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SECOND DIVISION
JULY 26, 2011

2011 IL App (1st) 100676-U
No. 1-10-0676

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.
)	
v.)	No. 07 CR 5570
)	
RICHARD BRYANT,)	Honorable
)	Timothy J. Joyce,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Harris concurred in the judgment.

ORDER

Held: Defendant's conviction for aggravated possession of a stolen motor vehicle affirmed where evidence supported trial court's determination that defendant knew vehicle was stolen; consecutive one-year MSR terms on aggravated battery convictions vacated; judgment affirmed in all other respects.

¶ 1 Following a bench trial in January 2010, defendant Richard Bryant was convicted of one count of aggravated possession of a stolen motor vehicle, (625 ILCS 5/4-103.2(a)(7)(A) (West 2006)), and two counts of aggravated battery to a peace officer (720 ILCS 5/12-4(b)(18) (West 2006)). He was sentenced to a ten-year term of imprisonment for the aggravated possession of a stolen motor vehicle, to run consecutively to two concurrent four-year terms of imprisonment for the two counts of aggravated battery to a peace officer. The trial court assigned consecutive terms of mandatory supervised release (MSR) of two years for the aggravated possession of a stolen motor vehicle and one year terms for the two counts of aggravated battery to a peace officer. On appeal,

defendant contends that the State failed to prove beyond a reasonable doubt that he knowingly possessed a stolen vehicle; further, the imposition of multiple terms of MSR was erroneous.

¶ 2 At trial, Chicago Police Officer Patrick Thiry testified that at 10:45 p.m. on February 25, 2007, he was working with Officer Scott Bittner when they saw defendant driving a Dodge Intrepid northbound on Indiana Avenue near 48th Street in Chicago. Defendant was not wearing a seatbelt. After running the license plate number of the car and learning that it was stolen, the officers followed the car.

¶ 3 When defendant pulled into a parking spot, the officers turned on the police car's emergency lights and exited the car. Officer Bittner testified that he stood at the rear of the stolen vehicle as Officer Thiry walked up to the driver's side and asked defendant to turn off the car's engine. When defendant started to move the gear shift, Officer Bittner pounded on the back window and told him to stop. Defendant glanced back and reversed the car. Officer Bittner jumped out of the way, fell and injured his right knee.

¶ 4 Officer Thiry testified that he again ordered defendant to turn off the vehicle. When defendant did not comply, the officer attempted to pull defendant out of the car. Defendant grabbed Officer Thiry's right arm and struck him in the shoulder with the car door. Officer Thiry continued his attempt to remove defendant from the vehicle. While the officer's body was halfway inside the vehicle, defendant began to drive northbound on Indiana Avenue. Officer Thiry was dragged for approximately three house lengths before he was able to free himself from defendant who was holding onto the officer's right arm. As a result of this incident, Officer Thiry sustained some minor abrasions.

¶ 5 Officers Thiry and Bittner testified that they returned to their car, related what had occurred over the police radio and drove in defendant's direction. Officer Bittner testified that a minute later, he saw defendant running away from the stolen vehicle that had crashed into a telephone pole at 43rd Street and Indiana Avenue. Defendant was then apprehended by several officers.

¶ 6 Suzette Gonzalez acknowledged that in 1999 she had been convicted of deceptive practices. She testified that she owned the stolen Dodge Intrepid. Gonzalez related that she was a friend of Teirra McGowan, who was dating defendant, and that she had known defendant through McGowan for three years.

¶ 7 Gonzalez further testified that prior to February 25, 2007, she had allowed McGowan to borrow her car several times and had seen McGowan driving it with defendant as a passenger. She did not give anyone permission to drive her car on February 25, 2007, nor did she give defendant permission to drive it during the month of February 2007. Some time prior to February 25, 2007, Gonzalez reported the car stolen because McGowan had not returned it to her and she informed police that McGowan had the car.

¶ 8 Gonzalez further testified that she did not currently have a drug problem. She stated that when she did have a drug problem in the past, she purchased drugs from defendant. When defense counsel asked her if she allowed defendant to use her vehicle in exchange for drugs, she responded, "[n]o."

