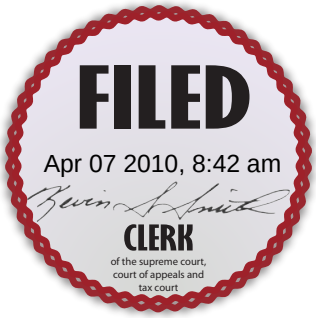

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IN THE
COURT OF APPEALS OF INDIANA

W.M.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0909-JV-942
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
Cause No. 49D09-0905-JD-1301

April 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

W.M., a minor,[1] appeals from a proceeding in which he was adjudicated a juvenile delinquent based on the juvenile court's findings that he committed acts that if committed by an adult would be class D felony receiving stolen property and class A misdemeanor criminal trespass.

We affirm in part and reverse in part.

ISSUE

Whether sufficient evidence exists to support the delinquency adjudication.

FACTS

Snodgrass Sheet Metal Company ("Snodgrass") in Indianapolis has "[p]robably fifty" company vehicles. (Tr. 12). On Friday, April 24, 2009, all of the company vehicles were accounted for; however, on Monday, April 27, 2009, General manager Christopher Meyers arrived at work to find that two of the company's security gates "had been knocked down[,] so we did a check of our vehicles and . . . [a blue 1998 Ford F250 truck] was missing."[2] (Tr. 12). Snodgrass filed a police report with the Indianapolis Metropolitan Police Department ("IMPD").

Five days later, on May 2, 2009, IMPD patrol officer Darrell Patton was patrolling the area of 34th and Emerson Avenue. He pulled into the gas station lot at that intersection and "observed someone up at the driver's door" of a blue truck. (Tr. 4).

[1] W.M. was seventeen years old when the underlying events occurred.

[2] Meyers later testified that the keys were in the truck at the time it was stolen.

When the truck passed Officer Patton, he ran the license plate and "[i]t came back as a wanted vehicle, a stolen vehicle." (Tr. 4). Officer Patton notified dispatch that he had located a stolen vehicle and requested backup assistance. When his backup assistance arrived at the scene, Officer Patton initiated a traffic stop of the blue truck.

W.M. was in the driver's seat, and his cousin was a passenger. When Officer Patton approached the truck, W.M. "gave him a different name than . . . . [h]is real name." (Tr. 9). Officer Patton had W.M. and his passenger get out of the truck, and handcuffed them. He then asked W.M. whether the truck belonged to him. W.M. told Officer Patton that he had just purchased the truck and had proof of purchase in the glove compartment of the truck. Officer Patton searched the glove compartment for "a bill of sale, a registration to the vehicle, anything that might state that [W.M.] did in fact own the vehicle." (Tr. ??). He found no evidence supporting W.M.'s claim of ownership; rather, he found a vehicle registration that indicated that Snodgrass was the "rightful owner of the vehicle." (Tr. 6).

On May 5, 2009, the State filed a delinquency petition alleging that W.M. had committed the acts, which if committed by an adult, would be auto theft; receiving stolen property, and criminal trespass. At the denial hearing held on August 5, 2009. Meyers and Officer Patton testified to the foregoing facts. Meyers testified that the truck had been returned in poor condition with a damaged windshield and with Snodgrass' signage and identifying marks "scraped off and some of it hit with blue spray paint." (Tr. 16).

W.M. then took the stand and testified that when the police pulled him over, he did not disclose the fact that he occasionally used a different surname because "they really didn't even ask me that." (Tr. 35). He testified that he "came into contact with the [truck]" through an individual who had sold him his first car. (Tr. 22). He identified the seller of the truck only as "a white male" and a 'regular neighbor type"; nor could he identify the individual who had previously sold him a car, and who had introduced him to the seller of the truck. (Tr. 23). He further testified that the men "had called [him], they was [sic] blowing my phone up, telling [him] that they have another . . . vehicle for [him]." (Tr. 23).

