meet often at the Queen Albert's Bar, and Percoliza had even slept at defendant's home on a number of occasions. On March 18, 2005, Percoliza met defendant at the bar and they decided to go to Percoliza's house for a drink. Percoliza drove his car, which was a red Ford Probe similar to Yolanda's with the exception that it was a different model year and did not have red wheel rims. After spending some time at Percoliza's home, the two returned to the bar to have another drink. Percoliza parked the Ford Probe close to the bar. About 30 minutes later, Percoliza gave defendant the key to his car. Defendant was going to drive and buy Percoliza some cigarettes, because the bar did not sell cigarettes and the store was not within walking distance.

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When defendant later returned with Percoliza's key, the police were also there and indicated that defendant had stolen a car. Percoliza testified that he gave his key to the police, but defendant was arrested and taken away. He continued to drink at the bar until, between 30 minutes and a few hours later, he went outside to check on his car. The police were still there, and when Percoliza suggested they try his key on the stolen vehicle it would not start.

Finally, defendant testified about the circumstances of his arrest. Defendant testified that he met Percoliza, a friend he had known for a few years, at the Queen Albert's Bar on March 18, 2005. The two soon left the bar and drove in Percoliza's car, a red Ford Probe, to Percoliza's home. After about an hour, the two returned to the bar. It was a 15 minute drive each way, and Percoliza drove.

About 30 minutes after returning to the bar, Percoliza gave defendant the key to his car so defendant could go buy some cigarettes for him. When defendant stepped outside, he could not remember where Percoliza parked his car so he had another acquaintance drive him around to find it. The two circled the block a few times before defendant observed what he thought was Percoliza's car parked on Drake Avenue. Using Percoliza's key, defendant opened the door and started the vehicle's engine. Defendant noted that the key only partially entered the ignition switch, but the key still worked.

Defendant then began driving the car down a nearby alley when he heard and saw some people behind him screaming. After stopping briefly, defendant continued and, ultimately, parked the car near the Queen Albert's Bar. He went inside to tell Percoliza that the car was outside, and then walked back to the car because it was illegally parked. While waiting outside, Christina and Nicholas arrived and began asking defendant why he stole Christina's car. Defendant responded that

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it was his friend's car, and then walked back inside the bar because he felt threatened.

Inside the bar, defendant gave Percoliza his car key back and told him about the disturbance outside. Soon the police arrived and began asking who had been driving the car. Defendant went outside to explain the situation and was arrested. Defendant explained that a brass pipe he was carrying at the time belonged to a friend, and that he was holding it while his friend was at a casino.

With respect to the Ford Probe, defendant testified that he was simply mistaken and thought that the vehicle he was using was Percoliza's. He indicated that he never noticed the sticker on the windshield or the other items inside the car identified by Christina and Yolanda, noting that it was dark where the car was parked. When asked on cross-examination why he drove straight back to the bar and never bought any cigarettes, defendant testified, "I changed my mind. I forgot."

Following closing arguments, the jury found defendant guilty and he was subsequently sentenced to 5 years' imprisonment. He now appeals.

II. ANALYSIS

On appeal, defendant contends the evidence was insufficient to prove him guilty beyond a reasonable doubt and that his trial counsel provided ineffective assistance of counsel. We address each argument in turn.

A. Reasonable Doubt

We first address defendant's challenge to the sufficiency of the evidence supporting his conviction.

When presented with such a challenge, it is not the function of this court to retry defendant and we review the evidence in the light most favorable to the State to determine whether any rational

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trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Evans*, 209 Ill.2d 194, 209 (2004). The jury's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill.2d 92, 114-15 (2007). As such, a reviewing court will not substitute its judgment for that of a jury on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill.2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt regarding the defendant's guilt. *Evans*, 209 Ill.2d at 209.

Section 4-103 of the Illinois Vehicle Code provides that it is a felony for:

“A person not entitled to the possession of a vehicle or essential part of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted; additionally the General Assembly finds that the acquisition and disposition of vehicles and their essential parts are strictly controlled by law and that such acquisitions and dispositions are reflected by documents of title, uniform invoices, rental contracts, leasing agreements and bills of sale. It may be inferred, therefore that a person exercising exclusive unexplained possession over a stolen or converted vehicle or an essential part of a stolen or converted vehicle has knowledge that such vehicle or essential part is stolen or converted, regardless of whether the date on which such vehicle or essential part was stolen is recent or remote.” 625 ILCS 5/4-103(a)(1), (b) (West 2004).

Thus, the State is required to establish that a defendant had possession of a vehicle to which

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he was not entitled and that he knew that the vehicle was stolen. *People v. Steading*, 308 Ill. App. 3d 934, 942 (1999). Furthermore, the statute creates a permissible inference that a person exercising exclusive and unexplained possession of a stolen vehicle has knowledge that the vehicle is stolen. *People v. Abdullah*, 220 Ill. App. 3d 687, 690 (1991). While the inference of knowledge arising from exclusive possession of stolen property may be rebutted by a defendant's explanation, "a defendant must offer a reasonable story or be judged by its improbabilities." *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990). A jury is not required to accept defendant's version of the facts, but may consider its probability or improbability in light of the surrounding circumstances. *Ferguson*, 204 Ill. App. 3d at 151.

In this case, defendant has not challenged the evidence of his possession of Yolanda Lopez's vehicle or the fact that he was not authorized to use it. Instead, both in the trial court below and again on appeal, he has challenged only the evidence supporting his knowledge that the Ford Probe was stolen. Essentially, defendant claims that the evidence supported his reasonable belief that the vehicle he was driving belonged to Percoliza. He therefore contends he raised an affirmative defense of mistake of fact, and the State failed to disprove this defense beyond a reasonable doubt and establish that he knew the vehicle was stolen. We disagree.

Defendant is correct that mistake of fact is a statutorily recognized affirmative defense. 720 ILCS 5/4-8(a) (West 2004); 720 ILCS 5/3-2 (West 2004). Furthermore, after a defendant raises such an affirmative defense, the State is required to disprove its existence beyond a reasonable doubt. *People v. Sims*, 374 Ill. App. 3d 231, 268 (2007). As noted above, however, defendant's mere unauthorized and otherwise unexplained possession of Yolanda's vehicle created a permissible

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inference that he had knowledge it was stolen. *Abdullah*, 220 Ill. App. 3d at 690.

The testimony of defendant and Percoliza attempted to establish the affirmative defense of mistake of fact and to rebut the statutory inference by presenting the jury with an explanation centered around defendant's simple mistaken use of Percoliza's key to operate the wrong car. However, this explanation contained a number of improbabilities and inconsistencies. For example, defendant failed to reasonably explain how he did not notice the differences in the appearance of the two cars, even though he had been a passenger in Percoliza's car that very evening. He did not reasonably explain how he forgot where Percoliza's car was parked in the 30 minutes he was inside the bar after returning from Percoliza's home, or why he did not further respond to Christina's and Nicholas' yelling in the alley as he was driving away. Finally, defendant's only explanation for why he never obtained any cigarettes, ostensibly the only reason for his use of Percoliza's car, was "I changed my mind. I forgot." We also note that Percoliza himself testified that the police ultimately attempted to use his key, the very key defendant purportedly used to operate Yolanda's car, and it did not in fact work.

Furthermore, defendant's explanation was rebutted by the State's evidence that after defendant was in possession of Yolanda's vehicle it was in substantially different condition than it had been before. Specifically, the door lock had been damaged, there were wires hanging inside the cabin, and there was a screwdriver in the ignition. Officer Biala testified that in her experience and training, this was evidence of a stolen vehicle. We note that "[t]he condition of the vehicle is one of the most significant factors which courts consider in determining whether or not the defendant had knowledge of the vehicle's theft." *Abdullah*, 220 Ill. App. 3d at 691. This evidence was never

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seriously challenged by defendant at trial.

