

THIRD DIVISION
FEBRUARY 19, 2014

No. 1-12-0234

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In the Interest of Jacorey B.</i> , a Minor,)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 11 JD 40046
)	
JACOREY B.,)	
)	Honorable
Respondent-Appellant.))	Richard F. Walsh,
)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *HELD:* Circuit court's finding of delinquency with respect to the offense of possession of a stolen motor vehicle and criminal trespass to a motor vehicle reversed where the elements of the offenses were not proven beyond a reasonable doubt.

¶ 2 Minor respondent was adjudicated delinquent of the offenses of possession of a stolen motor vehicle and criminal trespass to a motor vehicle in a juvenile proceedings governed by the Juvenile Court Act of 1987 (705 ILCS 405/5-101 *et seq.* (West 2010)) and was sentenced to two years' probation. On appeal, respondent challenges his delinquency adjudication, arguing that the State failed to prove him guilty of the offenses beyond a reasonable doubt.¹ For the reasons explained herein, we reverse the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On February 11, 2011, Ahmad Tomalieh reported that his 1999 Dodge Durango with vehicle license plate 2696209 had been stolen. Fifteen-year-old respondent was arrested on that date in connection with theft of Tomalieh's vehicle and was charged with possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2010)) and criminal trespass to a motor vehicle (720 ILCS 5/21-2 (West 2010)).

¶ 5 At the trial that ensued, Ahmad Tomalieh confirmed that on February 11, 2011, he owned a 1999 Dodge Durango. On that date, the car was in "very good" condition. Sometime in the morning, Tomalieh drove his vehicle to the restaurant in which he worked, and left it parked in front of the restaurant. Shortly before completing his shift at the restaurant that evening, Tomalieh went outside and started his vehicle to allow it to warm it up before he drove home.

¹ Respondent raises several other arguments on appeal; however, because we find his sufficiency of the evidence claim dispositive, we need not set forth his additional arguments in this disposition.

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He explained that he did so every night before "[he] le[ft] the job." Tomalieh then returned to the restaurant. When Tomalieh came back outside, his vehicle was gone. He immediately called the police and reported his vehicle stolen.

¶ 6 The following day, Tomalieh received a call from "somebody" at the police station and was told that his car had been found. After receiving paperwork in the mail, Tomalieh went to an impound lot to retrieve his car. He described his car's condition as "very bad," and explained that the front end of the vehicle had been damaged and the mirror was broken. It appeared as though "[s]omebody, like, hit it." The vehicle was no longer driveable. Tomalieh acknowledged that he never saw respondent drive his vehicle, but confirmed that he did not give respondent or anyone else permission to drive his car.

¶ 7 Dolorous Stimage testified that on February 11, 2011, at approximately 2 p.m., she was driving southbound on Harvey Avenue in Oak Park, Illinois. At that time, she observed a black vehicle turn the corner, lose control, and crash into a tree. The vehicle sustained damage to the front end and there was smoke emitting from the vehicle. Stimage observed three young men run away from the vehicle after the accident. Each of the men were African American and were wearing dark-colored jackets. Two of the occupants ran away from the steaming vehicle toward some houses. The other young man traveled northbound on Harvey Avenue towards Division Street. Stimage called the police while she drove around the block and tried to keep a lookout for the three men involved in the accident. Stimage then returned to the accident site.

¶ 8 When the police arrived, Stimage relayed what she had observed and reported that she had just seen one of the young men traveling east down Division Street and had seen the other

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two occupants of the vehicle a few blocks away traveling north. Police officers subsequently stopped three young men who matched the general description provided by Stimage. She was driven in a squad car several blocks away to where the young men had been stopped. Stimage remained in the squad car, and from a distance of approximately 10 feet, identified the three young men as the individuals she had seen leave the scene of the accident. She recognized the men by their clothing.

¶ 9 Oak Park Police Officer Barrientos testified that he was on patrol on February 11, 2011. At approximately 2:06 p.m., he received a call about a reckless driver operating a vehicle in the area of Augusta near Harvey Avenue. As he made his way to the area to respond to the call, Officer Barrientos received a second call about a crashed vehicle located at 805 North Harvey Avenue. He and several other officers arrived at the accident site. There, he observed a black Dodge Durango crashed into a tree. Officer Barrientos subsequently spoke to Dolorous Stimage, an eyewitness to the accident. Stimage relayed that she had seen three young African American men flee the area following the crash. She provided a "very general description" of the offenders, but directed Officer Barrientos to the last locations she had seen the men. Officer Barrientos relayed that information to other officers over the radio and they began patrolling the area looking for the offenders. He subsequently received a dispatch from Sergeant Ballard that three young men matching Stimage's description had been stopped. Respondent was one of the individuals that Sergeant Ballard had stopped.

¶ 10 Officer Barrientos transported respondent to the police station. After Sergeant Barrow contacted respondent's "legal guardian or parents," Officer Barrientos conducted a "brief

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investigation" of respondent. Officer Barrientos testified that he initially provided respondent with a printed copy of his *Miranda* rights. Respondent orally confirmed that he was aware of his rights and then initialed and signed a printed *Miranda* waiver form. Officer Barrientos then asked respondent about the "1999 Dodge Durango belonging to Ahmad Tomalieh." In response to Officer Barrientos' inquiry, respondent indicated that he had purchased the vehicle "for \$5.00 from a crackhead." After making the purchase, respondent indicated that he picked up two of his friends and they began driving around. When respondent observed a marked police car on the road, he became scared, sped up, lost control of the vehicle and crashed it into a tree.

Respondent admitted that he fled the scene of the accident because he knew the vehicle was stolen. Officer Barrientos acknowledged that he did not obtain a written statement from respondent. In addition, although respondent's mother was not present during the questioning, Officer Torkilsen, a juvenile officer, was present when respondent received his *Miranda* admonishments and during his oral statement.

¶ 11 Following Officer Barrientos' testimony, the State rested its case. Defense counsel moved for a directed verdict, but the motion was denied. Respondent then elected to testify on his own behalf. Respondent testified that on February 11, 2011, his friend, James, picked him up in a car that respondent believed belonged to James' mother. Respondent acknowledged that when James crashed the car, he fled from the scene. Although respondent acknowledged receiving *Miranda* warnings and completing a *Miranda* waiver form, respondent denied ever making any statements to police about purchasing or driving the vehicle.

¶ 12 After hearing the testimony, the court adjudicated respondent delinquent of the offenses

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of possession of a stolen motor vehicle and criminal trespass to a motor vehicle. Respondent was sentenced to two years' probation and this timely appeal followed.

¶ 13

II. ANALYSIS

¶ 14 On appeal, respondent challenges the sufficiency of the evidence. He asserts that the State failed to prove beyond a reasonable doubt that Tomalieh's 1999 Dodge Durango was the same car that he possessed, entered and crashed.

¶ 15 The State responds that "minor-respondent's confession, corroborated by the testimony of Mr. Tomalieh, Ms. Stimage, and Officer Barrientos, and minor-respondent established that the vehicle in minor-respondent's possession and the vehicle minor-respondent entered belonged to Mr. Tomalieh." Accordingly, the circuit court's delinquency should be affirmed.

¶ 16 Due process requires proof beyond a reasonable doubt to convict a defendant of a criminal offense. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This standard is applicable to juvenile delinquency proceedings. *In re Jonathan C.B.*, 2011 IL107750, ¶ 47. In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *In re Jonathan C.B.*, 2011 IL107750, ¶ 47; *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of

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the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶ 17 Criminal trespass to a vehicle occurs when a person "knowingly and without authority enters any part of or operates any vehicle * * *." 720 ILCS 5/21-2 (West 2010). "Identity of the vehicle is a material element of the crime and the State must prove it beyond a reasonable doubt." *People v. Bunch*, 35 Ill. App. 3d 235, 237 (1976).

¶ 18 The offense of possession of a stolen motor vehicle, in turn, is set forth in section 4-103(a) of the Illinois Vehicle Code. That section, in pertinent part, provides:

"[I]t is a violation of this Chapter for:

(1) 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. * * * 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) (West 2010).

