UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2540

September Term, 2013

IN RE: SUAVE L. S.

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: November 19, 2015

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Suave L.S., Appellant, was found involved in motor vehicle theft, unauthorized removal of a motor vehicle, and theft under $1,000, in violation of Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL") §§ 7-105(b), 7-203(a), and 7-104(g)(2), respectively. Appellant was committed to the Department of Juvenile Services for placement at a Level A facility. He appealed and presents the following issue for our review:

> Was the evidence legally sufficient to sustain the court's findings that Appellant was involved in the offenses of the unlawful taking of a vehicle, unauthorized use of the vehicle, and theft under $1,000?

For the following reasons, we answer the question in the affirmative.

BACKGROUND

The State charged Appellant by juvenile petition in the Circuit Court for Prince George's County with multiple charges relating to the theft of a 2008 Toyota Yaris.

At Appellant's trial, Clara Byrd testified that on October 29, 2013 she was the owner of a 2008 Toyota Yaris. That same morning, she allowed her boyfriend to drive the car to his grandparents' house. Shortly thereafter, she received a call from her boyfriend, who informed her that the Yaris had been taken out of his grandparents' driveway. Both Ms. Byrd and her boyfriend called the police, and a stolen-vehicle report was filed.

On October 30, 2013, the police called Ms. Byrd to inform her that her car had been located. When Ms. Byrd recovered the vehicle from the police, she found that the left front tire had been removed, the underside of the car had been damaged, and the inside had been ransacked. Ms. Byrd testified that none of these conditions existed prior

to the theft of the car. Ms. Byrd also testified that she did not know Appellant, that she had not given him permission to take the car, and that the keys were in the vehicle at the time it was stolen.

Following Ms. Byrd's testimony, Officer Alba De Jesus of the Prince George's County Police Department testified that, on October 30, 2013, he received a call in connection with a disabled vehicle. Upon arriving at the scene, Officer De Jesus observed two individuals changing the tire of a 2008 Toyota Yaris:

OFF. DE JESUS: …And I saw a gentlemen with a tool trying to fix the front tire. I asked what was wrong with the vehicle. They stated they were trying to go to school, fix the vehicle.

* * *

OFF. DE JESUS: …I stepped out of my vehicle. I checked what was wrong with the vehicle. I told the Defendants or the subjects to have a seat, give me their names and identification. Run them through dispatch; came back negative. I run the tags of the vehicle since – due to their age, I ran the tags. The tags came back stolen. I then placed the Defendants into custody and then searched the vehicle, and there was books in the vehicle.

[PROSECUTOR]: What kind of books?

OFF. DE JESUS: I believe it was science, math book, and there was a folder.

[PROSECUTOR]: Okay. What time was it?

OFF. DE JESUS: It was around 10:30 in the morning.

[PROSECUTOR]: And was October 30th a school day?

OFF. DE JESUS: Yes.

Officer De Jesus then testified that Appellant was one of the two individuals he saw attempting to fix the tire on the car. Appellant was placed under arrest, and Officer De Jesus asked Appellant if he knew who owned the vehicle. Appellant responded, "No."

On cross-examination, Officer De Jesus revealed that, at the time Appellant was arrested, there was no sign of damage to the vehicle's ignition and no broken windows. Officer De Jesus also testified that Appellant was not seen inside the car, that there were no names on the books found inside, and that Appellant did not attempt to flee when Officer De Jesus initially approached him. The keys were found in the car at the time it was recovered.

STANDARD OF REVIEW

When reviewing the sufficiency of evidence in a criminal case, it is our duty to determine, in a light most favorable to the prosecution, "whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt…beyond a reasonable doubt." *Taylor v. State,* 346 Md. 452, 464 (1997). This does not mean that we should weigh the evidence or undertake "a review of the record that would amount to a retrial of the case." *Winder v. State,* 362 Md. 275, 325 (2001). Instead, the sole issue is whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979) (emphasis in original).

Nor need there be any direct evidence of the defendant's guilt. Verdicts founded on circumstantial evidence alone are sufficient, "provided the circumstances support

rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Hall v. State*, 119 Md. App. 377, 392 (1998). In these instances, "[t]he judgment of the circuit court will not be set aside unless clearly erroneous, with due regard given to the opportunity of the trial court to judge the credibility of the witnesses." *Taylor*, 346 Md. at 465.

In juvenile delinquency cases, we apply the same standard of review. *See In re Timothy F.*, 343 Md. 371, 380 (1996) ("In such cases, the delinquent act, like the criminal act, must be proven beyond a reasonable doubt.").

DISCUSSION

Appellant contends that the record fails to establish that he was in "possession" of the car or had "knowledge" that it was stolen, which were essential elements of all three charges for which Appellant was found guilty. We disagree and find that sufficient evidence existed to establish all elements.

Under CL § 7-203(a), "[w]ithout the permission of the owner, a person may not take and carry away from the premises or out of the custody of another or use of the other, or the other's agent, or a governmental unit any property, including: (1) a vehicle; (2) a motor vehicle; (3) a vessel; or (4) livestock." *Id.*

In the case of theft of a motor vehicle, "a person is guilty…if, knowing that the car has been stolen, the person participates in the continued use of it after the initial taking[.]" *In re Levon A.,* 361 Md. 626, 638 (2000). No evidence is required to show that the accused was involved in the original taking of the vehicle or that he intended to permanently deprive the owner of its use. *In re Landon,* 214 Md. App. 483, 505 (2013).

All that must be established is that the accused knew the car was stolen and that he participated in the continued use of the car in a manner meant to deprive the owner of the property. *Id.*

Regarding the first element, that the accused know that the car is stolen, the State need not prove that Appellant had actual knowledge that the vehicle was stolen. Instead, "such knowledge 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). In other words, the State has met its burden if it has shown that Appellant knew or should have known that the car was stolen. *Id.* (Court found sufficient evidence where prosecutor established that the defendants "knew or should have known the car was stolen").

In the present case, we find that it was reasonable for the trier of fact to conclude that Appellant knew or should have known that the vehicle was stolen. He admitted to Officer De Jesus that he did not know to whom the car belonged, and Appellant offered no explanation for how the vehicle came into his possession. When taken in conjunction with the fact that the car was stolen just one day prior to Appellant's arrest, a reasonable inference can be drawn that Appellant had knowledge of the theft. *See Allen v. State,* 171 Md. App. 544, 562 (2006) ("Maryland law recognizes that a [trier of fact] may infer, from the unexplained possession of recently stolen goods, that the possessor is the thief").[1]

[1] Although Appellant did not raise the issue of time in his brief, we nevertheless find that the one-day span between when the car was taken and (continued…)

Appellant contends that the element of scienter was not established because there was no evidence of "breaking" (i.e. popped/damaged ignition), there was no direct evidence that Appellant had been in the car, and he made no attempt to flee when he was approached by Officer De Jesus. However, given the fact that Appellant offered no explanation for his possession of the car, any additional indications of culpability are irrelevant to show guilty knowledge if Appellant had exclusive possession of the vehicle at the time of his arrest. This brings us to the second element of theft of a motor vehicle – possession.

Possession, at least with respect to crimes against property, generally requires a showing that the accused exhibited a "continuing and exclusive exercise of dominion and control over [the] property[.]" *Burns,* 149 Md. App. at 551. Although this standard requires the State to show that the accused was more than a mere participant, it is not necessary that the State establish "actual manual possession by an accused[.]" *Myers v. State,* 165 Md. App. 502, 529 (2005). For instance, a person is said to have exercised dominion and control over property "by using it or concealing it in an unauthorized manner." *Lee v. State,* 59 Md. App. 28, 36 (1984). And possession need not be singularly held to be "exclusive" – it is the exercise of personal possession and the assertion of property rights that determines whether an accused has exclusive possession.

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when Appellant was arrested was sufficient to make the vehicle "recently stolen goods." *See In re Antonette H.,* 200 Md. App. 341, 345 (2011) ("When the appellant was first observed behind the wheel of the stolen car, the time lapse since its original theft was something less than 34 hours. She qualified, therefore, for the possession of 'recently stolen goods'").

Brown, 8 Md. App. at 226; *See also Myers,* 165 Md. App. at 529-530 ("Additionally, possession may be joint…[which] does not negate the notion of exclusive possession.").

In the present case, Appellant was found changing the tire of the car, which he was not authorized to do. Appellant also told Officer De Jesus that he was changing the tire because he was trying to get to school, implying that he intended to use the vehicle to drive to school, which he was not authorized to do. This implication was supported by the fact that Officer De Jesus recovered school books from inside the car. Based on these circumstances, it was reasonable for the trier of fact to infer that Appellant had exercised the requisite dominion and control over the vehicle to support a finding of possession.

Appellant argues that, because the State did not establish that he was the driver of the car, the prosecution was required to show "other incriminating evidence" to establish that he possessed it. Appellant relies primarily on *In re Melvin M.,* 195 Md. App. 477 (2010); however, a closer examination of that case reveals that it is inapposite.

There, the respondent was found involved in the delinquent act of theft of an automobile. *Id.* The evidence presented at trial established that the respondent was found inside of the car shortly after it had been stolen, but no evidence was presented that the respondent actually drove the vehicle or took part in the vehicle's theft. *Id.* In overturning his finding of delinquency, we held that "mere presence in [a stolen vehicle], without more, is insufficient to show possession to sustain a conviction for theft of an automobile." *Id.* at 490. We further held that possession may be shown in these circumstances provided there is other incriminating evidence, such as running from the police or using the vehicle in a crime. *Id.* at 486.

One fact that we made clear throughout our decision in *In re Melvin M.* was that we were dealing with the possession of a stolen vehicle *by a mere passenger*. *See e.g. Id.* at 485 ("…the question before us, whether **a mere passenger in a car** that he knows is stolen may be convicted by [theft]"); *Id.* at 489-490 ("[Certain inferences] usually [do] not apply to **a mere passenger** in a car"); *In re Landon G.,* 214 Md. App. at 496 ("In *In re Melvin M.*, the conceptual lynchpin underlying a finding of possession of a stolen vehicle **by a passenger** is the possession of 'other incriminating evidence'") (Emphasis added to all). In doing so, we reiterated that "dominion and control" were still the driving factors in determining whether anyone, passenger or otherwise, is in possession of stolen property. *See In re Melvin M.,* 195 Md. App. at 490 (To establish joint possession of a stolen vehicle, "the State must present some evidence that the accused took some action which demonstrated his restraining or directing influence over the car").

In the present case, Appellant was not a mere passenger in the car. As we discussed above, he was seen changing the car's tire, an act that can reasonably be construed as directing influence over the car. Appellant then informed Officer De Jesus that he planned to use the vehicle to go to school, further reiterating the reasonable inference that Appellant had "such firm and continuing control of the property" to support an inference of guilt. *Burns*, 149 Md. App. at 553.

Therefore, we find that the evidence was sufficient for the trier of fact to conclude that Appellant was in exclusive possession of stolen property. And because he did not provide a satisfactory explanation for his having exclusive possession of the stolen car,

we also conclude that the evidence was sufficient for the trier of fact to infer that Appellant had guilty knowledge.

For these reasons, we believe that the evidence was sufficient to support the court's finding of involved as to the other two charges against Appellant. *See In re Landon G.,* 214 Md. App. at 504 (A showing of joint possession and guilty knowledge is sufficient to support a finding of involved in violation of Md. Code, Criminal Law § 7-104); *Id.* at 512 (Evidence sufficient to support a finding of involvement under Md. Code, Criminal Law § 7-203(a) is sufficient to support a finding of involvement under Md. Code, Criminal Law § 7-105).

For these reasons, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.