

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY FRATELLO,

Defendant-Appellant.

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UNPUBLISHED  
February 19, 2002

No. 226847  
Kalamazoo Circuit Court  
LC No. 99-001150-FH

Before: Griffin, P.J., and Holbrook, Jr. and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for unlawfully driving away an automobile, MCL 750.413. Defendant was sentenced to a two-year term of probation and was also ordered to pay restitution in the amount of \$1,775. We affirm.

This case concerns the ownership of a 1964 Plymouth Belvedere. Defendant contends on appeal that there was insufficient evidence to support the trial court's determination that he no longer retained ownership of the vehicle at the time of the charged offense. We disagree.

In reviewing the sufficiency of the evidence in a bench trial, this Court views the evidence de novo and in the light most favorable to the prosecutor to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. Deference is given to the trial court's determinations of credibility. *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999). In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), aff'd by equal division, 462 Mich 71; 611 NW2d 783 (2000). A finding of fact is considered "clearly erroneous" if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *Id.*

In establishing the unlawful driving away of a motor vehicle, the prosecution must prove beyond a reasonable doubt that (1) the vehicle belonged to someone else; (2) defendant took possession of the vehicle and drove it away; (3) these acts were done without the owner's permission; and (4) defendant intended to take possession of the vehicle and drive it away. MCL

750.413; *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993), aff'd 446 Mich 435; 521 NW2d 546 (1994).

Specifically at issue in the present case is the element requiring the prosecution to prove that the subject automobile belonged to someone else. Defendant contends that because of defects in the transfer of title and because he never relinquished possession of the vehicle after the transfer of the title, he retained ownership of the automobile and therefore could not be convicted of unlawfully driving away an automobile. Conversely, the prosecution successfully asserted at trial that defendant validly assigned title to the complainant, Kenneth Courtney, and no longer possessed an ownership interest in the vehicle at the time of the charged offense.

Legal title and ownership of a vehicle are not coextensive terms under the Motor Vehicle Code. *Botsford General Hosp v Citizens Ins Co*, 195 Mich App 127, 133; 489 NW2d 137 (1992). While Michigan courts have held that the sale of a motor vehicle without the transfer of a certificate of title was void, *Endres v Mara-Rickenbacker Co*, 243 Mich 5, 8; 219 NW 719 (1928); *Michigan Mutual Auto Ins Co v Reddig*, 129 Mich App 631; 341 NW2d 847 (1983), we are nonetheless reluctant to find lesser defects, even those involving statutory violations, fatal to the transfer of ownership. See, e.g., *Schomberg v Bayly*, 259 Mich 135; 242 NW 866 (1932); *Allstate Ins Co v Demps*, 133 Mich App 168, 174; 348 NW2d 720 (1984); *Long v Thunder Bay Mfg Corp*, 86 Mich App 69; 272 NW2d 337 (1978). Thus, one can be the “owner” of a vehicle even if one does not possess all the normal incidents of ownership. *Botsford, supra* at 133. The question of ownership of an automobile is one of fact that is to be decided by the factfinder. *Id.* at 134. The proper inquiry in the case at bar is whether Courtney was the owner of the vehicle, not whether defendant effectively transferred title. *Id.* at 133-134.

At trial, Courtney testified that during the month of February 1999, he and defendant entered into an oral agreement whereby defendant would purchase Courtney’s house by paying off the current mortgage and a debt owed to a credit union. Courtney testified that as part of the purchase price, defendant also agreed to sign over the automobile in question. Courtney contacted a title company to oversee the closing and retained an attorney to draw up the deed and witness the transfers. Courtney maintained that on August 23, 1999, he and defendant met at the attorney’s office, at which time Courtney signed over the deed to the house while defendant signed over the title to the car.

The attorney testified at trial that he was present at the August 23, 1999, meeting. He prepared the warranty deed evidencing the transfer of the real property, but stated that he was unaware of the existence of any prior negotiations involving the transfer of the title to the Plymouth. According to the attorney, Courtney signed the warranty deed and then requested the title to the car from defendant. A “heated” discussion ensued regarding whether the transfer of the title to the Plymouth should be included in the real estate transaction. It was clear to the attorney that Courtney did not intend to hand over the deed until he was in possession of the title to the Plymouth. Despite the fact that defendant was not “overly happy,” the attorney testified that he witnessed defendant fill out a green car title and hand it to Courtney before Courtney left the office. The attorney indicated that there was some conflict concerning this latter transaction, but stated that he felt the two were “peacable” at the time they left his office. The attorney testified that he believed the arrangement to be that defendant would end up with a warranty deed for the house while Courtney would end up with a certificate of title for a car.

After the meeting, Courtney testified that he phoned a local garage, where he believed the car was undergoing repairs, to inquire regarding its progress. The owner of the garage informed him that the vehicle was no longer there; defendant had picked up the car earlier that day. Courtney further testified that four days after the meeting in the attorney's office, he took the certificate of title to the Secretary of State's office but was refused his request to transfer the title to his name because defendant had recently filed an application for lost title. Courtney went home and called the police to report the car as stolen.

On August 30, 1999, Courtney attempted to retrieve the Plymouth from defendant. Courtney testified that he drove to defendant's house, where the car was parked, but as he approached it, defendant came out of the house, jumped into the car and locked it. When Courtney tried to unlock it by putting his hand through one of the open windows, defendant bit him and drove away. Courtney telephoned the police and defendant was arrested approximately thirty minutes later. The police allowed Courtney to take possession of the automobile and he retained possession until October 12, 1999, at which time the car was placed in police custody pending the outcome of this action. Courtney testified at trial that while he still did not have a certificate of title issued by the Secretary of State in his name, he possessed the original certificate of title which was signed over by defendant in August. Courtney denied defendant's allegations that he had threatened or previously assaulted defendant.

