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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-002018-MR

WILLIAM JOSEPH MADDEN

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE JANET J. CROCKER, JUDGE
ACTION NO. 14-CR-00040

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, JONES, AND TAYLOR, JUDGES.

JONES, JUDGE: An Allen Circuit Court jury convicted William Joseph Madden of theft by unlawful taking, automobile, over \$10,000; theft by unlawful taking, value under \$500; and being a first-degree persistent felony offender. The jury recommended a total sentence of twenty-years' imprisonment; however, the trial

court reduced the sentence pursuant to KRS¹ 532.070, lowering the total sentence to twelve-years' imprisonment.

Madden now appeals, contending that the judgment must be reversed due to insufficient evidence for the offense of theft by unlawful taking, automobile, over \$10,000. We find no reversible error and affirm the trial court's judgment.

I. FACTUAL AND PROCEDURAL HISTORY

According to the Commonwealth's proof, on the evening of March 14, 2014, Cy Williams was at home watching television when he heard one of the vehicles in his driveway being started. Cy immediately looked out of the window, and witnessed his father Braddie Williams' truck being driven away. Cy called out to his father to confirm that he was still in the house, and after Braddie responded, Cy advised him that his truck was being stolen.

At Braddie's instruction, Cy got into his car and followed the suspect, remaining less than a quarter of a mile away. Cy testified that the stolen truck was going about thirty miles per hour, that it was swerving slightly, and that he was following closely enough that the driver of the truck would have been easily able to see Cy's headlights. Cy stated that he only lost sight of the truck briefly at the top of a hill. As Cy closed in on the truck, it pulled into the back of a church located approximately one mile from the Williams' residence, and parked. Cy testified that he drove about two hundred feet past the entrance of the church and

¹ Kentucky Revised Statutes.

backed into the next driveway with his lights off. The truck was visible from the road and from the location where Cy parked.

Cy watched the truck for two or three minutes, waiting to see if the driver of the vehicle was going to drive away or if someone was going to get out of the vehicle. As Cy watched, his father arrived in another vehicle and pulled close to where the driver of the stolen truck had parked. Upon seeing his father arrive, Cy too pulled his vehicle closer to the stolen truck. When Cy got closer, he witnessed his father speaking with Madden—a man he had never seen before. Cy's father asked Madden what he was doing, and Madden stated that he was just out for a walk.

After Cy informed his father that his credit and debit cards were missing from his truck, the conversation between Braddie and Madden began to get more heated. Suddenly, Madden began running away. Cy and Braddie gave chase and when Cy was within five feet of Madden, Madden fell down. Cy testified that Madden got up from the ground swinging his fists. At that point, Braddie and Madden began to wrestle. Braddie eventually gained control of Madden and placed him in a headlock until the police, whom Elaine, Braddie's wife, had called earlier, arrived.

Braddie testified that after the police arrived, he walked back to his truck to have a look at it. He stated that there was no damage to the truck and the key had been left in the ignition. However, it appeared as though the truck had been

rummaged through as there were papers from the glove compartment and the console strewn about everywhere.

Upon arrival, police officers took Madden into custody and a subsequent search of Madden's person found the Williams' credit and debit cards, and a pocket knife. Both police officers testified that they thought Madden was intoxicated because he smelled of alcohol and was irate.

Madden did not dispute the Commonwealth's version of the events. However, Madden denied that he intended to permanently deprive the Williamses of the truck. Madden testified that he had been drinking at his home all night and eventually passed out. When he came to, he was walking down the road and realized he needed to buy more beer. He did not have any money so naturally he decided to look through unlocked vehicles for change and other valuables. Eventually, he came to the Williamses residence which was less than a mile from his home.

After rummaging through Cy's vehicle, Madden noticed that the keys to Braddie's truck had been left in the ignition. He decided that he would take the truck, drive to Bowling Green to purchase more beer, and return the truck to an area where the Williamses could find it. Madden claims that immediately after he began the approximately eighteen mile drive to Bowling Green, he realized he was too drunk to drive, so he decided to pull over, leave the truck in the church parking lot, and walk home. He insists that that he did not know he was being followed by

the Williamses and only pulled behind the church because he wanted to get the truck “a little bit out of sight.”

