2018 IL App (1st) 161678-U
No. 1-16-1678
Order filed September 11, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 13540
	)	
RONALD WILBUTT,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for Class 3 felony theft over his contention that the State presented insufficient evidence to prove him guilty beyond a reasonable doubt.

¶ 2 The judge found defendant Ronald Wilbutt guilty of theft of property with a value between $500 and $10,000, and sentenced him to four years' imprisonment. On appeal, Wilbutt contends that the State failed to prove beyond a reasonable doubt that the fair market value of the stolen property exceeded $500. We affirm. The record establishes that the State presented evidence of the replacement cost of the bicycle, between $5,700 and $6,000) which, combined with the

evidence of the bicycle's age and condition, provided a sufficient basis for determining that its fair market value exceeded $500.

¶ 3 Background

¶ 4 Wilbutt and codefendant Michael McCall were charged by information with one count of felony theft, a Class 3 felony. The count alleged that, on June 30, 2015, Wilbutt and McCall knowingly obtained or exerted unauthorized control over a bicycle with a value of more than $500, but less than $10,000. (McCall pleaded guilty and is not a party to this appeal.)

¶ 5 At trial, Alberto Hernandez testified that, on June 30, 2015, he worked at 1000 West Fulton Market, Chicago. His primary mode of transportation was his custom built bicycle, which he had assembled from bicycle components purchased individually, including carbon-fiber wheels. For over a year leading up to the theft, Hernandez rode his bicycle to work every day.

¶ 6 On June 30, at about 9 a.m., Hernandez rode his bicycle to work and arrived at the front entrance to his building on Fulton Market, east of North Carpenter Street. He parked his bicycle on the bicycle rack in front of the building's main entrance, detached his bicycle's front wheel, and locked the wheel and the frame to the rack using a metal lock. Hernandez periodically looked out the window to check on his bicycle throughout the day. About 6:30 p.m., he discovered his bicycle, front wheel, and lock were no longer on the rack. Hernandez had not given anyone permission to take his bicycle. When he was presented with two photographic exhibits, Hernandez testified that they showed a man holding his bicycle on the west side of his work building on Carpenter Street. Hernandez testified that, at the time of the theft, his bicycle was worth approximately $5,700 or $6000 "market value."

¶ 7 On cross-examination, Hernandez testified he calculated the market value as the sum of cost to repurchase, at the time of the theft, each of the components from which the bicycle had been originally assembled. This value was not reduced to account for any "wear and tear" from Hernandez riding the bicycle for over a year before the theft.

¶ 8 Detective Michael Grzenia testified that he investigated the theft. He interviewed Hernandez and recovered video taken from surveillance cameras at 1000 West Fulton Market. After viewing the video, Grzenia learned of a license plate number which he found belonged to a van registered to McCall. After McCall was arrested, Grzenia interviewed McCall and learned the name of a second suspect, whom he identified in court as Wilbutt. Grzenia compared photos from a computer search of Wilbutt's name to the man in surveillance videos from 1000 West Fulton Market and concluded Wilbutt was the man in the video.

¶ 9 Wilbutt was arrested and interviewed by Grzenia and another detective at the police station. Wilbutt initially denied any involvement in the theft; however, after Grzenia played surveillance videos, Wilbutt made a statement to detectives. He said McCall called him, asked him to take a ride, and picked him up. McCall drove to the West Fulton Market address and pointed out a bicycle. Wilbutt retrieved the bicycle and found its lock already had been cut off. Wilbutt returned to McCall's van with the bicycle, loaded it inside, and the pair drove away. Wilbutt said that the bicycle did not belong to either him or McCall and it was not theirs to sell. Wilbutt received $150 after McCall sold it.

¶ 10 The parties stipulated to the foundation of two surveillance videos, which were admitted into evidence and published. The State questioned Grzenia about events in the videos as they were shown. The first video, time stamped 6:36 p.m., showed the front entrance on the south side

of the building. The bicycle rack was out of view. Wilbutt can be seen riding a bicycle toward the front of the building, the south side on West Fulton Market, and continuing east alongside the building and out of view. The second video, about a half-hour later, shows Wilbutt getting out of a van parked on the curb along the west side of the building on Carpenter. Wilbutt walked south and then west onto Fulton Market, towards the front of the building and out of view. Wilbutt reappeared holding a bicycle frame in one hand and a bicycle tire in the other. He placed them into the van, got in, and the van drove away.

¶ 11 The trial court found Wilbutt guilty of felony theft. In doing so, the court rejected defense counsel's contention during closing argument that the State failed to prove the bicycle's value exceeded $500 because the bicycle's value of $6,000 meant that, even with depreciation, the evidence sufficiently showed its value to be greater than $500.

¶ 12 Wilbutt filed a *pro se* posttrial motion claiming ineffective assistance of trial counsel. Wilbutt also filed a motion for new trial alleging, *inter alia*, there was insufficient evidence to prove that the bicycle's value was over $500 where Hernandez admitted his valuation of the bicycle did not account for depreciation. The court, after a hearing, denied Wilbutt's *pro se* motion. The court also denied his motion for new trial, finding that the bicycle's value was proved beyond a reasonable doubt to be more than $500 where: $6,000 was much greater than $500; and there was no evidence that the bicycle had been damaged or that something was so "gravely wrong" with it that its value would have depreciated so much in the time Hernandez owned it. The court ultimately sentenced Wilbutt to four years' imprisonment.

