

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDON DANE MULLINS,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

BRANDON DANE MULLINS,

Respondent-Appellant.

UNPUBLISHED

May 6, 2008

No. 278025

Wayne Circuit Court

Juvenile Division

LC No. 04-433764-DL

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant Brandon Dane Mullins appeals as of right his conviction for receiving and concealing stolen property, MCL 750.535(7).¹ We affirm.

Defendant's argument on appeal focuses on the sufficiency of the evidence underlying his conviction. Specifically, defendant argues that the testimony did not show that he bought, received, possessed, concealed, or aided in the concealment of the stolen property nor was there any evidence presented as to the fair market value of the stolen property.

In reviewing the sufficiency of the evidence, this Court views the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In reviewing a sufficiency challenge, we are mindful that the fact-finder had the special opportunity to assess

¹ Defendant also contends that the trial court committed "clear error" in finding him guilty beyond a reasonable doubt of a curfew violation. The curfew violation charge, however, was dismissed by the trial court. Therefore, this issue is moot and will not be addressed by this Court.

the credibility of the witnesses that appeared before it. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

MCL 750.535(7) provides that “[a] person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen, embezzled, or converted.”² In *People v Allay*, 171 Mich App 602, 608; 430 NW2d 794 (1988), this Court noted that:

[t]he essential elements for a conviction pursuant to the receiving and concealing statute require proof (1) that some property was stolen, (2) that the defendant bought, received, concealed, possessed, or aided the concealment of the same, (3) that the property is identified as property previously stolen, and (4) that the defendant had knowledge of the stolen nature of the property at some time during his wrongful course of conduct.³

At trial, there was testimony that defendant was found inside a stolen vehicle at 1:30 a.m. Officer Steven Osborne observed that the steering column of the vehicle was “torn up” and a screwdriver was lying there. In addition, the ignition was “all punched out” and destroyed. After Officer Osborne noticed the steering column destroyed, defendant “stated that he knew the vehicle was stolen and a friend of his stole it and picked him up and they went for a ride.” Thus, the evidence supported the conclusion that the vehicle was stolen, it was identified as previously stolen, and defendant had knowledge that it was stolen.

The evidence was also sufficient with respect to the remaining element whether defendant bought, received, concealed, possessed, or aided in the concealment of the same. Michigan courts have held that the term “possession” includes both actual and constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Possession is a question of fact for the fact-finder. *Id.* at 469. “[A] person has constructive possession if there is proximity to the article together with indicia of control.” *Id.* at 470. “[A] person has constructive possession if he knowingly has the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person.” *Id.* (internal quotations and citation omitted). Possession may be sole or joint. *Id.* Constructive possession may be proved by circumstantial evidence and drawing reasonable inferences therefrom. *Id.* at 469; *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975). A rational trier of fact could reasonably infer, based on the evidence, that defendant was in joint possession of the stolen vehicle when he decided to get into the van and ride around in it. Thus, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant possessed a stolen motor vehicle knowing that the

² MCL 750.535(7) was amended by 2006 PA 374, effective October 1, 2006. The amendment does not apply to this case.

³ MCL 750.535(7) does not have a specific fair market value requirement. Therefore, this Court will not address defendant’s argument that his conviction is not supported by sufficient evidence because plaintiff failed to present evidence as to the fair market value of the stolen property.

motor vehicle was stolen. MCL 750.535(7); *Wilkins, supra*. Defendant's conviction is supported by sufficient evidence.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski