Circuit Court for Charles County
Case No. C-08-CR-22-000067

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1462

September Term, 2022

JEREK PROCTOR

v.

STATE OF MARYLAND

Beachley,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: September 14, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury sitting in the Circuit Court for Charles County convicted Jerek Proctor, appellant, of unauthorized use of a motor vehicle. The court sentenced appellant to one year of incarceration, which the court suspended in favor of three years of unsupervised probation. Proctor noted this appeal, in which he contends that the evidence was insufficient to sustain his conviction.[1] For the reasons that follow, we shall affirm.

BACKGROUND

At trial, Angelic Brewer testified that, on the morning of January 3, 2022, she was driving home from an overnight work shift in Jessup. It was snowing. On her route from Jessup to her home in Waldorf, Ms. Brewer's Jeep became stuck in snow on the Baltimore Washington Parkway for several hours. Ms. Brewer then tried a different route but got stuck again in snow on Route 301 in Upper Marlboro for an unspecified period of time. As she was finally nearing her home, her Jeep got stuck in snow a third time, in the parking lot of Hip Hop Fish & Chicken on Leonardtown Road.

Ms. Brewer exited the Jeep, which was equipped with a push start ignition. The key fob for the Jeep, which must be in the vehicle for it to start, was in the pocket of Ms. Brewer's coat, which she left on the passenger seat.

Proctor approached Ms. Brewer and offered to help her get her car out of the snow. He assured her that he was not going to steal it. Ms. Brewer agreed. Proctor got into the Jeep and "was able to rock it back and forth and get it out." Ms. Brewer testified that "instead of [Proctor] getting out" of the Jeep at that point, he "went up to . . . Ell Lane,

[1] In his brief, Proctor also raised a challenge to a ruling on his request for a jury instruction. On May 15, 2023, Proctor dismissed his appeal of that ruling.

made a right on Leonardtown Road[,]" and "kept going." As Proctor drove away, Ms. Brewer called the police.

After turning onto Leonardtown Road, the Jeep ran into an embankment of snow near Thomas Stone High School. Proctor exited the Jeep and walked back toward Ms. Brewer. He told her that the Jeep had "stopped or turned off." A person at the scene drove Ms. Brewer to her vehicle a short time later. Her coat and keys were still inside the Jeep.

Sergeant Edward Webster of the Charles County Sheriff's Office testified that he was dispatched to Hip Hop Fish & Chicken in response to a report of a carjacking. As he was driving his patrol car southbound on Leonardtown Road, he was informed that the suspect had returned the vehicle and was walking northbound on Leonardtown Road.

Sergeant Webster observed Proctor, who fit the description of the suspect, walking on the road "just north" of Hip Hop Fish & Chicken. Sergeant Webster stopped his vehicle and asked Proctor what happened. Proctor said that the Jeep stopped "because it got too far away from the keys." Proctor claimed that it was a "misunderstanding" and that he was "a good Samaritan."

Proctor was placed into Officer Hazel Ptack's police cruiser.[2] Sergeant Webster followed Officer Ptack's vehicle to the location of the Jeep. The Jeep was "facing into the snow" on the shoulder of the southbound lane of Leonardtown Road, in the area of Thomas Stone High School and Tower Self Storage. Photographs of the Jeep in the location where Proctor left it were admitted into evidence. Also in evidence was an aerial photograph of

[2] Officer Ptack's last name is misspelled "Petac" in the transcript.

Leonardtown Road with labels that showed the location of Ell Lane, Hip Hop Fish & Chicken, Thomas Stone High School, and Tower Self Storage. There was no direct evidence of how far Proctor drove the Jeep.

The State introduced into evidence an audiovisual recording of the interaction between Proctor and Officer Ptack, in which Proctor gave the following version of events:

> I was walking, I said now, I will help you. [Ms. Brewer] said okay, you get in my truck and you can help me out. So I got . . . the truck unstuck and I pulled up here and the key got disconnected from the car because she had it on her and not in the vehicle. Um, and then, . . . the power stopped it right now and I got out and I started going towards you guys. . . . I was just a Samaritan hoping to just help her out.

After the State rested, defense counsel moved for a judgment of acquittal. Counsel argued that the uncontroverted evidence was that Ms. Brewer gave Proctor permission to take control of her car, therefore, the State failed to prove that Proctor took the vehicle without consent. The court denied the motion. As stated earlier in this opinion, the jury found Proctor guilty of unauthorized use of a motor vehicle.

DISCUSSION

The Parties' Contentions

Proctor was convicted of a violation of Criminal Law Article ("CR") § 7-105(b), which makes it a felony to "knowingly and willfully take a motor vehicle out of the owner's lawful custody, control, or use without the owner's consent." Proctor argues that, because it was undisputed that Ms. Brewer gave him consent to take control of her vehicle, he could not be found guilty of violating the statute.

