

No. 1-12-1991

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19940
	)	
VICTOR MIRELES,	)	Honorable
	)	William H. Wise,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOWSE delivered the judgment of the court.  
Justices Fitzgerald Smith and Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was proven guilty of theft beyond a reasonable doubt when the evidence at trial established, through the testimony of the victim and defendant's inculpatory statement, that defendant sold two cars that he was storing for the victim without the victim's permission.

¶ 2 After a bench trial, defendant Victor Mireles was found guilty of theft and sentenced to six months in jail. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt when the victim's testimony was implausible and contrary to human experience

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and the evidence at trial failed to establish that the victim either owned or had a superior possessory interest in the property. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a 2007 loan made by the victim, Colin Crowe, to Ishmael Santiago. Defendant facilitated the \$100,000 loan and stored the two classic cars used as collateral because the victim did not have space. Defendant subsequently admitted that he sold the cars without the victim's permission. At trial, the State's theory of the case was that defendant committed a theft in that he sold the two cars without the victim's permission. Defendant, on the other hand, argued that there was insufficient evidence to establish that a theft had occurred.

¶ 4 At trial, the victim testified that defendant, a friendly acquaintance to whom he had previously lent money, approached him with a business opportunity in November 2007. Specifically, Ishmael Santiago needed a short-term loan and wanted to use certain cars as collateral. Although the victim only "vaguely" knew Ishmael, he trusted this man due to his relationship with defendant. The victim subsequently lent Santiago \$120,000, and received a 1970 Chevy Malibu and a 1958 Corvette as collateral. The parties executed a written loan agreement and the victim gave Ishmael \$100,000 in cash. Defendant was also present. The victim received a signed title for each vehicle. However, he did not take immediate possession of the cars because there was a 30-day window during which the loan was to be repaid.

¶ 5 At trial, the victim identified two bills of sale executed on November 1, 2007 and signed by the victim and Ishmael. The first was for a 1958 Corvette in the amount of \$50,000 and the second was for a 1970 Malibu in the amount of \$70,000. He also identified the Malibu's title signed by the victim and Ishmael's son Anthony, and the Corvette's title signed by the victim and

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Ishmael. The Corvette's title was issued in July 2008. The victim then identified bank statements showing withdrawals totaling \$120,000.

¶ 6 When the victim made a verbal demand for repayment, the Santiagos told him they could not pay and to take the cars. The victim did not have space to store the cars, so he had them towed to properties owned by defendant. Defendant stored the vehicles for free because they were friends and because defendant owed the victim \$100,000. No written agreement was executed. When the victim inquired about the cars in October 2009, defendant told him that they were gone and asked what he was going to do about it. The victim contacted the police in 2010. There was a delay because he had a broken leg and also because he was unsure how to proceed and had to consult with his attorney. The victim did not register the cars because he was unsure what he was going to do with them or whether the Santiagos were ultimately going to "redeem them." Although he thought about selling the cars and mentioned this to defendant, he did not tell defendant to sell the cars.

¶ 7 During cross-examination, the victim testified that he did not know Ishmael, but knew Anthony socially and could not recall if he agreed to the loan without speaking to the Santiagos. He admitted that he did not go to the location where the cars were stored and never made a written demand for them. When he spoke to the police in February 2010, he did not recall stating that the amount of the loan was \$106,000. Although the victim was unsure whether defendant ever stated that the cars were sold, defendant was clear that he no longer had them.

¶ 8 Detective Robert Palos testified that his investigation revealed that the cars were in the possession of Sebastian Mayiscalco, who had purchased them from defendant. During a subsequent interview with defendant, defendant made a written statement. The statement was published, without objection, to the court.

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¶ 9 In the statement, defendant stated that he assisted the victim in a business venture and when the loan was not paid back, Ishmael gave the victim two vintage cars which were towed to defendant's home. Defendant subsequently sold these cars, without the victim's consent, to Mayiscalco for \$45,000. Defendant stated that his wife did not know that defendant "stole these cars" and sold them without the victim's consent.

¶ 10 During cross-examination, Palos testified that the victim stated that after the Santiagos defaulted on the loan, the victim offered them an additional \$20,000 to keep the cars. Palos then identified a bill of sale for the cars, listing the seller as defendant's wife Christine. He denied threatening to arrest defendant's wife; rather, defendant chose to "come clean."

¶ 11 Defendant testified that he told the victim that Anthony was investing in a tequila company and could double the victim's money. After receiving \$120,000 in cash from the victim, defendant met with Ishmael and gave him the funds. The victim did not ask for collateral and did not know about the cars. In December, after speaking with Anthony, defendant advised the victim that "it" did not look good, and that the victim could check out certain cars. Defendant subsequently received the title to the Malibu which he gave to the victim. He also received "second" title to two motorcycles. Ishmael could not find the title to the Corvette. The cars were then towed to defendant's properties. Defendant sold the cars in early 2008. The victim did not object to the sale and never demanded the vehicles. In fact, when he learned about the sale, the victim merely told defendant to get his money. Although defendant invested the proceeds of the sale, the investment did not "pan out." Eventually, the victim lost patience, demanded the cars, and went to the police. When he spoke with Palos, defendant offered to sign anything in order to prevent his wife's arrest.

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¶ 12 During cross-examination, defendant characterized the cars as "his" collateral because it was "his" loan, that is, he gave the Santiagos the money and received physical possession of the cars. In January 2008, when he decided to sell the cars, he did not ask the victim's permission because he felt the cars belonged to him. However, he did not sign the bill of sale. Defendant admitted that he had previously borrowed \$100,000 from the victim that he had not paid back and that he told Palos that he sold the cars without the victim's consent.

¶ 13 Officer Dave Harrison testified that he spoke to the victim in February 2010 regarding the cars. Although the victim indicated that the cars had been purchased, his attorney mentioned a loan. The victim explained that he had \$120,000 tied up in the cars, and that he had learned that the friend storing the cars sold them. During a subsequent conversation, the victim indicated that the loan was for \$106,000 in cash plus additional consideration and the cars were collateral.

¶ 14 In finding defendant guilty of felony theft, the court characterized defendant's testimony as "one of the wildest" stories the court had heard and so unbelievable that it shocked the court's conscience. However, the court later vacated its guilty finding and permitted the parties to present additional closing arguments. After hearing additional argument, the court commented that it did not believe a word defendant said, and that there was no doubt that everyone involved in this case believed the victim had a possessory interest in the cars. The court then found defendant guilty of misdemeanor theft as the value of the two cars was not established at trial. Defendant was subsequently sentenced to six months in jail.

¶ 15 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the victim's testimony was implausible and contrary to human experience and because the State failed to establish that the victim either owned the cars or had a superior possessory interest in them.

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¶ 16 In assessing the sufficiency of the evidence, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 17 In a bench trial, the trial court, as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from the evidence presented at trial. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A fact finder need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; rather, all the evidence taken together must satisfy the fact finder beyond a reasonable doubt of a defendant's guilt. *In re Jonathon C. B.*, 2011 IL 107750 ¶ 60. In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with a defendant's innocence and raise it to the level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 18 To prove a defendant guilty of theft, the State must establish that he knowingly obtained or exerted unauthorized control over the property of the owner and intended to deprive the owner permanently of the use or benefit of the property. See 720 ILCS 5/16-1(a)(1)(A) (West 2008).

¶ 19 When assessing a sufficiency of the evidence claim on appeal, this court does not retry the defendant or substitute its judgment for that of the trier of fact as to the issues of witness

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credibility and the weight to be given to each witness's testimony (see *People v. Ross*, 229 Ill. 2d 255, 272 (2008)), yet this is exactly what defendant seeks. He essentially asks this court to reweigh the evidence presented at trial, as his contentions on appeal focus on why the trial court was wrong to believe the testimony of the victim. We decline defendant's request.

