UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1622

September Term, 2014

OBINNA IFEANDU

v.

STATE OF MARYLAND

Wright,
Reed,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: November 16, 2015

Obinna Ifeandu, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of two counts of theft of property with a value of at least $10,000 but less than $100,000.[1] He was subsequently sentenced to two concurrent four-year terms of imprisonment. Appellant filed this appeal from his conviction and sentence and presents the following question, which we quote, for our review:

> Was the evidence sufficient to prove that he knowingly possessed the two stolen vehicles?

For the reasons that follow, we shall affirm the judgments.

FACTS AND LEGAL PROCEEDINGS

On August 13, 2013, John Eppley, who was employed as a tow-truck driver, was contacted by a man only known to him as "T" about towing two vehicles in a freelance capacity. The vehicles were a 2013 Toyota Highlander ("Highlander") and a 2011 Acura LT ("Acura"). T instructed Eppley where to pick up and deliver the vehicles and that the keys to the vehicles and $200 cash would be under the floor mats of one of the vehicles. Eppley drove to an area in Laurel where he loaded the two vehicles onto his flatbed tow truck. He then transported the vehicles to a 7-Eleven Store in Silver Spring, Maryland where he unloaded and parked them side by side in the parking lot area. He then handed the vehicles' keys to a man in the parking lot.

[1] The trial court granted defense counsel's motion for judgment of acquittal on two additional charges of theft of property with a value of at least $10,000 but less than $100,000 and a charge of a theft scheme.

Officer Timothy Bettis testified that, around 7:30 p.m. on August 13, 2013, he was conducting undercover surveillance of the 7-Eleven at the corner of King Street and Georgia Avenue in Silver Spring, Maryland. He described the area as having "a lot of activity," including drug dealing, loitering, trespassing and theft from vehicles. Officer Bettis wore plain clothes and was sitting in his parked, unmarked police car by the gas pumps when he saw appellant walk from King Street to the 7-Eleven parking lot. Officer Bettis noticed appellant because he was "looking from side-to-side and looking all around the parking lot." At the same time, the officer noticed a tow truck with a "Greenbelt Exxon" decal unloading two vehicles next to the 7-Eleven dumpster. Officer Bettis was immediately suspicious, explaining, "I didn't think [Exxon] would be towing out of [the Citgo 7-Eleven], and I didn't think it would be delivering a car" to the 7-Eleven parking lot.

Officer Bettis observed appellant and the tow truck operator shake hands and exchange something. Appellant then approached and entered the black Acura, and drove it across the street into a public parking garage under the Galaxy Apartments building. A minute later, appellant returned to the parking lot, got into the Highlander and drove it into the parking garage. During Officer Bettis' surveillance of appellant, he submitted the Highlander's tags for review by the computer system.[2] The vehicle "came back [as] stolen."

[2] The officer could not run the temporary "paper" tags on the Acura.

Officer Bettis called for back-up and several officers responded. One of the officers followed the Highlander into the parking garage and parked behind it when appellant pulled into a parking spot in "close proximity" to the Acura. As appellant exited the Highlander, he was arrested and recovered from his pant's pocket by the police was a magnetic key "hider" with a key fob inside that opened the front door of the Galaxy Apartments, as well as an additional key that opened Apartment 318 in the Galaxy building. In the meantime, another officer stopped Eppley a few blocks from the 7-Eleven.

Appellant was transported to a police station, where he was interrogated. When asked if he lived at the Galaxy Apartments, he responded that he did not. When the police went to Apartment 318, a woman opened the door, whereupon they secured the one-bedroom apartment and obtained a search warrant. Recovered, as a result of the search of the apartment, were documents reflecting transactions by appellant and mail addressed to appellant. Among those documents were appellant's passport located in the top drawer of the bedroom dresser and appellant's social security card located in the top drawer of the bedroom desk. When the police confronted appellant with information that the key fob and key recovered from his pant's pocket fit the building and Apartment 318, appellant again denied living there, explaining that he was in possession of the key fob to use the apartment's gym.

The apartment concierge testified that appellant's name was not on the lease for any of the apartments; however, when shown a picture of appellant, the concierge recognized

him as someone he had seen almost on a daily basis during the summer, going in and out of the building with someone who was a resident. The concierge testified that, on one occasion, he had seen someone throw a key fob to appellant from an apartment balcony.

Detective David Wells, an officer trained in identifying stolen vehicles, testified that, upon inspecting the Acura and Highlander, he "immediately noticed" that their VIN plates were fake because they had no rivets. The Detective found that a piece of hard cardboard had been placed over the VIN plates covering the rivets and the true VIN numbers. Detective Wells additionally testified that the federal component part labels on various parts of the vehicles had been removed and fictitious labels had been secured in their place. Affidavit's from the vehicles' owners stated that the Highlander had been stolen some time in August 2013 and the Acura had been stolen on August 9, 2013. The police identified two other stolen vehicles in the public garage, a Honda Accord and a Toyota Venza, both parked in close proximity to the Acura and Highlander. The Accord and Venza also lacked rivets on their VIN plates and had cardboard covering their true VIN plates. Additionally, their federal component part labels had been removed and replaced with fictitious ones.

STANDARD OF REVIEW

The standard for appellate review of evidentiary sufficiency 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.'" *State v. Mayers*, 417 Md. 449, 466 (2010) (quoting *Moye v. State*, 369 Md. 2, 12 (2002) (citing

Jackson v. Virginia, 443 U.S. 307, 319 (1979)). "Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998) (citing *Binnie v. State*, 321 Md. 572, 580 (1991)). "We do not re-weigh the evidence, but we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. Smith*, 374 Md. 527, 534 (2003) (quotation marks and citation omitted).

DISCUSSION

Appellant was found guilty of two counts of theft based on evidence that demonstrated he knowingly possessed the stolen Acura and Highlander. The State contends that appellant was in possession of two stolen vehicles on the evening of August 13, 2013, as part of an automotive theft scheme. The State's case was based on the testimony of the tow truck driver, who picked up and unloaded the stolen vehicles, and several Montgomery County police officers who testified for the State.

Although appellant presented no testimonial evidence, he contends on appeal, that he did not know that the vehicles were stolen. The evidence, according to appellant, was insufficient to show that he knew the vehicles were stolen and that there was no evidence showing that he was engaged in anything other than a bona fide purchase of the vehicles. We disagree.

Md. Code Ann., Crim. Law, § 7-104(c)(1), prohibiting the possession of stolen property, provides in pertinent part:

> A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person:
>
> > (i) intends to deprive the owner of the property;
> > (ii) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> > (iii) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
>
> The crime consists of four elements:
>
> > (1) the property must be stolen;
> > (2) the defendant must be in possession of the stolen property;
> > (3) the defendant must know that the property has been stolen or believe that it probably has been stolen; and
> > (4) the defendant must intend . . . to deprive the owner of the property[.]

In re Landon G., 214 Md. App. 483, 493 (2013).

It is the third element that is at issue in the case *sub judice*.

The Court of Appeals has stated that "[g]uilty knowledge" that an object is stolen may be "inferred from facts and circumstances such as would cause a reasonable man of ordinary intelligence, observation and caution to believe that the property had been unlawfully taken." *Anello v. State*, 201 Md. 164, 168 (1952). We look to the "'*ad hoc* circumstances'" elicited to determine if there was a "'sufficient factual predicate to give rise to a permissible inference that [appellant] had the required scienter for a violation of §7-104(c).'" *In re Landon G.*, 214 Md. App. at 500 (quoting *Burns v. State*, 149 Md. App.

553–54 (2003)). "Such circumstances include but are not limited to the unexplained possession of recently stolen property, flight from the police or other evidence indicating an attempt to avoid capture and the condition of the property indicating a theft." *Id*. at 501 (quoting *Commonwealth v. Carson*, 592 A.2d 1318, 1321 (Pa. Super. Ct. 1991).

Moreover, it is well established in Maryland that circumstantial evidence tending to show consciousness of guilt is admissible. *Decker v. State*, 408 Md. 631, 640 (2009) (quotation marks and citation omitted).

> To be relevant, it is not necessary that the evidence of this nature conclusively establish guilt. The proper inquiry is whether the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt. If so, the evidence is relevant and generally admissible.

Thomas v. State, 397 Md. 557 (2007) (quotation marks and citation omitted).

We are persuaded that there was sufficient evidence for a rational trier of fact to find that appellant knew or should have known that the vehicles were stolen. First, the vehicles were stolen property in the possession of appellant and appellant was acting suspiciously. The Acura had been stolen four days earlier and the Highlander was stolen, at most, two weeks earlier. When appellant approached the vehicles in the 7-Eleven parking lot, he was observed by a police officer acting in a suspicious manner, looking from side to side and all around. We conclude that appellant's behavior permits a reasonable inference that he was wary of being detected and on the lookout for police.

Second, the VIN plates on the vehicles had been covered up and federal component part decals removed. While appellant's retort is that "only a highly trained car theft investigator [would] know the importance of this evidence," we do not find that this alone is persuasive. As noted, Detective Wells' expertise is "identifying vehicles that have been stolen" and, accordingly, he *is* a highly trained car theft investigator. Detective Wells, indeed, testified that he "immediately noticed" that something was wrong with the VIN numbers. The fact, however, that the Acura and the Highlander were discovered in close proximity to two *other* stolen vehicles with similarly tampered VIN numbers and missing federal component part decals also circumstantially establishes that appellant knew or had reason to know that the vehicles were stolen.

Finally, a rational trier of fact could infer a consciousness of guilt from appellant's repeated attempts to disassociate himself from the location of the stolen vehicles. While appellant explained that his possession of the building key fob was due to his use of the building's gym, appellant offered no explanation or testimony to account for his possession of a key to the building where the stolen vehicles were located, a key to an apartment within, nor why his social security card, passport, mail, and other personal documents were located in the apartment—specifically in drawers of a dresser and a desk in the apartment's bedroom. Despite all of the evidence personally connecting him to the location, appellant repeatedly denied his association. It is not required that this evidence conclusively demonstrate that appellant is guilty—it is sufficient that a rational trier of fact could infer

that appellant's repeated denials of association with the location where the stolen vehicles were found demonstrates a consciousness of guilt. We are persuaded that a rational trier of fact could make such an inference.

For the aforesaid reasons, we are persuaded that a rational trier of fact could find that appellant knew or should have known that the vehicles were stolen.

JUDGMENTS FOR THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COST TO BE PAID BY THE APPELLANT.