Madden moved for a directed verdict on the charge of theft by unlawful taking, automobile, value over \$10,000 at the close of the Commonwealth’s proof and again at the close of all of the evidence. Madden based his motion on his belief that the Commonwealth failed to prove that he intended to deprive Braddie of the truck. The trial court denied the motion, specifically finding that the Commonwealth had met its burden on each element of the offense. The jury eventually convicted Madden on all charges. This appeal follows.

II. ANALYSIS

On appeal, Madden claims that the trial court improperly denied his motion for a directed verdict on the offense of theft by unlawful taking, automobile, over \$10,000. Specifically, he insists that the Commonwealth failed to: 1) prove that he took the property with the intent to deprive the owner thereof; and 2) prove that the value of the property exceeded \$10,000.

When ruling on a directed verdict, the trial court must view the evidence in favor of the Commonwealth. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). A directed verdict should not be given if a reasonable juror could find the elements of the crime proven beyond a reasonable doubt. *Id.* The trial court must assume that evidence proffered by the Commonwealth is true, but should defer questions of credibility and weight of the evidence to the jury. *Id.* On

appellate review, “if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.” *Id.*

Madden first claims that the trial court erred in denying his motion for a directed verdict because the Commonwealth failed to provide evidence sufficient for the jury to find that Madden intended to deprive Braddie of the truck. We disagree.

Theft by unlawful taking is codified in KRS 514.030 and reads, in relevant part:

[A] person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with the intent to deprive him thereof...

Defined in KRS 514.010, “deprived” means:

(a) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value or with intent to restore only upon payment of reward or other compensation; or

(b) To dispose of the property so as to make it unlikely that the owner will recover it.

Madden asserts that he never intended to keep the truck permanently and was only going to use the truck in order to drive to Bowling Green to purchase beer. He insists that after he was finished using the truck, he was going to leave it in a location where it would be easy for the Williamses to find. In support,

Madden highlights that when he realized he was too intoxicated to drive, he parked the truck less than a mile from the Williams' home, unharmed, and with the keys left in the ignition. Additionally, he asserts that although he parked the vehicle behind the church, it was clearly visible from the road.

Kentucky Courts have long held that direct evidence is unnecessary to prove a defendant's state of mind. *Quisenberry v. Commonwealth*, 336 S.W.3d 19, 36 (Ky. 2011) (citing *Rogers v. Commonwealth*, 315 S.W.3d 303 (Ky. 2010)). State of mind may be established by circumstantial evidence including actions preceding and following the charged offense, as well as the defendant's knowledge and the surrounding circumstances. *Id.* The jury has wide latitude in inferring intent from the evidence. *Anastasi v. Commonwealth*, 754 S.W.2d 860, 862 (Ky. 1988). Sufficient circumstantial evidence is such that, based on the totality of the evidence, reasonable minds might find guilt beyond a reasonable doubt. *Benham*, 816 S.W.2d at 187.

In this case, the circumstantial evidence was sufficient to defeat a motion for a directed verdict. The Commonwealth presented evidence that Madden was not a friend or a relative of the Williamses; that he took the truck in the middle of the night without their permission; that he drove away from the residence; that he pulled over only when he realized he was being followed; and that he parked the truck behind a church and ran when confronted. Based on all of the information the jury received, it was not unreasonable for the jury to believe that when Madden

unlawfully took possession of the Williams's truck, he was not concerned about the Williamses recovering the truck. Indeed, viewing the evidence as a whole in a light most favorable to the Commonwealth, we believe it is certainly reasonable for a jury to infer that a stranger, who, without permission, absconds with another person's vehicle in the middle of the night, intended to deprive the owner of that vehicle as defined by KRS 514.010. Therefore, we reject Madden's contention that the trial court erred by denying his motion for a directed verdict based on the Commonwealth's failure to provide sufficient evidence that he intended to deprive the Williamses of their truck.

Madden next claims that the trial court erred in denying his motion for a directed verdict because the Commonwealth failed to introduce evidence sufficient to prove that the value of the truck met the \$10,000 minimum as required for conviction under KRS 514.030(2) (e). Again, we disagree.

We first note that Madden failed to move for a directed verdict on this specific element of the offense. In making his motion for a directed verdict for the offense of theft by unlawful taking, automobile, \$10,000 or more, Madden focused solely on the Commonwealth's alleged failure to prove that he intended to deprive the Williamses of their truck. However, when ruling on the motion, the trial court explicitly found that the Commonwealth had met its burden on each element of the offense.

In order to preserve a trial court's denial of a motion for directed verdict, a defendant must move for a directed verdict at the close of the Commonwealth's proof and again at the conclusion of all of the evidence. *Commonwealth v. Jones*, 283 S.W.3d 665, 669 (Ky. 2009). Additionally, the defendant "must state specific grounds for relief and should identify which elements of the alleged offense the Commonwealth has failed to prove." *Id.* "Merely moving summarily for a directed verdict or making a general assertion of insufficient evidence is not enough." *Id.* Here, Madden failed to identify the value of the truck as an element that the Commonwealth failed to prove. Therefore, he did not properly preserve the alleged error for appellate review. However, "[w]hen a defendant fails to [properly] preserve an error based on sufficiency of the evidence, an appellate court can review the issue for palpable error." *Chavies v. Commonwealth*, 354 S.W.3d 103 (Ky. 2011). Madden has requested, and we grant, palpable error review. Under Kentucky Rules of Criminal Procedure (RCr) 10.26, an error is considered palpable if it affects the defendant's substantial rights and resulted in manifest injustice.

Theft by unlawful taking is a class A misdemeanor unless "[t]he value of the property is ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony[.]" KRS 514.030(2) (e). The "value" refers to "the market value of the stolen items at the time and place of the theft." *Commonwealth v. Reed*, 57 S.W.3d 269, 270 (Ky. 2001). The burden is on

the Commonwealth to prove that the value of the stolen item is over \$10,000. *Id.*

As noted earlier, in ruling on a motion for a directed verdict, the circuit court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. *Benham*, 816 S.W.2d at 187.

At trial, Braddie, the owner of the truck, testified that he purchased the truck approximately eight years prior to the theft for \$22,000-\$23,000. He described the truck as a 2004 full-size Chevrolet 2500 Duramax with four doors, a diesel engine, and an automatic transmission, which was in good working order. He testified that diesel engine trucks depreciate at a slower rate than regular trucks. He stated that from time to time he would check around on the internet and in small sales papers in order to keep himself informed of the market value of the truck. Braddie concluded that based on all of the information that he had, he would sell the truck for \$17,000. After Braddie's testimony, the jury was led to the window of the courtroom to view the stolen truck.

It is well-established that so long as the testimony of an owner as to the value of personal property stolen from him is sufficiently descriptive to allow the jury to make a reasoned determination, it satisfies the Commonwealth's burden of proof with respect to that element of the offense. *Commonwealth v. Reed*, 57 S.W.3d 269, 270 (Ky. 2001). *Lee v. Commonwealth*, 547 S.W.2d 792 (Ky. App. 1977); *Phillips v. Commonwealth*, 679 S.W.2d 235, 237 (Ky. 1984); *Brewer v.*

Commonwealth, 632 S.W.2d 456, 457 (Ky. App. 1982); *Braden v. Commonwealth*, 600 S.W.2d 466, 468-69 (Ky. App. 1978).

Here, Braddie described the truck in great detail, including its condition, features, and purchase price. In addition, the jury was allowed to view the actual truck in order to corroborate Braddie's testimony concerning the truck's condition. Furthermore, we note that Braddie's testimony that the value of the stolen truck exceeded \$10,000 went uncontroverted. Given the totality of the evidence, it was reasonable for the jury to conclude that the truck was worth over \$10,000. Therefore, we hold that the trial court did not err—much less commit palpable error—when it found that the Commonwealth met its burden on that element of the offense.

For the foregoing reasons, the judgment of the Allen Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky