

No. 1-13-1775

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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. 11 CR 11999
)	
LUIS TOLENTINO,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence was sufficient to sustain defendant's vehicular hijacking conviction where it showed defendant, together with his accomplices, took possession of the victim's vehicle, abandoned her in an isolated area, and drove away in her vehicle.

¶ 2 Following a bench trial, defendant, Luis Tolentino, was found guilty of vehicular hijacking and sentenced to seven years' imprisonment. On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction of vehicular hijacking. We affirm, as the evidence fully supported the conviction.

¶ 3 Defendant and codefendants, Anthony Lind, and Christine Escalera (who are not parties to this appeal), were charged by indictment with seven counts of aggravated kidnapping, three

counts of armed robbery, one count of armed robbery with a weapon, one count of vehicular hijacking, one count of aggravated battery, and three counts of intimidation, arising from a June 2011 incident where defendant, Mr. Lind, and Ms. Escalera allegedly dispossessed victim Claribel Cisneros of her vehicle, took her by force to a number of locations, subjected her to physical attacks and, ultimately, drove away in her vehicle abandoning her in an isolated area. Defendant and Mr. Lind were tried together at a bench trial.

¶ 4 At trial, Ms. Cisneros testified that on June 21, 2011, at about 10 p.m., she received a phone call from Mr. Lind, who asked her if she wanted to go with him and defendant to a recording studio. Ms. Cisneros had a previous physical relationship with Mr. Lind. Ms. Cisneros agreed and then drove her 2000 Kia Sportage (Kia) alone to meet Mr. Lind at an apartment building located at Fulton Street and Kedzie Avenue in Chicago. She testified that she is the owner of the Kia. When she arrived at the apartment building, Thomas Elmore, Mr. Lind's cousin, known to Ms. Cisneros as "Blackie," exited the building to meet her. Mr. Elmore and Ms. Cisneros went inside an apartment to join Mr. Lind, Mr. Lind's girlfriend, defendant, and Ms. Escalera, defendant's girlfriend. The group remained inside the apartment for about 20 minutes and then Ms. Cisneros, Mr. Lind, and his girlfriend left the apartment. Ms. Cisneros drove the group to the recording studio. Mr. Lind was in the front-passenger seat and his girlfriend was in the backseat. The three remained at the recording studio for about 90 minutes to two hours while consuming alcohol, and then left for defendant's apartment. Ms. Cisneros intended to drop off Mr. Lind and his girlfriend at defendant's apartment before meeting her friend, Nadine Jiminez.

¶ 5 While driving on the expressway, Ms. Cisneros missed their exit. Mr. Lind became angry and punched the front-passenger side window. The Kia was running out of gas, so Ms. Cisneros stopped at a gas station. She had to "beg [for] some money [to] put gas in the car," then she switched seats with Mr. Lind, thinking that if he drove, he might not "be so aggressive." Mr. Lind took over the wheel and the three continued on to defendant's apartment.

¶ 6 When they arrived there, Mr. Lind's girlfriend exited the Kia and knocked on defendant's door. Ms. Cisneros, who was still in the Kia, told Mr. Lind that she "wanted to leave," and attempted to remove her keys from the ignition. Mr. Lind grabbed Ms. Cisneros' arm, twisted it, and then pushed her into the door of the Kia. He then grabbed the keys to the Kia from her hand and bruised her arms in the process.

¶ 7 When defendant did not respond to her knocking, Mr. Lind's girlfriend returned to the Kia. Ms. Cisneros stated that she was going to call the police and Mr. Lind grabbed her cell phone from her and told her she "wasn't going to call the police." They remained in the Kia for several hours while waiting for defendant and, during that time, Ms. Cisneros asked to leave on several occasions. Mr. Lind prevented Ms. Cisneros' attempts at leaving the Kia and told her to "shut up," saying that if she "kept talking he was going to punch [her.]" At one point, Mr. Lind pushed her back into the car when she again tried to leave the Kia. Ms. Cisneros gave up her attempts to leave because she was frightened of what Mr. Lind might do to her.

