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2016 IL App (3d) 120523-U

Order filed March 21, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0523
WAIL SALEM,	)	Circuit No. 10-CF-1808
Defendant-Appellant.	)	Honorable Richard Schoenstedt, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The introduction of defendant's certified copies of prior convictions, during the State's case-in-chief, amounted to harmless error.
- ¶ 2 The State charged defendant with one count of unlawful possession of a stolen 2006 BMW. Prior to trial, the State moved to admit other crimes evidence during its case-in-chief, as substantive evidence, to prove intent, knowledge, or absence of mistake. This evidence included certified records of defendant's prior convictions for theft-related offenses and unlawfully

possessing open titles to vehicles. The court granted the State's motion to admit other crimes evidence, but limited the number of convictions the State could present to the jury as substantive evidence.

¶ 3 At the conclusion of the trial, the jury found defendant guilty of the offense of possession of a stolen vehicle. The court denied defendant's posttrial motion that alleged the court erred by allowing the State to introduce the prior convictions as substantive evidence of intent. Defendant appealed and this court dismissed the appeal on the grounds that defendant's notice of appeal was not timely. *People v. Salem*, 2014 IL App (3d) 120523-U. Upon review, our supreme court exercised its supervisory authority and directed this court to vacate our prior decision dismissing the appeal and consider the merits of defendant's appeal. *People v. Salem*, 2016 IL 118693. Accordingly, we now vacate our prior decision, *People v. Salem*, 2014 IL App (3d) 120523-U, and after reaching the merits, we now affirm defendant's conviction.

¶ 4 **BACKGROUND**

¶ 5 The State charged defendant with committing the offense of unlawful possession of a stolen motor vehicle on July 8, 2010, alleging that "defendant, a person not entitled to possession of said vehicle, possessed a 2006 BMW with VIN # 5UXFA93526LE84880, knowing it to have been stolen."<sup>1</sup> Prior to trial, the State filed a "Motion to Admit Other Crimes [Evidence]," asking the court to allow the State to admit other crimes evidence as substantive evidence of defendant's knowledge, intent, and absence of mistake when he possessed the stolen 2006 BMW. The other crimes evidence the State sought to introduce included: four felony convictions for unlawful possession of open vehicle titles in Will County case No. 11-CF-935; two felony convictions for theft and two felony convictions for possession of stolen property in

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<sup>1</sup>This vehicle was also referred to as the "black BMW" or "black car" during some of the testimony.

Cook County case No. 04-CR-0398403; one felony conviction for theft in Cook County case No. 10-CR-598401;<sup>2</sup> and evidence that defendant possessed two other uncharged stolen vehicles on July 8, 2010.

¶ 6 The court held a hearing on the State's motion on March 1, 2012. The defense objected to the use of all of the other crimes evidence on the grounds that the State's purpose was to convince the jury defendant was a habitual thief, therefore, he must have committed the crime in the instant case. The defense argued the evidence was cumulative and there was not enough similarity between the other crimes evidence and the charged offense to establish relevance on the issue of intent.

¶ 7 After finding the other crimes evidence was relevant to the issue of intent, the court allowed the State to present evidence concerning the two other uncharged stolen vehicles parked in defendant's driveway near the 2006 BMW. Additionally, regarding defendant's convictions as substantive evidence, the court limited the State to introducing one, rather than all four, of the convictions for open title offenses; two of the four 2004 theft convictions; and records of the 2011 guilty plea for felony theft, originating in the 2010 Cook County case.

¶ 8 During the jury trial, which began on April 9, 2012, the State's evidence established that Tomas Bartos and his wife, Nadezda Bartos, originally leased the 2006 BMW, in 2007, and, later, purchased the 2006 BMW in Nadezda's name. The 2006 BMW was registered in Illinois and had a specialty Illinois Firefighters' license plate, number 60428FF. The evidence established the 2006 BMW had been towed to Laurel Motors in Westmont, Illinois, for repairs in 2010 and, shortly thereafter, the car was reported as stolen from the dealership. The owners did

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<sup>2</sup>In the 2010 Cook County case, defendant pled guilty to one count of felony theft, but had not yet been sentenced for that charge at the time of this trial.

not know defendant or provide defendant, defendant's family members, or anyone else permission to drive or use the 2006 BMW.

