2018 IL App (1st) 160895-U
Nos. 1-16-0895 & 1-16-2099, cons.
Order filed November 5, 2018

FOURTH DIVISION

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ELGEN MOORE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 14 CR 7726 The Honorable Neil J. Linehan, Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's Class X sentence, based in part on an aggravated unlawful use of a weapon (AAUW) conviction, must be vacated and his case remanded for resentencing, since the Illinois Supreme Court found the AAUW statute to be unconstitutional in *People v. Burns*, 2015 IL 117387.

¶ 2 Defendant Elgen Moore was convicted, after a jury trial, of possession of a stolen motor vehicle and sentenced as a Class X offender to 14 years with the Illinois Department of Corrections (IDOC).

¶ 3 On appeal, defendant claims: (1) that the State failed to prove beyond a reasonable doubt either (a) that the motor vehicle in his possession was stolen or (b) that defendant knew it was stolen; (2) that the trial court committed plain error by admitting the opinion testimony of a police detective regarding the value of the motor vehicle; and (3) that defendant's Class X sentence, based in part on an aggravated unlawful use of a weapon (AAUW) conviction, must be vacated and his case remanded for resentencing, since the Illinois Supreme Court has since found the AAUW statute to be unconstitutional.

¶ 4 The State agrees that, based on the Illinois Supreme Court's decision in *People v. Burns*, 2015 IL 117387, defendant's 14-year sentence must be vacated and his case remanded for resentencing. For the following reasons, we affirm defendant's conviction but remand for resentencing.

¶ 5 BACKGROUND

¶ 6 An indictment charged defendant with possession of a stolen motor vehicle, "in that he, not being entitled to the possession of a motor vehicle, to wit: a 2013 Ford, property of EAN Holdings d/b/a Enterprise Rent A Car, possessed said vehicle knowing it to have been stolen or converted."

¶ 7 At defendant's jury trial, Officer Lydia Cruz, the arresting officer, testified that on April 3, 2014, at 10:30 p.m., she and her partner stopped defendant, who was driving a 2013 Ford Escape, for failing to use a turn signal when turning right onto Ashland Avenue from 69th Street. Defendant pulled over after the officers activated their lights. Before approaching the vehicle, Officer Cruz ran the vehicle's license plate number through a law enforcement database that revealed the vehicle was possibly stolen. After approaching, Officer Cruz did not observe damage to either the steering column or the ignition, or observe any physical evidence that the vehicle was stolen. The officers directed defendant to exit the vehicle, and he complied. They then placed him in custody and transported him to a police station.

¶ 8 At the police station, Officer Cruz contacted the Illinois State Police (ISP), and the ISP's greater metro auto theft task force (GMAT) sent detective Jeffrey Leonard to assist them.

¶ 9 Detective Jeffrey Leonard testified that he had been a detective with the DuPage County Sheriff's Office for eight years. From 2008 until May 2015, he was also assigned to GMAT, "a multi-jurisdictional task force that focuses on auto theft" and provides "assistance in identifying vehicles," specifically with respect to "people who attempt to retag or falsify the identification of vehicles." He explained that "[a] retag is when people take an actual vehicle and they ***

put a different VIN on a vehicle," in order to "change the identity of the vehicle" and that a "VIN" is a vehicle identification number. Detective Leonard taught courses on vehicle identification five or six times a year at the ISP Academy and the Chicago Police Academy.

¶ 10 Detective Leonard testified that, on April 4, 2014, at 12:30 a.m., he and his partner, Detective Frank Horbus, arrived at the District 7 police department in order to assist Officer Cruz. After arriving at the police station, Detective Leonard inspected the 2013 Ford Escape that defendant had driven. Detective Leonard first observed that the vehicle "appeared to be in good shape." Then he looked at "the public VIN," which is located on the windshield. Concerning the public VIN, Detective Leonard testified:

> "Noticed the VIN not to be a true and accurate VIN that a Ford would be put [*sic*] on their vehicles. Appeared to be a sticker with the wrong kind of font. And appeared to be some, like, bubbling underneath the sticker."

¶ 11 Next, Detective Leonard checked "the federal label," which is required "by the Feds regarding manufacture of the vehicle" and is "a sticker that is placed on the driver's side of the vehicle that has the VIN and the date of manufacture and tire pressure label." The federal label is on "the B-pillar," which is where the "front door closes." Detective Leonard observed that the

VIN on the federal label matched the VIN on the windshield. He testified that it was "a fake federal sticker."

¶ 12 Detective Leonard testified, without objection, that he ultimately learned the "true" VIN[1] of that vehicle, that the true VIN did not match the public VIN on the vehicle, and that he also learned that the vehicle had been reported stolen.

¶ 13 Detective Leonard testified that, after inspecting the vehicle, he and his partner, Detective Horbus, spoke with defendant in an interview room at the police station. After Detective Leonard read defendant his *Miranda* rights, defendant signed the bottom of a preprinted *Miranda* form acknowledging his rights, and the two detectives signed the form as well.

¶ 14 First, Detective Leonard asked defendant "about the vehicle that he was driving," and defendant replied that "it was not his vehicle. That it was a friend of his vehicle by the name of Tenisha Cash. *** That he's only had the vehicle for a couple of days. He is due to return it soon, and he provided [the detective with a] phone number on how to contact Tenisha." When asked if he knew that the vehicle was stolen, defendant stated that "he had no knowledge of it being stolen."

[1] Detective Leonard explained how he later learned the true VIN. *Supra* ¶¶ 15-16.

¶ 15 After that initial conversation, Detective Leonard exited the interview room, called the phone number that defendant had provided, and spoke with Tenisha Cash.

¶ 16 When Detective Leonard reentered the interview room, he advised defendant that the Miranda warnings still applied and defendant acknowledged that he understood. Defense counsel objected to the detective testifying about the contents of his conversation with Cash, and the trial court sustained the objection. Detective Leonard then testified that he asked defendant if defendant had purchased the vehicle for $5000, and defendant stated that he had. The following exchange occurred, without objection by defense counsel:

"ASSISTANT STATE'S ATTORNEY [(ASA)]: Did you ask him anything in regards to the value of the vehicle?

DETECTIVE LEONARD: Said the vehicle—the basic value of the vehicle is approximately $30,000. I said, 'Did you pay more money or did you think the vehicle was bad by paying only $5,000 for a $30,000 car?'

ASA: What was his response to that?

DETECTIVE LEONARD: First point he said yes, [*sic*] that he nodded that he knew that the vehicle was probably a bad vehicle.

ASA: How did he signify to you that he knew the vehicle was stolen?

DETECTIVE LEONARD: Kind of put his head down and kind of nodded like he knew it was a stolen vehicle.

ASA: Judge, if the record reflect the witness moved his head in an up and down manner.

THE COURT: Record will so reflect.

ASA: Detective, did the defendant say anything else to you in the second conversation regarding how he obtained that vehicle?

DETECTIVE LEONARD: He said he obtained the vehicle from a female named Michelle Thompson.

ASA: Did he tell you anything else about this Michelle Thompson?

DETECTIVE LEONARD: No, he did not.

ASA: At that point was the interview ended?

DETECTIVE LEONARD: Yes."

¶ 17 Detective Leonard testified that, after the interview, he advised Officers Cruz and Taylor that defendant had "admitted to or acknowledged that he knew, had knowledge that the vehicle was stolen." On April 23, 2014, Detective Leonard reinspected the vehicle in order to remove the "bad" VIN stickers. When he removed the public VIN sticker from the windshield, he discovered another VIN sticker underneath it. The numbers on the two public stickers were "similar, but they weren't the VINs that belonged to the vehicle." After

removing the public VIN stickers, he next removed the federal label on the B-pillar. With respect to removal of the federal label, he testified that he was able to peel it off easily and that, if it had been an authentic federal label, it would have come off in pieces. In addition, when an authentic federal label is removed, it will leave a "footprint" which consists of lines or the words "void, void, void."

¶ 18 After removing the public VIN and the federal label, Detective Leonard identified the vehicle through "a hard secondary number." From this secondary number, he confirmed that the vehicle was stolen in 2013 and learned the true owner. After his inspection, the vehicle was "released back" to the Enterprise rental car company. Detective Leonard was not asked for the numerals or characters in this secondary number, and he did not provide them.

¶ 19 Detective Leonard testified that he had inspected hundreds of stolen motor vehicles and hundreds of retagged or fake VINs. In his experience, it is not normal for true VIN stickers to be able to be peeled off. He also testified that the VIN of a vehicle can never be changed.

¶ 20 On cross, Detective Leonard testified that there was no visible indication that the vehicle was stolen, such as damage to the steering column or to the ignition device or any other physical damage, and that a lay person would not have been able to spot that the VIN stickers were fake.

¶ 21 Concerning the value of the vehicle, the following exchange occurred on cross:

"DEFENSE COUNSEL: And you asked [defendant] if he thought if he paid only $5,000 for a car worth $30,000, might something be wrong? That's the question you asked him, correct?

DETECTIVE LEONARD: Yes.

DEFENSE COUNSEL: You asked him if might something be wrong, not if the car was stolen?

DETECTIVE LEONARD: Yes.

DEFENSE COUNSEL: And at the time you asked him this question, you didn't know the actual market value of this vehicle, did you?

DETECTIVE LEONARD: I roughly based on my experience and training that I knew approximately the value of that vehicle was more than $5,000.

DEFENSE COUNSEL: But the value of the vehicle can be [affected] by different variables and factors, correct?

DETECTIVE LEONARD: Correct.

DEFENSE COUNSEL: The condition of the vehicle, the amount of miles on [the] vehicle, that can all go into play [*sic*] how much a vehicle is worth?

DETECTIVE LEONARD: Correct."

Detective Leonard admitted that he did not know the vehicle's mileage or whether it had structural damage. He explained that his estimate was based on "the condition [the vehicle] was in, the way it looked and the way it appeared sitting in the back parking lot, fully loaded with a leather interior, all the updated options on it, it was probably worth [$]25 to $30,000."

¶ 22 Defense counsel then asked: "And correct me if I am wrong. You asked him if he thought the vehicle was stolen, and [defendant] shook his head in an up and down motion?" Detective Leonard replied "yes."

¶ 23 Detective Leonard admitted that, when he asked defendant if defendant thought the vehicle was "stolen," defendant had already been sitting in the police station for over 45 minutes, and that defendant did not provide a verbal answer. Detective Leonard also admitted that he did not discover any information linking defendant to the theft of the vehicle in March 2013 from Enterprise.

¶ 24 On redirect, Detective Leonard testified that, if a vehicle is not returned to a rental company, it is considered stolen. Detective Leonard clarified that he had two conversations with defendant; that during the first conversation defendant stated that the vehicle belonged to his girlfriend, Tenisha Cash; and that during the second conversation defendant changed his story, stating that the

vehicle was purchased from Michelle Thompson. Defendant did not provide a bill of sale or title or registration.

¶ 25 On recross, Detective Leonard testified that he discovered no evidence of defendant's failing to return the vehicle to Enterprise. In addition, he testified that defendant stated that defendant and Tenisha Cash purchased the vehicle from Michelle Thompson. Detective Leonard admitted that his report stated that defendant stated that he purchased the vehicle but it did not state that he purchased it from Michelle Thompson. Detective Leonard admitted that he had not asked defendant to provide contact information for Thompson or documentation for the vehicle.

¶ 26 Mark Cimaroli, a risk manager for Enterprise Rent-A-Car, tesified that a 2013 Ford Escape, with a VIN of 1FMCU9H91DUA87619, was last rented on March 13, 2013, to Stacy Canaday, from Beloit, Wisonsin, and was not returned. His company reported it stolen on April 1, 2013, and received it back in May 2014. The vehicle was reported stolen to the police department in Downers Grove, Illinois. Cimaroli was not asked if the VIN of the Enterprise vehicle matched the secondary number of the vehicle that Detective Leonard discovered.

¶ 27 The State then moved into evidence People's exhibit No. 9, a certified vehicle record from the Illinois Secretary of the State for a 2013 Ford Escape

with a VIN of 1FMCU9H91DUA87619, which was the same number that Cimaroli had just testified to. The defense made no objection, and the trial court admitted it into evidence. After the State rested, the defense moved for a directed finding on the ground that the State had failed to prove defendant knew the vehicle was stolen, and the trial court denied the motion. After the denial, the defense rested.

¶ 28 After hearing argument and jury instructions, the jurors retired to deliberate at 2:36 p.m. on September 22, 2015. At 3:15 p.m., they sent the trial court a note, stating: "(1) Did [defendant] receive a title? Any proof of purchase? Bill of sale? (2) Is the license plate on the car registered to this vehicle? In his name?" With the agreement of both sides, the trial court sent back a note at 3:30 p.m., stating: "You have received all the evidence[.] Please continue to deliberate." At 3:45 p.m., the jurors reached a verdict, finding defendant guilty of possession of a stolen motor vehicle.

¶ 29 On December 21, 2015, the trial court sentenced defendant as a Class X offender to 14 years with IDOC. Defendant filed a notice of appeal on January 15, 2016, which was assigned appeal number 1-16-0895. On the same day, defendant also filed a motion to reconsider sentence. On February 23, 2016, the trial court denied his motion to reconsider sentence. Defendant's appellate counsel then moved for leave on August 8, 2016, to file a late notice of appeal,

which this court permitted on August 17, 2016. The second notice of appeal was assigned appeal number 1-16-2099. On Februay 15, 2017, defendant moved to consolidate the two appeals, which this court granted on February 22, 2017.

¶ 30 On August 28, 2017, defendant moved this court, with the agreement of the State's Attorney's Office, for a partial summary disposition and to remand this case for resentencing while retaining jurisdiction over the remainder of his appeal. On September 13, 2017, this court denied the motion.

¶ 31 On October 15, 2018, after defendant's initial appellate brief and the State's appellate brief were filed, defendant moved to expedite this appeal. On October 17, 2018, this court granted defendant's motion to expedite, and this appeal followed.