Defendant presented a version of events that contradicted Courtney's testimony. Defendant claimed that from the outset of the negotiations, it had been mutually understood that Courtney would acquire separate financing, independent of the real estate transaction, in order to purchase the car from defendant. Defendant further contended that before the meeting with the attorney on August 23, 1999, Courtney had assured him that he had received approval for such financing. Defendant testified that he had never agreed to sign over the car as part of the real estate transaction until Courtney refused to deliver the warranty deed unless defendant agreed to do so. Defendant maintained that at the meeting, he never actually gave the title to Courtney but that Courtney reached across the table and took the title from him before storming out of the office.

Defendant testified that shortly after leaving the attorney's office, he learned from Courtney that contrary to his earlier representations, he in fact had not yet been approved for the agreed-on financing. At that time, the Plymouth was still at the garage for repairs. Because defendant had earlier told Courtney that he would pay the bill for the repairs and pick up the car, defendant went to the garage and retrieved the car later that night. The following day, allegedly because of Courtney's failure to obtain financing, defendant testified that he went to the Secretary of State's office and obtained a duplicate title. In so doing, defendant represented that he had signed over title to someone whose financing had fallen through, but that the person was trying to cheat him by not returning the title. Although defendant acknowledged fleeing from Courtney in the Plymouth after Courtney showed up at his home on August 30, 1999, defendant testified that he did so because he believed, based on prior threats, that Courtney was attacking him.

At trial, a Kalamazoo police detective recounted a meeting with defendant and his attorney on September 21, 1999. The detective testified that defendant had contacted him earlier that day seeking to report a stolen vehicle and had come to the police station to fill out a report; however, when defendant arrived at the station, he indicated that he no longer wished to report

the car as stolen but rather simply wished to discuss the facts of this case. According to the detective, defendant then informed him about the disagreement regarding ownership of the Plymouth. Defendant explained in pertinent part that he signed the title of the vehicle over to Courtney as part of an agreement; however, he then filed for a duplicate title. Defendant further informed the detective that when signing the original certificate of title in the attorney's office, he purposely signed the title over to himself (as purchaser) and entered the wrong date, justifying his actions as a response to the duress he experienced and his discomfort with the manner in which the transaction was occurring.

An employee of the State Farm Insurance investigative unit likewise testified that when defendant contacted her regarding an investigation into a fraud claim involving the Plymouth, he related to her that he had signed over the title to his car, but that there had been significant errors made in the process, i.e., he had dated the title erroneously and had also placed his name on the certificate of title as both seller and purchaser. According to the State Farm employee, defendant further stated that after doing so, he had "second thoughts" about the transaction and thus obtained a duplicate title from the Secretary of State.

Citing MCL 257.233(9),<sup>1</sup> defendant now argues that even if the defects in the transfer of title are excused, he nonetheless retained ownership of the vehicle because he maintained possession of the automobile upon the transfer of the title. However, as the trial court aptly concluded, defendant's own actions precluded delivery of the automobile to Courtney. Following the close of proofs, the trial court found that although there was no written agreement setting forth the parties' original understanding with respect to the requirements for the purchase and transfer of Courtney's home, an agreement to transfer the deed to the home in exchange for a transfer of title to the 1964 Plymouth was reached between the parties during their August 23, 1999, meeting at the attorney's office. With respect to the validity of the transfer of title as a result of defendant's actions in improperly dating and placing his name as both seller and purchaser on the certificate, the trial court, noting that "[t]itle and ownership are not synonymous at law," held that "regardless of the status of the title there were certain representations made at the real estate closing which would indicate who the owner of the vehicle was." The court then found that based on defendant's conduct following the transfer, defendant understood at the conclusion of the August 23, 1999, meeting that Courtney was the rightful owner of the Plymouth, and that with his understanding defendant wrongfully drove the vehicle without its owner's permission and was thus guilty of the offense of unlawfully driving away an automobile.

Giving due deference to the trial court's determinations of the credibility of the witnesses, Ortiz-Kehoe, supra, we find no clear error in the trial court's findings that defendant attempted to

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<sup>1</sup> MCL 257.233(9) states:

Upon the delivery of a motor vehicle *and* the transfer, sale or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or assignment of certificate of title. [Emphasis added.]

procure duplicate certificates of title after he transferred the title to Courtney, took the automobile from the repair shop, and wrote on the original certificate of title in a manner designed to prevent the valid transfer of title. Because defendant intentionally prevented delivery, he cannot successfully argue that due to a lack of delivery, a transfer of ownership did not take place. Such a ruling would, in effect, allow defendant to assign the title yet prevent the transfer of ownership by refusing to relinquish the automobile. Accordingly, defendant's argument is without merit.

The evidence adduced at trial was more than sufficient to support, beyond a reasonable doubt, the trial court's findings that the automobile belonged to another and that defendant unlawfully drove it away. The testimony clearly indicated the existence of an agreement between defendant and Courtney regarding the transfer of title to the automobile. Moreover, it is undisputed that defendant signed over the title of the automobile to Courtney on August 23, 1999. The trial court determined that defendant understood Courtney to be the owner of the Plymouth at the time of the charged offense. This finding was evidenced by actions on the part of defendant which, as noted above, included his various purposeful attempts to frustrate and prevent the valid transfer of title. The evidence, when viewed in the light most favorable to plaintiff, is sufficient to support the trial judge's finding that Courtney owned the Plymouth at the time of the charged offense, and that defendant is guilty beyond a reasonable doubt of unlawfully driving it away.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ Joel P. Hoekstra