STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1666

State of Minnesota,
Respondent,

vs.
Brandon Carl Heinl,
Appellant.

Filed September 3, 2013
Affirmed
Kirk, Judge

Ramsey County District Court
File No. 62-CR-11-6477

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Julie Loftus Nelson, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

On appeal from his conviction of multiple counts of theft of a motor vehicle, appellant argues that (1) the evidence was insufficient to sustain his convictions, and

(2) the district court abused its discretion by sentencing appellant despite a date discrepancy in the pre-sentence investigation report (PSI). We affirm.

FACTS

On August 17, 2011, respondent State of Minnesota charged appellant Brandon Carl Heinl with six counts of theft of a motor vehicle. The state later amended the complaint to add two additional counts of theft of a motor vehicle. Of the eight counts, the complaint alleged five counts in violation of Minn. Stat. § 609.52, subd. 2(17) (2010), and three counts in violation of Minn. Stat. § 609.52, subd. 2(1) (2010). The complaint alleged that between March 15 and May 6, 2011, appellant stole five vehicles and sold them for scrap to Metro Metals, a scrap-metal processor.

The district court held a jury trial in April 2012. Following the trial, the jury found appellant guilty of six counts of theft of a motor vehicle relating to the thefts of three of the vehicles: a 2001 Chevrolet Lumina, a 1992 Chrysler LeBaron, and a 1991 Chevrolet Astro. The jury found appellant not guilty of two counts of theft of a motor vehicle regarding two other vehicles.

At trial, the owner of the 2001 Chevrolet Lumina, R.A.O., testified that she parked her vehicle on the street in front of her house on March 20, 2011, and when she woke up the next morning, her vehicle was gone. R.A.O. reported the vehicle stolen to police on March 21. R.A.O. testified that she did not know appellant and did not give him permission to take her vehicle or to sell it for scrap. She testified that she still had the vehicle's title and keys. The manager of Metro Metals, B.G., testified that appellant brought the 2001 Chevrolet Lumina to Metro Metals on March 21. Appellant signed

paperwork stating that he had the right to possess the vehicle and sell it for scrap. Metro Metals paid appellant $348.50 for the vehicle. B.G. testified that Metro Metals had a written ticket showing that appellant brought the vehicle to Metro Metals, a photograph of a tow truck bringing the vehicle to Metro Metals, and a photograph of appellant collecting money for the vehicle. The district court received the records into evidence.

The owner of the 1992 Chrysler LeBaron, D.S., testified that he noticed that his vehicle, which had been parked in his backyard, was missing on April 21, 2011. D.S. testified that he did not know appellant and had not given appellant permission to take his vehicle or sell it for scrap. B.G. testified that appellant delivered the 1992 Chrysler LeBaron to Metro Metals on April 20. Appellant signed paperwork stating that he had the right to possess the vehicle and sell it for scrap, and Metro Metals paid him $510 for the vehicle and another vehicle that is not the subject of this matter. B.G. testified that Metro Metals completed a written ticket stating that appellant brought the vehicle to Metro Metals and took photographs of the vehicle's delivery and of appellant collecting payment for the vehicle. The district court received the records into evidence.

The owner of the 1991 Chevrolet Astro, G.C.M., testified that he parked his vehicle in the parking lot of a market in December 2010 because it had a flat tire. G.C.M. testified that he passed by his vehicle every day on his way to work. G.C.M. testified that when he went to fix the vehicle's tire in May 2011, he noticed the vehicle was missing from the parking lot. He testified that he did not know appellant and he had not given appellant permission to tow his vehicle or sell it for scrap. Once G.C.M. noticed that his vehicle was missing, he asked the owner of the market if she had called for the vehicle to

be towed; the owner denied that she had. B.G. testified that appellant sold the 1991 Chevrolet Astro to Metro Metals on May 6. Appellant signed a statement that he had the right to sell the vehicle to Metro Metals, and Metro Metals paid him $388 for the vehicle. B.G. testified that Metro Metals completed a written ticket stating that appellant had delivered the vehicle to Metro Metals and took photographs of the delivery and of appellant collecting payment for the vehicle. The district court received the records into evidence.

