STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

v

RAY RICKY STALEY,[1]

Defendant-Appellant

UNPUBLISHED
December 20, 1996

No. 188447
Monroe County
LC No. 95-026541-FH

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of unlawful use of a motor vehicle, MCL 750.414; MSA 28.646. Defendant was sentenced to 2-1/2 to 8 years in prison as a fourth habitual offender, MCL 769.12; MSA 28.1084. We affirm.

Defendant first argues that the evidence was insufficient to support his conviction for unlawful use of a motor vehicle. We disagree. In reviewing this issue, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995).

The crime of unlawful use of a motor vehicle is committed when a person "takes or uses without authority any motor vehicle without intent to steal the same." MCL 750.414; MSA 28.646. The person must have intended to take or use the vehicle, knowing that he had no authority to do so. *People v Hayward*, 127 Mich App 50, 60-61; 338 NW2d 549 (1983). Unlawful use of a motor vehicle is a lesser included offense of unlawfully driving away a motor vehicle. *Id.* at 61.

The evidence at trial established that defendant drove the complainant's vehicle from Erie, Michigan to Suffolk, Virginia. The complainant testified that he did not grant defendant authority to

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

drive the vehicle on the night in question, nor did he otherwise authorize defendant to drive the vehicle to Virginia. Upon extradition to Michigan, defendant told a police officer, "I did it 'cause I was mad and wanted to get back at him." This statement supports an inference that defendant knew he was using the vehicle beyond any authority granted to him. Accordingly, viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction of unlawful use of a motor vehicle.

At sentencing, defendant admitted having three prior felony convictions and was thereafter sentenced as a fourth-felony habitual offender, MCL 769.12: MSA 28.1084. Defendant now argues that the trial court erred because it failed to advise him of his various rights in accordance with MCR 6.302(B).

Defendant's reliance on MCR 6.302(B) is misplaced. Before May 1, 1994, a defendant was entitled to a jury trial on an habitual offender charge and, accordingly, the trial court was required to advise the defendant of his rights before accepting a plea of guilty to an habitual offender charge. *People v Brownridge*, 414 Mich 393, 397-398; 325 NW2d 125 (1982). Effective May 1, 1994, however, the procedure for enhancing an habitual offender's sentence was changed. A defendant so charged is no longer entitled to a jury trial. *People v Zinn*, 217 Mich App 340, 345; ___ NW2d ___ (1996). As amended, MCL 769.13; MSA 28.1085, states, in pertinent part::

> (5) The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing, or at a separate hearing scheduled for that purpose before sentencing. The existence of a prior conviction may be established by any evidence that is relevant for that purpose, including, but not limited to, 1 or more of the following:
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> * * *
>
> (d) A statement of the defendant.

In this case, the existence of defendant's prior convictions were established by defendant's admissions at sentencing, thereby satisfying MCL 769.13(5); MSA 28.1085(5). Accordingly, the trial court did not err.

Defendant further contends that the 180 day rule was violated and, therefore, the trial court was without jurisdiction over defendant with regard to the habitual offender charge. Defendant has not cited any authority in support of this argument. Arguments before this Court must be supported by citation to appropriate authority. *People v Sowders*, 164 Mich App 36, 49; 417 NW2d 78 (1987). Moreover, this issue is not set forth in or otherwise suggested by defendants statement of the questions presented in his brief on appeal. MCR 7.212(C)(5); *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990). Therefore, this issue is not properly before this Court.

Defendant finally argues that the trial court abused its discretion by imposing a sentence that is disproportionate to the seriousness of the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree.

Defendant not only took the complainant's vehicle without authorization, he drove it to Virginia, thereby causing additional expense to the complainant in order to retrieve the vehicle. The presentence report indicates that defendant has not shown any remorse for his actions. Defendant is an habitual offender with three prior felony convictions and several misdemeanor convictions. We find that defendant's sentence is proportionate to both the seriousness of the offense and the offender. The trial court did not abuse its discretion. *Milbourn, supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhof

[1] Defendant has been identified both as "Ray Ricky Staley" and "Ricky Ray Staley."