¶ 8 Defendant finally opened the door to his apartment, and Ms. Cisneros ran to ask him for help getting back the keys to the Kia. Defendant did not assist her. Mr. Lind and defendant went inside defendant's apartment and "spoke for a little bit." Ms. Cisneros waited on the porch. When they came out, defendant told Ms. Cisneros that Mr. Lind would return the keys to the Kia

if she bought them some liquor. Ms. Cisneros told them that she did not have any money and waited inside the Kia for about 90 minutes. Defendant, Mr. Lind, and Ms. Cisneros returned to Ms. Cisneros' Kia and were "just there about another hour and a half *** talking." Eventually, Mr. Elmore came out of the defendant's apartment and joined the group. Ms. Cisneros could not leave because Mr. Lind still had the keys to the Kia and her cell phone. Ms. Cisneros also stated that Mr. Lind grabbed a "big piece of lumber" which he started "flinging" at her "as if he was going to hit [her] with it."

¶ 9 At some point thereafter, Mr. Lind left the keys in the ignition. Ms. Cisneros took the keys, hid them in her bra, and asked to use the bathroom. Initially, defendant told her "no" but then told her to "go next-door and pee in the back yard." Mr. Lind told his girlfriend to "watch" Ms. Cisneros, so she accompanied her to the yard.

¶ 10 Ms. Cisneros could hear the others looking for the keys to the Kia, and she heard Mr. Lind tell Ms. Escalera to go and see if she had them. Ms. Escalera asked her if she had the keys and Ms. Cisneros told her she did not. Ms. Escalera began to search Ms. Cisneros, told her to lift up her bra, saw the keys, and took them away from her. Mr. Lind's girlfriend and Ms. Cisneros began to argue which, ultimately, became a physical altercation. Ms. Escalera joined the fight. Ms. Cisneros could not remember who threw the first punch, but stated that she fell to the ground after being punched and covered her head with her arms as she was being beaten. Once the beating stopped, someone picked her up, pushed her into the Kia, and took her purse.

¶ 11 Ms. Cisneros could not recall who took her purse, but saw defendant with a gift card in his hand which belonged to her. The "refund gift card" was from her school, Wright College, and had a value of only \$4. Defendant then took her identification card, wrote down her address

from her identification card on a parking ticket, and told Ms. Cisneros if she told anyone what had happened, he would go to her house and "kill everybody in there."

¶ 12 The group forced Ms. Cisneros to accompany them to a liquor store. Defendant drove his vehicle with Ms. Escalera and Mr. Elmore, and Mr. Lind followed in the Kia with Ms. Cisneros in the backseat and Mr. Lind's girlfriend in the front-passenger seat. When they arrived at the liquor store, defendant entered the store, but soon returned explaining that he could not buy what he wanted, that Ms. Cisneros had to go inside with him, and Ms. Cisneros complied. In the liquor store, defendant attempted to purchase four beers, however, the transaction was denied.

¶ 13 Thereafter, both vehicles proceeded to a gas station where defendant used Ms. Cisneros' gift card to purchase \$4 worth of gas. After leaving the gas station, defendant wanted to go to "You Pull It" to sell Ms. Cisneros' Kia. Since she did not have the title to the Kia with her, defendant was unable to do so. Both vehicles then travelled to a dead end at Christiana and Chicago Avenues and came to a stop. Defendant exited his vehicle, opened the rear door of the Kia, and told Ms. Cisneros to get out. Ms. Cisneros complied and asked defendant if he would return the Kia to her and asked Mr. Lind if he would return her cell phone, however, the two vehicles pulled away leaving Ms. Cisneros behind in an isolated area. Her vehicle and phone were never returned to her.

¶ 14 Ms. Cisneros, thereafter, boarded a CTA bus "for free" to return home and later, called her friend Nadine Jiminez from a payphone near her home. After talking with Ms. Jiminez, the two women went to the 17th District police station to report the incident.

¶ 15 On June 24, 2011, Ms. Cisneros returned to the police station where, in a photo array, she identified defendant, Mr. Lind, and Ms. Escalera as the offenders. On July 4, 2011, she

identified Mr. Elmore in a photo array. Ms. Cisneros identified defendant and Ms. Escalera in separate lineups.