L.M., an employee of the Driver and Vehicle Services division of the Minnesota Department of Public Safety, testified that neither appellant nor his company, First Class Recovery, have a valid motor-vehicle-dealer license. L.M. testified that an unlicensed individual who buys a vehicle is required to transfer the title of the vehicle into his name before he can sell it, even if he sells it for scrap. She testified that appellant did not transfer the titles of the 2001 Chevrolet Lumina, the 1992 Chrysler LeBaron, or the 1991 Chevrolet Astro into his or his company's name. L.M. testified that scrap-metal yards are not required to collect the title for vehicles that are over six years old. She testified that Metro Metals is a licensed scrap-metal processor.

K.S., a senior license inspector with the City of St. Paul Department of Safety and Inspection, testified that a tow-truck driver is required to be licensed if he tows a vehicle from private property at the request of an individual who is not the owner of the vehicle. K.S. testified that neither appellant nor his company is licensed. K.S. testified that a tow company that receives a request to tow a vehicle off a private lot must notify the police department before towing the vehicle and get signed authorization from the person

requesting the tow. After towing the vehicle, the company must notify the last known owner of the vehicle and then hold the vehicle for 90 days before disposing of it to allow the owner to claim it.

A tow-truck professional, J.S., testified that before towing a vehicle from private property he requires the owner of the vehicle to meet with him and transfer the vehicle's title to him. J.S. testified that he does not transfer the vehicle into his name if he is going to scrap the vehicle, but he keeps the vehicle's title in his records.

St. Paul Police Sergeant Julie Weflen testified that in May 2011 she began investigating a complaint about a stolen vehicle that was taken to Metro Metals. During the course of the investigation, Sergeant Weflen began investigating appellant and his company. On August 3, 2011, Sergeant Weflen questioned appellant about four stolen vehicles. Sergeant Weflen testified that appellant did not remember the 2001 Chevrolet Lumina, but he admitted that the 1992 Chrysler LeBaron had been in his driveway for a few days before he took it to Metro Metals. Sergeant Weflen testified that she showed appellant pictures of him scrapping the stolen vehicles at Metro Metals, and appellant did not deny that he was the person in the photographs. Appellant admitted that his internal record-keeping process had been sloppy. He told Sergeant Weflen that he did not require more information from the people he bought vehicles from than Metro Metals required; Metro Metals only requires photo identification.

Appellant testified that he did not take the 2001 Chevrolet Lumina. He testified that one of his employees brought the 1992 Chrysler LeBaron to his house, but he was unable to name the employee who had done so. Appellant testified that the 1992

Chrysler LeBaron remained at his house for a day or two. Appellant testified that he towed the 1991 Chevrolet Astro from a parking lot at a market after a man contacted him and told him his uncle wanted the vehicle towed. Appellant testified that the man provided appellant with identification and the key for the vehicle. Appellant admitted he did not have the titles to any of the vehicles.

This appeal follows.

D E C I S I O N

I. The evidence is sufficient to sustain appellant's convictions.

In assessing whether the evidence was sufficient to support a jury's guilty verdict, this court "determine[s] whether the legitimate inferences drawn from the facts in the record would reasonably support the jury's conclusion that the defendant was guilty beyond a reasonable doubt." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We will not disturb the jury's verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

This court applies heightened scrutiny to convictions that are based on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). "In circumstantial evidence cases, the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). The first step in analyzing whether the evidence was sufficient in a circumstantial-evidence case is to identify the

circumstances proved. *Id.* A reviewing court must assume that the "jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The second step in the analysis is to "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with rational hypotheses other than guilt." *Al-Naseer*, 788 N.W.2d at 473-74 (quotation omitted). In doing so, this court does not give "deference to the fact finder's choice between reasonable inferences." *Id.* at 474 (quotation omitted).

