FOURTH DIVISION
May 1, 2014

No. 1-12-2641

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. 03 CR 22462
	)	
CARLOS BALMARES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

ORDER

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

HELD: Defendant's conviction for possession of a stolen motor vehicle is affirmed because the owner's testimony and the arresting police officer's nonhearsay testimony were sufficient to prove defendant possessed the stolen vehicle in the absence of evidence of identifying registration numbers; any error in the trial court's order denying defendant's motion to suppress his statement to police was harmless beyond a reasonable doubt.

¶ 1 The State indicted defendant, Carlos Balmares, for possession of a stolen motor vehicle

(PSMV) in 2003. Defendant failed to appear for court, and the circuit court of Cook County issued a bench warrant which was executed in 2012. After the warrant was executed in 2012 and following a bench trial, the trial court convicted defendant of PSMV and sentenced him to three years' imprisonment.

¶ 2 For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The indictment charged defendant with possession of a stolen motor vehicle in that defendant possessed a 1985 Chevrolet, property of Edward Hanacek [sic], not being entitled to possession and knowing it to have been stolen or converted. Before trial, defendant filed a motion to suppress a statement he made to police. Defendant's written motion asserted a number of grounds for suppression, including that police failed to properly inform him of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and that he was unable to appreciate and understand the full meaning of his *Miranda* rights because defendant is not a native English speaker. The trial court held a hearing on defendant's motion. At the beginning of the hearing, the trial court asked counsel for the State and the defense "Who is taking the burden going forward?" The State replied: "It's defense burden." Defense counsel did not object or correct the State or the court. Defense counsel informed the court that the sole ground for defendant's motion to suppress was a language barrier which allegedly prevented defendant from appreciating and understanding his *Miranda* warnings.

¶ 5 Evidence at the hearing on defendant's motion to suppress consisted entirely of defendant's testimony. Defendant testified police told him that he had the right to remain silent

in English. Defendant testified he did not understand what police said when they spoke English and that "[w]hen they read my rights, I didn't understand that either." Defendant stated he understood that police were conducting an investigation, and that one of the officers "spoke a little bit of Spanish, not much." Defendant testified police did not tell him that anything he said could be used against him in court or that he had the right to consult with a lawyer and to have a lawyer present during interrogation. Defendant testified police did tell him that if he was poor and could not afford an attorney, an attorney would be present during his interrogation. When asked if he "made a statement" defendant responded: "No."

¶ 6 At the close of defendant's testimony, the trial court made the following comment:

> "I understand that it's hard to suppress something that somebody said they never did it in the first place. But I saw from the arrest report in this case attributing a statement, albeit at the time the statement was made, it's with respect to whether *Miranda* warnings would be required. But go ahead and cross-examine."

¶ 7 The State asked only one question at the suppression hearing: did one of the officers who arrested defendant speak Spanish. Defendant answered: "Yes." The trial court then stated as follows to defense counsel: "They're going to ask that this be directed out because there's no statement, no fruit of the poisonous tree that has been elicited. What do you have to say about that?" Defense counsel's only response was: "Judge, we ask the court allow the motion to go forward." The court denied defendant's motion to suppress his statement to police officers at the time of his arrest. The court ruled as follows: "Petitioner has rested. I have no indication that

there was a problem with eliciting the statement in any way improper. As a matter of fact, Petitioner insists he did not make the statement at all. So the Motion to Suppress is denied."

¶ 8 At defendant's bench trial, Edward Hanacea testified that on September 26, 2003, he owned a 1985 Chevy dark blue conversion van. After work, Hanacea parked his van one-half block from his house and went into his home. At that time, the van was locked and had no visible damage. Hanacea did not leave the keys in the van. The next day, between 2:30 a.m. and 3 a.m., a loud banging on the front window of his house awakened Hanacea. Police were at Hanacea's door. He did not recall the exact name of the single police officer who was at his door. The officer asked Hanacea if he owned a van and Hanacea told the officer that he did, describing it as a blue Chevy van. The officer asked Hanacea when Hanacea last saw the van or where he parked it. Hanacea told the officer he parked his van around the corner and that it should be there. Hanacea testified that the officer then asked Hanacea to follow him if Hanacea wanted to come and get the van because it was no longer where Hanacea parked the van. The officer told Hanacea he would show him where the van was so that Hanacea could determine if he could get the van home or would have to have it towed.