¶ 16 On cross-examination, Ms. Cisneros acknowledged that she had purchased a "gallon" of a "clear liquor" to drink that night, and that she drank a "couple shots" at the recording studio, but that she did not remember exactly how many shots she drank. Others in the group also drank the liquor, and they continued to drink after they left the recording studio and while they waited for defendant to emerge from his apartment.

¶ 17 Thomas Elmore testified that he is known as "Blackie," and that he is Mr. Lind's cousin. Mr. Elmore grew up with defendant, and is "best friends" with him. Mr. Elmore stated that in the past, he had sexual relations with Ms. Cisneros. On June 21, 2011, Mr. Elmore was at the Fulton Street apartment with Mr. Lind, Mr. Lind's girlfriend, Ms. Escalera, defendant, and a number of other people. Ms. Cisneros had driven to the apartment and then left in the Kia with Mr. Lind and his girlfriend to go to a recording studio.

¶ 18 Mr. Elmore, defendant, and Ms. Escalera remained at the apartment, and Mr. Elmore went to sleep. Early the next morning, Mr. Elmore woke up and took his dog for a walk. When he went outside, he saw Ms. Cisneros' Kia parked in the parking lot. Mr. Lind, his girlfriend, and Ms. Cisneros were sitting inside the Kia. Mr. Elmore went back to the apartment, but soon returned to the parking lot and saw "everybody outside," including defendant. About 10 minutes later, Ms. Cisneros got out of her vehicle and tried to get her keys back. She was upset because Mr. Lind would not return the keys to her Kia. When Ms. Cisneros asked defendant if she could use the bathroom, he refused her and told her to go in the back yard. She then went "to the side of the garage" with Mr. Lind's girlfriend. Mr. Elmore stated that he could hear the two women

fighting. Mr. Elmore ran to that area and saw Ms. Cisneros "laying on the floor getting beat up." Defendant kicked Ms. Cisneros in the face; she was bleeding from her nose.

¶ 19 Mr. Lind and defendant wanted to go to the liquor store, "but [Ms. Cisneros] didn't have money." They traveled to the liquor store in two vehicles: defendant drove his own vehicle followed by Mr. Lind driving Ms. Cisneros' vehicle. Defendant went into the store, but was not able to use Ms. Cisneros' card, so he "grabbed her." Mr. Elmore then went in to the store with her. They could not purchase liquor, so the group went to a gas station where they bought some gas.

¶ 20 The group then proceeded to "some car place" called "You Pull It." Mr. Elmore explained that nothing could be done with the Kia because "[y]ou need a title or something." The group then drove to the area of Christiana and Chicago Avenues, "a dead end," where the two vehicles stopped. Defendant "pulled" Ms. Cisneros out of the Kia, and then the group drove away in both vehicles.

¶ 21 Mr. Elmore further testified that after the incident, he spoke to a detective, but denied telling him that Mr. Lind swung a piece of lumber at Ms. Cisneros and, initially denied telling him that defendant intended to sell Ms. Cisneros' Kia to You Pull It. Mr. Elmore later admitted that he did give that information to the detective.

¶ 22 Nadine Jiminez testified that she and Ms. Cisneros were friends. In the early morning hours of June 22, 2011, Ms. Jiminez called Ms. Cisneros' cell phone and a man answered. Ms. Jiminez could hear Ms. Cisneros in the background and then the call abruptly ended. She made repeated attempts to call Ms. Cisneros, but there was no answer. The next afternoon, she met with Ms. Cisneros and noticed she had a number of injuries, including two bloody eyes, bruises,

and scratches. Ms. Cisneros told Ms. Jiminez what had happened to her and Ms. Jiminez accompanied her to the police station.

¶ 23 Detective Luis Carrizal testified that he was investigating the incident and spoke with Ms. Cisneros who identified defendant, Mr. Lind, Ms. Escalera, and Mr. Elmore in photo arrays, and identified defendant, Ms. Escalera, and Mr. Elmore in separate lineups. He also interviewed Mr. Elmore, who told him that he saw Mr. Lind chase Ms. Cisneros around the Kia while swinging a piece of lumber at her head and that, on the way to You Pull It, defendant told him he was going to sell Ms. Cisneros' Kia. An Assistant State's Attorney prepared a written statement which was read aloud to Mr. Elmore which Mr. Elmore signed at the bottom of each page.