¶ 13 On appeal, Wilbutt's sole argument is that the State failed to prove beyond a reasonable doubt that he committed Class 3 felony theft because it did not establish that the bicycle had a fair market value exceeding $500. Wilbutt requests that this court reduce his conviction to Class

4 felony theft and that we remand the cause for resentencing. See 720 ILCS 5/16-1(b)(2) (West 2014) (A person who has been convicted of theft of property not exceeding $500 in value and who has previously been convicted of any type of theft is guilty of a Class 4 felony).

¶ 14 Analysis

¶ 15 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence fall within the province of the trier of fact, and we do not substitute our judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable[,] or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Yates*, 98 Ill. 2d 502, 518 (1983).

¶ 16 A person commits theft when he or she knowingly obtains or exerts unauthorized control over property of the owner. 720 ILCS 5/16-1(a)(1) (West 2014). "Depending on the value of the stolen property and other facts, the crime of theft may be punished as a Class A misdemeanor, a Class 4, 3, 2, or 1 felony, or a Class X felony." *People v. Perry*, 224 Ill. 2d 312, 320 (2007) (citing 720 ILCS 5/16-1(b) (West 2000)). Theft of property exceeding $500 and not exceeding $10,000 in value is a Class 3 felony. 720 ILCS 5/16-1(b)(4) (West 2014). When a charge of theft of property exceeding a specified value is brought, the property's value is an element of the

offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. *Perry*, 224 Ill. 2d at 320; 720 ILCS 5/16-1(c) (West 2014). Thus, to convict Wilbutt of Class 3 felony theft, the State must to prove: (i) defendant knowingly obtained or exerted unauthorized control over the bicycle; and (ii) the value of the bicycle exceeded $500 but did not exceed $10,000. 720 ILCS 5/16-1(a)(1) (West 2014); 720 ILCS 5/16-1(b)(4) (West 2014).

¶ 17 Wilbutt does not dispute that the there was sufficient evidence presented at trial to prove that he knowingly obtained or exerted unauthorized control over Hernandez's bicycle. Rather, he only argues that the State failed to prove beyond a reasonable doubt that the bicycle had a value of more than $500 but less than $10,000. Specifically, he argues that Hernandez's testimony that the value of his bicycle was between $5,700 and $6,000 did not prove the value at the time of the theft because that figure was the replacement cost and there was no evidence showing the condition of the bicycle or any depreciation due to Hernandez's use of the bicycle.

¶ 18 "It is well-settled law that the value of stolen property is the fair cash market value at the time and place of the theft." *Perry*, 224 Ill. 2d at 336. Generally, " '[o]riginal or replacement cost is not the standard for assessing value, although evidence of cost together with evidence concerning age, condition, and utility of the stolen item may afford a basis for determining value.' " *People v. Foster*, 199 Ill. App. 3d 372, 392 (1990) (quoting *People v. Langston*, 96 Ill. App. 3d 48, 54 (1981)). The State need not establish the property's exact value, only that the fair cash market value of the property at the time of the theft exceeds the sum necessary to sustain a particular conviction of felony theft. See *People v. Davis*, 132 Ill. App. 3d 199, 203 (1985). In the absence of contrary evidence, to establish value, the person who testifies must have "sufficient knowledge of the property and its value to give a reasonable estimate, received

without objection." *People v. Harden*, 42 Ill. 2d 301, 305-06 (1969). Indeed, where the evidence of value is uncontroverted, a general description of the property may suffice, despite the lack of evidence that the property was not affected by obsolescence, depreciation, or deterioration. *Id.*

¶ 19 Wilbutt's reliance on *People v. Moore*, 109 Ill. App. 3d 874 (1982), is unavailing. In *Moore*, the victim "thought" or "guessed" what she paid for the stolen items, and there was no evidence that items were in good working order. Hernandez's testimony established the bicycle's value, and there was no evidence of damage.

¶ 20 After viewing the evidence in the light most favorable to the State, we find sufficient evidence exists to conclude that the bicycle had a fair market value of over $500. The record shows that the State presented evidence of the replacement cost of the bicycle, which, combined with the evidence of the bicycle's age and condition, provided a sufficient basis to determine its fair market value exceeded $500. *Foster*, 199 Ill. App. 3d at 392. Hernandez testified to the bicycle's replacement cost, age, and condition. Specifically, he explained that it was custom built and had been assembled from bicycle components, including carbon fiber wheels, which he had purchased individually. At the time of the theft, he stated that it would cost between $5,700 and $6,000 to repurchase all of the components comprising the stolen bicycle. Although Hernandez did not expressly testify about the bicycle's condition on the date of the theft, a reasonable trier of fact could find the bicycle was in working condition where Hernandez testified that it was two years old and he had rode it to work on the morning of the theft. This evidence was sufficient for a rational trier of fact to conclude that, at the time of the theft, the bicycle had a fair market value of more than $500, and thus sustain the Class 3 felony theft conviction of Wilbutt.

¶ 21 Affirmed.