The State asserts that appellant's interpretation of CR § 7-105(b) is "narrow and faulty[.]"[3] We agree with the State.

Standard of Review

"We normally review sufficiency of evidence rulings by whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. McGagh*, 472 Md. 168, 194 (2021) (citations omitted). The issue presented in this appeal, however, is "more a question of statutory construction than a debate over the quantum of proof presented at trial." *Doswell v. State*, 53 Md. App. 647, 649 (1983). Matters of statutory interpretation are reviewed de novo. *Johnson v. State*, 467 Md. 362, 371 (2020).

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature. . . . [W]e begin with the normal, plain meaning of the statute. If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to the legislative intent ends ordinarily and we apply the statute as written without resort to other rules of construction. . . . [T]he plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute."

[3] The State asserts, preliminarily, that Proctor's argument was not preserved for appellate review because his motion for judgment of acquittal was not based on statutory construction. *See, e.g., Mulley v. State*, 228 Md. App. 364, 388-89 (2016) ("The issue of sufficiency of the evidence is not preserved when [the defendant]'s motion for judgment of acquittal is on a ground different than that set forth on appeal." (quotation marks and citations omitted)). Because the circuit court was asked to rule on whether the State had met its burden of production on the element of lack of consent, however, we conclude that the issue was sufficiently preserved for our review. *See Redkovsky v. State*, 240 Md. App. 252, 261 (2019) ("[A] motion for judgment of acquittal may be sufficient to preserve an issue where the acquittal argument generally includes the issue raised on appeal.").

State v. Bey, 452 Md. 255, 265-66 (2017) (quoting *State v. Johnson*, 415 Md. 413, 421 (2010)) (additional citation omitted). "'[P]enal statutes, like other statutes, are to be fairly and reasonably construed and courts should not, by narrow and strained construction, exclude from their operation cases plainly within their scope and meaning.'" *Jones v. State*, 304 Md. 216, 220 (1985) (quoting *State v. Fabritz*, 276 Md. 416, 422 (1975)).

Analysis

The statute at issue here, CR § 7-105, "proscribes the unauthorized use of a motor vehicle." *In re Landon G.*, 214 Md. App. 483, 511 (2013). Section 7-105 has its roots in the general unauthorized use statute, which was originally enacted in 1880 and is currently codified as § 7-203 of the Criminal Law Article. *Id.* at 508. The purpose of CR § 7-203 was "to provide a lesser-included offense to the horse stealing statute . . . by eliminating the need to prove the element of *animus furandi*, or the specific intent to deprive." *Id.*

Section 7-203(a) provides: "Without 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." CR § 7-203(a). A violation of § 7-203 is a misdemeanor punishable by "imprisonment for not less than 6 months and not exceeding 4 years or a fine not less than $50 and not exceeding $100 or both[.]" CR § 7-203(b)(1).

Proctor was convicted of a violation of CR § 7-105, which was enacted in 1995 as a "'special sentence-enhancing spin-off'" of CR § 7-203. *Landon G.*, 214 Md. App. at 509 (quoting Charles E. Moylan, Jr., *Maryland's Consolidated Theft Law and Unauthorized Use*, § 16.1 (MICPEL 2001) ("Moylan"). "'The clear purpose of § [7-105] was to cut the

motor vehicle from the herd of 18 types of chattel covered by § [7-203] and then to provide both felony status and enhanced punishment for the unauthorized use of a motor vehicle."' *Id.* (quoting Moylan, § 16.5). Section 7-105(b) provides: "A person may not knowingly and willfully take a motor vehicle out of the owner's lawful custody, control, or use without the owner's consent." A violation of CR § 7-105 is a felony punishable by "imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both[.]" CR § 7-105(c).

"With the exception of covering certain chattels in addition to a motor vehicle in § 7-203, the language of §§ 7-105(b) and 7-203(a) is virtually identical" and "proscribe[s] the same conduct when the subject property is a motor vehicle." *Landon G.*, 214 Md. App. at 511-512. The only difference between a conviction for unauthorized use of a motor vehicle under the two statutes is the criminal penalty.[4] *Id.* at 512 n.12. As Judge Moylan has noted, "[b]ecause [CR § 7-105] is essentially simply a penalty enhancement for one particular instance of unauthorized use, the case law that has developed since 1880 to deal

[4] As the Supreme Court has noted with regard to the general history of the statutory crime of unauthorized use of a motor vehicle and the reason for sentencing enhancements:

> "It was when 'joy-riding' was at its height that most of the legislative enactments providing a penalty therefor were passed and the mere prevalence of this type of wilful trespass is sufficient to explain the creation of this statutory crime. The severity of the punishment attached (the crime being a felony in many jurisdictions) is attributable to two factors: First, the trespass occasionally resulted in great damage to the car, . . . ; second, the prevalence of this kind of trespass made it very difficult to secure convictions in cases of outright larceny of motor vehicles, because the claim of an intent to return usually seemed plausible."