To obtain a conviction for the offense of possession of a stolen motor vehicle, the State is required to prove beyond a reasonable doubt that: (1) the defendant possessed the vehicle; (2) that he was not entitled to possess the vehicle; and (3) that defendant knew the vehicle was

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stolen. *People v. Cox*, 195 Ill. 2d 378, 391(2001); *People v. Anderson*, 188 Ill. 2d 384, 389 (1999). The State, however, is not required to prove specific ownership of the vehicle; rather, it only needs to prove that someone other than the defendant had a superior interest in the property. *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992); *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990). This element may be satisfied by circumstantial evidence and reasonable inferences drawn therefrom. *Fernandez*, 204 Ill. App. 3d at 109. When evidence of ownership is used, the State must prove that the defendant possessed the same vehicle owned by the complainant. *Smith*, 226 Ill. App. 3d at 438; *Fernandez*, 204 Ill. App. 3d at 109. In lieu of proof of ownership, chain of custody evidence, linking the recovered car to the car identified in the indictment, may provide the basis for an inference of identification. *Smith*, 226 Ill. App. 3d at 438; *Fernandez*, 204 Ill. App. 3d at 109.

¶ 19 Here, respondent was charged with possession of Tomalieh's black 1999 Dodge Durango with vehicle number 2696209. At trial, Tomalieh testified that he reported his car stolen on February 11, 2011. He confirmed that the car was parked outside the place of his employ in the morning and further testified at "[i]n the night before I leave the job, I turned it on" to allow the vehicle to heat up. At some unspecified time later, when Tomalieh walked outside, his vehicle was gone. He immediately contacted the police to report his car stolen and officers responded within "five minutes." Tomalieh was contacted by "someone" from the police department the following day and was told his vehicle had been recovered.

¶ 20 The record reveals that the vehicle crash in which respondent was suspected of having been involved occurred on Harvey Avenue at approximately 2:06 p.m. on February 11, 2011.

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The vehicle at issue was a black Dodge Durango. Respondent was apprehended within blocks of the accident site shortly after the collision occurred. Inexplicably, counsel for respondent and the State both gloss over the stark timing disparity in this case. Based on Tomalieh's testimony, his Dodge Durango became missing sometime at "night" on February 11, 2011. Although it is possible that Tomalieh misspoke and confused the date, the record contains no police report to substantiate the timing of the vehicle theft. In addition, there was no testimony presented at trial detailing the vehicle identification or license plate numbers of the vehicle involved in the crash or the transport of that vehicle from the accident site to the impound lot. Based on the evidence that is contained in the record, specifically Tomalieh's testimony, the Dodge Durango involved in the crash in the afternoon of February 11, 2011, could not have been his vehicle. He testified that he went outside at night at the close of business on February 11, 2011, started his car to warm up, returned to and closed the restaurant, and then noticed his car was gone.

¶ 21 We acknowledge that the damage to Tomalieh's vehicle matched the descriptions provided by Officer Barrientos and Dolorous Stimage. See, e.g., *People v. Balthazar*, 187 Ill. App. 3d 964, 969 (1989) (recognizing that the identity of a vehicle can be established through the testimony of witnesses who provide matching descriptions of the vehicle). We further acknowledge that Officer Barrientos testified that when he specifically asked respondent about the "1999 Durango belonging to Almad Tomalieh," respondent acknowledged driving and crashing that vehicle; however, we note that respondent denied making that statement. Moreover, we are unable to agree with the State that such evidence is enough to sufficiently link respondent to Tomalieh's car, especially when considered along with the time disparities

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contained in the record. Ultimately, the State's evidence is insufficient to establish that the vehicle identified in the indictment as the car stolen from Ahmad Tomalieh was the one alleged to be in respondent's possession and control, and accordingly, the circuit court's order adjudicating respondent delinquent of possession of a stolen motor vehicle and criminal trespass to a motor vehicle cannot stand. See, e.g., *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990); *People v. Hope*, 69 Ill. App. 3d 375, 380-81 (1979). We reverse the circuit court's order adjudicating respondent delinquent of possession of a stolen motor vehicle and criminal trespass to a motor vehicle.

¶ 22 In light of our disposition of respondent's sufficiency of the evidence claim, we need not address the remaining contentions raised by respondent on appeal.

¶ 23 III. CONCLUSION

¶ 24 The judgment of the circuit court is reversed.

¶ 25 Reversed.