

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TORREY REMEL BRISBANE,

Defendant-Appellant.

UNPUBLISHED

August 21, 2008

No. 277365

Wayne Circuit Court

LC No. 06-012990-01

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of receiving and concealing a stolen motor vehicle, MCL750.535(7). He was sentenced to concurrent prison terms of two years and six months to five years for each offense to run consecutively to a parole violation sentence. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence adduced below to prove beyond a reasonable doubt that he was guilty of both counts of receiving and concealing a stolen motor vehicle. We disagree. We review challenges to the sufficiency of the evidence *de novo*, considering the evidence in the 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 Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Therefore, on review all reasonable inferences and credibility choices are made in support of the jury verdict. *Id.* at 400.

Defendant was convicted for receiving and concealing two stolen motor vehicles, a Dodge Caravan and a Dodge Ram truck, under MCL750.535(7), which provides that “[a] person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing, or having reason to know or reason to believe, that the motor vehicle is stolen, embezzled, or converted.” Therefore, to prove defendant’s guilt, the prosecutor must prove (1) that the motor vehicle was stolen, (2) that the defendant bought, received, concealed, possessed, or aided the concealment of the vehicle, (3) that the vehicle is identified as the vehicle previously stolen, and (4) that the defendant had knowledge of the stolen nature of the vehicle at some time during his wrongful course of conduct. *People v Allay*, 171 Mich App 602, 608; 430 NW2d 794

(1988). Defendant argues that the prosecution failed to prove the possession and guilty knowledge elements of the statute.

As a question of fact, the issue of possession is reserved to the fact-finder. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Possession may be established through reasonable inferences drawn from circumstantial evidence. *Id.* at 469; *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975). Moreover, in Michigan, possession encompasses both actual and constructive possession. *Id.* at 470. “[A] person has constructive possession if there is proximity to the article together with indicia of control.” *Id.* at 470. Therefore, so long as the defendant has constructive possession, the prosecution does not need to prove actual physical possession. *People v Terry*, 124 Mich App 656; 335 NW2d 116 (1983).

Taking into consideration all the facts surrounding the use of these stolen vehicles in a light most favorable to the prosecution, a reasonable jury could find that defendant possessed both vehicles. In regards to the Dodge Caravan, defendant, while under police surveillance, was observed in actual possession of the vehicle as he drove it from the field to the street. Although defendant argues that his possession was “temporary,” there is no time requirement in the statute; therefore, on the record, there was sufficient evidence that defendant was in actual possession of the stolen Dodge Caravan. In regards to the Dodge Ram truck, the evidence was also sufficient to find that defendant was in constructive possession of the vehicle. He was observed taking the tires off of the truck, which was located in the field next to where he was staying, while its engine was still running. The evidence indicates proximity to and control over the truck.

In addition to possession, defendant must also have had knowledge of the vehicles’ stolen status to be convicted of the crime of receiving and concealing a stolen motor vehicle. *People v Ainsworth*, 197 Mich App 321, 324-325; 495 NW2d 177 (1992). Direct evidence of guilty knowledge is rarely available and generally must be inferred from the surrounding circumstances. *People v Salata*, 79 Mich App 415, 421; 262 NW2d 844 (1977). Furthermore, “[k]nowledge concerning the status of a stolen item encompasses not only actual knowledge, but constructive knowledge, through notice of facts and circumstances from which guilty knowledge may fairly be inferred.” *People v Wilbert*, 105 Mich App 631, 637; 307 NW2d 388 (1981).

Defendant argues the prosecution failed to establish that defendant knew the vehicles were stolen with either direct or circumstantial evidence. However, this Court has previously held that guilty knowledge can be inferred in similar circumstances. See *People v Biondo*, 89 Mich App 96, 98; 279 NW2d 330 (1979), where the defendant claimed there was insufficient evidence to show his guilty knowledge for receiving and concealing stolen property. When the police took possession of the vehicle from the defendant, however, they discovered that the ignition housing was damaged. *Id.* at 98. This Court held that a jury could infer the guilty knowledge element when the person is in possession of a motor vehicle with readily detectable damage to the ignition switch. *Id.* at 98. As in *Biondo*, defendant in this case was in possession of vehicles that had noticeable damage to their steering columns and ignition systems. Furthermore, the Dodge Caravan had the contents of the ignition system strewn about in the inside of the vehicle. While under police surveillance, the defendant was observed driving the Dodge Caravan, and it was reasonable to infer that, as he was driving, he would have noticed the damage to the steering column and the ignition parts strewn in the vehicle. In regards to the Dodge Ram truck, the damage to the steering column and the fact that the vehicle was on blocks in a field with the engine running while defendant removed the tires supports that defendant

knew the vehicle was stolen. Defendant was acting in a hurry and, as soon as he removed the tires, he and his companion quickly moved them from the field and hid them from view in the house. The circumstantial evidence and reasonable inferences, when viewed in the light most favorable to the prosecution, is sufficient to meet the guilty knowledge element of receiving and concealing a stolen motor vehicle with respect to both vehicles.

We find, considering the totality of the circumstances in this case as set forth in the record, that there was sufficient evidence to support both counts of receiving and concealing a stolen motor vehicle.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens