2017 IL App (1st) 151403-U

No. 1-15-1403

Order filed September 25, 2017

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 16639
	)	
JARVIS SPIVERY,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant	)	Judge, presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a stolen motor vehicle is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he possessed the vehicle and knew it to be stolen.

¶ 2 Following a bench trial, defendant Jarvis Spivery was convicted of possession of a stolen motor vehicle and sentenced to four years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because there was insufficient evidence to establish that he possessed the vehicle or that he knew the vehicle was stolen. We affirm.

¶ 3 Defendant was charged with one count of possession of a stolen motor vehicle which alleged that he possessed a 2014 Dodge Ram truck, belonging to Rachel Johnson, without being entitled to the possession of the vehicle, and knowing the vehicle to have been stolen or converted. 625 ILCS 5/4-103(a)(1) (West 2014).

¶ 4 At trial, Johnson testified that, at approximately 3:40 a.m., on August 24, 2014, she drove her Dodge Ram truck to a Marathon gas station located at 119 South Cicero Street. Johnson had purchased the truck on August 2, 2014. At the gas station, Johnson turned her truck off and entered the station to pay for gas. Inside the station, she realized that she had forgotten both her keys and her cell phone in the truck. Johnson estimated that she was away from her truck for five to ten minutes. When she exited the station, she saw someone driving away in her truck. Johnson screamed for them to stop, but they did not. Johnson then flagged down another vehicle and used the occupant's cell phone to report her vehicle stolen.

¶ 5 Two weeks later, on September 7, 2014, police informed Johnson that her truck had been recovered. Johnson testified that she did not give anyone permission to drive or take her truck from the gas station on the morning of August 24, 2014. She also did not give anyone permission to be in possession of her truck on September 7, 2014. Johnson testified that she was not familiar with defendant and did not give him permission to use her truck. When the truck was returned to her, Johnson discovered that the floor mats were missing, the driver and passenger sides of the truck were dented, the spare tire was gone, and the leather seats were damaged.

¶ 6 Chicago police officer Urban testified that, at approximately 12:28 p.m., on September 7, 2014, he was on patrol in plain clothes and in an unmarked car near the area of the 5200 block of West Ferdinand Street. While traveling eastbound on Ferdinand Street towards Laramie Avenue, Officer Urban noticed a black truck with "truck plates," which indicated to him that the truck

was illegally parked in a residential area. Urban also observed that the truck was parked several feet away from the curb, which was another parking violation. Urban pulled his unmarked police car approximately 15 to 20 feet behind the truck while his partner ran the truck's license plate number. As the plate number was being run, Urban observed defendant inside of the truck in the driver's seat. Urban then saw defendant slide from the driver's seat to the passenger seat and exit the vehicle using the passenger door. Urban did not see anyone else in the truck. After exiting the truck, defendant "walk[ed] or *** kind of jog[ged]" towards a residence, but the door to the residence was closed and he was unable to enter. By this time, Urban had learned that the truck had been reported stolen. The officers then placed defendant into custody. The keys for the truck were recovered inside of the vehicle.

¶ 7 The officers took the truck into police custody and defendant was transported to the 15th District police station for processing. At the station, Urban advised defendant of his *Miranda* rights. Defendant indicated that he understood his rights and agreed to speak to Urban. Defendant told Urban that he had purchased the truck from "an unknown male" at a "tire shop near Huron [Street] and Cicero [Avenue]." Defendant also told Urban that he knew the truck was "hot," but that "for a few hundred dollars" he believed that he could use the truck for at least a few days before "it g[ot] recovered or caught." Urban testified that, based on his police experience, he understood the term "hot" to mean stolen. Urban also testified that he was familiar with the area of Huron Street and Cicero Avenue and that there is a tire shop located there. Urban acknowledged that no other person was present when he advised defendant of his *Miranda* rights and defendant told him that he had purchased the truck.

¶ 8 On cross-examination, Urban acknowledged that he did not include the two parking violations that initially alerted his attention to the black truck in his arrest report or the recovered

vehicle supplementary report. Urban also acknowledged that he had no knowledge of a surveillance video ever being requested or retrieved from the Marathon gas station. Urban further acknowledged that he did not see defendant driving the truck or memorialize defendant's statement. The steering column of the truck was not peeled back, the windows were not broken, and the locks on the vehicle were intact.

¶ 9 The State entered into evidence the certified title information of the vehicle records for the 2014 Dodge Ram and then rested. The parties stipulated to the testimony of Chicago police officer Kuciver-Price. If called to testify, Officer Kuciver-Price would have stated that, in the narrative section of the original case incident report in this matter, she indicated that Johnson told her that she had left her Dodge Ram running while it was parked at the Marathon gas station.

¶ 10 The court found defendant guilty of possession of a stolen motor vehicle. In announcing its decision, the court looked to "the plethora of driving under the influence of alcohol" cases to determine what constitutes possession of a vehicle under the law. The court noted that Officer Urban observed defendant in the driver's seat with the truck "running," and watched as defendant slid to the passenger seat and exited the vehicle towards a nearby residence. The court also noted that, in his statement to Urban, defendant admitted that he had purchased the truck. The court found that this statement, in which defendant admitted knowing that the truck was "hot," was enough to satisfy the knowledge element of the charged offense.

