SECOND DIVISION
November 19, 2013

No. 1-12-0388

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. 10 CR 17763
	)	
SEBE WOODY,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant knew the construction equipment he transported was stolen, thereby supporting defendant's convictions for possession of a stolen motor vehicle and theft. Defendant's mittimus will be corrected to reflect 490 days of presentence credit. We affirm.

¶ 2 Defendant was convicted of aggravated possession of a stolen motor vehicle and theft resulting from his involvement in transporting stolen heavy construction equipment. He was sentenced to 10 years' imprisonment for the possession count and a concurrent term of 5 years for the theft count. Defendant appeals his convictions, contending the State failed to prove him

guilty beyond a reasonable doubt because the State did not prove that defendant knew the equipment he was driving was stolen. In the alternative, defendant asks this court to order the clerk of the circuit court to correct his mittimus to reflect 490 days, rather than 489 days, of presentence credit.

¶ 3 At trial, the State presented evidence of three incidents of defendant possessing stolen construction equipment. Defendant was acquitted of charges related to the second and third incidents, but was convicted of the first. The parties dispute whether the trial court properly used evidence of the second and third incidents to prove defendant knew the construction equipment was stolen when he possessed it in the first incident.

¶ 4 The State's evidence related to the first incident showed that on July 13, 2010, defendant met with Kassandra Stricklin and Donald Adduci and asked them whether they wanted to earn some money. Stricklin testified that defendant asked her to drive Adduci's car to follow defendant as he drove a bulldozer. Stricklin drove Adduci's Ford Escort to 143rd and LaGrange. While en route, defendant, Stricklin, and Adduci stopped at a restaurant where defendant picked up two batteries from an unknown person, and then they proceeded to a vacant construction lot at 143rd and LaGrange. When they arrived, defendant put the batteries into the bulldozer, noticed there was a flat tire, and drove the equipment across the street to a gas station. Stricklin and Adduci followed defendant to the gas station. Defendant was unsuccessful at filling the tire with air, so he called an unknown person. That person arrived at the gas station and gave defendant money to have the tire filled by a mechanic with a larger air compressor. After the tire was filled with air, defendant drove the equipment down 143rd Street to Harlem, and Stricklin followed him by driving Adduci's car, who rode with Stricklin. At about 79th and Harlem, defendant hit a bump and the bucket on the bulldozer fell out into the street. Defendant tried to retrieve the bucket and put it back into the bulldozer. The police eventually arrived and detained defendant. Stricklin and Adduci were allowed to leave.

¶ 5 Sergeant Peter Kokkinis testified that on July 13, 2010, at about 9 p.m. he observed a front end loader attempting to scoop a heavy equipment bucket into the front end loader at 76th and Harlem. The loader was partially obstructing the street, in the curb lane, and was partially in a private driveway. He observed the loader unsuccessfully attempt to scoop the bucket and then attempt to move the bucket off of the street. Kokkinis activated his lights and went to speak with the driver. He radioed for assistance and when Officer Tsiamas arrived, they both spoke with the driver, whom Kokkinis identified as defendant. Kokkinis observed that defendant appeared to lack the knowledge appropriate to reload the bucket into the equipment. Defendant told Kokkinis that, at the direction of his boss named Dave, defendant was moving the equipment from 147th and LaGrange to an unknown location at I-55 and Harlem. Defendant did not know Dave's last name or the company that Dave worked for. During this conversation, defendant was fidgety and sweating. Kokkinis obtained the emergency telephone number for Brothers Asphalt, the name on the side of the equipment, and Nicola Colella later arrived at the scene. He learned from Colella that defendant did not have permission to possess the equipment. Kokkinis also learned that Donald Adduci and Kassandra Stricklin were in a Ford Escort that was also on the scene, and that Stricklin was driving. Defendant was not arrested, but he was detained for further investigation. Adduci and Stricklin were allowed to leave the scene after Tsiamas spoke with them.

¶ 6 On cross-examination, Kokkinis testified that defendant did not attempt to flee when the officer arrived. Kokkinis also observed defendant call Dave. Defendant told Kokkinis that Dave answered the telephone but disconnected the call once defendant informed Dave that the police were on the scene. The officers, however, did not attempt to contact Dave during the hour-long on-scene investigation.

