

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
April 18, 2013

v

CANDACE RENEE O'NEAL,
Defendant-Appellee.

No. 309259
Oakland Circuit Court
LC No. 2011-235961-FH

Before: MARKEY, P.J., and TALBOT and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order granting defendant's motion for a directed verdict of acquittal following her jury-trial conviction of receiving, possessing, or concealing stolen property valued at \$20,000 or more, MCL 750.535(2)(a). Because the evidence was sufficient for a rational jury to conclude that defendant possessed the stolen vehicle, we reverse and remand for reinstatement of defendant's conviction.¹

On February 16, 2011, Jose Hurtado's 2007 Cadillac Escalade was stolen from a driveway in Detroit. On February 24, 2011, defendant, accompanied by her husband, went to the Michigan Secretary of State office located at Seven Mile and Evergreen. When they approached the counter, defendant spoke to the clerk about applying for a title transfer for a 2007 Cadillac Escalade. Defendant provided the clerk with her Michigan driver's license and a vehicle certificate of title from the state of Georgia. Defendant was named on the title, and the address on the title was a Georgia address that was different from the address on defendant's driver's license. The title indicated that the vehicle was purchased on September 25, 2006, and titled on October 22, 2006. Based on the information on the title, defendant appeared to be the original owner of the vehicle. During her verification process, the clerk was unable to verify the VIN number and noticed that the Georgia title did not appear to be authentic. When the clerk told

¹ We note that reinstatement of defendant's conviction does not implicate double jeopardy principles. See *People v Anderson*, 409 Mich 474, 483 n 10; 295 NW2d 482 (1980) ("Although retrial following an acquittal is barred, the government may *appeal* if reinstatement of a jury's verdict of conviction, rather than retrial, is sought, e.g., where the judge enters an acquittal on a post-trial motion." [Emphasis in original].)

defendant that she was going to call the Georgia Department of Motor Vehicles (DMV) to further investigate, defendant stated that she did not want to wait and left.

Because of the abnormalities in the documentation that defendant gave her and information that she received from the Georgia DMV, the clerk alerted her supervisor, who issued a branch fraud alert report and contacted the Secretary of State investigations department. An investigator later determined that someone acting as defendant's agent was able to successfully title the vehicle in defendant's name at a different Secretary of State branch. The investigator put a stop on the title, canceled the license plate associated with the Escalade, and referred the matter to the auto theft unit of the Oakland County Sheriff's Department.

Oakland County Sheriff's Department Detectives Frank Lenz and Steven Law went to defendant's apartment complex in Wixom to try to locate the Escalade and question defendant. When they arrived, they saw the Escalade backed into a parking spot adjacent to defendant's apartment. The license plate on the vehicle was titled in defendant's name. Lenz observed a false VIN number on a sticker on top of the true VIN number on the dashboard of the vehicle. Lenz, Law, and two other detectives then went to defendant's apartment. According to Lenz, after they announced themselves through the closed door, defendant eventually opened the door and stated, "I don't have to speak to you, I don't have anything to say to you guys." Defendant's husband was also present in the apartment. Lenz testified that the detectives asked defendant more than once for an explanation regarding the Escalade, but defendant did not respond. Similarly, Law testified that he gave defendant several opportunities to speak to him about the vehicle being titled in her name, but she refused to speak. When the detectives asked defendant's husband about the vehicle, defendant interrupted and told her husband, "[y]ou don't need to say anything. They already got the car. They already know all about me." Defendant told the detectives where the keys to the vehicle were located, and Law took the keys and confirmed that they started the Escalade. A search of the vehicle revealed two fraudulent insurance certificates with defendant's name on them in the front seat area. The detectives later discovered that the Escalade was Hurtado's stolen vehicle that had been retagged with a different VIN number.

At trial, defendant admitted that she had never owned an Escalade, had never lived in Georgia, and that all the information on the documentation that she gave to the Secretary of State clerk was false. She maintained, however, that she never looked at the documentation, did not know what was going on, and that her husband had asked her to put the vehicle in her name. Defendant claimed that she never drove or rode in the Escalade, never possessed the vehicle, never went to another Secretary of State branch, never attempted to title the vehicle a second time, never gave anyone permission to title the vehicle in her name, and did not apply for insurance for the vehicle. Defendant asserted that she did not find out that the Escalade was titled in her name or that the insurance was in her name until her preliminary examination.

The jury convicted defendant of receiving, possessing, or concealing stolen property valued at \$20,000 or more. Thereafter, defendant moved for a directed verdict of acquittal. The trial court granted the motion on the basis that the prosecution presented insufficient evidence to establish that defendant possessed the vehicle. The prosecution now appeals the trial court's ruling.

In reviewing a trial court's ruling on a motion for a directed verdict of acquittal, this Court must review the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). “Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime.” *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). The weight of evidence, the credibility of witnesses, and the inferences to be drawn from the evidence are matters for the jury to determine. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012); *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011).

To establish receiving, possessing, or concealing stolen property valued at \$20,000 or more, the prosecution was required to prove: “(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen.” *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002); see also MCL 750.535(2)(a). The only element at issue in this case is the third element, i.e., that defendant possessed the stolen property.

Possession can be actual or constructive, joint or exclusive, and may be proven by direct or circumstantial evidence. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989); *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003). Possession may also be established through reasonable inferences drawn from circumstantial evidence. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). “[A] person has constructive possession if there is proximity to the article together with indicia of control.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) (citation omitted). “The test for constructive possession is whether the totality of the circumstances indicates a sufficient nexus between defendant and the contraband. Although not in actual possession, a person has constructive possession if he knowingly has the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons[.]” *People v Minch*, 493 Mich 87, 91-92; 825 NW2d 560 (2012) (quotation marks and footnotes omitted).

The prosecution presented sufficient evidence for a rational jury to conclude that defendant had constructive possession of the stolen Escalade. The evidence showed that defendant and her husband went to the Secretary of State office at Seven Mile and Evergreen and that defendant alone spoke to the clerk about applying for a title transfer for a 2007 Cadillac Escalade. Defendant admitted at trial that documents purporting to show that she was the owner of the Escalade were fraudulent. Defendant held herself out as the owner of the Escalade when she handed those documents, including a false out-of-state vehicle certificate of title with her name on it, to the clerk for processing. When the clerk informed defendant that she needed to investigate the transaction further because of an issue with the VIN number, defendant stated that she did not want to wait and left the office.

Just over a week after her visit to the Secretary of State office, detectives located the Escalade parked in the parking lot adjacent to defendant's apartment building. Defendant was aware that the vehicle was parked outside of her apartment and refused to answer questions about it. When the detectives began questioning defendant's husband about the Escalade, defendant did not allow him to answer and told him, "[y]ou don't need to say anything. They already got the car. They already know all about me." Contrary to defendant's trial testimony, defendant's statement to her husband shows that she, and not her husband, was the perpetrator. We are required to view the evidence in the light most favorable to the prosecution, and to draw all reasonable inferences and make credibility choices in support of the jury verdict. *Nowack*, 462 Mich at 400. Further, the keys to the Escalade were in defendant's apartment, and defendant directed the detectives to their location. The detectives confirmed that the keys started the vehicle. In addition, two fraudulent insurance certificates containing defendant's name were found inside the vehicle. Thus, viewing the evidence in the light most favorable to the prosecution, the circumstantial evidence and reasonable inferences drawn therefrom was sufficient to show that defendant exercised dominion and control over the vehicle.

Moreover, even crediting defendant's version of the facts, her testimony tended to show that both she and her husband were involved in the criminal venture. Defendant admitted that her husband behaved strangely in the Secretary of State office, which caused her to become suspicious and question him after they left. According to defendant, her husband told her that he had a "hook up" with regard to the Escalade. More than one week later, the Escalade was parked next to her apartment, defendant told detectives where the keys to the vehicle were, the vehicle was titled in her name, and fraudulent insurance papers containing her name were found inside the vehicle. If defendant and her husband were both involved in the criminal venture, defendant would not have been absolved from responsibility given that possession can be joint and not merely exclusive. *McKinney*, 258 Mich App at 166. Thus, defendant's theory was unavailing.

In sum, the evidence was sufficient to allow a rational jury to conclude that defendant constructively possessed the Escalade. Accordingly, the trial court erred by concluding otherwise and granting defendant's motion for a directed verdict of acquittal.

Reversed and remanded for reinstatement of defendant's conviction. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Pat M. Donofrio