¶ 9 At the close of evidence, the court stated that it listened carefully to the testimony of the officers and Gonzalez. The court found the officers' testimony credible that defendant had caused their injuries. The court further stated that the fact that Gonzalez had previously bought drugs from defendant was:

"[c]ertainly something that the Court would normally consider and have certainly considered it, but it's considerably bellied [*sic*] by [defendant's] conduct at the time the officer came up to the car."

¶ 10 The court noted that the only reason for defendant to drive away from the police was that he knew the car was stolen. The court concluded that defendant was guilty of aggravated possession of a stolen motor vehicle and two counts, one for each of the officers involved, of aggravated battery to a peace officer.

¶ 11 Defendant filed a motion for a new trial alleging, in relevant part, that the State failed to prove him guilty beyond a reasonable doubt. He claimed that Gonzalez was not a credible witness because she was a drug addict, was a friend of defendant's girlfriend, McGowan, and had given McGowan permission to use her car. The court denied the motion. In doing so, the court noted that it was "certainly curious" that Gonzalez would allow McGowan to use her car with regularity. However, the fact that defendant fled from police suggested only one thing, and that was that defendant knew the car was stolen.

¶ 12 The court sentenced defendant to ten years of imprisonment for aggravated possession of a stolen motor vehicle to run consecutively to two concurrent four-year prison terms for the aggravated battery offenses. The court also sentenced defendant to a two-year term of MSR on the possession count to run consecutively to one-year terms of MSR on the aggravated battery counts.

¶ 13 On appeal, defendant first contends that no rational trier of fact could conclude that he was guilty beyond a reasonable doubt of aggravated possession of a stolen motor vehicle. He maintains that this court should disregard the trial court's unreasonable inference that he knew the vehicle was stolen.

¶ 14 When a defendant challenges the sufficiency of the evidence to sustain his conviction, a reviewing court must determine whether all of the direct and circumstantial evidence, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Id.* For the reasons that follow, we do not find that defendant's convictions should be reversed..

¶ 15 To sustain defendant's conviction of aggravated possession of a stolen motor vehicle, the State was required to prove, in relevant part, that defendant knowingly possessed a stolen vehicle. 625 ILCS 5/4-103.2(a)(7) (West 2006). Where possession has been shown, an inference of

defendant's knowledge that the vehicle was stolen can be drawn from the surrounding facts and circumstances. *People v. Wehrwein*, 190 Ill. App. 3d 35, 41 (1989).

¶ 16 Viewed in the light most favorable to the prosecution, the State's evidence showed that Gonzalez had allowed McGowan to borrow her car previously, but that she did not give permission to anyone to use her car on February 25, 2007. Gonzalez reported the car stolen because McGowan had failed to return it, and on February 25, 2007, police observed defendant driving the car. After they learned that the car had been reported stolen, they asked defendant to turn off the engine. He refused, and reversed the car toward Officer Bittner, who had to jump out of the way to avoid being hit. Defendant then held onto Officer Thiry as he drove away, dragging him for about three house lengths. Defendant crashed the car and fled on foot before he was apprehended by several officers. We find that this evidence was sufficient for the court to infer that defendant was in knowing possession of a stolen vehicle and thus defendant was proved guilty beyond a reasonable doubt. See *People v. Smith*, 226 Ill. App. 3d 433, 436-37 (1992).

¶ 17 Defendant contends, however, that a reasonable inference could be drawn that he was allowed to borrow the vehicle because: (1) Gonzalez frequently lent her vehicle to McGowan, defendant's girlfriend; (2) Gonzalez had lent the car to McGowan "shortly before his arrest"; and there was no evidence that Gonzalez had asked McGowan to return the car. He maintains that the trial court failed to properly weigh Gonzalez' testimony and relied solely on the unreasonable inference that he would not have fled unless he knew the car was stolen.