A. The evidence is sufficient to sustain appellant's convictions of violating Minn. Stat. § 609.52, subd. 2(17).

Appellant first challenges his three convictions of violating Minn. Stat. § 609.52, subd. 2(17). Under that statute, an individual commits theft if he "takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent." Minn. Stat. § 609.52, subd. 2(17). Appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he (1) took the 2001 Chevrolet Lumina or the 1992 Chrysler LeBaron, and (2) knew or had reason to know the owner or authorized agent of the owner did not give consent. He admits that he took the 1991 Chevrolet Astro, but argues that he did not know or have reason to know that the owner had not given consent.

Appellant contends that the state did not present direct evidence establishing that appellant took the vehicles directly from the vehicles' owners. But the statute does not

require the state to establish that appellant took the vehicles directly from the owners. Instead, the statute provides that an individual commits theft if he "takes or drives a motor vehicle." *Id.* Theft of a motor vehicle "is a continuing offense commencing when the vehicle is taken and concluding when it is abandoned." *State v. Finn*, 295 Minn. 520, 522, 203 N.W.2d 114, 115 (1972).

The state did not establish that appellant took the three vehicles directly from their owners, but it presented direct evidence that appellant took or drove the vehicles. *See Bernhardt*, 684 N.W.2d at 477 n.11 ("Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." (quotations omitted)). The district court received into evidence documents and photographs that established that appellant delivered the 2001 Chevrolet Lumina, the 1992 Chrysler LeBaron, and the 1991 Chevrolet Astro to Metro Metals, signed a form that certified he had the right to sell each vehicle, and collected payment for the vehicles. The manager of Metro Metals identified appellant as the person who delivered the vehicles and received payment. And appellant testified that he sold the 1991 Chevrolet Astro and the 1992 Chrysler LeBaron to Metro Metals. Based on the evidence, the jury could reasonably determine that appellant took or drove the three vehicles.

Appellant also contends that the state failed to prove that appellant knew or had reason to know that the owners or authorized agents of the owners did not consent to him taking the vehicles. Appellant's unexplained possession of the stolen vehicles shortly after they were stolen provides circumstantial evidence that he knew the owners of the vehicles did not consent to him taking the vehicles. *See State v. Hager*, 727 N.W.2d 668,

677-78 (Minn. App. 2007) ("An individual's unexplained possession of stolen property within a reasonable time after a . . . theft will in and of itself be sufficient to sustain a conviction." (quotation omitted) (alteration in original)); *State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987) ("Unexplained possession of recently stolen property supports a conclusion that appellant knew the property was stolen."), *review denied* (Minn. Mar. 25, 1987). The circumstances proved include that the owners of all three vehicles did not consent to appellant taking their vehicles and selling them for scrap. Appellant testified that he did not remember the 2001 Chevrolet Lumina, that one of his employees left the 1992 Chrysler LeBaron at his house, and that he towed the 1991 Chevrolet Astro at the request of an individual who provided identification and a key for the vehicle. However, assuming that the jury believed the state's witnesses and disbelieved any contrary evidence, appellant's possession of the vehicles shortly after they were reported stolen supports a reasonable inference that appellant knew the vehicles were stolen. *See Moore*, 438 N.W.2d at 108.

In addition, the circumstances proved include the following: an unlicensed tow-truck driver is required to transfer a vehicle's title into his name before he can sell it for scrap; a tow-truck driver is required to be licensed if he tows a vehicle from private property at the request of someone who does not own the vehicle; neither appellant nor his company is licensed; and appellant formed a corporation, filed articles of incorporation with the state, hired employees, leased land, purchased tow trucks, and ensured that his trucks were up to code. The circumstances proved indicate that, based on his experience in the industry, appellant knew or should have known the tow-truck-

industry requirements. The record establishes that appellant did not comply with these requirements and did not obtain the titles to the three vehicles. Because appellant knew or should have known about these requirements, the fact that he did not acquire the titles to each of the three vehicles provides another reasonable inference that he knew that the vehicle's owners did not consent to him taking the vehicles.

Based on the circumstances proved, the only reasonable inference the jury could make is that appellant knew or had reason to know that the vehicles' owners did not consent to him taking the vehicles. Therefore, the evidence is sufficient to support appellant's convictions of violating Minn. Stat. § 609.52, subd. 2(17).