¶ 9 Hanacea testified his son drove him, and they followed the officer to an empty lot where the officer shined a spotlight "on my van and it was in the lot." Hanacea testified he saw his 1985 Chevrolet conversion van sitting in the lot with other cars parked in the lot. The State asked Hanacea "[d]id you have the opportunity to identify your van?" and Hanacea responded: "Yes. I looked inside the van." Hanacea described the condition of the van when he found it, including that the driver's window was "busted" and the steering column was wrapped with

towel paper. Hanacea testified that he removed the wrapping and the steering column was "all busted up and the ignition switch was popped out *** and there was glass all over the floor. Stuff was thrown all about." Hanacea had clothes, blankets, and other items in the van, which were "all thrown on the ground scattered all over." The metal around the steering column was peeled apart and busted. Hanacea, who testified that he was an auto mechanic for 42 years before he retired, testified that the rod that activated with the key in the ignition switch was bent. Hanacea testified that the van was not in the condition as he saw it in the empty lot when he parked it the previous evening. Hanacea testified he had the opportunity to view his van at or around 3 a.m. on the morning of September 27, 2003. Hanacea testified he does not know defendant and did not give him permission to drive or to be inside of his van. Hanacea did not see defendant in his van, break the window, or peel the steering column.

¶ 10 Next, Chicago police department officer Eliel Roa testified that on September 27, 2003, he and his partner stopped a vehicle for not having a light on its rear license plate. On cross-examination, Roa testified the van was green. Defense counsel impeached Roa with his written theft report in which Roa wrote that the vehicle had no back license plate, not that it lacked a license plate light, and that Roa noted that the van was blue in his report. At trial, Roa identified the vehicle as a 1985 Chevrolet. Roa identified defendant as the driver of the vehicle. Roa testified the van was not stopped in a forest preserve parking lot and that defendant was inside the van, driving, alone, when Roa stopped the van. Defendant was not able to produce a valid driver's license. Roa testified that as he was speaking to defendant at the driver's window of the van, he observed the ignition of the vehicle and saw that the column was peeled and there was no

key in the ignition, but the car was running. Roa testified he could see the peeled column from the window. Roa testified he asked defendant to exit the vehicle and that he read defendant his *Miranda* rights in Spanish. Roa explained that he has "an FOP book where I have *Miranda* and translated it in Spanish." Roa testified he speaks fluent Spanish and has spoken Spanish his entire life. Roa testified that when he read defendant his *Miranda* rights, defendant indicated he understood his rights. Roa then questioned defendant. Defendant told Roa that he saw the vehicle running unattended for about three hours on 45th Street, so he took it.

¶ 11 Roa checked the vehicle identification number (VIN) of the vehicle he stopped through LEADS. Defense counsel objected to the State's question on the grounds the State had not elicited testimony as to what VIN Roa checked. The trial court overruled the objection because "[h]e is talking about the VIN of the vehicle he stopped." The State asked "what were the results of that inquiry?" Defense counsel did not object to that question, and Roa testified: "We saw the inquiry came back that the vehicle was reported so stolen." Roa testified he later learned who owned the vehicle. The State asked Roa "did you learn that it was an individual by the name of Edward Hanacek [sic] II?" Defense counsel objected on hearsay grounds. The witness continued and answered he did learn that "Hanacek" [sic] was the owner of the vehicle.

¶ 12 Defendant testified that about 3 a.m. on September 27, 2003, he was "coming from work." Defendant testified he was coming from work in a car with his wife. Defendant testified he was driving and that he "picked them up." Defendant testified he was driving a gray and red van, and that he was not driving a 1985 Chevy conversion van. Defense counsel asked defendant: "How were you stopped by police that evening?" and defendant responded: "I stopped

and I parked at this place." Defendant testified there were no cars and that he "came out right away." Then, "[a]bout 15 minutes later the police arrived, he parked next to my van. When I came back to where they were at they were asking me questions." Defendant testified police asked for identification and he told them he did not have any. Defendant stated police then told him they were going to take him to the police station and check his immigration record but "[a]t no moment did they tell me that they were arresting me for a *** stolen car." Defendant testified he was not in possession of a 1985 blue conversion van at any time. He also testified that when police arrested him, an officer took his wife and child home "and he was the one who was driving that van."

¶ 13 On cross-examination defendant testified that he finished work at 12:30 and parked between 1 and 1:30 in the morning. Defendant testified he was driving his own van. Defendant testified he was not stopped by police, but "the police arrived where I was at," where he parked his van. Defendant testified everyone parks their car there. Defendant testified he parked but he did not turn off his van and left his lights on. When police arrived, defendant was outside his van. He testified "[t]he car that was stolen was further down, like 15 feet away." The defense entered into evidence a certified copy of an Illinois Secretary of State registration of a 1985 Chevy sports van with a certain VIN that indicated no registration.

¶ 14 When the trial court entered its judgment on a subsequent court date, the court ruled as follows: "The Court has heard the evidence and found the government witnesses to be credible and compelling beyond a reasonable doubt, [defendant] is incredible almost as though talking about some other event altogether. There is a finding of guilty." Defendant filed a motion for a

new trial in which the defense argued the evidence did not prove defendant guilty of every element of the offense beyond a reasonable doubt, defendant was denied his right to equal protection, and defendant did not receive a fair trial. The trial court denied defendant's posttrial motion. After a sentencing hearing, the court sentenced defendant to imprisonment for three years.

¶ 15 This appeal followed.

¶ 16 ANALYSIS

¶ 17 Defendant argues the State failed to prove all the elements of the offense of PSMV beyond a reasonable doubt and that the trial court relied on inadmissible evidence to convict him of PSMV. The elements of the offense of PSMV are that the defendant possessed a vehicle; that the defendant was not entitled to possession of the vehicle; and that the defendant knew that the vehicle was stolen. *People v. Eggerman*, 292 Ill. App. 3d 644, 648 (1997); 625 ILCS 5/4-103(a)(1) (West Supp. 2003).

> "The State must prove each element of an offense beyond a reasonable doubt. [Citations.] Where a defendant alleges on appeal that the State failed to meet this burden, a reviewing court, considering the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. [Citation.] We must carefully examine the evidence, while considering that the trier of fact saw and heard the witnesses.

[Citation.]" *People v. Sams*, 2013 IL App (1st) 121431, ¶ 9.

¶ 18 Defendant challenges the sufficiency of the evidence that the vehicle was stolen. The indictment charged defendant with possessing a vehicle that was stolen or converted in that defendant, not being entitled to possession, possessed a vehicle owned by Hanacea. Defendant argues the State failed to prove that the vehicle Roa testified defendant was driving was the same vehicle Hanacea identified as his own. Defendant argues the State failed to meet its burden because the State did not adduce evidence "that the vehicle recovered from [defendant] shared the same license plate number, VIN, or details of appearance as the one Hanacek [*sic*] testified to owning," or a continuous chain of custody from the recovery of a vehicle to its identification by its owner.

¶ 19 "It is not necessary to prove ownership of a stolen vehicle. [Citations.] However, there must be proof that someone other than defendant had a superior interest in the car identified in the indictment. [Citations.] 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 complainant." *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992). That the vehicle was stolen is essential to the charge of the unlawful possession of a stolen vehicle and may not be proved by inadmissible hearsay. *People v. Cordero*, 244 Ill. App. 3d 390, 392 (1993).

¶ 20 Defendant argues that Roa's testimony that the VIN for the vehicle--the same vehicle which Roa testified defendant possessed--was entered into the law enforcement agencies data service (LEADS), from which Roa learned that the vehicle was stolen, cannot be considered as substantive proof the vehicle was stolen. Defendant argues the trial court could only consider

that testimony to show the course of the police investigation. Alternatively, even had the trial court admitted Roa's testimony regarding the result of his LEADS search as substantive evidence, that evidence would still be insufficient to prove the vehicle was stolen because the State failed to adduce evidence of its accuracy.

¶ 21 The trial court did not admit Roa's testimony regarding the computer search for the truth of the assertion that Hanacea owned the van. Roa's testimony regarding the computer search was necessary to explain the course of Roa's investigation, therefore the trial court properly admitted the evidence under the course-of-investigation exception to the rule against hearsay. Compare *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 35. The court admitted the testimony to show how the vehicle defendant was driving came to be displayed to Hanacea. Although Roa did not directly testify that he or his partner contacted Hanacea as a result of the computer inquiry, that fact was a reasonable inference from the testimony. The trial court's rulings refute the suggestion that the court relied on the testimony for the truth of the matter asserted. When defense counsel moved for a directed finding at the close of the State's case, counsel argued as follows: "There is nothing identifying this van, nothing identified specifically with regard to Mr. Hanacek [*sic*] for the ownership of this van. There have been no records introduced into the record to show on this date that he owned the vehicle." The court ruled: "Mr. Hanacek [*sic*] testified. I am persuaded from his testimony that we are talking about he same van. He testified as well. The motion is respectfully denied." The record reflects the trial court's reliance on Hanacea's testimony, not Roa's testimony about the computer search, to identify the van Roa recovered from defendant as Hanacea's property.