Additionally, W.M. testified that the "person [he] bought the car from . . . told [him] that the paperwork was in the glove box"; and that he "glanced" at it, but had not read it closely. (Tr. 29, 34). Under cross examination, W.M testified as follows:

> Q: . . . [Y]ou said you also knew that there was paperwork in the glove box, is that right?
> A: Yes. It was . . .
> Q: Okay. And you said you looked at it but . . .
> A: I looked . . . I looked . . .
> Q: . . .Didn't really read it?
> A: . . . I glanced at it. Yes. I didn't, you know what I mean[,] [s]ee what, who . . .
> ***
> [A:] . . . Had the signature under there. You know what I mean?
> Q: Okay. I mean you didn't look to see whose name it was in?
> A: No, ma'am.
> Q: If it was in this person that you didn't really know his name?
> A: . . . Tell you the truth ma'am. I really didn't even care because you know what I mean? It was just so, so low of a price I was anxious to get it off his hands because you know what I mean? I found that it was . . . . I thought that it was a deal.

***
***
Q: And so since it was a good deal on a car you just thought, "Hey, I'm just gonna get it." "I don't really . . . ."
A: Yes, ma'am.
Q: ". . . Care where it came from?"
A: Yes, ma'am.
Q: Okay.
A: Long as it was legitimate, I was, wasn't even caring.

(Tr. 34-35).

W.M. testified that although the truck had been in [h]orrible condition," he had been attracted by "how low the price was"; however, he could not "even remember the [purchase price[3]]. It was so small." (Tr. 34, 24). Although W.M. initially testified that the truck had no identifying markings, he later testified that the side of the truck "looked to be, seemed like sprayed over or something . . . like spray paint," (tr. 29); and that he had "seen like indents coming out of the spray paint . . . ." (Tr. 29, 30). Lastly, W.M. testified that the seller had provided him with a receipt; however, he did not initially volunteer this information when Officer Patton asked for proof of purchase. He testified that he did not have the receipt with him when Officer Patton pulled him over, because his mother had asked to keep it in her possession, "just in case something happened." (Tr. 30).

At the close of the evidence, the juvenile court entered true findings as to the receiving stolen property and criminal trespass counts.[4] W.M. now appeals.

[3] W.M.'s Exhibit A, the receipt, indicates a purchase price of $1,000.00.

[4] The trial court entered a not true finding on the auto theft count.

DECISION

W.M. argues that the State failed to submit sufficient evidence to prove that he received stolen property because the State did not prove "that [he] knew that the Truck was stolen when he purchased it." W.H.'s Br. at 3. He also argues that the evidence is insufficient to prove that he committed criminal trespass because the State failed to prove that he "knew that the truck belonged to Snodgrass when he drove it." W.H.'s Br. at 3.

> When the State seeks to have a juvenile adjudicated to be a delinquent for committing an act that would be a crime if committed by an adult, the State must prove each element of the crime beyond a reasonable doubt. When reviewing a juvenile adjudication, this Court will consider only the evidence and reasonable inferences supporting the judgment, and will neither reweigh the evidence nor judge witness credibility. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed the delinquent act, we will affirm the adjudication.

J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), *trans. denied.*

1. Receiving Stolen Property

In order to prove that W.M. committed an act that would be class D felony receiving stolen property if committed by an adult, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally received, retained, or disposed property that belonged to another person that has been the subject of theft. I.C. § 35-43-4-2.

"Knowledge that the property is stolen may be established by circumstantial evidence; however, knowledge of the stolen character of the property may not be inferred solely from the unexplained possession of recently stolen property." *Barnett v. State*, 834

N.E.2d 169, 172 (Ind. Ct. App. 2005). "The test of knowledge is a subjective one, asking whether the defendant knew from the circumstances surrounding the possession that the property had been the subject of a theft." *Id*. (quoting *Purifoy v. State*, 821 N.E.2d 409, 414 (Ind. Ct. App. 2005)). "Possession of recently stolen property when joined with attempts at concealment, evasive or false statements, or an unusual manner of acquisition may be sufficient evidence of knowledge that the property was stolen." *Id.* *See Driver v. State*, 725 N.E.2d 465 (Ind. Ct. App. 2000) (trier of fact may infer defendant's knowledge that the property is stolen from possession coupled with facts like the defendant lying about how he acquired the property).

The following evidence was presented at the denial hearing: The truck was stolen from Snodgrass' premises between April 24, 2009 and April 27, 2009. Five days later, on May 2, 2009, Officer Patton found W.M. in possession of the truck. Portions of the truck had been scratched and Snodgrass' signage had been visibly spray painted over. W.M. claimed to have purchased the truck recently and that he had proof of purchase in the glove box; however, Officer Patton found no evidence whatsoever to indicate that W.M. had bought the truck. W.M. never advised Officer Patton that he had a receipt at home. W.M. also provided a different name than the one he ordinarily used.