Jones, 304 Md. at 222-23 (quoting Perkins, *Criminal Law,* 272-73 (2d ed. 1969)).

with unauthorized use law generally will be solid and reliable authority for handling problems as they arise with respect to [CR § 7-105]." Moylan, § 16.6.

Proctor claims that, because CR § 7-105(b) "makes no reference to authorized drivers who exceed the scope of the owner's initial consent," the statute does not apply to "conduct that follows the owner's initial authorization." We do not agree. *Jones, supra*, which was decided before the enactment of CR § 7-105, is instructive. In that case, the owner of a car gave the defendant, a mechanic, permission to take the car in order to perform repairs. 304 Md. at 218. The defendant failed to return the vehicle within two hours, as he had promised, and could not be located. *Id.* Eventually, the defendant was contacted on his home phone and was told to cease further work on the car and remain at home until the owner arrived to retrieve the vehicle. *Id.* at 219. When the owner arrived at the defendant's house, 15 minutes later, both the defendant and the vehicle were gone. *Id.* The defendant was later arrested and was ultimately convicted of unauthorized use of a motor vehicle, pursuant to Article 27 § 349, the predecessor statute to CR § 7-203.[5] *Id.*

[5] At the time *Jones* was decided, Article 27 § 349 provided, in pertinent part:

> Any person . . . who shall enter, or being upon the premises of any other person, . . . shall, against the will and consent of said person . . . , wilfully take and carry away any . . . motor vehicle . . . , or take and carry away out of the custody or use of any person . . . , any of the above-enumerated property at whatsoever place the same may be found, . . . shall upon conviction . . . be adjudged guilty of a misdemeanor, and shall restore the property . . . , although it may appear from the evidence that such person . . . , took and carried away the property or any portion of the same . . . for his . . . present use, and not with the intent of appropriating or converting the same.

(continued…)

On appeal, the defendant argued that he could not be convicted of unauthorized use because the owner of the vehicle gave him permission to drive the vehicle. *Id.* at 221. The Supreme Court rejected that argument and held that, when the defendant continued to use the vehicle "after being told to stop work and leave the vehicle where it was, the bailment relationship came to an end[.]" *Id.* Therefore, because the continued use of the car was without consent, the defendant was not exempt from prosecution for unlawful use of a motor vehicle. *Id*.

Here, although there was no bailment relationship between Proctor and Ms. Brewer, the same general logic applies.[6] It was undisputed that Ms. Brewer gave Proctor consent to take control of her Jeep for the limited purpose of extricating it from an accumulation of snow. Once the purpose for which consent was given was achieved, the consent terminated. Therefore, any use of the Jeep beyond what was reasonably necessary to free it from where it was stuck was without consent. *Accord Overstreet v. Commonwealth*, 435 S.E.2d 906, 908 (Va. Ct. App. 1993) ("[W]here the owner gives consent to a temporary possession or a possession for a limited purpose, the expiration of that qualification creates a constructive revestment of possession in the true owner with 'bare charge or custody' in the other person. A violation of the owner's possessory right constitutes a trespassory taking."); *State v. Rose*, 589 N.E.2d 1315, 1317 (Ohio 1992) (holding that a defendant can

Md. Code (1957, 1982 Repl. Vol.).

[6] "[W]hen one undertakes to repair an automobile, or any other good or chattel, for a consideration, the contract created between the parties is called a bailment for hire." *Jones*, 304 Md. at 219. Here, because there was no consideration given for the temporary transfer of possession of the Jeep, there was no contract, and therefore no bailment.

be convicted of unauthorized use of a motor vehicle where defendant's possession or use extended beyond the scope of the owner's consent); *Bass v. State*, 138 N.W.2d 154, 157 (Wis. 1965) ("Mere permission . . . to move the vehicle from one location . . . to another location on the same premises cannot, under any reasonable interpretation, be construed as implied consent to take the vehicle . . . to an unknown and unlimited destination on an errand completely non-beneficial" or unrelated to the purpose for which permission was given.). *See also* 7A AM.JUR.2D, *Automobiles and Highway Traffic*, § 391 (2017) ("[T]he offense of taking, using, or operating a motor vehicle without the owner's consent may be committed by one whose original possession of the vehicle was lawful, but who subsequently used the vehicle for his or her own purposes without the consent of the owner, or by one who used the vehicle contrary to the instructions of the owner." (footnote omitted)).

In sum, a person who uses a motor vehicle in a manner that exceeds the scope of the owner's consent may be convicted of a violation of CR § 7-105. The evidence at trial was sufficient to support a finding that Proctor's use of the Jeep exceeded the scope of Ms. Brewer's consent. Accordingly, the court did not err in denying Proctor's motion for judgment of acquittal.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.