¶ 22 The evidence was more than sufficient to link the van Roa recovered to the van Hanacea owned without relying on the results of the computer search as evidence of that fact. The trial court found Roa's testimony more credible than defendant's. Roa's testimony established that defendant was in possession of a van on September 27, 2003. Roa stopped defendant in the van in the 4600 block of south Wood street. Roa observed the condition of the van and suspected the van was stolen. As part of his investigation, Roa identified a possible owner of that vehicle by checking the registration of the vehicle Roa saw defendant driving. The possible owner Roa identified, Hanacea, testified at defendant's trial. Hanacea testified that on the same day and at the same time Roa stopped defendant in a van and checked that van's VIN number (defense counsel asked and defendant testified about the events of September 27, 2003 at about 3 a.m., and Hanacea testified he had an opportunity to view his van at or around three o'clock in the morning on September 27, 2003), police brought Hanacea to the same location at which Roa stopped defendant, 46th and Wood streets. There, Hanacea observed his van and identified it as his property. Hanacea testified he had not given permission for anyone to drive his van because it should have been parked. Roa's corrected testimony described the van defendant was driving as blue, and Roa testified the van had a peeled steering column. Hanacea described his van as blue and in substantially the same condition in that location on that day and time as the van Roa described defendant to have been driving in that location on that day and time--that is, with the steering column "peeled" and the ignition "popped."

¶ 23 Although Roa did not testify he showed Hanacea the van he saw defendant driving which Hanacea then identified as his own, the circumstantial evidence is sufficient to permit the trial

court to find beyond a reasonable doubt that the vehicle defendant possessed was Hanacea's van. The van Roa saw defendant driving was in the same condition and in the identical location as the van Hanacea identified as his property. Defendant's suggestion that he was driving a different van with a peeled steering column (accepting Roa's testimony as more credible, as we must), which happened to stop in the same location as Hanacea's stolen 15-year-old van, on the same date and time of defendant's arrest, borders on the absurd. The vehicle police recovered from defendant is the same vehicle the State charged defendant with taking: the van Hanacea owned. We find that Hanacea and Roa's testimony were sufficient to prove that defendant was in possession of the vehicle, defendant was not entitled to possession, the vehicle defendant possessed belonged to Hanacea, and defendant knew the vehicle was stolen.[1]

¶ 24 Defendant alleges that his attorney was ineffective because he did not include the issue of the trial court's reliance on Roa's testimony concerning the computer search in the motion for a new trial. To prove ineffective assistance of counsel under the *Strickland* standard a defendant must not only show deficient performance but also prejudice. See *People v. Tate*, 2012 IL 112214, ¶ 18. In light of our analysis of the foregoing evidence, it is irrelevant whether defendant forfeited the question of the admissibility of Roa's testimony regarding his computer search of the van's VIN for review, or whether defense counsel was ineffective in failing to

[1] Although defendant does not directly challenge the knowledge element of the offense, we note that: "The condition of the vehicle is one of the most significant factors which courts consider in determining whether or not the defendant had knowledge of the vehicle's theft. The element of knowledge has been properly inferred where the steering column was peeled and the key in the ignition would not start the vehicle." *People v. Abdullah*, 220 Ill. App. 3d 687, 691 (1991).

specifically raise the issue in defendant's posttrial motion, because defendant suffered no prejudice (see generally *People v. Smith*, 195 Ill. 2d 179, 190 (2000) ("unless the underlying issues are meritorious, defendant has suffered no prejudice")). Defendant's arguments that the State failed to prove every element of the offense beyond a reasonable doubt and that he is entitled to a new trial because the court relied on inadmissible evidence to convict him both fail.

¶ 25 Defendant also argues on appeal that the trial court erred in denying defendant's motion to suppress his statement to Roa. Roa testified that, after he stopped defendant and in response to Roa's question, defendant stated "he (defendant) saw the vehicle running for about three hours on 45th street, so he took it." Defendant agues several procedural errors led to the admission of defendant's statement: (1) the trial court applied an incorrect burden of proof at the hearing on the motion to suppress, (2) the trial court erroneously denied the motion on the grounds defendant denied making the statement, and (3) counsel rendered ineffective assistance in acquiescing to the trial court's errors. Defendant did not raise these issues in his posttrial motion but argues this court should find the trial court's errors rise to the level of plain error. Substantively, defendant argues that the State failed to meet its burden to prove defendant's custodial statement was voluntarily made because the State failed to produce evidence of what warnings defendant received or evidence of defendant's ability to understand those warnings. Defendant argues that Roa's testimony at trial that he read defendant "*Miranda* warnings," without more, is not enough to meet the State's burden.

