

RENDERED: April 9, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-000151-MR

MARIO ANDRETTI REED

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELEER, JR., JUDGE
ACTION NO. 96-CR-00139

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, EMBERTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Mario Andretti Reed (Reed) appeals from the judgment of the Hopkins Circuit Court entered on January 8, 1997, which convicted Reed of the unauthorized use of a motor vehicle, in violation of Kentucky Revised Statutes (KRS) 514.100 for which Reed received a twelve-month jail sentence. Reed argues that the trial court erred in denying his motions for a directed verdict. We affirm.

Reed was indicted on one count of robbery in the first degree, one count of theft by unlawful taking and one count of

unlawful transaction with a minor in the second degree. The case went to a jury trial in November 1996.

Crystal Cruce (Cruce) testified that on the evening of June 30, 1996, she drove to Evansville, Indiana to pickup Reed to take him to his mother's house in Madisonville, Kentucky. Cruce and Reed were dating at that time. Cruce testified that on the drive to Madisonville, Reed told her that he was going to rob the Kentucky Fried Chicken store (KFC) which was only a five-minute walk from his mother's house. Cruce testified that Reed was acting strangely and when Reed showed her a handgun she became frightened. When they arrived at his mother's house, Reed and Cruce argued. Cruce went into the house and Reed left the house on foot.

At 9:47 p.m. that evening, the KFC was robbed by a man three KFC employees identified as Reed. Cruce testified that fifteen to twenty minutes after Reed left the house on foot, she and Reed's mother, Linda Ann Lester (Lester), heard a noise, looked outside and discovered that Cruce's car was missing. Lester drove Cruce home around 4:30 a.m. the following morning. On July 1, 1996, Cruce's sister reported to the police that Cruce's car had been stolen at approximately 10:00 p.m. the previous evening. Cruce testified that Reed frequently used her car with her permission, and previously had always returned it. She claimed that Reed did not ask for and she did not give him permission to take her car on June 30, 1996.

Lester testified that Reed left her residence driving Cruce's car. Lester stated that she found Reed in Evansville,

Indiana the next day and that he gave her the keys to Cruce's car and told her that the car was located in the driveway of a particular house in Providence, Kentucky. Lester contacted the police and told them what Reed had told her. The police recovered Cruce's car from the location Reed had given to Lester.

Shelley Hathaway (Hathaway) testified that she met Reed for the first time late in the evening on June 30 and they spent the remainder of the evening smoking crack cocaine. She testified that Reed parked a car and left it in the same location Reed had described to Lester. Hathaway could not describe the car.

Reed twice moved the trial court for a directed verdict of acquittal. Both motions were denied. The jury was unable to reach a verdict on the robbery in the first degree count and the trial court declared a mistrial as to this count. The unlawful transaction with a minor count was dismissed by the trial court upon the request of the Commonwealth. The jury acquitted Reed of the theft by unlawful taking count, but convicted him of the unauthorized use of a motor vehicle. This appeal followed.

Reed argues that the trial court erred in refusing to enter a directed verdict of acquittal. He contends that the Commonwealth failed to prove that he took the car, who owned the car, and whether or not the vehicle that was recovered was the same vehicle that was reported missing.

The standard of review for denial of a motion for a directed verdict based on insufficient evidence is set forth in Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991), as follows:

"On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony."

Id. at 187 (citation omitted).

KRS 514.100(1) defines the unauthorized use of a vehicle as follows:

A person is guilty of the unauthorized use of an automobile or other propelled vehicle when he knowingly operates, exercises control over, or otherwise uses such vehicle without consent of the owner or person having legal possession thereof.

Cruce testified that on June 30, she did not give Reed permission to use her car. Lester testified that Reed took Cruce's car. She further testified that Reed gave her the keys to Cruce's car and explained where the car was located. Hathaway testified that late in the evening of June 30, Reed parked a car in that same location he described to Lester. The police found the car parked in the same driveway of the same house in Providence which Reed had described to Lester and Hathaway described to the trial court. This certainly constitutes sufficient evidence to induce a reasonable juror to believe beyond a reasonable doubt that on June 30, 1996, Reed used Cruce's car without her consent.

As to Reed's contention that the Commonwealth failed to prove the ownership of the car, the statute requires that the

defendant must knowingly operate the vehicle without the consent of the owner or the person having legal possession thereof. Cruce testified that "they" bought the car for her. In the context of her testimony, "they" refers to her sister, who was her legal guardian, and presumably her sister's husband. Cruce testified that she drove the car wherever she wanted. Based upon these facts, a reasonable juror could conclude, at a minimum, that Cruce had legal possession of the car. Thus, proof of ownership of the car was not required to convict Reed since he could also have been convicted based upon not having gained the consent of Cruce, who had legal possession of the car.

There was sufficient evidence to convict Reed of the unauthorized use of a vehicle. The trial court properly denied Reed's motions for a directed verdict. The judgment of the Hopkins Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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