

No. 1-14-2947

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)(1).

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. 13 CR 10451
)	
MALCOLM FRENZEL,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held* Where the evidence established that someone other than defendant had a superior interest in the vehicle he possessed, the evidence was sufficient to prove defendant guilty of possession of a stolen motor vehicle.

¶ 2 Following a bench trial, defendant Malcom Frenzel was found guilty of one count of possession of a stolen motor vehicle and two counts of aggravated assault of a peace officer. He was sentenced to concurrent terms of 13 years in prison for the possession of a stolen motor

vehicle offense and 5 years for each aggravated assault charge. On appeal, defendant argues that the State did not prove him guilty of possession of a stolen motor vehicle because it did not prove beyond a reasonable doubt that the Oldsmobile stolen from Diana Salgado was the same Oldsmobile he possessed. For the reasons below, we affirm.

¶ 3 Defendant's conviction arose from events that took place on January 10, 2013. At trial, Diana Salgado testified, that in January 2013, she had a 1996 Oldsmobile Ciera. Her father bought her the car and his name was on the title.

¶ 4 On January 10, 2013, Salgado, who lived in the area of the 4500 block of South Christiania in Chicago, parked her car at 5 p.m. on the corner of the block. When she parked her car, it did not have any damage in the inside or on the outside. After she parked, Salgado took her keys with her and went home. At 10 p.m., the police came to her home and informed her that they found her car and that it had been crashed. At this time, she did not know that her car was gone, so the police walked with her to the corner where she had parked it. Her car was not there. Salgado did not know defendant and did not give him permission to drive her car.

¶ 5 The State showed Salgado People's Exhibit No. 1. Salgado recognized the exhibit and testified that it was a photograph of her car with damage to the driver's side. She testified that the damage was not present on her car when she parked it on January 10, 2013. The State then showed Salgado People's Exhibit No. 2. Salgado recognized the exhibit and testified that it was a photograph of the rear of her car, that there was damage to the lock on the trunk, and that the damage was not there when she parked her car on January 10, 2013. Salgado testified that the photographs truly and accurately depicted her car.

¶ 6 On cross-examination, Salgado confirmed that her father bought her the car and put the registration in his name. Salgado stated that she and her father lived together, and he was in Mexico on January 10, 2013. Salgado confirmed that when the police came to her home on January 10, 2013, they told her that her car had been in a crash on California and Ogden. On re-direct, Salgado testified that when she parked her car, there was no blood on the inside, including on the driver's side.

¶ 7 Illinois State Police Trooper Kenneth Smith and Trooper Alan Knudson both testified that they were working together on January 10, 2013. At approximately 8:40 p.m., while on patrol, they conducted a random registration check on a silver Acura and discovered that it was a stolen vehicle. They pulled over to wait for the stolen Acura to pass them. However, the stolen Acura did not pass them, so the troopers travelled back to the location where they thought they had seen it. They stopped their car at 1321 South California and noticed a dark colored Oldsmobile without a front registration plate parked in that location. Trooper Smith initially thought that the Oldsmobile was the stolen vehicle that they had run the registration check on.

¶ 8 When the troopers approached the Oldsmobile, they noticed that the headlights were off and that the driver was male and the passenger female. In court, both troopers identified defendant as the driver. The troopers announced their office and requested defendant and his passenger to put their hands up, but neither complied. Defendant placed the car in reverse, accelerated, and turned the car so the rear end tire went on the curb.

¶ 9 Trooper Smith hit the front driver's side window of the car with his hand and yelled to defendant to stop. Defendant stopped reversing, turned the steering wheel in Trooper Smith's

direction, and drove the car straight at him, missing him by inches. Trooper Smith fired six gunshots into the car while defendant accelerated toward him. The troopers attempted to pursue defendant as he drove from the scene, but lost sight of the car around Ogden Avenue. When Trooper Knudson called for assistance, he initially reported that the subject car was a maroon Oldsmobile. Trooper Smith's gun was turned over to an Illinois State Police Investigator.

¶ 10 In response to a question posed by the trial court, Trooper Smith confirmed that the car he went up to that night was a 1996 Oldsmobile Ciera. On cross-examination, Trooper Smith testified that later that evening, the same car was found abandoned and that he went to the location where it was found.

¶ 11 Illinois State Police Special Agent Jonathan Parker testified that he investigated the incident and identified the recovered car as a blue 1996 Oldsmobile Ciera. He observed broken glass, a red-blood like substance on the steering wheel and driver's seat, and bullet and gunshot related damage on the car. About four months later, Special Agent Parker collected a buccal swab from defendant and sent it to the Illinois State Police Crime Lab for testing.

¶ 12 The parties stipulated that an evidence technician, Investigator Gonzalez, would have testified that she processed the 1996 Oldsmobile Ciera after the incident and recovered two fired bullets from it. Investigator Gonzalez photographed the bullet damage to the car. She observed shattered glass and blood on the steering wheel and dashboard and blood on the interior driver's side door, and swabbed the areas where she observed blood. The parties further stipulated that Nicole Fundell, a qualified expert in the field of firearms identification and a forensic scientist,

would have testified that the two fired bullets recovered by Investigator Gonzalez came from Trooper Smith's handgun.

¶ 13 Finally, the parties stipulated that a forensic scientist, Jamie Bartolotta, would have testified that she conducted DNA analysis on the buccal swab collected from defendant and that she obtained a DNA profile from that swab. Bartolotta also tested swabs of blood stains taken from, *inter alia*, the steering wheel and the interior driver's side door of the recovered car. She determined that the male DNA profile identified from these items matched the obtained DNA profile of defendant.

¶ 14 At the end of the State's case, the State informed the court that it could not find the photographic exhibits that it had presented during the trial to the troopers and Salgado. The State explained that the witnesses described each of the locations and the areas that were photographed and that the exhibits were photographs of the crime scene and the Oldsmobile. The court responded by stating as follows: "I recall when the evidence was presented what the photographs were of."

¶ 15 After the State rested, defendant made a motion for acquittal. The trial court denied defendant's motion.

¶ 16 Defendant did not present any witnesses or testify.

¶ 17 Following argument, the trial court found defendant guilty of possession of a stolen motor vehicle and guilty on the charges of aggravated assault of a peace officer. Defendant filed two posttrial motions, including a motion for a new trial that his attorney drafted and a *pro se* "Motion to Reconsider Judgment, or in the Alternative New Trial," which the trial court

considered as a *Krankel* motion. The trial court denied both motions and sentenced defendant to concurrent terms of 13 years in prison for the possession of a stolen motor vehicle charge and 5 years for each aggravated assault charge.

¶ 18 Defendant argues on appeal that the State did not establish ownership of the car he possessed or that someone else had a superior interest in said car. Specifically, defendant argues that the evidence is insufficient to support a finding that the car he possessed was the same car that had been stolen from Salgado, and therefore, the State did not establish that the car he possessed was stolen.

¶ 19 When reviewing the sufficiency of the evidence on appeal, the question is 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." *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). "[T]he reviewing court will not substitute its judgment for that of the trier of fact on issues concerning the weight of the evidence or the credibility of the witnesses." *Robinson*, 2013 IL App (2d) 120087, ¶ 11. The reviewing court must allow reasonable inferences from the record in favor of the prosecution (*People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007)) and will only reverse a conviction if the evidence is "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt" (*People v. Evans*, 209 Ill. 2d 194, 209 (2004)). This standard of review applies with both direct and circumstantial evidence. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 20 If circumstantial evidence establishes proof of each element of the offense beyond a reasonable doubt, then it is sufficient to uphold a conviction. *People v. Hall*, 194 Ill. 2d 305, 330

(2000). However, with respect to each link in the chain of circumstances, the fact finder does not need to be satisfied beyond a reasonable doubt. *Hall*, 194 Ill. 2d at 330. Rather, it is sufficient if, after taking all the evidence together, the fact finder is satisfied beyond a reasonable doubt of a defendant's guilt. *Hall*, 194 Ill. 2d at 330. In addition, "in weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 21 Section 4-103(a)(1) of the Illinois Vehicle Code states as follows:

"(a) Except as provided in subsection (a-1), it 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; 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) (West 2012).

To obtain a conviction for the offense of possession of a 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, 390 (2001). “These facts, however, all may be shown by circumstantial evidence, or inferred from the surrounding facts and circumstances.” *People v. Tucker*, 186 Ill. App. 3d 683, 694 (1989).

¶ 22 The State is not required to prove ownership of a stolen vehicle, but rather, only that someone other than the defendant had a superior interest in the vehicle. *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992). This factor may be established by circumstantial evidence and reasonable inferences drawn therefrom. *People v. Fernandez*, 204 Ill. App. 3d 105, 109 (1990). If the State uses evidence of ownership to show a vehicle was stolen, there must be evidence that the defendant possessed the same vehicle that was owned by the complainant. *Smith*, 226 Ill. App. 3d at 438. Evidence that establishes the make and model of a stolen vehicle, without more, is insufficient to prove ownership. *People v. Walker*, 193 Ill. App. 3d 277, 279 (1990). In lieu of proving ownership, the State may present chain of custody evidence, linking the recovered vehicle to the one named in the indictment, as the basis of a proper inference of identification. *Smith*, 226 Ill. App. 3d at 438

¶ 23 Defendant contends on appeal that the State did not establish ownership of the car he possessed. He argues that the State did not present a certificate of title and that the State presented no evidence to establish a link between the car he possessed and the car stolen from

Salgado, such as evidence that the vehicles shared the same license plate numbers, vehicle identification numbers, or another unique identifying characteristic. Defendant argues that the photographs that the State presented during Salgado's testimony cannot constitute competent proof of the car he possessed because the photographs were never admitted into evidence. Defendant further argues that the State did not prove chain of custody, because there was no evidence that the car he possessed was ever returned to Salgado.

¶ 24 Viewing the evidence in the light most favorable to the State, we conclude that the State proved defendant guilty of the offense of possession of a stolen motor vehicle beyond a reasonable doubt.

¶ 25 The record indicates that the car defendant possessed and the car stolen from Salgado shared the same make, model, and year. Salgado testified that in January 2013, she had a 1996 Oldsmobile Ciera, which her father bought for her. Trooper Smith identified the car at the scene of the incident as a 1996 Oldsmobile Ciera, and both Trooper Smith and Trooper Knudson identified defendant as the driver. When the car was later found abandoned and recovered, Investigator Gonzalez identified it as a 1996 Oldsmobile Ciera. Defendant's DNA was found in the interior driver's side door and steering wheel, and the two bullets recovered from the Oldsmobile came from Trooper Smith's handgun. Accordingly, we find that there is sufficient evidence to indicate that the car defendant possessed and Salgado's car shared the same make, model, and year.

¶ 26 While evidence of the make and model of a stolen car is insufficient to establish ownership (see *Walker*, 193 Ill. App. 3d at 279), the additional facts present in this case as well

as inferences drawn from those facts establish a link between the 1996 Oldsmobile Ciera that defendant possessed and the 1996 Oldsmobile Ciera that Salgado owned.

¶ 27 At trial, the State presented photographs of the recovered car. Although the State did not admit the photographs into evidence, Salgado testified about them. Salgado testified that the first photograph was a picture of her car, that the second photograph was a picture of the rear of her car, that the photographs showed damage to the driver's side of her car and to the lock on the trunk of the car, and that the damage was not there when she parked her car on January 10, 2013. She agreed that the photographs truly and accurately depicted her car. We find that Salgado's testimony, when viewed in the light most favorable to the prosecution, was sufficient to establish that the 1996 Oldsmobile Ciera defendant possessed – which he does not dispute was the car depicted in the photographs – was Salgado's 1996 Oldsmobile Ciera.

¶ 28 With respect to defendant's argument that the State did not prove that someone else had a superior interest in the 1996 Oldsmobile Ciera because the State did not establish that it was returned to Salgado, we note that such evidence is not required to show that a car was stolen. While defendant cites authority indicating that returning a car to its rightful owner is one way of showing superior interest (see *People v. Balthazar*, 187 Ill. App. 3d 964, 968-69 (1989); *People v. Tucker*, 186 Ill. App. 3d 683, 691-92 (1989); *People v. Hope*, 69 Ill. App. 3d 375, 380 (1979)), these cases do not hold that in order to prove that someone else had a superior interest in the vehicle, the State must present evidence that the vehicle was returned to the owner. Defendant's argument fails.

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¶ 29 Accordingly, we find that the evidence, when viewed in the light most favorable to the State, was sufficient to establish that the vehicle defendant possessed, and was observed in, was the same vehicle Salgado owned.

¶ 30 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 31 Affirmed.