> "On review of a trial court's ruling on a motion to suppress, great deference is afforded to the trial court's factual findings, and the

> reviewing court will reverse those findings only if they are against the manifest weight of the evidence. [Citation.] A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. [Citation.] However, this court reviews *de novo* the ultimate question of whether or not the motion to suppress evidence should have been granted. [Citation.] Further, in reviewing the court's ruling on a motion to suppress, it is proper for us to consider the testimony adduced at trial, as well as at the suppression hearing. [Citation.]" (Internal quotation marks omitted.) *People v. Kronenberger*, 2014 IL App (1st) 110231, ¶ 28.

¶ 26 Defendant argues he did not knowingly and voluntarily waive is rights under *Miranda* because he did not fully understand the warnings, did not receive all of the required warnings, or both. "[A] failure to comply fully with *Miranda* warnings can be classified as harmless error. If it can be determined beyond a reasonable doubt that the error did not contribute to the conviction, a reversal on constitutional grounds is not warranted." *People v. Maiden*, 210 Ill. App. 3d 390, 396-97 (1991).

> "This court [has] listed three different approaches for measuring error under this harmless-constitutional-error test: (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 improperly admitted evidence is merely cumulative or duplicates properly admitted evidence. [Citations.]" (Internal quotation marks omitted.) *People v. Brown*, 363 Ill. App. 3d 838, 849-50 (2005).

¶ 27 We find that defendant's statement did not contribute to his conviction. Despite the State's reference to defendant's statement in its very brief closing argument, the other evidence against defendant was so overwhelming that the error in admitting defendant's statement, if any, was harmless beyond a reasonable doubt.

> "In considering whether constitutional error constitutes harmless error beyond a reasonable doubt ***, it is not enough that the erroneously admitted evidence be considered merely cumulative or that there be other evidence in the record sufficient to support the conviction. [Citations.] The inquiry of a court of review should not be as to the amount of untainted evidence as compared to the amount of tainted evidence. The focus should rather be upon the character and quality of the illegally obtained evidence as it relates to the other evidence bearing on the same issue and the court should appraise the possible impact upon the jury of the wrongfully obtained evidence. [Citation.]" (Internal quotation marks

omitted.) *People v. Lane*, 106 Ill. App. 3d 793, 797 (1982).

¶ 28 Roa testified he saw defendant driving the vehicle. Defendant's statement is of very poor quality as evidence of possession when compared to Roa's testimony and does not contribute meaningfully to the evidence of defendant's possession of the vehicle. Thereafter, defendant's statement, "I took it." might be evidence that defendant did not have permission to possess the vehicle and establish his knowledge of its theft, but either conclusion based on the statement alone would also require an inference. We reject defendant's assertion that the statement "was key evidence [that defendant] knew the vehicle to be stolen." The trial court heard evidence that the vehicle had a peeled steering column, popped ignition, and was running without a key. The physical condition of the vehicle defendant was driving is significantly better evidence of defendant's knowledge the vehicle was stolen. See *People v. Abdullah*, 220 Ill. App. 3d 687, 691 (1991). Finally, Hanacea testified the vehicle Roa recovered from defendant belonged to him (Hanacea) and that he did not give anyone permission to drive the vehicle. Hanacea told police the van should have been parked where he left it at the time police arrested defendant with the van. Defendant's statement merely duplicated properly admitted evidence.

¶ 29 The trial court found defendant's testimony, explaining that he was standing outside his own vehicle with the engine running for 15 minutes in an empty lot where people park their cars when police arrived and accused him of stealing a van that also happened to be in the same lot, incredible. "[T]he credibility of the conflicting testimony between the defendant and [o]fficer *** is best determined by the trial judge, whose findings will not be overturned unless manifestly erroneous or clearly unreasonable." *People v. Kratovil*, 351 Ill. App. 3d 1023, 1031 (2004). We

see no reason to disturb the trial court's credibility determination. The evidence in this case overwhelmingly supports defendant's conviction. Defendant is not entitled to have his conviction reversed based on any alleged error in the admission of his statement to police because any such error is harmless beyond a reasonable doubt.

¶ 30 Nor, having determined that any error in the admission of defendant's statement is harmless beyond a reasonable doubt, is defendant entitled to a new hearing based on any of the procedural deficiencies he alleges occurred in the suppression hearing. *People v. Wilson*, 66 Ill. App. 3d 330, 335 (1978) ("Because the court did not determine the question of alleged *Miranda* violations raised in the defendant's motion to suppress *and this was not harmless error* the defendant is entitled to a rehearing on that motion.") (Emphasis added.). See also *Lane*, 106 Ill. App. 3d at 797 (remanding for further hearings on the defendant's motion to suppress where the court was unable to conclude that error was harmless beyond a reasonable doubt).

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 33 Affirmed.