¶ 32 ANALYSIS

¶ 33 On appeal, defendant claims: (1) that the State's evidence was insufficient on two elements, namely, that the vehicle was, in fact, stolen, or that defendant knew it was stolen; (2) that the admission of the opinion testimony of a police detective about the approximate value of the motor vehicle was plain error; and (3) that defendant's Class X sentence must be vacated and his case remanded for resentencing. The State agrees that his sentence must be vacated and the case remanded for resentencing.

¶ 34 For the following reasons, we affirm defendant's conviction but agree that the case must be remanded for resentencing based on the Illinois Supreme Court's decision in *Burns*, 2015 IL 117387, ¶ 25 (finding the AUUW statute to be "facially unconstitutional, without limitation"). As a result of *Burns*, defendant's prior AUUW conviction was constitutionally invalid and should not have been used to enhance his sentence. Therefore, we remand for resentencing.

¶ 35 I. Sufficiency of the Evidence

¶ 36 Defendant claims that the evidence was insufficient to establish his guilt beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, we will not retry the defendant. *People v. Nere*, 2018 IL 122566, ¶ 69. Instead, a reviewing court considers whether, 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. *Nere*, 2018 IL 122566, ¶ 69; *People v. Hardman*, 2017 IL 121453, ¶ 37. "All reasonable inferences from the evidence must be drawn in favor of the prosecution." *Hardman*, 2017 IL 121453, ¶ 37. " '[T]he trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *Hardman*, 2017 IL 121453, ¶ 37 (quoting

People v. Jackson, 232 Ill. 2d 246, 281 (2009)). A reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable or unsatisfactory as to raise a reasonable doubt of the defendant's guilt. *Hardman*, 2017 IL 121453, ¶ 37.

¶ 37 To sustain a conviction for possession of a stolen motor vehicle, the State must prove the following three elements beyond a reasonable doubt: (1) that the defendant was in possession of a motor vehicle; (2) that the vehicle was stolen; and (3) that the defendant knew it was stolen. *E.g.*, *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 12.

¶ 38 II. Stolen Vehicle

¶ 39 First, defendant claims that the State's evidence was insufficient to prove the second element, that the vehicle was stolen. With respect to this element, defendant argues primarily that the State failed to establish that the vehicle that defendant possessed, and that Detective Leonard inspected, was the same vehicle reported stolen by Enterprise. "When the State uses evidence of ownership to prove a vehicle was stolen, it must show that the defendant possessed the same vehicle owned by the complainant." *Frazier*, 2016 IL App (1st) 140911, ¶ 18. Evidence establishing the make and model of a stolen vehicle, without more, is insufficient to prove ownership. *People v. Walker*, 193 Ill. App. 3d 277, 279 (1990).

¶ 40 In the case at bar, the Enterprise risk manager testified that a 2013 Ford Escape with a certain VIN was stolen from Enterprise. While Detective Leonard testified that he discovered the true VIN of the 2013 Ford Escape driven by defendant, he did not testify as to what this number was. Thus, defendant argues that the State failed to match the VIN, namely, the true VIN of the vehicle driven by defendant, with the VIN of the vehicle stolen from Enterprise.

¶ 41 However, what defendant's argument overlooks is that Detective Leonard's testimony did, in fact, match the VIN of the vehicle driven by defendant with the VIN of the vehicle stolen from Enterprise. He testified, without objection, that he discovered the vehicle's "true" VIN; that, by using this number, he learned that the vehicle was reported stolen in 2013; that the report of its theft had been filed with the Downers Grove police department; and that the vehicle was then returned to its true owner, the Enterprise rental car company. Although Detective Leonard did not testify to the numerals of the VIN, his testimony established that the true VIN that he found on the vehicle was the same VIN reported by Enterprise to the Downers Grove police department, thereby matching the VIN on the vehicle that defendant drove with the vehicle that Enterprise had reported stolen. *People v. Wehrwein*, 190 Ill. App. 3d 35, 42 (1989) (evidence was sufficient to prove a truck stolen where a

police officer testified that "he ran a check on the vehicle identification number" and that "[t]he computer check revealed that the [truck] had been stolen on March 1, 1985").

¶ 42 In addition to testimony about a VIN, the State may also establish ownership of a vehicle through " 'chain of custody testimony,' " showing that the vehicle " 'in which defendant was arrested was later returned to, and accepted by' " the owner. *People v. Balthazar*, 187 Ill. App. 3d 964, 968 (1989) (quoting *People v. Hope*, 69 Ill. App. 3d 375, 380 (1979) (the vital link needed to establish that the vehicle driven by the defendant and the one missing by the owner are the same vehicle may be established by "chain of custody testimony" showing that the vehicle "in which defendant was arrested was later returned to, and accepted by" the owner)); *People v. Stone*, 75 Ill. App. 3d 571, 575 (1979) (the State could have "shown that the dealership took re-delivery of the car from the police so as to establish chain of custody of the car"). See also *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992) ("In lieu of proof of ownership, chain of custody evidence, linking the recovered car to the car named in the indictment, may form the basis of a proper inference of identification.").

