

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MICHAEL AMARAL, *Appellant*.

No. 1 CA-CR 17-0771
FILED 8-28-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-138453-001
The Honorable Virginia L. Richter, Judge *Pro Tempore*

AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Paul J. Prato
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Maria Elena Cruz joined.

T H U M M A, Chief Judge:

¶1 Michael Amaral was convicted of unlawful use of means of transportation and unlawful flight from a law enforcement vehicle. Amaral appeals the unlawful use of means of transportation conviction and resulting sentence, claiming the evidence was insufficient to show he knowingly took unauthorized control of the vehicle. Because the trial evidence was sufficient, his conviction and resulting sentence are affirmed as modified to correctly state the offense upon which he was convicted and sentenced.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In June 2016, Amaral entered into an agreement to buy a 2001 Hyundai Sonata from the victim F.G. F.G. agreed to sell Amaral the Hyundai on the condition he do some work on two other vehicles and pay her \$650.

¶3 On June 14, 2016, after Amaral completed work on the two vehicles, Amaral asked F.G., “Can I use the car to go to my sister’s house to get the money? I will be back tonight.” F.G. said, “Sure,” “assum[ing]” Amaral would bring the money that night. Amaral, however, did not return that night. Over the next four days, F.G. unsuccessfully tried to contact Amaral. On June 18, 2016, F.G. reported to the police her car was missing, testifying at trial she was afraid “there would be a car accident, and since the car was still under my name that I would be held responsible.” On cross-examination, F.G. testified that, when she reported the missing car, she “could have” told the police that Amaral had told a mutual friend that he was using the car and would pay F.G. as soon as he could. F.G. also testified that she may have heard “one time that evening” that Amaral “was on his

¹ This court views the facts in the light most favorable to sustaining the verdicts and resolves all reasonable inferences against the defendant. *State v. Harm*, 236 Ariz. 402, 404 n.2 (App. 2015) (citing *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

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way to give [her] the money." The record indicates, however, that Amaral never paid F.G. the \$650.

¶4 On June 22, 2016, two City of Tempe police detectives, while on patrol in an unmarked vehicle, noticed a 2001 Hyundai Sonata. They ran the car's license plate and learned it had been reported stolen. After requesting backup, the detectives followed the Hyundai onto the freeway. Two marked patrol vehicles then pulled up behind the car and ordered Amaral to pull over.

¶5 Later, when the car stopped, one of the detectives drew his gun, approached the car and issued commands to the driver. The driver "stared directly at" the detective, "did not listen to [the] commands" and sped off. Both detectives later identified Amaral as the driver of the Hyundai. A few days later, police recovered the Hyundai. When police called F.G. to let her know they recovered the car, F.G. said she still had not heard from Amaral.

¶6 In August 2016, Amaral was charged with (1) theft of means of transportation, a Class 3 felony, and (2) unlawful flight from a law enforcement vehicle, a Class 5 felony. At a jury trial in May 2017, after the State rested, Amaral unsuccessfully moved for a judgment of acquittal. *See Ariz. R. Crim. P. 20(a) (2018).*² After argument and final instructions, the jury found Amaral guilty of the lesser included offense of unlawful use of means of transportation, a Class 5 felony, for Count 1 and guilty as charged of unlawful flight for Count 2. At sentencing, Amaral admitted to historical prior felony convictions and the court found he violated probation imposed in another case. The court sentenced Amaral to presumptive, consecutive sentences of five years,³ to be served consecutively to sentences imposed in the probation case and in another case.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

³ The sentencing minute entry incorrectly states Amaral (1) was guilty of theft of means of transportation, a Class 3 felony, for Count 1, and (2) was sentenced as a non-repetitive offender for both offenses. Given the record in this case, the court corrects that minute entry so that it reflects (1) the conviction for Count 1 was for the lesser included offense of use of means of transportation, a Class 5 felony, and (2) he was sentenced as a repetitive offender, with two historical prior felony convictions, *see A.R.S. § 13-702*, for both Counts. *See State v. Ovante*, 231 Ariz. 180, 188 ¶ 38 (2013) (allowing

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¶7 This court has jurisdiction over Amaral's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and 13-4033(A).

DISCUSSION

¶8 Amaral does not challenge the unlawful flight conviction. Instead, he argues that the superior court erred by denying his motion for judgment of acquittal, claiming the evidence was insufficient to show that he knowingly took unauthorized control of the Hyundai. A court is directed to grant a motion for judgment of acquittal "if there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, 562 ¶ 16 (2011) (citations omitted). This court reviews the sufficiency of the evidence *de novo*, "viewing the evidence in a light most favorable to sustaining the verdict." *State v. Bible*, 175 Ariz. 549, 595 (1993).

¶9 Amaral points out that his agreement with F.G. states he would take possession of the Hyundai on June 14, 2016 and did not specify when the \$650 was due. Amaral argues that this agreement, and F.G.'s acknowledgement that she may have received a message from Amaral about paying her as soon as he could, show Amaral did not know he was required to return the Hyundai, even though he did not pay on the day he said he would pay.

¶10 The sufficiency of the evidence is tested "against the statutorily required elements of the offense." *State v. Pena*, 209 Ariz. 503, 505 ¶ 8 (App. 2005). As applicable here, "[a] person commits unlawful use of means of transportation if, without intent permanently to deprive, the person . . . [k]nowingly takes unauthorized control over another person's means of transportation." A.R.S. § 13-1803(A)(1). Evidence of knowledge may be circumstantial; "the defendant's mental state will rarely be provable by direct evidence." *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996).

¶11 On this record, there was sufficient evidence for the jury to conclude that the State proved, beyond a reasonable doubt, that Amaral knowingly took unauthorized control of F.G.'s Hyundai. After telling F.G.

sentencing minute entry to be corrected on appeal when record clearly identifies intended sentence).

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he would use the car to get the \$650 to pay her on June 14, 2016, he failed to do so. F.G.'s testimony that Amaral never contacted her about payment in the days that followed further supports the inference that he knowingly took unauthorized control over the Hyundai. This is true even if, as Amaral claims on appeal, that testimony was disputed. *See State v. Lee*, 151 Ariz. 428, 429 (App. 1986) (noting that when inconsistencies are made plain to the jury, the issue is not sufficiency of the evidence but whether the jury finds the witness credible). Finally, Amaral's flight from police while driving the Hyundai is further evidence of guilt. *See State v. Cota*, 229 Ariz. 136, 142 ¶ 11 (2012). On this record, there was sufficient evidence to support guilt, meaning the superior court properly denied the motion for judgment of acquittal.

CONCLUSION

¶12 Amaral's conviction and sentence is affirmed as modified to correctly reflect that (1) the conviction for Count 1 was for the lesser offense of use of means of transportation, a Class 5 felony, and (2) he was sentenced as a repetitive offender, with two historical prior felony convictions, for both Counts.



AMY M. WOOD • Clerk of the Court
FILED: AA