Ultimately, it was the jury's role in the case to weigh the evidence and judge the credibility and demeanor of the witnesses. *Evans*, 209 Ill.2d at 209. Furthermore, a defendant's explanation rebutting the statutory inference of knowledge must be reasonable (*Ferguson*, 204 Ill. App. 3d at 151), as must a defendant's belief in a mistaken fact supporting an affirmative defense (*People v. Bauer*, 393 Ill. App. 3d 414, 423 (2009)). Whether viewed as a failure of defendant to rebut the statutory inference he knew Yolanda's car was stolen, or as the State's successfully disproving the defense of mistake of fact, the evidence presented here was not so improbable or unsatisfactory that it leaves any doubt of defendant's guilt. *Evans*, 209 Ill.2d at 209.

B. Ineffective Assistance of Counsel

Next, we consider defendant's assertion that his trial counsel provided ineffective assistance by failing to tender a jury instruction on mistake of fact.

A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill.2d 285, 302 (2004). In order to obtain relief under *Strickland*, a defendant must prove that defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused defendant prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010).

Effective assistance of counsel refers to competent, not perfect, representation. *People v. Palmer*, 162 Ill.2d 465, 476 (1994). Thus, a defendant must overcome the presumption that the

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challenged conduct might be considered sound trial strategy under the circumstances. *People v. Mims*, 403 Ill. App. 3d 884, 890 (2010). A decision involving a matter of trial strategy will typically not support a claim of ineffective representation, and a defense counsel's choice of jury instructions is typically considered a tactical decision within that counsel's discretion. *Mims*, 403 Ill. App. 3d at 890 (2010).

On appeal, defendant notes that the defense theory at trial was that defendant mistakenly used Percoliza's key to operate Yolanda's vehicle, and that this mistake precluded a finding of guilty on the charge of possession of a stolen motor vehicle. This theory was advanced at trial through witness testimony, cross-examination, and closing arguments. As such, defendant asserts that his trial counsel should have tendered Illinois Pattern Jury Instructions, Criminal, No. 25.24 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 25.24), which states that "[a] defendant's mistake as to a matter of fact is a defense if the mistake shows that the defendant did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged." Defendant contends that without this instruction the jury could not properly weigh the evidence presented, and, therefore, there is a reasonable probability the verdict would have been different if only his trial counsel had tendered IPI Criminal 4th No. 25.24.

While defendant is certainly correct that his defense at trial centered around his purportedly mistaken belief that he was operating Percoliza's car, we do not agree that his trial counsel's decision not to tender IPI Criminal 4th No. 25.24 left the jury unable to consider that defense or amounted to ineffective assistance. Defendant's argument fails to consider that his trial counsel tendered and obtained an alternative instruction addressing this defense, Illinois Pattern Jury Instructions,

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Criminal, No. 23.36A (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 23.36A). In part this instruction informs the jury of the permissible inference of knowledge established in section 4-103 of the Illinois Vehicle Code. However, the instruction also informs the jury that it is not required to make this inference and, moreover, defendant's exclusive possession of a stolen vehicle "*may be reasonably explained by facts and circumstances in evidence.*" (Emphasis added.) IPI Criminal 4th No. 23.36A. After obtaining this instruction, defendant's trial counsel then referred to it specifically while asserting during closing arguments that defendant had adequately and reasonably explained his possession of Yolanda's vehicle.

The purpose of jury instructions is to provide jurors with the correct principles of law applicable to the evidence. *People v. Bauer*, 393 Ill. App.3d 414, 423 (2009). While the trial counsel did not tender the exact instruction defendant now contends he should have, the jury was properly instructed by IPI Criminal 4th No. 23.36A that it could consider defendant's explanation and defendant's trial counsel further supported that defense through questioning and argument. We cannot say that this strategy fell below an objective standard of reasonableness, and we, therefore, reject defendant's assertion that he received ineffective assistance of trial counsel.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.