¶ 18 We note that the court was not required to search out all possible explanations consistent with innocence and raise them to the level of a reasonable doubt (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)), and that here the court could draw the reasonable inference that defendant attempted to flee from police and thwart his arrest because he knew the car was stolen (*Smith*, 226 Ill. App. 3d at 436-37).

¶ 19 Moreover, the trial evidence does not show that Gonzalez had lent her car to McGowan

"shortly before [defendant's] arrest," but to the contrary, that Gonzalez gave no one permission to drive it on February 25, 2007 Gonzalez had reported the car stolen prior to that date. In addition, the fact that Gonzalez had previously lent her car to McGowan does not reasonably lead to the inference that defendant was allowed to use it. The court found the lending relationship between Gonzalez and McGowan curious, but that defendant's actions established that he knew the car was stolen. It is not our prerogative to substitute our judgment for that of the trial court on questions involving the weight of the evidence or the credibility of the witnesses (*People v. Campbell*, 146 Ill 2d. 363, 375 (1992)), and we find no reason to disturb the natural inference drawn by the court that flowed from the evidence before it (*People v. Herring*, 324 Ill. App. 3d 458, 464-65 (2001)).

¶ 20 In reaching this decision, we have considered *People v. Melchor*, 376 Ill. App. 3d 444 (2007) and *People v. Sergey*, 137 Ill. App. 3d 971 (1985), both cited by defendant. We find these cases to be factually inapposite. In the *Melchor* case, this court found that the trial court's erroneous admission of a deceased witness' testimony was not harmless error. The court noted that the deceased witness was the only person connecting defendant to the murder; further, although defendant's flight from police provided some evidence of his consciousness of guilt, the proof against defendant was far from overwhelming to conclude that the error was harmless. *Melchor*, 376 Ill. App. 3d at 456-58. The *Melchor* case is clearly inapplicable to this case as it involved whether an erroneous admission of evidence in a murder case was harmless. Furthermore, in a stolen vehicle possession case, defendant's flight from police supports the reasonable inference that defendant knew the vehicle was stolen. See *Smith*, 226 Ill. App. 3d at 436-37, and *People v. Whitfield*, 214 Ill. App. 3d 446, 454-55 (1991), and cases cited therein.

¶ 21 In the *Sergey* case, defendant's conviction for possession of a vehicle while knowing it to be stolen or converted was reversed where the evidence showed that defendant's employer stored numerous cars with keys in the ignition, defendant believed his employer owned the car in question and would have allowed him to drive it, and defendant temporarily used the car without damaging

it. *Sergey*, 137 Ill. App. 3d at 973, 975-76. Here, unlike *Sergey*, defendant fled from police in the stolen car, crashed it and fled on foot. These actions support the reasonable inference that defendant knew the car was stolen. See *Whitfield*, 214 Ill. App. 3d at 454.

¶ 22 Defendant further maintains that it can "be inferred with greater certainty" that he fled from police because he had an outstanding warrant and a lengthy history of unfavorable encounters with police. Since no evidence to that effect was introduced at trial, we will not consider it. *People v. Orta*, 361 Ill. App. 3d 342, 349 (2005).

¶ 23 Defendant next contends, the State concedes, and we agree, that the trial court erred in entering consecutive MSR terms. Pursuant to section 5-8-4(e)(2) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-8-4(e)(2) (West 2006)), when a defendant receives consecutive sentences for multiple felonies, the sentences are treated as a single term and defendant serves the MSR term corresponding to the most serious offense. *People v. Jackson*, 231 Ill. 2d 223, 227 (2008). Aggravated possession of a stole motor vehicle, a Class 1 felony, is more serious than aggravated battery to a peace officer, a Class 2 felony. 625 ILCS 5/4-103.2(c) (West 2006); 720 ILCS 5/12-4(e)(2) (West 2006); 730 ILCS 5/5-8-1(d)(2) (West 2006). Thus, we vacate the one-year MSR terms for the aggravated battery convictions and affirm the two-year MSR term assigned to the aggravated possession conviction.

¶ 24 In light of the foregoing, we vacate the one-year MSR terms assigned to the aggravated battery convictions and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed in part; vacated in part.