

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 26, 2013

v

CURTIS DIONTE COPELAND,

Defendant-Appellant.

No. 311129
Wayne Circuit Court
LC No. 12-000746-FH

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. I conclude that the prosecution presented insufficient evidence to prove that defendant received, concealed, or had actual or constructive possession of the stolen car in this case. See MCL 750.535(7); *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002).

The stolen, black Chevrolet Impala was located in front of a residence at 3950 Joseph Campau Street in Detroit. It is true that defendant was seen frequenting the residence. In addition, defendant was present at the time a different, white Chevrolet Impala was purchased from Lea's Auto Body in August 2011. The evidence established that the VIN plate was removed from this white Impala and subsequently attached to the stolen black Impala.

The problem, however, is that there was no evidence directly linking defendant to the falsification of the vehicle's VIN. Nor was there any evidence to prove that defendant received, concealed, or had actual possession of the black Impala. No paperwork or documentation bearing defendant's name was located in the black Impala. Moreover, the evidence tended to establish that Tierra Hinton, defendant's apparent girlfriend, lived in the residence on Joseph Campau Street. Indeed, Hinton and her small child were present when the police searched the residence. Additionally, Hinton was present with defendant at the time the white Impala was purchased in August 2011. The sales receipt for the white Impala was made out to Hinton and the white Impala was registered in Hinton's name. In short, there was significantly more admissible evidence tying Hinton to the falsified VIN and stolen Impala than there was tying defendant to the VIN and stolen vehicle.

In light of the evidence presented at trial, I conclude that it is at least equally as likely that Hinton falsified the VIN plate and concealed or possessed the stolen vehicle. "When a jury is confronted, as here, with equally persuasive theories of guilt and innocence it cannot rationally

find guilt beyond a reasonable doubt.” *United States v Andujar*, 49 F3d 16, 22 (CA 1, 1995). Moreover, it cannot be disputed that defendant’s mere presence at 3950 Joseph Campau Street was insufficient to prove that he constructively possessed the black Impala. See *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Vaughn*, 200 Mich App 32, 36; 504 NW2d 2 (1993). In my opinion, no rational trier of fact could have determined beyond a reasonable doubt that defendant received, concealed, or possessed the stolen black Impala. For this reason, I would reverse defendant’s conviction.

/s/ Kathleen Jansen