¶ 24 At the close of evidence and arguments, the trial court stated that the case had been "quite challenging in deciding the facts and matching that with the law that would be applicable." The trial court further noted that Ms. Cisneros had consumed alcohol on the date of the incident and that there were "great holes" in her testimony. Ultimately, the trial court found defendant not-guilty on the counts of kidnapping, armed robbery, aggravated battery, and intimidation and concluded that the evidence and facts presented as to those charges did not "rise to the level of proof beyond a reasonable doubt." The trial court determined, however, that "the charge of aggravated vehicular hijacking was proved beyond a reasonable doubt," and observed that it was "extremely clear" Ms. Cisneros was "taken to an abandoned area and kicked out of her own car." The trial court further noted that it was "clear that she did not have the use of her own vehicle at the end of that evening" and that, instead, it was "in the hands of" defendant and Mr. Lind.

¶ 25 Defendant filed a motion for a new trial or, in the alternative, to find him not-guilty of aggravated vehicular hijacking, contending, *inter alia*, that he should be convicted of the lesser

charge of simple vehicular hijacking due to the conflicting evidence regarding the piece of lumber allegedly used by Mr. Lind against Ms. Cisneros. The trial court granted defendant's motion, in part, finding defendant guilty of simple vehicular hijacking. Defendant was sentenced to seven years' imprisonment for that conviction.

¶ 26 A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-3 (West 2010). On appeal, defendant contends the evidence was insufficient to support his conviction for vehicular hijacking.

¶ 27 Defendant contends that to meet the "taking" requirement, the evidence must show that the victim had "possession or some possessory interest in that vehicle in the first place." Additionally, defendant maintains that Ms. Cisneros' "bald assertion" that the Kia was hers should be afforded little weight and that evidence "casts significant doubt on Cisneros' ownership of the Kia" pointing to testimony which shows she was not carrying a driver's license nor the title to the Kia on the night of the incident.

¶ 28 Defendant also contends that the evidence is insufficient to prove "some lesser possessory interest" in Ms. Cisneros' Kia because she "voluntarily relinquished possession" of it to Mr. Lind. Defendant asserts that after doing so, she no longer "had the capability to maintain dominion over the Kia to the exclusion of others" because she "had no further possessory interest in the Kia." Defendant asserts that this issue should be reviewed *de novo*, as a matter of statutory interpretation.

¶ 29 We note that the "taking" element of vehicular hijacking requires a showing that defendant knowingly took a motor vehicle from the victim's person or immediate presence, and

includes no explicit requirement to show the victim's possessory interest in the vehicle. 720 ILCS 5/18-3 (West 2010). Defendant however, appears to ask this court to interpret this element to include an implicit requirement to show the victim's possessory interest in the vehicle, such that she has "capability to maintain dominion over the [Kia] to the exclusion of others." While we question this premise, we conclude that we need not address defendant's argument because the evidence is sufficient to establish the "taking" element, even if it were to require a possessory interest in the vehicle at issue.

¶ 30 When reviewing a challenge to the sufficiency of the evidence, " 'the relevant 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court may not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses (*People v. Young*, 128 Ill. 2d 1, 51 (1989)), and will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of a defendant's guilt. *Collins*, 106 Ill. 2d at 261.

¶ 31 We find the evidence in this case was sufficient to establish that defendant "knowingly [took] a motor vehicle from the person or the immediate presence of" Ms. Cisneros. Ms. Cisneros testified that the Kia belonged to her. Although Ms. Cisneros initially allowed Mr. Lind to drive the Kia, she later repeatedly demonstrated her revocation of that permission and attempted to regain control of the vehicle. Further, the testimony showed that over the course of the night the group prevented Ms. Cisneros from possessing the Kia by the use of force and

