NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN THE INTEREST OF: N.G., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: N.G., MINOR	:	
	:	No. 2901 EDA 2022

Appeal from the Dispositional Order Entered November 9, 2022
In the Court of Common Pleas of Philadelphia County Juvenile Division at
No(s): CP-51-JV-0000918-2021

BEFORE: NICHOLS, J., SULLIVAN, J., and COLINS, J.*

MEMORANDUM BY NICHOLS, J.: **FILED JANUARY 18, 2024**

Appellant N.G., a minor, appeals from the dispositional order entered following his adjudication of delinquency for receiving stolen property (RSP) and unauthorized use of an automobile (UUA).[1] Appellant challenges the sufficiency of the evidence supporting his adjudication of delinquency for RSP and UUA. We affirm.

The juvenile court summarized the facts of this case as follows:

> On August 13, 2021, at approximately 6:25 P.M. on the 2900 block of North A Street in the City and County of Philadelphia, PA, Philadelphia Police Officer Czapor (badge #4423), working in full uniform in an unmarked car, witnessed [Appellant] operating a vehicle in stolen status (red Nissan Sentra with a Pennsylvania tag of KKG-2994) (herein referred to as "the vehicle"). At this time, Officer Czapor observed [Appellant] enter the driver's seat of the vehicle, and subsequently operate the vehicle by pulling out of a

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. §§ 3925(a) and 3928, respectively.

> parking spot without signaling. Due to this illegal maneuver, Officer Czapor then contacted Officer Ferguson over radio to run the Pennsylvania license plate, who then verified that the vehicle [Appellant] was operating was, in fact, a stolen vehicle. Acting upon this information, Officer Czapor returned to the 2900 block of North A Street in the City and County of Philadelphia, PA, where at approximately 6:45 P.M. Officer Czapor observed the vehicle parked in the same spot and [Appellant] walking away from the vehicle. Officer Czapor and his partner then observed [Appellant] walking toward them in the unmarked patrol vehicle, stop and bend down near the rear passenger tire of a yellow SUV type vehicle, and subsequently get back up and walk in the opposite direction of the uniformed officers. At this point Officer Czapor and his partner decide to apprehend [Appellant] for the stolen vehicle and recovered the vehicle's key and key fob on [Appellant's] person.
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> At [Appellant's] adjudicatory hearing on November 9, 2022, Commonwealth's witness Sarah Deveary testified that she was the owner of the vehicle in question, had not seen the vehicle since the night of August 3, 2021 and did not give permission for [Appellant] or anyone else to be operating the vehicle. Ms. Deveary also testified to the fact that the vehicle was in perfect condition the night she last saw it, and when she received her vehicle back it was in totaled condition (the cost to repair the damages were more than the vehicle was worth). According to Ms. Deveary, "the doors, the right side of the [vehicle], the bumper, the front of the [vehicle], and the side mirrors were knocked off." Furthermore, [Appellant] did not offer [his driver's] license, [the vehicle's] registration, or proof of insurance [for the vehicle].

Trial Ct. Op., 1/31/23, at 2-3 (citations omitted and some formatting altered).

On November 9, 2022, the juvenile court adjudicated Appellant delinquent of RSP and UUA. The juvenile court placed Appellant on probation and ordered Appellant to pay $200 in restitution to the victim.

Appellant filed a timely notice of appeal. Appellant and the juvenile court complied with Pa.R.A.P. 1925.

Appellant raises two issues on appeal:

1. Did the [juvenile] court err [by adjudicating] Appellant [delinquent] of receiving stolen property under 18 Pa.C.S. § 3925, where the evidence was insufficient to establish the elements of the offense, specifically, that Appellant had any knowledge or belief the property may have been stolen?

2. Did the [juvenile] court err [by adjudicating] Appellant [delinquent] of unauthorized use of an automobile under 18 Pa.C.S. § 3928, where the evidence was insufficient to establish the elements of the offense, specifically, that Appellant was at least reckless with respect to the owner's lack of consent to the vehicle's operation?

Appellant's Brief at 4.

Appellant's issues are related; therefore, we discuss them together. In his first issue, Appellant argues that the Commonwealth failed to establish that Appellant knew or had reasonable cause to know that the vehicle he operated was stolen. Appellant's Brief at 14-30. Appellant claims that the Commonwealth must prove, directly or circumstantially, that Appellant had "guilty knowledge," *i.e.*, Appellant knew or had reason to know that the vehicle was stolen. ***Id.*** at 15-22 (citing, *inter alia*, ***In re K.G.***, 278 A.3d 934 (Pa. Super. 2022); ***Commonwealth v. Dunlap***, 505 A.2d 255 (Pa. Super. 1985)). Appellant contends that the owner offered contradictory answers about when she last saw the vehicle, the Commonwealth did not present evidence of the condition of the vehicle on the date of Appellant's arrest, and Appellant's conduct when the police approached him do not support an inference that Appellant had guilty knowledge. ***Id.*** at 22-30.