¶ 11 On appeal, defendant contends that the State failed to prove him guilty of possession of a stolen motor vehicle beyond a reasonable doubt. Specifically, defendant claims that there was insufficient evidence from which a reasonable trier of fact could find beyond a reasonable doubt that he possessed the truck or that he knew the truck was stolen.

¶ 12 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. Where the evidence produces "conflicting inferences," it is the trier of fact's responsibility to resolve that conflict. *People v. Pryor*, 372 Ill. App. 3d 422, 430 (2007). We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 13 In order to sustain a conviction for this offense, the State must prove beyond a reasonable doubt that: (1) defendant possessed the vehicle; (2) he was not entitled to possession of the vehicle; and (3) he knew the vehicle was stolen. 625 ILCS 5/4-103(a)(1) (West 2014); *People v. Cox*, 195 Ill. 2d 378, 391 (2001). Defendant does not challenge the sufficiency of the evidence to establish the second element of the offense. Rather, he argues that the State did not prove beyond a reasonable doubt that he possessed the truck or that he knew the truck to be stolen.

¶ 14 Possession and knowledge are questions of fact for the trier of fact to resolve. *People v. Santana*, 161 Ill. App. 3d 833, 838 (1987). Possession exists when a person has immediate and exclusive control over an object. *Santana*, 161 Ill. App. 3d at 837. In this case, "knowledge"

means that defendant was "consciously aware" that the truck was stolen, or that he was aware "of the substantial probability" that it was stolen. See 720 ILCS 5/4–5(a) (West 2014). The trier of fact's findings on these matters will not be disturbed on appeal unless the evidence is so palpably contrary to the verdict or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of guilt. *Santana*, 161 Ill. App. 3d at 837.

¶ 15 After viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant was in possession of the truck and knew it to be stolen. The record shows that defendant was sitting in the truck as it was illegally parked near a curb on a residential street. Defendant was the sole occupant of the truck and was sitting in the driver's seat. As officers in an unmarked car pulled up behind him, defendant slid to the passenger's seat and exited the vehicle. He "walk[ed] or *** kind of jog[ged]" towards a nearby residence where he was ultimately apprehended. The keys for the truck were found inside the vehicle. Shortly after his arrest, defendant told Officer Urban that he had purchased the truck for "a few hundred dollars" from a man at a tire shop. He also told the officer that he knew the truck was "hot," but that he believed he could use the truck for at least a few days before "it g[ot] recovered or caught." Urban testified that there is a tire shop at the location defendant mentioned and that, based on his police experience, he understood "hot" to mean stolen. This evidence was sufficient to prove that defendant possessed a stolen motor vehicle beyond a reasonable doubt. See *Santana*, 161 Ill. App. 3d at 837-38 (defendants were in possession of a stolen vehicle when they were discovered leaning inside the open doors of the vehicle and moving their arms around).

¶ 16 Defendant nevertheless argues that the State did not prove anything more than that he was a mere "passive occupant" of the truck because it failed to present evidence that he drove the

truck. He claims that the trial court erred in finding that he possessed the truck where it mistakenly believed that the truck was "running" while he was inside of it. Defendant also maintains that Urban's testimony was "too convenient" and that his statement to the officer was unworthy of belief because it was not memorialized.

¶ 17 We initially note that defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 690 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact."). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). This aside, the State is not required to show that defendant was seen driving the vehicle to show that he had possession. *Santana*, 161 Ill. App. 3d at 837-38 (defendants were in possession of a stolen vehicle when they were discovered leaning inside the open doors of the vehicle and moving their arms around). Moreover, "the testimony of a single witness, if positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). We will not reverse the conviction simply because defendant claims that Urban was not credible. See *Evans*, 209 Ill. 2d at 211-12.

¶ 18 Although the trial court, in announcing its decision, misstated the evidence and found that the truck was running, there was still sufficient evidence for the trier of fact to conclude that defendant possessed the truck. As mentioned, defendant was inside the parked truck and sitting in the driver's seat. The keys to the truck were recovered inside the vehicle and defendant told Urban that he had purchased the truck and knew it was "hot."

¶ 19 We are likewise not persuaded by the string of cases defendant cites to show that he was merely a "passive occupant" in the truck and that the State failed to show that he "actively

engaged in using the stolen vehicle." See *People v. Anderson*, 188 Ill. 2d 384, 393 (1999); *People v. Tucker*, 186 Ill. App. 3d 683, 693-94 (1989); *People v. Davenport*, 176 Ill. App. 3d 142, 145 (1988). Here, unlike the cases cited by defendant, he was not merely a passenger in a truck that was being driven by another person. Rather, he was the sole occupant of the truck, was seated in the driver's seat, and admitted that he purchased the truck and knew that it was stolen.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.