¶ 43 In the case at bar, Detective Leonard testified, without objection, that the vehicle was, in fact, stolen and that the vehicle was returned to its true owner, the Enterprise rental car company, after his second inspection of the vehicle on

April 23, 2014. Similarly, Cimaroli, Enterprise's risk management expert, testified that a vehicle of this year and model had been stolen from Enterprise in 2013—and had been returned to them in May 2014, which was shortly after Detective Leonard's second inspection. Specifically, Cimaroli was asked, without objection: "Did [Enterprise] ever eventually re-obtain *that* vehicle?" (Emphasis added.) Cimaroli replied that it had, thereby confirming that the vehicle returned to them was the same vehicle that had been stolen. Concerning the return of the vehicle, Cimaroli was not asked whether it was through the police that Enterprise had "re-obtain[ed]" this 2013 Ford Escape. However, Detective Leonard did testify that the police had returned a 2013 Ford Escape to Enterprise at about this time, and Cimaroli confirmed that Enterprise had accepted it. This circumstantial evidence links the vehicle that Detective Leonard testified about with the vehicle that Cimaroli testified about.

¶ 44 Finally, Detective Leonard's testimony about the placement of fake VIN stickers, with the wrong font and bubbling, further supports a finding that the vehicle was stolen.

¶ 45 In light of (1) Detective Leonard's testimony about the VIN, (2) Detective Leonard's and Cimaroli's testimony about the release of the vehicle to, and its acceptance by, its true owner, and (3) the evidence of deliberate alteration and

tampering with the vehicle's identification labels, this court finds that a rational factfinder could find that the vehicle was stolen, beyond a reasonable doubt.

¶ 46 III. Knowledge

¶ 47 Second, defendant argues that the State's evidence was insufficient to prove the third element, that he knew the vehicle was stolen. "Direct proof of a defendant's knowledge that the property is stolen is unnecessary, and a defendant's knowledge that the vehicle was stolen can be inferred from the surrounding facts and circumstances, which would lead a reasonable person to believe that the property was stolen." *Frazier*, 2016 IL App (1st) 140911, ¶ 23. The Criminal Code of 2012 provides, in relevant part, that: "Knowledge of a material fact includes awareness of the substantial probability that the fact exists." 720 ILCS 5/4-5(a) (West 2014).

¶ 48 On appeal, the State argues that it established knowledge through evidence of: (1) inconsistent stories by defendant, who first stated that he borrowed the vehicle from his girlfriend and then stated that he purchased it from another party; (2) defendant's lack of a purchase receipt, title or registration; (3) the disparity between defendant's claimed $5,000 purchase price and Detective Leonard's $30,000 estimate of the vehicle's value; and (4) defendant's non-verbal nod in agreement to Detective Leonard's question of whether defendant thought the vehicle was "bad."

¶ 49 Defendant argues that there are problems with each one of these pieces of evidence, and we will discuss them, in turn, below. However, first, we must observe that "[e]ach individual item of evidence does not have to prove the fact at issue beyond a reasonable doubt." *People v. McKown*, 236 Ill. 2d 278, 304 (2010). "Rather, each individual item of evidence must tend to show that the fact at issue *** is more or less likely." *McKown*, 236 Ill. 2d at 304. "By way of analogy, it is often said that ' "a brick is not a wall." ' " *McKown*, 236 Ill. 2d at 304 (quoting Fed. R. Evid. 401, Advisory Committee's Note (quoting C. McCormick, Handbook of the Law of Evidence § 152, at 317 (1954))). "That is, an individual item of evidence is merely a brick, one of many bricks used to build the wall that is the fact at issue." *McKown*, 236 Ill. 2d at 304.

¶ 50 First, the State argues that defendant put forth inconsistent stories about his possession of the vehicle. "It is well established that exclusive possession of recently stolen property creates an inference of guilt which can be rebutted by defendant's explanation." *People v. Daniels*, 113 Ill. App. 3d 523, 531 (1983); *People v. McIntosh*, 48 Ill. App. 3d 694, 699-700 (1977) (a jury may draw an inference of guilt from the exclusive possession of recently stolen property, which may be rebutted by a defendant's explanation). However, "[a] defendant who chooses to explain his possession of stolen property must offer a reasonable story or be judged by its improbabilities." *Daniels*, 113 Ill. App. 3d

at 531; *McIntosh*, 48 Ill. App. 3d at 700 (not every explanation overcomes the inference of guilt; it must be a satisfactory explanation that the jury finds reasonable and acceptable). While a "defendant's story was not preposterous on its face, there does not appear to be error in the implicit finding of the trier of fact that it was not reasonably believable." *Daniels*, 113 Ill. App. 3d at 531.