In his second issue, Appellant argues that the Commonwealth failed to establish that Appellant was reckless with respect to lack of consent to operate the vehicle. Appellant's Brief at 30-33. As with his challenge to the sufficiency of evidence supporting his adjudication for RSP, Appellant contends that the evidence does not support an inference that Appellant knew he did not have the owner's consent to operate the vehicle or recklessly disregarded that risk. ***Id.*** at 31-32 (citing ***K.G.***, 278 A.3d at 937, 941). Appellant notes that like the juvenile in ***K.G.***, the record establishes that Appellant operated the vehicle with a key and attached key fob. ***Id.*** at 33. Appellant also claims that the juvenile court's observation that Appellant failed to produce his driver's license, the vehicle's registration, and proof of insurance was not supported by the record because there is no evidence that the police ever asked Appellant for those documents. ***Id.*** at 32.

> In reviewing the sufficiency of the evidence to support the adjudication below, we recognize that the Due Process Clause of the United States Constitution requires proof beyond a reasonable doubt at the adjudication stage when a juvenile is charged with an act which would constitute a crime if committed by an adult. Additionally, we recognize that in reviewing the sufficiency of the evidence to support the adjudication of delinquency, just as in reviewing the sufficiency of the evidence to sustain a conviction, though we review the entire record, we must view the evidence in the light most favorable to the Commonwealth.

In re A.D., 771 A.2d 45, 48 (Pa. Super. 2001) (*en banc*) (citations and omitted and formatting altered).

Additionally, this Court has explained that "[i]n a juvenile proceeding, the hearing judge sits as the finder of fact. The weight to be assigned the

testimony of the witnesses is within the exclusive province of the fact finder. . . . [This Court], as an appellate court, will not substitute our judgment for that of the fact finder." ***Id.*** at 53 (citation omitted).

The offense of RSP is as follows:

> **(a) Offense defined.**—A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.
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> **(b) Definition.**—As used in this section the word "**receiving**" means acquiring possession, control or title, or lending on the security of the property.

18 Pa.C.S. § 3925.

The offense of UUA is as follows:

> **(a) Offense defined.**—A person is guilty of a misdemeanor of the second degree if he operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without consent of the owner.

18 Pa.C.S. § 3928(a).

Accordingly, in order to convict a defendant of RSP, the Commonwealth must establish three elements: "(1) intentionally acquiring possession of the movable property of another; (2) with knowledge or belief that it was probably stolen; and (3) the intent to deprive permanently." ***Commonwealth v. Gomez***, 224 A.3d 1095, 1099 (Pa. Super. 2019) (citation and quotation marks omitted). The second element is sometimes referred to as "guilty knowledge." ***Id.*** "To establish a defendant had guilty knowledge, *i.e.*, that he knew

property in his possession was stolen or believed that it was probably stolen, the Commonwealth may introduce evidence that the underlying theft occurred recently." ***Id.*** at 1099-1100. "Such evidence will permit a fact-finder to infer guilty knowledge, particularly where there is no satisfactory explanation for a defendant's possession of recently stolen goods." ***Id.*** at 1100.

Our Supreme Court has explained:

> "Recent" is a relative term. Whether possession is recent, and how recent it is, are normally questions of fact for the trier of fact, and require that the trier of fact consider the nature and kind of goods involved, the quantity of goods, the lapse of time from theft and possession, and the ease with which such goods can be assimilated into trade channels, as well as other circumstances relevant in any given case.

Commonwealth v. Williams, 362 A.2d 244, 249 (Pa. 1976) (citations omitted and some formatting altered). Specifically, the ***Williams*** Court concluded that the defendant's possession of a car twelve days after it was stolen was "recent" and supported an inference of guilty knowledge. ***Id.*** at 250.

Additionally, other circumstantial evidence may provide a basis for an inference of guilty knowledge:

> Circumstantial evidence of guilty knowledge may include, *inter alia*, the place or manner of possession, alterations to the property indicative of theft, the defendant's conduct or statements at the time of arrest (including attempts to flee apprehension), a false explanation for the possession, the location of the theft in comparison to where the defendant gained possession, the value of the property compared to the price paid for it, or any other evidence connecting the defendant to the crime.

Gomez, 224 A.3d at 1100 (citation omitted).

> Once the inference [of guilty knowledge] is properly drawn by the trier of fact and pursuant to the understanding that it cannot be drawn unless he is convinced that the unexplained possession is so recent as to convince him of the inferred fact beyond a reasonable doubt and his conviction of the same is not weakened below this standard by other circumstances, an appellate court may not reverse unless, after considering the evidence, it believes a juror or judge, acting in a reasonable and rational manner, could not have been convinced beyond a reasonable doubt.

Commonwealth v. Newton, 994 A.2d 1127, 1133 (Pa. Super. 2010) (citations omitted).

"In order to establish the *mens rea* element of the crime of unauthorized use of automobiles, the Commonwealth must prove that the accused was at least reckless with respect to the owner's lack of consent to the accused's operation of the vehicle." ***Dunlap***, 505 A.2d at 257 (citation omitted). Additionally, the defendant's knowledge of or recklessness as to the owner's lack of consent to the defendant's operation of the vehicle "may be demonstrated by circumstantial evidence, and an inference of guilty knowledge may be drawn from unexplained possession of recently stolen goods. Whether possession is recent and whether it is unexplained are normally questions of fact for the trier of fact." ***Id.*** (citations omitted).

In ***K.G.***, this Court vacated the order adjudicating a juvenile delinquent of UUA because there was insufficient evidence to establish that the juvenile knew or had reason to know that he did not have the owner's permission to operate the vehicle. ***K.G.***, 278 A.3d at 939, 941. Specifically, the juvenile

operated the vehicle with its keys, there was no damage to the vehicle, and the juvenile was cooperative with the police when they pulled him over and did not attempt to flee. ***Id.*** at 937, 941. The ***K.G.*** Court reiterated that mere possession of the vehicle was insufficient to infer guilty knowledge. ***Id.*** at 939, 941.

Here, with respect to RSP, the juvenile court explained:

> The circumstances in the instant case that allowed this court to establish the requisite guilty knowledge [Appellant] possessed are as follows: Police Officer Czapor clearly identified [Appellant] as the driver and only occupant of the vehicle, and during arrest recovered the vehicle's key and key fob on [Appellant's] person. Also, [Appellant's] conduct leading up to his arrest as described by Officer Czapor infers a guilty knowledge. Specifically, [Appellant] entering the vehicle, illegally pulling out of a parking spot, returning the vehicle to that same parking spot approximately twenty-five minutes later, then his action of walking toward them in the unmarked patrol vehicle, stopping and bending down near the rear passenger tire of a yellow SUV type vehicle, and subsequently getting back up and walking in the opposite direction of the uniformed officers. Also, the time between the theft of the vehicle and [Appellant's] possession was about ten days . . . . Furthermore, the owner, Ms. Deveary did not give permission for any other person to use her vehicle, and the vehicle was totaled upon return according to Ms. Deveary. Lastly, [Appellant] did not offer license, registration, or proof of insurance.
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> It is clear to this court that the totality of the circumstances was sufficient to support an inference that [Appellant] had reasonable cause to know that the vehicle was stolen and satisfies the *mens rea* under the receiving stolen property charge. N.G lacked the owner's permission to operate the vehicle, was operating the vehicle in a totaled condition, conducted an illegal maneuver while operating the vehicle, and immediately prior to arrest, exhibited evasive and deceptive behavior indicative of guilty knowledge by bending down behind another vehicle, getting up and walking in the opposite direction of the uniformed officers.

Trial Ct. Op. at 6.

> With respect to UUA, the juvenile court stated:
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> > In the instant case, the totality of circumstances demonstrated: 1. [Appellant] operating the vehicle according to Officer Czapor's testimony, 2. Officer Czapor witnessing [Appellant] pull out of a parking spot illegally while operating the vehicle, 3. the vehicle was in totaled condition, 4. the owner's testimony of non-permission, and 5. [Appellant] did not offer license, registration, or proof of insurance.
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> > This court found the evidence sufficient to uphold a finding of guilt and adjudicated [Appellant] delinquent.

Id. at 8.

Following our review of the record, and in viewing the evidence in the light most favorable to the Commonwealth, we conclude that there was sufficient evidence supporting Appellant's adjudications for RSP and UUA. ***See A.D.***, 771 A.2d at 48. Unlike the juvenile in ***K.T.***, the vehicle in the instant case had sustained damage to its doors, right side, front end, bumper, and was missing its side mirrors, and the owner's insurer declared the vehicle "totaled" because the cost of the repairs exceeded the vehicle's value. ***Compare*** N.T., 11/9/22, at 26-27 ***with K.G.***, 278 A.3d at 937, 941. Appellant argues that there is no evidence as to the condition of the vehicle on the night Appellant operated it because Officer Czapor did not testify about the vehicle's condition. Appellant notes that Ms. Deveary did not see the vehicle that night, instead she described the vehicle's condition when it was returned to her. Additionally, Appellant contends that Ms. Deveary gave contradictory answers concerning when she last saw her vehicle. However, this Court will not

substitute its judgment for that of the fact-finder, whose exclusive province is to assess the credibility of the evidence. ***See A.D.***, 771 A.2d at 50. Further, Officer Czapor testified to the items recovered from Appellant when he was arrested including the vehicle's key and key fob, and he specifically stated that he did not find a driver's license for Appellant. ***See*** N.T., 11/9/22, at 6, 18. The juvenile court found that Appellant's possession of the vehicle ten days after the owner reported it stolen was sufficiently recent to support an inference of guilty knowledge, and on this record, we will not disturb that finding of fact. ***See Williams***, 362 A.2d at 249-50; ***Newton***, 994 A.2d at 1133. Accordingly, Appellant is not entitled to relief, and we affirm the juvenile court's dispositional order.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024