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SIXTH DIVISION
May 1, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF D.R., a Minor,)	Appeal from the
)	Circuit Court of
Respondent-Appellant.)	Cook County.
)	
)	No. 14 JD 3399
)	
)	The Honorable
)	Stuart F. Lubin,
)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶1 *HELD:* The State failed to prove beyond a reasonable doubt that the minor-respondent was in possession of a stolen motor vehicle owned by the complainant.

¶2 Following a bench trial, respondent-minor, D.R., was found guilty of possession of a stolen motor vehicle and adjudicated as a delinquent. The trial court sentenced D.R. to one year probation and 30 days community service, along with various other conditions. On appeal, D.R. contends the State failed to provide beyond a reasonable doubt that D.R. was in possession of the

vehicle in question and that the vehicle in D.R.'s possession was owned by the complainant.

Based on the following, we reverse.

¶3

FACTS

¶4 At trial, Darakela Richardson testified regarding "an incident" with her vehicle.

Specifically, Richardson testified that, at approximately 1 a.m. on August 12, 2014, she was walking to her home located at 2938 West Monroe Street in Chicago, Illinois, when she noticed that her 2002 Dodge Caravan with vehicle identification number (VIN) 1B4GP24302B675510 was not parked behind her house. Richardson stated that only she and her mother, whom she lived with, had access to the keys for her vehicle; Richardson's mother was the only person with permission to use the car and she was home on the date in question. Richardson testified that she retrieved her vehicle "out of the pound" on August 15, 2014. When asked whether "the pound" was the Chicago police department pound, Richardson replied, "No. It was towed at [sic] a pound." According to Richardson, when she retrieved her vehicle, she observed "it was scraped up like on the side" and "where I stick my key in it, it was yanked out." Richardson testified that, when she initially parked her vehicle behind her house on August 11, 2014, the vehicle did not have any scrapes and the ignition was intact.

¶5 Officer Joel Lopez testified that, on August 12, 2014, at approximately 7:40 p.m., he was standing near the corner of Ferdinand Street and Laramie Avenue in Chicago, Illinois, with his two partners when he observed a 2002 Dodge Caravan. Officer Lopez said "I told my partners that that was the van we saw. And we go into the vehicle and got behind it to verify it."

According to Officer Lopez, he "received just a message. They were talking over the radio.

Then I received a message from the sergeant." Officer Lopez's attention was drawn to the vehicle because of the conversation he had with the sergeant. Officer Lopez was seated in the

back of the police vehicle. The officers followed the van into an alley and, when the police car was approximately 100 feet behind the van, Lopez's partner activated the emergency lights in an attempt to curb the van. The driver of the van did not stop. Instead, while the van was still moving, the doors opened and five people jumped out. Two individuals exited from the right side of the moving van and three exited from the left. Officer Lopez identified defendant as having exited the moving van from the driver's seat. Officer Lopez stated that the police vehicle was within 100 feet of the van when defendant exited.

¶6 Officer Lopez testified that the van continued "rolling, went through Laramie[,] and it hit a fence on Laramie of a house." Officer Lopez inspected the inside of the van and observed that it was "punched"; there was no key in the ignition and the vehicle could not be turned off. When asked whether the ignition was in the steering wheel, Officer Lopez responded that he could not recall; however, he continued by stating "[t]he first thing I tried to do was turn off the car and there was nothing there. There was nothing there."

¶7 According to Officer Lopez, defendant fled southbound on Laramie Avenue and turned eastbound on Fulton Street. Officer Lopez did not pursue defendant, instead calling "it in" over the radio. Defendant was apprehended by another officer in the area and returned to the scene. At that time, Officer Lopez identified defendant as the same individual he observed exit the driver's seat of the van.

¶8 On cross-examination, Officer Lopez stated that it was still light outside when the incident occurred. Officer Lopez testified that he did not see the faces of the individuals as they exited the van, but he observed their hair and clothing. Officer Lopez identified all of the individuals as African-American. Officer Lopez recalled that one of the individuals was a female that exited from the rear of the van.

¶9 On redirect examination, Officer Lopez testified that defendant was "probably the tallest person there" and defendant was identifiable by his hair. Officer Lopez was able to observe defendant for "a little bit" as defendant fled through an open lot. Officer Lopez stated that defendant was returned to the scene within 10 minutes after having fled.

¶10 In finding D.R. guilty of possession of a stolen motor vehicle, the trial court stated:

"The State has proven its charges beyond a reasonable doubt. Ms.

Richardson testified that she is the owner of a 2002 Dodge Caravan. She gave the VIN numbers. It was stolen August 11 from behind her house. She picked it up at the pound on August 15, the same day that the police recovered it.

She testified that the ignition was yanked out and the side was scraped, which corresponds to the damage that Officer Lopez testified about. That the ignition was punched and that the car hit a fence.

Officer Lopez also saw the defendant get out of the driver's door. He was the tallest person in the car. He identified him by his hair. The defendant has distinctive braids and the clothing. The defendant was brought back to the scene by another officer in the district within 10 minutes. And he testified that this defendant was the only one who exited the driver's door of the vehicle."

On November 5, 2014, D.R. was sentenced to one year probation and 30 hours of community service, along with other various conditions. This appeal followed.

¶11 ANALYSIS

¶12 D.R. contends the State failed to prove beyond a reasonable doubt that he committed the offense of possession of a stolen motor vehicle.