¶ 51 In the case at bar, Detective Leonard testified that, initially, defendant stated that "it was not his vehicle. That it was a friend of his vehicle by the name of Tenisha Cash. *** That he's only had the vehicle for a couple of days. He is due to return it soon, and he provided [the detective] [a] phone number on how to contact Tenisha." After the detective contacted Tenisha, defendant stated that he purchased the vehicle for $5000 "from a female named Michelle Thompson." On cross, Detective Leonard clarified: "I believed he stated that himself and Tenisha Cash purchased the vehicle from Michelle Thompson."

¶ 52 It is not necessarily inconsistent that defendant and Cash purchased the vehicle together but that the vehicle then belonged to Cash, that defendant intended to return it to her soon, and that he had only been using it for a couple of days. However, in judging whether defendant's second statement was "reasonably believable," the jury could consider the fact that defendant did not volunteer that he was one of the purchasers until after the detective had already interviewed his copurchaser, Cash. *Daniels*, 113 Ill. App. 3d at 531. In

determining whether a defendant knew a vehicle was stolen, a jury may consider that a defendant had a "vague recollection" at his first interview but was "able to recall" more details during a second interview. *McIntosh*, 48 Ill. App. 3d at 701. In light of "the erratic character of defendant's memory with regard to vital facts," a rational jury could reject a defendant's explanation. *McIntosh*, 48 Ill. App. 3d at 702.

¶ 53 Second, the State argues that defendant lacked a purchase receipt, title or registration. However, on cross, Detective Leonard conceded that he did not ask defendant to provide any documentation. Two of the fundamental principles of our criminal justice system are that "the defendant is not required to offer any evidence on his own behalf," and that the State, alone, bears the burden to prove him guilty beyond a reasonable doubt. Ill. S. Ct. R. 431(b) (eff. July 1, 2012); *People v. Sebby*, 2017 IL 119445, ¶ 67 (explaining why these are among the most "important constitutional principles"). Although Detective Leonard testified that he asked defendant "if he had registration for the vehicle," the detective was not asked for defendant's answer. The State also argues that defendant could not remember when he made the purchase. However, Detective Leonard did not testify that he asked defendant that question. Detective Leonard testified that, other than stating that he purchased the vehicle from Michelle Thompson, defendant did not tell him anything else about

Thompson, and at that point the interview ended. Thus, the record does not support an argument that defendant failed to produce a purchase receipt, title or registration or that defendant did not know the purchase date.

¶ 54 Third, the State argues that defendant's knowledge that the vehicle was stolen can be inferred from the disparity between defendant's claimed $5000 purchase price and Detective Leonard's $30,000 estimate of the vehicle's value. *McIntosh*, 48 Ill. App. 3d at 701-02 ("[t]he purported purchase price of nearly one-half of the car's actual value" was evidence of defendant's knowledge); *People v. Deery*, 41 Ill. App. 3d 302, 310 (1976) ("one of the indications that property has been stolen is a great disparity between its market value and the price at which it is offered").

¶ 55 In its brief to this court, the State concedes that the "actual value [of the vehicle] is not a part of the record." Detective Leonard admitted (1) that he did not know (a) the actual mileage of the vehicle or (b) whether the vehicle had sustained any latent or structural damage due to accident or other causes; and (2) that these factors would affect a vehicle's actual value.

¶ 56 However, Detective Leonard did testify that he had been assigned for seven years to a task force that focuses solely on auto theft and provides assistance in identifying vehicles; that he had inspected hundreds of stolen motor vehicles; that this one-year-old vehicle "appeared to be in good shape;"

and that it was "fully loaded with a leather interior" and with "all the updated options." Based on these factors, he estimated that this 2013 Ford Escape was worth between $25,000 and $30,000 on April 3, 2014, when defendant was stopped.

¶ 57 Even if a factfinder were to assume that the detective's estimate was wrong by half, and that the vehicle was worth only between $12,500 to $15,000—that is *still more than double* the $5000 that defendant claimed he paid for it. See *McIntosh*, 48 Ill. App. 3d at 701-02 ("[t]he purported purchase price of nearly one-half of the car's actual value" was evidence of defendant's knowledge). Even if half-wrong, a large disparity remained. Even if defendant's hypothetical "what-if" argument was correct and the vehicle had sustained some structural damage, defendant had demonstrated by driving it that it was capable of normal use and that he believed it safe to drive. Thus, the vehicle remained an almost brand-new Ford Escape, with an all-leather interior, with all the latest options and with no apparent damage.

¶ 58 The disparity between defendant's claimed purchase price and the detective's estimate of the vehicle's approximate value, based on his personal inspection of it and his years of experience, was some circumstantial evidence of defendant's knowledge that the vehicle was stolen. *People v. Schaefer*, 87 Ill. App. 3d 192, 194 (1980) ("the disparity in the price paid by defendant and the

true value of the trucks" was some evidence of guilty knowledge); *McIntosh*, 48 Ill. App. 3d at 701-02; *People v. Kilgore*, 33 Ill. App. 3d 557, 560 (1975) ("the payment of $500 for a car valued at more than $2,000" was some circumstantial evidence of "guilty knowledge").[2]

¶ 59 Fourth, the State argues that it established knowledge through evidence of defendant's nonverbal nod in agreement to Detective Leonard's question of whether defendant thought the vehicle was "bad."

¶ 60 Three times at trial, Detective Leonard was asked about this same question and three times he testified about it, slightly differently each time.

¶ 61 First, Detective Leonard testified on direct that he asked defendant:

" 'Did you pay more money or did you think the vehicle was bad by paying only $5,000 for a $30,000 car?' " Detective Leonard testified that, in response, defendant "nodded that he knew that the vehicle was probably a bad vehicle." The prosecutor then asked: "How did he signify to you that he knew the vehicle was stolen?" Detective Leonard responded: "Kind of put his head down and kind of nodded like he knew it was stolen." Immediately after this interview, Detective Leonard advised Officers Cruz and Taylor that defendant

[2] In defendant's next claim on appeal, he challenges the admissibility of the detective's estimate. We discuss this admissibility claim in the following section of this order.

had "admitted to or acknowledged that he knew, had knowledge that the vehicle was stolen."

¶ 62 Second, on cross, defense counsel asked: "And you asked [defendant] if he thought if he paid only $5,000 for a car worth $30,000 might something be wrong? That's the question you asked, correct?" Detective Leonard replied: "Yes." Defense counsel followed up, asking: "You asked him if might something be wrong, not if the car was stolen?" The detective agreed.

¶ 63 Third, also on cross, Detective Leonard testified that he asked defendant if defendant thought the vehicle was "stolen," that defendant did not provide a verbal answer but instead shook his head in an up-and-down motion; and that, by this point, defendant had already been sitting in the police station for over 45 minutes.

¶ 64 At trial, the jury heard all of Detective Leonard's testimony, and it was the jury's function to evaluate it. *People v. Harris*, 2018 IL 121932, ¶ 26 (the jury is "responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from the facts"). Defendant is asking this court to reweigh the detective's testimony from a cold record and to substitute our determination for the jury's verdict. *Nere*, 2018 IL 122566, ¶ 69. However, it is not the function of an appellate court to retry a defendant. *Harris*, 2018 IL 121932, ¶ 26 ("[t]he reviewing court does not retry the defendant");

Nere, 2018 IL 122566, ¶ 69 ("our function is not to retry the defendant"). Instead, this court must view all the evidence in the light most favorable to the State and draw all reasonable inferences in favor of the prosecution, as we determine whether any rational trier of fact could have found defendant knew the vehicle was stolen. *Nere*, 2018 IL 122566, ¶ 69 (a reviewing court must view the evidence in the light most favorable to the State, when determining whether any rational factfinder could have found the essential elements beyond a reasonable doubt). See also *Harris*, 2018 IL 121932, ¶ 26 (a reviewing court "must draw all reasonable inferences in favor of the prosecution").

¶ 65 In sum, defendant was in exclusive possession in April 2014 of a motor vehicle stolen in April 2013; defendant's statements morphed in detail after the detective's further investigation; there was a large disparity between defendant's claimed purchase price for this one-year-old vehicle and the detective's estimate of its approximate value; and the detective testified that defendant nodded affirmatively to the detective's query about whether defendant knew the vehicle was stolen. *Harris*, 2018 IL 121932, ¶ 27 ("the testimony of a single witness is sufficient to sustain a conviction if the testimony is positive and credible"). Viewing all these facts in the light most favorable to the State, a rational factfinder could find, beyond a reasonable doubt, that defendant knew the vehicle was stolen. See, *e.g.*, *McIntosh*, 48 Ill. App. 3d at 702 (affirming

defendant's conviction where "defendant was in exclusive possession of a recently stolen automobile" and "his explanation was insufficient to raise a reasonable doubt as to his guilt").

¶ 66 For all the foregoing reasons, we do not find defendant's arguments persuasive and cannot find that the State's evidence was insufficient.

¶ 67 IV. Opinion Testimony

¶ 68 Finally, defendant claims that the trial court committed plain error by permitting Detective Leonard to testify, without objection, to the approximate value of the vehicle.

