STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 15, 2011
v	No. 299750 Kalkaska Circuit Court
TERRY JORDAN BARKOVICH, Defendant-Appellant.	LC No. 09-003123-FH

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of receiving and concealing a stolen motor vehicle, MCL 750.535(7), third-degree fleeing and eluding a police officer, MCL 257.602a(3), and misdemeanor reckless driving, MCL 257.626. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to serve concurrent prison terms of 3 to 20 years for each of his two felony convictions, with no credit for time served. Defendant was sentenced to time served for the reckless driving conviction. Because sufficient evidence was presented to support defendant's conviction, we affirm.

Defendant first argues that the prosecution presented insufficient evidence to support his conviction of receiving and concealing a stolen motor vehicle. Specifically, defendant argues that the phrase "stolen motor vehicle" in MCL 750.535(7) requires the prosecution to present evidence that someone took the vehicle with the intent to permanently deprive the owner of it. We disagree.

The issue regarding the proper interpretation of "stolen" in MCL 750.535(7) was raised by defendant in his motion for a new trial, which the trial court denied, and thus is preserved for appellate review. See *Royce v Chatwell Club Apartments*, 276 Mich App 389, 399; 740 NW2d 547 (2007). This Court reviews issues of statutory interpretation de novo. *People v Hrlic*, 277 Mich App 260, 262; 744 NW2d 221 (2008).

To convict defendant of receiving and concealing a stolen motor vehicle, the prosecution must prove that defendant "b[ought], receive[d], possess[ed], conceal[ed], or aid[ed] in the concealment of a stolen motor vehicle knowing, or having reason to know or reason to believe, that the motor vehicle [was] stolen, embezzled, or converted." MCL 750.535(7). In the immediate case, the prosecution presented evidence that on May 29, 2009, defendant was in possession of a truck that had been reported stolen from Mike Steamer Service. The evidence

established that when defendant (who was driving the vehicle) was signaled by police to stop, he initially stopped the vehicle, then drove away recklessly and thereafter exited the vehicle, fleeing on foot. Although defendant does not dispute that there was sufficient evidence presented to permit a reasonable jury to conclude that he possessed the vehicle without permission, he argues that a motor vehicle is not "stolen" pursuant to MCL 750.535(7) unless it was taken with the intent to permanently deprive the owner of it, and that no such evidence was presented.

In *People v Pratt*, 254 Mich App 425; 656 NW2d 866 (2002), the defendant was convicted of receiving and concealing stolen property pursuant to MCL 750.535(3). At the time of his conviction, the receiving and concealing stolen property statute read, as follows: "A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing the money, goods, or property is stolen, embezzled, or converted." 750.535(1). See 1998 PA 311.[1] On appeal, the defendant made an argument that was nearly identical to the one presented in the immediate case: that there was insufficient evidence to support his conviction because the prosecutor failed to present evidence that the property was stolen, asserting that "for the property to be 'stolen,' it must have been taken by larceny and, thus, taken with the intent to permanently deprive the owner of possession." *Pratt*, 254 Mich App at 427. A panel of this Court rejected the defendant's interpretation of the word "stolen," concluding that "the statute concerns any property taken without permission, not only property taken by larceny." *Id.* at 428. Citing the dictionary definition of "steal," we explained that for goods to be considered stolen "they need only be taken without permission or right; thus, 'stolen' goods encompass a broader category than just goods taken by larceny." *Id.* In the immediate case, defendant was convicted under the same statute as the defendant in *Pratt*, but of the more specific offense of receiving and concealing a stolen motor vehicle, MCL 750.535(7).[2]

Defendant is correct that many published decisions of this Court use the word "steal" in a context that would imply a requirement that the one doing the stealing have an intent to permanently deprive the owner of the object stolen. However, these cases address the mental state that corresponds with the verb "to steal," primarily in the context of larceny and conversion offenses, and have little precedential value when applied to the adjective "stolen" in the receiving and concealing a stolen property statute.

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[1] The current version reads, as follows: "A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, *or having reason to know or reason to believe*, that the money, goods, or property is stolen, embezzled, or converted." MCL 750.535(1) (emphasis added).

[2] The separate crime of receiving and concealing a stolen motor vehicle was not in effect at the time the defendant in *Pratt* was charged. See 2002 PA 720 (amending section 535 to include the separate crime of receiving and concealing a stolen motor vehicle; effective April 1, 2003). Thus, although the stolen property in *Pratt* was a 1990 Buick Regal, *Pratt* 254 Mich App at 426, the defendant could only be charged under the more general offense of receiving and concealing stolen property.

Defendant focuses his argument on his personal intent with respect to the vehicle, indicating a lack of evidence that he intended to permanently deprive the owner of the vehicle at issue. However, the statute he was charged with and convicted under merely requires proof that defendant "buy, receive, possess, conceal, or aid in the concealment of a *stolen* motor vehicle." MCL 750.535(7). "Stolen" being the past tense of "steal", it was not necessary that the prosecution establish any intent on defendant's part to steal the vehicle or to have stolen it. The focus of the statute is on defendant's actions *after* a vehicle has already been stolen. And, the statute at issue does not even require that the person who initially stole the vehicle be identified. That being true, it would be difficult if not impossible to prove a potentially unknown person's intent.

Most importantly, because we have previously interpreted the word "stolen" to mean "taken without permission or right" in a nearly identical subsection of the same statute, MCL 750.535(1), using a different interpretation for the subsection in issue here would violate the principle that "identical language in various provisions of the same act should be construed identically," *People v Wiggins*, 289 Mich App 126, 128-129; 795 NW2d 232 (2010). Accordingly, we reject defendant's argument that MCL 750.535(7) requires proof that a person took the vehicle with the intent to permanently deprive the owner of it. As such, defendant's sufficiency of the evidence argument fails.

Defendant also argues that his counsel was ineffective for failing to request an instruction that MCL 750.535(7) required the jury to find that a person intended to permanently deprive the owner of the vehicle. As any such request would have been meritless, counsel cannot be deemed to have provided ineffective assistance. *People v Mack*, 265 Mich App 122, 130; 695 NW2d 342 (2005).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto