2012 IL App (2d) 101330-U
No. 2-10-1330
Order filed August 6, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. EDWARD O. COOK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-CF-2147 Honorable T. Jordan Gallagher, Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

Held: Defendant was proved guilty beyond a reasonable doubt of possession of a converted motor vehicle.

¶ 1 After a bench trial, defendant, Edward O. Cook, was convicted of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a)(1), (d)(1)(F) (West 2008)), reckless homicide (720 ILCS 5/9-3 (West 2008)), and possession of a converted motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)). The trial court sentenced defendant to 10 years' imprisonment for aggravated DUI and 5

years' imprisonment for possession of a converted motor vehicle, to be served consecutively.[1] Defendant appeals only the conviction for possession of a converted motor vehicle, arguing that the evidence did not establish beyond a reasonable doubt that he was guilty of that charge. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On July 28, 2009, Aleksis Pugh was dating Kendrick Weber, whose sister was dating defendant. Pugh had known defendant for two or three weeks. That night, Pugh drove her white 2003 Acura to Weber's mother's house in Aurora to celebrate Weber's birthday. Defendant was there. The partygoers drank mixed drinks and smoked cannabis. Around 9:00 p.m., Pugh, Weber, defendant, and some of Weber's cousins drove to a house in De Kalb, where they continued to party, drinking tequila shots and smoking cannabis. Pugh did not see defendant ingest any other drugs, but there were occasions when defendant left the room for a few minutes.

¶ 4 On July 29, 2009, at around 3:00 a.m., Pugh, Weber, and defendant left De Kalb. Pugh drove to her apartment in Aurora, parked her car in the lot, and she, defendant, and Weber went inside. Pugh put her car keys on the table and went to bed, allowing defendant to sleep in the living room. At around 6:00 a.m., Pugh went to the bathroom and noticed that defendant was not in the living room; her car keys and her car were also missing. Pugh called 911; the tape of that call was played at trial, and the 911 operator testified at trial that Pugh was upset and "very angry" that her car was missing.

[1]The court found that the reckless homicide conviction merged with the aggravated DUI conviction.

¶ 5 The evidence of what happened next is essentially undisputed. According to his statements to police, one of which was videotaped, defendant, who acknowledged drinking and smoking cannabis the night before, borrowed Pugh's car and drove to a friend's apartment in Batavia. Defendant intended to return Pugh's car and decided to drive on side roads back to Aurora. According to witnesses, defendant was driving Pugh's vehicle southbound on Woodland Hills Road in Batavia at a high rate of speed. The car swerved off the west side of the road, where it hit and destroyed two mailboxes, sideswiped a tree, and then hit and killed both a man, David Long, and his dog, Shadow. Debris, two body parts, and spatter marks (*i.e.*, fluids from a vehicle that has crashed) from the Acura were later found on the west side of the road by the destroyed mailboxes and in the area where Long and Shadow were hit.

¶ 6 The Acura did not stop after hitting Long and Shadow. Rather, it swerved and crossed to the east side of Woodland Hills road, where it struck a Chevy Equinox (an SUV) that was parked by the curb. The Acura pushed the SUV over the curb and onto the front lawn of a residence. Charles Abbott, the SUV's owner, was sitting inside the SUV during the collision. Abbott sustained back and neck injuries, both front air bags deployed, and the SUV was "totaled."

¶ 7 Roger Dixon, who witnessed the Acura strike Abbott's SUV, approached the Acura on his bicycle. As he was retrieving his cell phone to call 911, Dixon looked inside the Acura and saw someone moving around and trying to open the door. Eventually, the person (defendant) succeeded in getting the door open, exited the vehicle, and then walked to the front of the vehicle. Defendant told Dixon "don't call, I'm okay." Dixon told defendant that he had to make the call; defendant looked up and down the street and then began "trotting" west across the lawn.

¶ 8 Defendant was ultimately apprehended when, after being pursued on foot by police, he stopped running. Subsequent blood analysis reflected that defendant's BAC was .106, and that both cocaine and cannabis were present in his urine. In addition, the Acura suffered significant damage, including: a smashed and shattered front windshield; a buckled hood; "contact" damage across the entire front and passenger sides of the vehicle; detached parts, including the front bumper and license plate; "induced" damage by the front driver's door; and a disconnected rearview mirror. An expert in accident reconstruction determined that the Acura was traveling between 49.9 and 56.4 miles per hour in a 30 mile-per-hour zone. Finally, the State introduced evidence that, when he drove on July 29, 2009, defendant's driver's license had been revoked due to a prior DUI conviction.

¶ 9 On May 21, 2010, the trial court, in finding defendant guilty, noted that "it's unquestionable" that the State proved defendant guilty beyond a reasonable doubt of unlawful possession of a converted motor vehicle. The court denied defendant's posttrial motion, sentenced defendant to consecutive terms of imprisonment, and denied defendant's motion to reconsider the sentence. Defendant appeals.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues on appeal that his conviction for possession of a converted motor vehicle must be reversed. Specifically, defendant argues that a conversion did not occur until he substantially interfered with Pugh's rights to her vehicle, *i.e.*, the accident, and that, because he abandoned the car and fled from the scene, he thereafter ceased to possess it.[2] Accordingly,

[2]We note that defendant relies on *People v. Sergey*, 137 Ill. App. 3d 971, 975 (1985), and *Johnson v. Weedman*, 5 Ill. 495 (1843), to support his proposition that, despite taking the vehicle and driving it from Aurora to Batavia, no conversion occurred *until the accident*. However, as seen

defendant contends that although the evidence established a conversion in that he took Pugh's car without permission and destroyed it in an accident, the evidence did not establish beyond a reasonable doubt that he ever *possessed* the vehicle *after* it was converted.

¶ 12 Section 4-103(a)(1) of the Illinois Vehicle Code provides that it is a felony for a person not entitled to the possession of a vehicle to possess it, knowing it to have been stolen or converted. 625 ILCS 5/4-103(a)(1) (West 2006). The essence of conversion is the "wrongful deprivation of property from the person entitled to its possession." *In re Rosin*, 156 Ill. 2d 202, 206 (1993). Conversion has been defined by our supreme court as an unauthorized act that deprives a person of his or her property, either permanently or for an indefinite period. *Id.* It is well-established that, when considering whether the evidence was sufficient to sustain a defendant's conviction, we ask 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. *People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008). Further, "possession" is a question of fact, and the trier of fact's finding regarding possession will not be disturbed on appeal "unless the evidence is so palpably contrary to the verdict or so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of guilt." *People v. Santana*, 161 Ill. App. 3d 833, 838 (1987); see also *People v. Anderson*, 188 Ill. 2d 384, 390-92 (1999) (citing favorably *Santana*'s interpretation of "possession" of a stolen vehicle). Here, as defendant does not challenge on appeal the court's finding that a conversion occurred when the accident caused a substantial interference with Pugh's rights to her vehicle, the

---

below, even if we accept defendant's argument that there was no conversion until the accident, we must affirm because defendant still possessed the converted vehicle. Accordingly, neither *Sergey* nor *Johnson* is necessary to our analysis.

narrow issue before us is whether any rational trier of fact could have found beyond a reasonable doubt that defendant *possessed* Pugh's vehicle once it was converted. We conclude, as did the trial court, that the elements for possession of a converted vehicle were proved beyond a reasonable doubt.

¶ 13 Defendant argues that he did not possess the converted vehicle because, *after* it was damaged and thereby became converted, he fled the scene. Defendant ignores, however, that the evidence showed that *he* was the only person in possession of the vehicle *when* it was converted. "Possession" exists when a person has immediate and exclusive control over an object. *Santana*, 161 Ill. App. 3d at 837. Thus, even if we were to assume that Pugh's vehicle was not converted until after it hit Abbott's SUV and came to a stop, defendant was in possession of the vehicle at that time. According to Dixon, defendant was inside the vehicle moving around and trying to open the door; when defendant finally exited the vehicle, he looked around the area and spoke with Dixon before fleeing. Therefore, if even for a brief period, defendant was certainly in possession of and retained exclusive control over the vehicle after the accident.

¶ 14 Further, as defendant agrees that a conversion occurred once there was a substantial interference with Pugh's rights to her vehicle, a rational trier of fact could have found that conversion happened *earlier* in the accident, *i.e.*, before the vehicle came to a rest and defendant fled. Specifically, Pugh's vehicle was damaged when it crashed into two mailboxes, hit a tree, and killed Long and Shadow. There were body parts, fluid, and debris from the Acura found on the west side of the road where the initial collisions occurred. Accordingly, a reasonable fact finder could have found that, once the Acura hit the mailboxes, tree, and victims, the damage sufficiently interfered with Pugh's property such that defendant was, at that time, in possession of a converted

vehicle. As such, viewing the facts in the State's favor, a reasonable fact finder could have found that defendant possessed a converted vehicle from the moment the Acura hit the first mailbox until he fled the scene.

¶ 15 In sum, we cannot find that no rational trier of fact could have found beyond a reasonable doubt that defendant possessed a converted motor vehicle. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 16 Affirmed.