¶ 69 A. Plain Error

¶ 70 In the case at bar, defendant concedes that his claim is forfeited. Failure to either object to the error at trial or raise the error in a posttrial motion results in forfeiture. *People v. Sebby*, 2017 IL 119445, ¶ 48; *People v. Belknap*, 2014 IL 117094, ¶ 66 (in order to preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion).

¶ 71 However, even when a defendant has failed to preserve an alleged error for our review, we may still review the issue for plain error. *Sebby*, 2017 IL 119445, ¶ 48; *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007); Ill. S. Ct. R. 615(a) (“Plain errors or defects affecting substantial rights may be noticed

although they were not brought to the attention of the trial court."). The plain error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 565. On the instant appeal, defendant claims plain error under both prongs.

¶ 72 In a plain error analysis, it is the defendant who bears the burden of persuasion. *Sebby*, 2017 IL 119445, ¶¶ 51-52; see also *People v. Woods*, 214 Ill. 2d 455, 471 (2005). Whether the defendant argues first or second prong error, "[t]he initial analytical step under either prong of the plain error doctrine is [to] determin[e] whether there was a clear or obvious error at trial." *Sebby*, 2017 IL 119445, ¶ 49; *Piatkowski*, 225 Ill. 2d at 565 ("the first step is to determine whether error occurred").

¶ 73 The application of forfeiture to claims that the State failed to lay an adequate foundation for the admission of certain testimony or evidence is "particularly appropriate because a defendant's failure to object to the foundation at trial deprives the State of its opportunity to cure any deficiency in

the foundation." *People v. Hamerlinck*, 2018 IL App (1st) 152759, ¶ 42; *Banks*, 2016 IL App (1st) 131009, ¶ 71 (citing *Woods*, 214 Ill. 2d at 470).

¶ 74 For the reasons explained below, defendant has not carried his burden of persuasion that a clear or obvious error occurred.

¶ 75 B. Standard of Review

¶ 76 While *de novo* review applies to an evidentiary question if that question concerns how to correctly interpret a rule of law (*e.g.*, *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)), the admission of evidence is generally within the sound discretion of the trial court, and a reviewing court will generally not disturb a trial court's evidentiary ruling absent an abuse of that discretion. *E.g.*, *People v. Romanowski*, 2016 IL App (1st) 142360, ¶ 21. In the case at bar, there is no dispute about a rule of law, so we apply an abuse-of-discretion standard of review. See generally *People v. Drake*, 2017 IL App (1st) 142882, ¶¶ 52-53 (Gordon, J., concurring in part and dissenting in part). An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24; *People v. Patrick*, 233 Ill. 2d 62, 68 (2009).

¶ 77 The cases cited by defendant on this issue are inapposite because they involved statutes where the value of the property was an element of the crime

charged. *People v. Burks*, 304 Ill. App. 3d 861, 862 (1999); *People v. Grass*, 126 Ill. App. 3d 540, 544 (1984); *People v. Castro*, 109 Ill. App. 3d 561, 566-68 (1982); *People v. Brown*, 36 Ill. App. 3d 416, 420 (1976); *People v. Harden*, 42 Ill. 2d 301, 305 (1969); *People v. Newton*, 117 Ill. App. 3d 232, 234 (1969). In the case at bar, the value of the stolen property was not an element of the crime charged, nor did it increase defendant's sentence. Thus, the question is whether the trial court abused its discretion in admitting this evidence.

¶ 78 C. Opinion Testimony

¶ 79 In the case at bar, Detective Leonard testified to the approximate value of the stolen motor vehicle based on his "specialized knowledge," without first being tendered to and accepted by the court as an expert. Ill. R. Evid. 702 (eff. Jan. 1, 2011). Rule 702 provides that if "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise." Ill. R. Evid. 702 (eff. Jan. 1, 2011).

¶ 80 In the case at bar, Detective Leonard testified to his knowledge and years of experience in prosecuting auto theft. Defense counsel did not object to the detective's testimony about the approximate value of the stolen vehicle. Instead, counsel chose to cross-examine the detective thoroughly on this point,

establishing the detective's lack of knowledge about the vehicle's mileage and possible structural damage. *People v. Manning*, 241 Ill. 2d 319, 327 (2011) (there is a "strong presumption" that an "action or inaction" by defense counsel at trial was "the product of sound trial strategy").

¶ 81 We cannot find that the trial court abused its discretion when it chose not to *sua sponte* override defense counsel's apparently deliberate tactics and decided not to suppress this testimony without an objection from the defense. *People v. Bush*, 214 Ill. 2d 318, 334 (2005) ("by failing to object at trial, a defendant waives any argument that an expert's opinion lacked an adequate foundation"). Since we do not find an error, there can be no plain error.

¶ 82 CONCLUSION

¶ 83 For the foregoing reasons, we affirm defendant's conviction but remand for resentencing.

¶ 84 Affirmed in part, reversed in part, and remanded for resentencing.