¶13 A challenge to the sufficiency of the evidence requires a reviewing court to 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." (Emphasis in the original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the reviewing court's function to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *People v. Williams*, 388 Ill. App. 3d 422, 429 (2009). In order to overturn a judgment, the evidence must be "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶14 A person commits the offense of possession of a stolen motor vehicle when he is in possession of a motor vehicle which he knows to have been stolen. 625 ILCS 5/4-103(a)(1) (West 2014). To establish an individual's guilt of possession of a stolen motor vehicle, the State must prove beyond a reasonable doubt that the defendant possessed the vehicle, that he was not entitled to possess the vehicle, and that he knew the vehicle was stolen. *People v. Cox*, 195 Ill. 2d 378, 391 (2001).

¶15 D.R. argues the State failed to prove beyond a reasonable doubt that Richardson owned the vehicle stopped by the police on August 12, 2014. More specifically, D.R. contends the State could not establish its burden where neither Richardson nor Officer Lopez provided a physical description of the vehicle and where there was no chain of custody established for the vehicle that was stopped.

¶16 This court has stated that it is not necessary to prove ownership of a stolen vehicle so long as there is proof that someone other than defendant had a superior interest in the car identified in the indictment. *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992) (and cases cited therein). When evidence of ownership is used to show the car was stolen, there must be evidence that defendant possessed the same vehicle which was owned by the complainant. *Id.* Evidence of ownership may be proved by circumstantial evidence and the reasonable inferences drawn therefrom. *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990). Moreover, in lieu of proof of ownership, chain of custody evidence, linking the recovered car to the car named in the indictment, also may provide a proper inference of identification. *Smith*, 226 Ill. App. 3d at 438.

¶17 Even assuming D.R. was accurately identified by Officer Lopez, we conclude that the trial evidence failed to demonstrate the vehicle D.R. was in possession of was the same vehicle stolen from Richardson. Richardson testified that her 2002 Dodge Caravan went missing at some point from the time she parked it on August 11, 2014, until the early morning of August 12, 2014. Richardson never testified that her vehicle was stolen or that she reported as much to the police. Richardson never testified regarding the color of her vehicle, the number of doors on the vehicle, or the license plate number. Moreover, Richardson's testimony failed to establish how she learned that her vehicle was at "the pound," never stating that she was contacted by the police to retrieve her vehicle. Instead, she explicitly denied that she recovered the vehicle from the police impound lot. Further, Richardson generally testified that her vehicle was "scraped up on the side" without elaborating on which side or where "on the side."

¶18 Officer Lopez testified that he followed and eventually inspected a 2002 Dodge Caravan that had been abandoned by five individuals. Lopez never elaborated why he and his partners followed the vehicle, only stating that his attention was drawn to the van because of what his

sergeant told him and to "verify it." Officer Lopez did not testify regarding the color of the van, the number of doors, the license plate number, or the VIN number. Lopez's testimony did not establish any damage to the van besides that the ignition was "punched." Moreover, Lopez never stated that the van was towed to the police impound lot or that the owner was contacted at all, let alone directed to retrieve the vehicle from the pound.

¶19 There was no testimony explaining the three-day delay between when D.R. was seen in the alley with a 2002 Dodge Caravan and when Richardson retrieved a 2002 Dodge Caravan from the pound.

¶20 Furthermore, no certificate of title for the vehicle found on Laramie was ever introduced by the State.

¶21 In sum, the record merely demonstrates that D.R. was in possession of a vehicle with the same year, make, and model as Richardson's missing vehicle. That evidence was insufficient to establish beyond a reasonable doubt that D.R. was in possession of a stolen motor vehicle.

¶22 We find the cases of *People v. Hope*, 69 Ill. App. 3d 375 (1979), and *People v. Stone*, 75 Ill. App. 3d 571 (1979), as cited by D.R., are instructive. In *Hope*, the court reversed theft and possession of a stolen motor vehicle convictions because the testimony showed only that the defendant was arrested in the same type of car that had been reported stolen. The State's evidence did not include proof of a VIN, proof of ownership by the victim, a chain of custody for the vehicle, or even testimony confirming if and when the victim's car was returned by the police. *Hope*, 69 Ill. App. 3d at 380. In *Stone*, the court reversed a theft of a stolen motor vehicle conviction where the State failed to prove ownership of the stolen vehicle. The officer in *Stone* testified only to the color of the car that had been abandoned, that the defendant was seen walking near (within one-quarter mile) the car, and that a license-plate check revealed the name

of the person holding title. *Stone*, 75 Ill. App. 3d at 572. Although we recognize that the crime charged was theft of a stolen motor vehicle and not possession of a stolen motor vehicle, as in our case, *Stone* remains instructive in that there was virtually no evidence demonstrating the defendant stole the abandoned vehicle or that it was the same vehicle later reported stolen. *Id.* at 574-75. Similarly, in the case before us, the details provided by Richardson's and Officer Lopez's testimony failed to demonstrate the van missing from Richardson's parking spot was the same as that from which D.R. was seen fleeing by Officer Lopez.

¶23 We need not address D.R.'s remaining contention.

¶24 CONCLUSION

¶25 We reverse the judgment of the trial court finding D.R. guilty of possession of a stolen motor vehicle.

¶26 Reversed.