¶ 9 On July 8, 2010, the Illinois State Police (ISP) and other multi-jurisdictional agencies executed a search warrant at defendant's residence in Will County, Illinois. On that date, the officers found a number of cars parked in defendant's driveway including: a Navigator, a black Mercedes, a maroon BMW, and the 2006 BMW, charged in the instant case. Officers immediately seized the Navigator and the black Mercedes because they were reported as stolen.

¶ 10 ISP agents also seized 10 to 12 license plates from defendant's garage on July 8, 2010, including a specialty Illinois Firefighters' plate, number 60428FF, registered to the Bartos's 2006 BMW. The agencies confiscated a six-inch stack of documents from defendant's property, some of which were retrieved from a briefcase found in the maroon BMW. The briefcase contained various vehicle titles, including a fraudulent Alabama title to the Navigator parked in defendant's driveway. On July 8, 2010, the 2006 BMW, also parked in defendant's driveway, had an Indiana dealer plate affixed to it.

¶ 11 The parties stipulated to admit transcripts of testimony, from an earlier trial, regarding 2 of defendant's 20 phone conversations from the Will County jail. During the 18th phone call, defendant's wife, Amal, told defendant the police took three cars they owned: "the red [maroon BMW], the black [Mercedes], and the white [Navigator]," but informed her husband they had not taken their daughter's black car (the 2006 BMW), because their daughter had it at work. According to Amal, the police intended to return the next day to pick up the 2006 BMW. During this conversation, defendant told his wife to take "the black car" (the 2006 BMW) to "Ashraf" to hide and to tell the police she could not find it. Defendant told Amal the black car needed to be hidden because it "will cause me problems." Amal told defendant the police took the briefcase and file folder with all of the titles. Defendant advised his wife the vehicles were not stolen, and

there were titles for the cars parked in the driveway. Defendant talked to Ashraf during the 20th call, and told him to get the black car (the 2006 BMW) from his wife and hide it.

¶ 12 Trooper Thomas Jennings, assigned to the Tri-County Auto Theft Task Force, testified he became involved in defendant's case on July 9, 2010, and discovered that the black Mercedes, seized from defendant's driveway on July 8, 2010, had been reported as stolen from its owner. The trooper also gave detailed testimony explaining that the Navigator, also seized from defendant's driveway on July 8, 2010, had been stolen from a manufacturer's plant in Louisville, Kentucky, and bore an altered VIN that did not match the original VIN placed on the car by the manufacturer.

¶ 13 Trooper Jennings explained that individuals who steal vehicles often "re-tag" a stolen vehicle with a different, valid VIN from a vehicle of the same make and model so the vehicle would appear "legitimate to the average person." Trooper Jennings reviewed an Alabama title for the Navigator, seized from defendant's home, that matched the altered public VIN for the Navigator. The trooper contacted Alabama's Motor Vehicle Division and determined that this title and VIN were not of record in Alabama and were, therefore, fraudulent. Trooper Jennings testified he investigated an additional black BMW (the charged 2006 BMW), located at defendant's residence on July 8, 2010, and noticed a problem with the public VIN near the windshield because there were asterisks on each side of the number, which meant it was not a valid number. The false VIN was "\*5UXFA93566LE84753\*." The 2006 BMW also had an expired Indiana dealer plate affixed to it, but the trooper determined it was not a valid license plate. After removing the license plate, the trooper observed another sticker bearing the false VIN with asterisks on each end, and discovered the true VIN sticker underneath had been removed. The trooper also discovered a loose VIN sticker where the confidential VIN was supposed to be stamped into the frame. After removing that sticker, Trooper Jennings noticed

the original confidential VIN stamped into the frame, 5UXFA93526LE84880, had been partially scratched off.

¶ 14 The Illinois Secretary of State computer records documented the original VIN, assigned to the 2006 BMW, was registered to Nadezda Bartos with an Illinois Firefighters' license plate number 60428FF. This matched the Illinois Firefighters' license plate found in the stack of license plates recovered from defendant's garage.

¶ 15 When Trooper Jennings interviewed defendant, defendant said he sold cars for various dealers to make a living. Defendant stated he obtained the Navigator and the 2006 BMW from a "guy named Durgam," later determined to be "Danny Alnajami." Defendant told the trooper he had Alabama titles for the Navigator and the 2006 BMW. Based on this information, the trooper said he checked Alabama records using both the true and fraudulent VIN's for the 2006 BMW, and Alabama had no record of either VIN being registered in Alabama.

¶ 16 The defense showed Trooper Jennings a copy of an Alabama title, purportedly for the 2006 BMW, bearing the fraudulent public VIN. That title showed the vehicle was sold to defendant on June 27, 2010, and the trooper said it looked like a "real title." The defense also showed the trooper a copy of a "bill of sale," issued to defendant for the 2006 BMW, showing a cash price of \$26,000 and containing information consistent with the Alabama title that included the fraudulent VIN. Both documents showed "Stan Lauren" was the prior owner of the 2006 BMW sold to defendant. The trooper said nothing appeared "out of the ordinary" in those two documents.

¶ 17 Initially, although defendant told the trooper that he bought the Navigator, the black Mercedes, and the 2006 BMW from Durgam, defendant subsequently told him defendant bought the 2006 BMW from a guy named Charlie. When the trooper asked defendant why he originally

said Durgam sold him the 2006 BMW, defendant admitted he lied to the trooper during the first interview.

¶ 18 Defendant also told Trooper Jennings that one of the dealers, for whom he bought and sold cars at auto auctions, was Urban, Inc.<sup>3</sup> The trooper verified that one of the dealer license plates, in defendant's possession, was registered to Urban, Inc., an Indiana dealership that was no longer in business.

¶ 19 Based on the court's previous ruling, the State published, to the jury, certified copies of counts I and II of defendant's 2004 Cook County charges, count II from his 2010 Cook County charges, and count IV from his 2011 Will County charges. The State read the following summary to the jury:

“Members of the jury, the defendant Wail Salem, has previously been convicted of the Class 4 felony of unlawful possession of vehicle title, under Will County case No. 11 CF 935.

Members of the jury, the defendant[,] according to People's Exhibit 19, has been convicted of the Class 1 felony offense of theft over \$500,000 under Cook County case No. 10 CR 598401.

[In] People's Exhibit 20, the defendant has been previously convicted of the Class 3 felony of theft, unauthorized control of \$300 but less than \$10,000, and the Class 2 felony of theft over \$10,000 under \$100,000, under Cook County case No. 04 CR 398403.

Those are the three certified convictions, your honor.”

After reading these prior convictions to the jury, the State rested its case-in-chief.

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<sup>3</sup>Transcripts from an earlier trial showed the name of this dealer was “Irbid, Inc.”

¶ 20 The defense called defendant as its only witness. Defendant testified that he lived at his residence with his wife and kids on July 8, 2010. At that time, defendant's 20-year-old daughter drove the 2006 BMW to school and to work. Defendant said he worked with car dealers, in July of 2010, to sell cars for them because his felony record prohibited him from operating as a car dealer. Defendant testified he would repair and detail vehicles before returning the vehicles to an auto auction for sale.

¶ 21 In 2010, defendant said he worked with a dealer named "Monte," who owned Urban, Inc., in Indiana. He stated Monte had an Indiana wholesale dealer license and defendant worked with him buying and selling cars at auto auctions, as well as to private individuals. Defendant testified he also worked with a few people in Michigan who bought and sold cars, including Durgam Alnajami, who he called Danny. Defendant stated that Durgam sometimes delivered the vehicles to defendant himself and sometimes Durgam's employees delivered vehicles to defendant. In June 2010, defendant said he bought a 2008 Range Rover vehicle from Durgam. After learning the Range Rover had been in an accident, Durgam allowed defendant to return the Range Rover in exchange for the Navigator, located on defendant's property. Since the Navigator was more expensive than the Range Rover, Durgam gave defendant the option to either pay the difference to Durgam or sell the Navigator and keep a portion of the Navigator's sale price equal to the value paid for the Range Rover.

¶ 22 Defendant said Durgam also sold him the 2006 BMW. Defendant denied he knew the 2006 BMW was stolen in July of 2010. According to defendant, Durgam sent him pictures of the car and they agreed on a purchase price, and a guy named Charlie delivered the 2006 BMW to defendant. Defendant said Charlie "signed [the title], gave me the title, gave me the bill of sale and gave me the key and the car." Charlie also removed the license plate on the Navigator

and replaced it with the Indiana dealer plate. Defendant testified he told Trooper Jennings defendant had an Alabama title for that vehicle.

¶ 23 During the jury instruction conference, without objection by the defense, the court allowed People's Instruction No. 9. This instruction told the jury they could consider defendant's prior convictions to impeach defendant's credibility (Illinois Pattern Jury Instructions, Criminal, No. 3.13 (4th ed. 2000)).<sup>4</sup> However, over defendant's objection, the court also gave the jury People's Instruction No. 10. This instruction allowed the jury to substantively consider the other crimes evidence, including defendant's prior convictions, for the limited purpose of resolving the issue of defendant's intent, knowledge, and absence of mistake in committing the offense of unlawful possession of a stolen vehicle (Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000)).

¶ 24 After closing arguments on April 12, 2012, the jury returned a verdict of guilty for the offense of possession of a stolen vehicle with respect to the 2006 BMW. On May 14, 2012, the court held the sentencing hearing. The court found defendant was eligible for sentencing as a Class X offender and orally sentenced defendant to serve 11 1/2 years in the Illinois Department of Corrections, to be served concurrently with defendant's other Will County charges, but consecutively with the sentence imposed for defendant's 2010 Cook County charge.

¶ 25 The court entered the written mittimus for defendant's sentence, on May 17, 2012. On that date, the court admonished defendant that, before he could file a notice of appeal, defendant had to first file a written motion with the trial court, within 30 days, asking the court to address any issues defendant wanted to challenge regarding this case. Defense counsel advised the court defendant intended to file a posttrial motion for new trial, as well as raising an issue concerning

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<sup>4</sup>We note that this issue was not addressed by either party prior to the jury instruction conference.

the sentence. The court then set defendant's anticipated posttrial or postsentence motion for hearing on June 19, 2012.<sup>5</sup>

¶ 26 On June 5, 2012, defendant filed his motion for new trial alleging prosecutorial misconduct occurred based, in part, on the introduction of other crimes evidence that did not show motive, intent, or other valid other crimes purpose. On June 21, 2012, without objection, the State argued the merits of the motion for new trial and, ultimately, the court denied the posttrial motion in its entirety. After appointing the appellate public defender, at defendant's request, the court directed the circuit clerk to file a notice of appeal on behalf of defendant, which was filed on June 22, 2012.

¶ 27 This court issued a decision dismissing the appeal on the grounds that defendant's notice of appeal was not "timely." *People v. Salem*, 2014 IL App (3d) 120523-U. Upon review, our supreme court exercised its supervisory authority to reinstate defendant's appeal. In addition, our supreme court directed this court to vacate our prior decision dismissing the appeal and consider the merits of defendant's appeal. *People v. Salem*, 2016 IL 118693. Accordingly, we vacate our prior order dismissing this appeal in *People v. Salem*, 2014 IL App (3d) 120523-U.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant argues the court committed reversible error when it allowed the State to present certified records of defendant's prior prosecutions as "other crimes evidence," during the State's case-in-chief. The State contends the trial court properly allowed the admission of the other crimes evidence to prove defendant knowingly possessed the 2006 BMW with the requisite criminal intent as charged.

¶ 30 At the onset, we note defendant was facing one count of unlawful possession of a stolen vehicle, namely, the 2006 BMW. In the instant case, defendant contends the trial court erred by

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<sup>5</sup>Later, without objection, the defense moved to continue the hearing to June 21, 2012.

allowing the State to use certified copies of defendant's prior felony convictions, in its case-in-chief, to attempt to prove defendant's knowledge, intent, or absence of mistake when possessing the stolen 2006 BMW.

¶ 31 Generally, Illinois courts prohibit the admission of other crimes evidence to protect against the jury convicting a defendant because he is a bad person deserving punishment. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Under very limited circumstances, the rules of evidence and existing case law permit the introduction of defendant's prior bad acts, as substantive evidence, when those prior bad acts are directly relevant to the issue of intent, knowledge, or absence of mistake. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *People v. Wilson*, 214 Ill. 2d 127, 135-36 (2005); *People v. Illgen*, 145 Ill. 2d 353, 364-65 (1991).

¶ 32 During its case-in-chief, the State read the following information from certified copies of defendant's convictions to the jury:

“Members of the jury, the defendant Wail Salem, has previously been convicted of the Class 4 felony of unlawful possession of vehicle title, under Will County case No. 11 CF 935.

Members of the jury, the defendant[,] according to People's Exhibit 19, has been convicted of the Class 1 felony offense of theft over \$500,000 under Cook County case No. 10 CR 598401.

[In] People's Exhibit 20, the defendant has been previously convicted of the Class 3 felony of theft, unauthorized control of \$300 but less than \$10,000, and the Class 2 felony of theft over \$10,000 under \$100,000, under Cook County case number 04 CR 398403.”

¶ 33 Here, the details of the convictions, published to the jury as set forth above, were so skeletal they were not relevant to the issue of whether defendant possessed this particular 2006

BMW with knowledge that the car was stolen. In other words, the content of the totality of the information published to the jury supported one conclusion: that defendant was a convicted thief with a propensity to unlawfully take the property of others. Such propensity evidence is not admissible because it is unduly prejudicial. See *People v. Gibbs*, 226 Ill. App. 3d 1068, 1071 (1992). Therefore, the introduction of the certified copies of defendant's prior court records as substantive evidence of intent was erroneous.

¶ 34 Having found error, we next address the State's contention that the error, if any, was harmless. Our supreme court has established three ways for measuring harmless error: "(1) focusing on the error to determine whether it might have contributed to the conviction; (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction; and (3) determining whether the evidence is cumulative or merely duplicates properly admitted evidence." *People v. Richee*, 355 Ill. App. 3d 43, 60 (2005) (citing *People v. Wilkerson*, 87 Ill. 2d 151, 157 (1981)).

¶ 35 Here, it was undisputed that the stolen 2006 BMW was parked in defendant's driveway and the Illinois Firefighters' license plate, No. 60428FF, previously affixed to the 2006 BMW at the time of the theft, was located in defendant's garage. Further, the jury learned defendant possessed the fraudulent Alabama title listing Stan Lauren as the previous owner of the 2006 BMW, and the 2006 BMW had been retagged with a fraudulent VIN while bearing an invalid Indiana dealer plate. Defendant admitted to the jury he could not act as a used car dealer due to his previous felony record.

¶ 36 In addition, defendant provided two different explanations to investigators concerning how defendant innocently acquired the stolen 2006 BMW. First, defendant indicated he purchased the 2006 BMW from someone named Durgam, but later stated he lied to the police about Durgam and actually bought the vehicle from another person named Charlie. The jury

could draw its own conclusions from these inconsistent versions defendant discussed with the investigators and could properly be advised of defendant's prior convictions to determine defendant's credibility.

¶ 37 Finally, during recorded telephone conversations from the jail, defendant told his wife to make sure the police did not find the black car (the 2006 BMW) and to take it to Ashraf to hide because it would cause problems for defendant. Defendant also asked Ashraf to get the black 2006 BMW from his wife and to hide it for defendant. The jury was also presented with evidence that defendant possessed other stolen vehicles, located in his driveway, on the same date the 2006 BMW was discovered by the police officers.

¶ 38 Based on the record, we conclude that the State presented overwhelming evidence to support defendant's conviction for possession of a stolen 2006 BMW, independent of the certified copies of his convictions introduced as substantive evidence during the State's case-in-chief. Therefore, any error in admitting defendant's prior convictions, during the State's case-in-chief, was harmless.

¶ 39 **CONCLUSION**

¶ 40 For the foregoing reasons, we affirm defendant's conviction for unlawful possession of a stolen vehicle.

¶ 41 Affirmed.