threats. Mr. Lind grabbed and twisted Ms. Cisneros' arm when she attempted to take her keys from the ignition. Ms. Cisneros was searched by Ms. Escalera after hiding the keys to the Kia in her bra. Ms. Escalera took away the keys from Ms. Cisneros. Defendant and Ms. Escalera then beat and kicked Ms. Cisneros. Defendant wrote down Ms. Cisneros' address and threatened to kill everyone in her house. Defendant and Mr. Lind forced Ms. Cisneros as a passenger in the Kia to a number of locations, including You Pull It where the group unsuccessfully attempted to sell Ms. Cisneros' Kia. During the course of the evening, defendant and Mr. Lind continued to dispossess Ms. Cisneros of her Kia and, at the end of the night, the group drove to an isolated area where defendant ordered her out of her own vehicle. Mr. Lind then drove the Kia away. Defendant and the others left Ms. Cisneros in an isolated area without her vehicle. The vehicle was taken from her against her will and has never been returned. After viewing the evidence in the light most favorable to the prosecution, we conclude that the evidence is sufficient to prove defendant as an active participant and accomplice, guilty of vehicular hijacking beyond a reasonable doubt.

¶ 32 Defendant makes a number of arguments challenging the trial court's determination, including that the evidence was insufficient to prove his guilt because Ms. Cisneros was drinking on the night of the incident. Defendant specifically points out testimony which shows that Ms. Cisneros could not remember a variety of details, including the type of alcohol she bought, and the locations of the liquor store, gas station, or where they finally left her. Defendant also contends that Ms. Cisneros was "so intoxicated that she was apparently willing to urinate in a neighbor's yard in broad daylight," and further observes that the police could not verify her

account of having boarded a CTA bus or her claim of having to "beg for gas money, despite admitting that she had at least \$4 on her debit card."

¶ 33 We note, however, that defendant mischaracterizes the evidence on a number of points. For example, Ms. Cisneros did not urinate in public because she was "so intoxicated." To the contrary, the testimony showed that she was not permitted to leave the presence of defendant and the other offenders; she was denied the use of defendant's bathroom and, thus, followed orders to relieve herself in a backyard.

¶ 34 Moreover, this court has observed that, although evidence that a witness was drinking near the time of an event is relevant and probative of her sensory capacity (*People v. Di Maso*, 100 Ill. App. 3d 338, 343 (1981)), the fact that a witness had been drinking alcohol, or was drunk, does not preclude the trier of fact from finding the witness credible. *People v. Bradford*, 194 Ill. App. 3d 1043, 1046-47 (1990). The assessment of Ms. Cisneros' credibility in this case was properly made by the trial court who had the opportunity to view, first hand, the testimony at trial. *Id.* at 1046.

¶ 35 In announcing its decision, the trial court acknowledged that Ms. Cisneros was intoxicated, and found defendant not-guilty of the majority of the charges against him. The trial court, however, found that it was "extremely clear" Ms. Cisneros was "taken to an abandoned area and kicked out of her own car," and that "she did not have the use of her own car at the end of that evening." The trial court, thus, found defendant guilty of vehicular hijacking and, after reviewing the evidence in the light most favorable to the prosecution, we cannot say that the trial court's determination was so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *Id.* at 1047.

¶ 36 Defendant also attacks the credibility of Mr. Elmore, claiming that he "admitted to a prior sexual relationship with Cisneros," and demonstrated "his potential bias in bringing her perceived attackers to justice." He also describes Mr. Elmore's testimony as "dubious and possibly coerced" noting that Mr. Elmore was in custody "nearly 20 hours" before he made a statement to police. Defendant additionally points to testimony showing that Mr. Elmore was intoxicated the night before he was taken into custody, that police threatened to charge him, and that he was unable to read his typed statement.

¶ 37 We first note, however, that while Mr. Elmore admitted briefly having "sexual relations" with Ms. Cisneros, he clarified that he "wouldn't call it a relationship." Mr. Elmore also testified to his close relationships with Mr. Lind and defendant, describing them respectively as his cousin and best friend. Moreover, Mr. Elmore testified that he had "sobered up" by the time he spoke to the police, that he told the truth, and that his typed statement was read aloud to him before he signed each page. When these issues were presented before the trial court, it concluded there was no reasonable doubt of defendant's guilt of vehicular hijacking and, under these circumstances, we perceive no basis to disturb these findings. *People v. Berland*, 74 Ill. 2d 286, 306 (1978). We, thus, affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.