¶ 20 Before considering the credibility of the witnesses that testified at trial, this court will consider whether the State presented evidence that the victim owned the two cars. Viewing the evidence in the light most favorable to the State, as we must, the evidence established that the victim received the cars as collateral for a loan, the victim asked defendant to store the cars, and defendant sold the cars without the victim's permission. While defendant is correct that the signatures on the certificates of title are undated and the title to the Corvette was issued in 2008, it is unclear how this defeats the victim's ownership of the cars as the victim had bills of sale and signed titles for both cars at the time of the alleged theft. In any event, the issue date of the Corvette's title and the fact that the bills of sale were dated when the certificates of title were not, went to the weight afforded to this evidence by the trial court. See *Siguenza-Brito*, 235 Ill. 2d at 228. Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty when the cars at issue were collateral for a loan agreement between the victim and the Santiagos and defendant admitted that he sold the cars without the victim's permission. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 21 Defendant, however, contends that the victim's testimony was so implausible and contrary to human experience that it cannot establish the victim's ownership interest in the cars at issue. Defendant argues that the lack of a written loan agreement between the victim and the Santiagos, as well as the victim's decision not to register the cars and to store them at defendant's properties "believe" the victim's ownership of the cars. Defendant argues that in the

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absence of a written loan agreement, only the testimony of the Santiagos could have clarified whether a loan existed and whether the cars were collateral.

¶ 22 Initially, this court rejects defendant's assertion that without the testimony of the Santiagos there was insufficient evidence of the original ownership of the cars because the record reveals that the victim and defendant testified consistently regarding the existence of the loan and that the cars were offered as collateral.

¶ 23 Here, the victim admitted that no written loan agreement was executed; rather, he testified that bills of sale were executed and the cars were towed to locations where they were to be stored by defendant. Although it is true that the victim did not pay defendant storage fees, the victim explained that defendant was a friend and owed him \$100,000. The victim also testified that he did not register the cars because he hoped that the loan would eventually be repaid. Contrary to defendant's assertion that the victim did nothing to show that he "intended to exercise dominion" over the cars, the victim instructed defendant, his friend and debtor, to store the cars. While it took several months for the victim to contact the police once he learned that the cars had been sold, he explained that he had a broken leg and had to consult an attorney because he was unsure how to proceed. Even if the victim's failure to secure a loan agreement or to periodically inquire about the status of the cars affected the weight that the trial court accorded to his testimony (*Ross*, 229 Ill. 2d at 272), those facts, in and of themselves, were not fatal to his credibility. Rather, it was for the trial court both assess the credibility of the witnesses and to draw reasonable inferences from the evidence presented at trial. *Siguenza-Brito*, 235 Ill. 2d at 228. This court cannot say that the testimony of the victim was "so wholly incredible" that it was incapable of being used as evidence against defendant. *People v. Sanders*, 2012 IL App (1st) 102040, ¶15.

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¶ 24 This court is unpersuaded by defendant's reliance on *State Farm Mutual Auto Insurance Co. v. Lucas*, 50 Ill. App. 3d 894 (1997), as the issue in that case was whether an insured's car insurance policies would cover damages from an accident that occurred when the insured was driving a vehicle that was not one of the two vehicles specified on his policies. The question of whether the insurance policies covered this third vehicle turned upon the insured's relationship to the vehicle, *i.e.*, if the insured owned the car, he was required to register it with the insurance company within 30 days of acquisition in order to obtain coverage. *Lucas*, 50 Ill. App. 3d at 896. If the insured had borrowed the vehicle, then coverage would exist under a provision regarding the "use of non-owned automobiles." *Lucas*, 50 Ill. App. 3d at 896.

¶ 25 Unlike *Lucas*, this case does not concern the interpretation of an insurance policy; rather, at issue in this case is ownership under the Criminal Code of 1961. Additionally, the record indicates that the cars at issue were antiques and used as collateral due to their value. The victim did not purchase or acquire the cars with the intent that they be used as a daily means of transportation, therefore, there was no need to register the cars or prepare them for regular use.

¶ 26 Ultimately, it was undisputed that defendant did not have permission to sell the cars, and although the victim failed to memorialize the loan or storage agreements in written form and admitted that he failed to regularly check on the cars, a trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Givens*, 237 Ill. 2d at 334); this is not one of those cases. Accordingly, we affirm defendant's conviction.

¶ 27 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

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¶ 28 Affirmed.