¶ 7 Officer Tsiamas testified substantially consistently with Kokkinis and provided additional testimony. Defendant told the officers that Dave hired him to move the Caterpillar

front end loader from a construction site off of 147th and LaGrange Avenue to an unknown location near Interstate 55 and Harlem Avenue. Defendant was sweating profusely, stuttering, and would not make eye contact with the officers. Defendant told Tsiamas that he was in a temporary employment center in Cicero, Illinois, when Dave approached him and asked whether he had a valid driver's license. Defendant could not provide the name of the temporary employment center. Dave asked defendant if he would move a front end loader from a construction site for him. Defendant told Kokkinis that he had moved approximately 10 to 12 front end loaders from construction sites in the last month. Dave provided defendant with two batteries and when defendant arrived at the construction site at 147th and LaGrange, he placed the batteries inside the loader and then had the tires filled at an auto shop. Defendant also explained to Tsiamas that when he tried to call Dave while the police were on the scene, Dave hung up the call and then would not answer defendant's calls. Defendant had a basic Class D driver's license.

¶ 8 Inspector Kelley interviewed defendant on July 13, 2010, at the Bridgeview Police Department. Defendant told him essentially the same thing that defendant told Kokkinis and Tsiamas. Kelley informed defendant that the equipment was stolen and defendant became very upset that Dave set him up with a job to transport stolen equipment. Defendant also said that he would no longer work with Dave and allowed the officers to retrieve Dave's telephone number from defendant's cellular phone.

¶ 9 The owner of the stolen equipment also testified for the State. Nicola Colella is the owner of Brothers Asphalt Paving, Inc., and also the owner of the combination machine that defendant was charged with possessing. He estimated that the value of the machine was $80,000 and the bucket was $7,000. The machine that defendant possessed would normally be transported by a "low boy," a tractor truck with a trailer. Without Colella's authority, no one is authorized to transport the vehicle. On July 13, Colella received a telephone call from the

Bridgeview Police Department informing him that his machine had been driving on the street and that the driver lost the bucket on the street. Defendant met the police at Harlem and 76th Street. Upon his arrival, Colella identified the machine as his own. Defendant approached Colella and told him that Colella's buddy, Dave, told defendant to move the machine. However, Colella did not have a "buddy" named Dave and he did not tell anyone named Dave to move his machine. Colella also testified that he had never employed defendant and did not know defendant.

¶ 10 Stricklin testified that the next morning she and Adduci picked defendant up from the Bridgeview Police Station. Defendant told Stricklin that he did not know the equipment was "supposedly stolen" and he was arrested because he did not have a "CDL" (commercial driver's license), and he was released on bond.

¶ 11 Adduci testified consistently with Stricklin in all material respects related to the July 13 incident. However, Adduci added that the day after he was arrested, defendant told Adduci and Stricklin that the equipment was stolen but that he was not going to be charged for the theft. Defendant did not mention Dave during this conversation.

¶ 12 The second incident occurred on either July 16 or 17, 2010. Stricklin testified that defendant asked her and Adduci if they would like to make more money by following behind another bulldozer, and they agreed. Defendant picked the two up from Stricklin's apartment and drove them to another vacant construction site in Tinley Park, located at Harlem and about 159th. This time, Adduci drove the bulldozer while defendant and Stricklin followed behind in the car. At about 5:15pm, Stricklin observed Adduci rear-end a vehicle and then waved her and defendant away from the scene. Stricklin and defendant left, with defendant driving. Adduci also testified that when he rear-ended the vehicle, he told defendant and Stricklin to leave because he knew the equipment was stolen. Adduci testified that while all three of them were

going to the construction site in Tinley Park, defendant said the equipment was stolen. Adduci believed they were stealing the equipment.

¶ 13 Marta Kwiecian, the owner of the vehicle that Adduci rear-ended, also testified for the State. On July 17, 2010, at about 5:15 p.m. she was driving a Honda Odyssey near State and Central Avenue in Burbank. She was stopped, waiting for the light to turn green, when her vehicle was rear-ended by what she described as a bulldozer. After her vehicle was struck, she went to talk to the driver, asking him to show her his insurance and driver's license. When he did not provide the information, she told him that she was going to call the police. The driver asked her not to call the police and Kwiecian replied that she had to call because the driver did not provide his insurance and license. When she dialed 9-1-1, the driver returned to the bulldozer-like vehicle and proceeded to leave the scene. Kwiecian followed him in her own vehicle. The driver proceeded east to 79th Street, and when he reached a red light, the driver exited the vehicle and ran away. The police arrived at the scene and completed a Traffic Accident Report. On August 4, 2010, Kwiecian spoke to Inspector Kelly of the Illinois State Police NEMAT Unit and picked Adduci out of a photo array. On September 8, 2010, she also identified Adduci in a line-up at the Tinley Park Police Department.

¶ 14 Barry Schedin testified that he worked for Kara Plumbing in July 2010 as a Superintendent and the company used a combination backhoe and loader machine. On July 17, 2010, he received a telephone call from the Tinley Park Police Department stating that their machine had been involved in an accident in Burbank. Schedin learned that the machine had been removed from Kara Plumbing's job site at the Burger King located at 159th and Harlem. The police found the machine in Burbank at 79th and State Road. For the distance that the machine was transported that day, Schedin explained that his company would normally have transported it by a "low boy." The combination machine had "Kara Plumbing" written on it. Schedin testified that the value of the machine was about $45,000. He did not give defendant,

Donald Adduci, or "Dave" (later identified as "William Hardin") permission to operate Kara Plumbing's machine.

¶ 15 Stricklin testified that the third incident occurred the next day, on July 17, 2010, when defendant asked Stricklin and Adduci for the third time whether they wanted to make some more money and to follow behind another bulldozer. Again, they agreed. Defendant picked them up and they proceeded to the Chicago Ridge Mall located at 6400 South 95th Street in Chicago Ridge. Defendant said they were to take the bulldozer to 30th and Cicero or Ogden. When they arrived at the construction site, Adduci again drove the bulldozer while defendant and Stricklin followed him. Stricklin testified to the State's video exhibit showing the incident at the mall. Stricklin suspected during the second and third incidents that the equipment was stolen, but she followed behind in the car anyway because she wanted the money. She received $40 payment for the third incident.

¶ 16 Rodger Maatman, Jr. testified that on Monday, July 19, 2010, that he was self-employed as a plumber. That day, he went to his job site at 95th and Ridgeland Avenue in Chicago Ridge and discovered that his Caterpiller 420D combination he was using was missing. When Maatman last left the machine, he did not leave the keys to the combination in the vehicle. A few days later, he recovered his combination from an impound lot. There were no pry marks around the ignition. Generally, his combination loader would have been transported in a "low boy" trailer. Maatman did not give defendant, Donald Adduci, or "Dave" (or, William Hardin) permission to take his combination. Maatman estimated the value of his combination at $50,000.

¶ 17 On September 8, 2010, the police took Stricklin and Adduci to the Tinley Park Police Station where Stricklin spoke with Inspector Kelly. Stricklin gave a handwritten statement that was similar to her trial testimony. She identified Adduci and defendant in two separate photo arrays. Stricklin admitted to having a drug habit in July 2010 but testified that she was not under

the influence of drugs at trial. Stricklin was not charged with any offense related to the three incidents, but she also was not promised that she would not be charged in exchange for her testimony.

¶ 18 After the parties rested their cases, the trial court found that there was independent corroboration from Kokkinis, Tsiamas, and Colella that defendant possessed the construction equipment involved in the first incident and drove it miles between construction sites, despite defendant not having a commercial driver's license. The court also noted that defendant did not know the full name of the person defendant claimed hired him to move the equipment. The court found there was no independent corroboration for the next two incidents, aside from the testimony of defendant's co-conspirators, Adduci and Stricklin. The court stated that because only Adduci and Stricklin testified to defendant's involvement in the second and third incidents, their testimony has to be treated "with a great deal of suspicion." Stricklin testified to being a drug abuser and only having a vague recollection of the last two incidents. The court considered Adduci and Stricklin's testimony regarding the second two incidents, and "place[d] some level of value to it even if it isn't proof beyond a reasonable doubt." The court concluded that defendant entered into these ventures knowing that Dave did not own the equipment. The court found defendant guilty of aggravated possession of a stolen motor vehicle and theft for the July 13, 2010, incident involving the equipment owned by Colella of Brothers Asphalt. Defendant was sentenced to 10 years' imprisonment for the possession count and a concurrent term of 5 years for the theft count. He appeals his convictions, contending the State failed to prove him guilty beyond a reasonable doubt.

¶ 19 "When a defendant challenges the sufficiency of the evidence, the relevant inquiry 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, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The

reviewing court must also construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* "A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt." *Id.*; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 20 Defendant contends that he had a plausible explanation for transporting the construction equipment on July 13, 2010 and the subsequent two dates: "Dave" hired him during a construction strike to move the equipment, and therefore he did not know the equipment was stolen. It is unlawful for "a person not entitled to the possession of a vehicle having a value of $25,000 or greater to receive, possess, conceal, sell, dispose or transfer the vehicle, knowing that the vehicle has been stolen or converted[.]" 625 ILCS 5/4-103.2(a)(3) (West 2010). It may be inferred that a person "exercising exclusive unexplained possession" over a stolen vehicle has knowledge that the vehicle is stolen. 625 ILCS 5/4-103(a)(1) (West 2010). A defendant may attempt to rebut the inference of knowledge that the vehicle is stolen by offering a reasonable explanation for the defendant's possession. *People v. Abdullah*, 220 Ill. App. 3d 687, 691 (1991). "However, a trier of fact is not required to accept defendant's version of the facts." *Id.* Further, the trier of fact is not required to elevate every theory of innocence to reasonable doubt. *People v. Dabrowski*, 162 Ill. App. 3d 684, 692 (1987).

¶ 21 Here, the evidence showed that on July 13, 2010, defendant approached Adduci and Stricklin, and asked them whether they wanted to earn money with him by helping him move a front end loader from a construction site to another location. Defendant claimed that "Dave" hired him. Yet, defendant did not know Dave's last name and did not know the name of temporary staffing agency where he met Dave. Defendant had to install batteries in the equipment upon arrival to the vacant construction site. When defendant hit a bump in the road

while driving the equipment and the bucket fell, defendant had a difficult time loading it back into the equipment. As Sergeant Kokkinis testified, defendant lacked the skill to handle the equipment. The evidence also revealed that this type of construction equipment was usually transported by a "low boy" trailer; yet, defendant and Adduci drove the equipment miles between sites. Based on these circumstances, defendant's explanation that he was merely scabbing work from Dave during a state-wide construction strike is implausible. Defendant was hired by a virtually unknown person to move equipment that in no visible way bore relation to ownership by Dave. Dave did not possess the requisite knowledge or licensure to operate the equipment. Moreover, and importantly, defendant continued attempting to transport these vehicles even after learning during his arrest and interrogation that the first vehicle was stolen. The trial court considered the testimony of all the witnesses, and despite the bias associated with Adduci and Stricklin, the court nevertheless gave some weight to their testimony implicating defendant. We cannot reverse the trial court's judgment where the evidence is not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt. See e.g., *People v. Mijoskov*, 140 Ill. App. 3d 473, 478 (1986) (finding the defendant knew a car was stolen where defendant co-owned a vehicle repair shop and the vehicle was brought into the defendant's shop for break-in damage by a person who left no identification or contact information, and no work order was prepared for the vehicle).

¶ 22 Defendant cites *People v. Watson*, 17 Ill. App. 3d 505 (1974), as an analogous case, however that case is distinguishable because that case involved a single incident in which the defendant's father owned a junk yard and defendant's friend called him to tow a vehicle. *Id.* at 506. When the defendant accompanied his friend to tow the vehicle to his father's junkyard, he believed it was a *bona fide* tow. *Id.* Here, defendant engaged in three acts, and the evidence showed that he lacked the ability and the license to operate this heavy construction equipment. Similarly, *People v. Gordon*, 204 Ill. App. 3d 123 (1990), is distinguishable because in that case,

the defendant testified that his friend gave him permission to drive the car that was deemed stolen. *Id.* at 127-28. The defendant had previously observed his friend driving the car and defendant himself had previously ridden in the car with his friend. *Id.* at 128. Here, defendant was not friends with Dave; he barely knew him. They had no previous working relationship upon which defendant could rely for the type of transportation work for which Dave engaged defendant.

¶ 23 The strongest evidence of defendant's felonious intent to knowingly possess the stolen combination loader in the first incident is that defendant engaged in the same unlawful behavior twice more, within a week of being arrested and informed that the first combination loader was stolen. The trial court properly considered defendant's removal and transport of two additional combination loaders in the second and third incidents as circumstantial evidence that defendant knew the first machine was stolen. See *People v. Colin*, 344 Ill. App. 3d 119, 127 (2003) (evidence of other crimes is admissible to prove *modus operandi*, intent, identity, motive, or absence of mistake). Although the trial court found the State's evidence regarding the second and third incidents did not prove beyond a reasonable that defendant committed these offenses, nonetheless the evidence was relevant to show defendant's intent to knowingly possess the first stolen combination loader. *Id.* at 126-27. Defendant's argument that credibility is a sort of all or nothing proposition where Adduci and Stricklin's testimony should either be found to constitute proof beyond a reasonable doubt or be rejected in its entirety is not supported by case law or logic.

¶ 24 Finally, defendant contends, and the State agrees, that defendant should have received presentence credit for 490 days served during presentence detention, rather than the 489 days of credit that defendant actually received. Based upon our review of the record, this court agrees and orders the clerk of the circuit court, pursuant to Supreme Court Rule 615 (eff. July 15, 2013), to correct defendant's mittimus to reflect the same. See also *People v. Mitchell*, 234 Ill.

App. 3d 912, 922 (1992) ("Pursuant to Supreme Court Rule 615, this court may correct the mittimus without remanding to trial court.")

¶ 25 Based on the foregoing, we affirm the judgment of the circuit court of Cook County and order the clerk of the circuit court to correct defendant's mittimus to reflect 490 days of presentence credit.

¶ 26 Affirmed; mittimus corrected.