In addition, W.M. could not recall the seller's name and was either unwilling or unable to disclose the name of the person who had introduced them. He testified further that the individual who had previously sold him a car and the seller of the truck had contacted him several times, with apparent urgency, trying to spur him to purchase the

1998 Ford F250 pickup truck in a quick transaction. The receipt that W.M. received from the seller does not identify that individual in any way.

The evidence presented at trial thus revealed that (1) W.M. was found in possession of the truck five days after it was stolen; (2) the side panels of the truck had been scratched and spray painted in an unsuccessful attempt to fully conceal Snodgrass' identifying markings; (3) W.M. made evasive or false statements about his given name and about having documentation of the purchase in the glove box; (4) W.M. acquired the truck in an unusual manner as evidenced by his inability/unwillingness to name any of the parties related to his acquisition of the vehicle; (5) the fact that the receipt did not identify the seller; and (6) W.M. ignored many of the warning signs, including the purchase price being so low.

We find that the juvenile court could reasonably have inferred that W.M. knew that the truck was stolen from the evidence presented at the denial hearing. *See Barnett*, 834 N.E.2d at 172 ("Possession of recently stolen property when joined with attempts at concealment, evasive or false statements, or an unusual manner of acquisition may be sufficient evidence of knowledge that the property was stolen."). Thus, we conclude that the evidence was sufficient to prove that W.M. knowingly or intentionally received stolen property.

2. Criminal Trespass

W.M. argues that the State failed to present sufficient evidence that he committed criminal trespass because the State failed to prove that he "knew that the truck belonged to Snodgrass when he drove it." W.M.'s Br. at 3.

S*ua sponte*, we consider whether the juvenile court's true findings as to both receiving stolen property and criminal trespass violated Indiana's prohibition against double jeopardy. Our Supreme Court has established a two-part test for analyzing state double jeopardy claims. Under that test, multiple offenses are the same offense in violation of Article 1, section 14, "if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." *Richardson v. State*, 717 N.E.2d 32, 49 (Ind. 1999).

Under the actual evidence test, we must determine whether there is a reasonable possibility that the evidentiary facts relied upon by the trier of fact to establish the essential elements of one offense may also have been used to establish all of the essential elements of the other offense. *See Davis v. State*, 770 N.E.2d 319 (Ind. 2002); *see also Bradley v. State*, 867 N.E.2d 1282 (Ind. 2007) (the proper inquiry is not whether there is a reasonable probability that the trier of fact used different facts, but whether it is reasonably possible it used the same facts to convict the defendant of both charges). Such is the case herein.

As noted above, to prove that W.M. committed an act that would be class D felony receiving stolen property if committed by an adult, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally received, retained, or disposed of property that belonged to another person that had been the subject of theft. I.C. § 35-43-4-2. On the other hand, to prove that W.M. committed an act that would constitute class A misdemeanor criminal trespass if committed by an adult, the State was required to prove that he knowingly or intentionally interfered with the possession or use of the property of another person without the person's consent. I.C. § 35-43-2-2(a)(4).

Here, although the evidence was sufficient to prove that W.M. committed the offense of receiving stolen property when he knowingly or intentionally received and retained Snodgrass' truck that was the subject of theft, we are not persuaded that the juvenile court relied on separate and distinct facts to establish that W.M. also committed the offense of criminal trespass when he knowingly or intentionally interfered with Snodgrass' possession or use of the truck as a separate offense. Simply put, we cannot conceive how an individual can receive/retain the stolen property of another without simultaneously interfering with that person's possession and use of said property. Thus, under these unique facts and circumstances, we conclude a reasonable possibility exists that the evidentiary facts relied upon by the juvenile court to establish the essential elements of the offense of receiving stolen property offense may also have been used to establish the essential elements of the offense of criminal trespass offense, in violation of the prohibition against double jeopardy.

Accordingly, we affirm the juvenile court's true finding as to receiving stolen property, but must reverse its true finding as to the criminal trespass charge and order that said true finding be vacated.

Affirmed in part and reversed in part.

BAKER, C.J., and CRONE, J., concur.