B. The evidence is sufficient to sustain appellant's convictions of violating Minn. Stat. § 609.52, subd. 2(1).

Appellant next challenges his three convictions of violating Minn. Stat. § 609.52, subd. 2(1), arguing that the state did not establish that he knew or believed that he had no right to transfer the vehicles. Under that statute, an individual commits theft if he "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(1).

Here, the circumstances proved include the following: the 2001 Chevrolet Lumina and the 1992 Chrysler LeBaron were taken from their parking spots at the homes of their owners; both the owner of the Lumina and the owner of the LeBaron did not know appellant and did not sell their vehicles to him; the 1991 Chevrolet Astro was taken from

the parking lot of a market; the owner of the Astro did not know appellant and did not sell the vehicle to him; appellant brought all three vehicles to Metro Metals, signed paperwork that stated he had the right to possess the vehicles and sell them for scrap, and received payment for the vehicles; appellant did not possess the titles to the three vehicles; appellant is not a licensed tow-truck driver; and appellant does not have a dealer license. The only reasonable inference that can be drawn from the circumstances proved is that appellant intentionally took the vehicles without the owners' permission and with intent to deprive the owners permanently of possession of the vehicles. *See Al-Naseer*, 788 N.W.2d at 473-74. The only evidence that supports appellant's argument that he did not know the vehicles were stolen was his own testimony. As discussed above, this court must assume that the jury disbelieved any evidence that is contrary to the state's evidence. *See Moore*, 438 N.W.2d at 108. Assuming that the jury disbelieved appellant's testimony, the evidence was sufficient to support appellant's convictions of violating Minn. Stat. § 609.52, subd. 2(1).

II. The district court did not abuse its discretion by sentencing appellant despite a date discrepancy in the PSI.

Appellant argues that the district court abused its discretion by sentencing him based on the criminal-history score set forth in the PSI instead of granting a continuance for probation to investigate the date discrepancy in the PSI. This court reviews the district court's determination of a defendant's criminal-history score for abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

During the sentencing hearing, appellant's counsel raised a concern with the PSI. Appellant's counsel pointed out that there was a discrepancy between the date of one of appellant's prior felony convictions that was listed in the PSI and the date of the same offense on the sentencing worksheet. The probation officer who prepared the PSI requested a continuance to examine the discrepancy, and the prosecutor reported that she was in agreement with a continuance. However, appellant's counsel withdrew his objection because appellant was concerned about the effect a continuance would have on his ability to transfer to a minimum-security prison. Based on appellant's withdrawal of his objection, the district court proceeded to sentence appellant.

Appellant contends that the date discrepancy in the PSI may have resulted in an incorrect criminal-history score and, if so, his sentence should be three months shorter. Appellant further argues, and the state concedes, that appellant did not waive his objection to his criminal-history score when he withdrew his objection before the district court. A sentence that is based on a miscalculated criminal-history score is illegal and may be corrected at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007); Minn. R. Crim. P. 27.03, subd. 9. As a result, "a defendant may not waive review of his criminal history score calculation." *Maurstad*, 733 N.W.2d at 147.

The state contends that appellant has not demonstrated that his criminal-history score is incorrect. We agree. Appellant argues that an additional point may have been added to his criminal-history score, but he does not explain why the discrepancy in dates on the PSI and the sentencing worksheet could have resulted in an additional criminal-history point. *Cf. Maurstad*, 733 N.W.2d at 144 (explaining Maurstad's argument that

the district court should not have added a custody-status point to his criminal-history score). On the record before this court, it is not clear that appellant's criminal-history score was incorrect. Further, as the state argues, appellant has another remedy; he may file a motion to correct his sentence in the district court that specifically explains why his criminal-history score is incorrect. *See* Minn. R. Crim. P. 27.03, subd. 9. Accordingly, we conclude that the district court did not abuse its discretion by sentencing appellant.

III. Appellant's pro se argument lacks merit.

Appellant does not raise any legal issues in his pro se supplemental brief; instead, he argues that he did not steal any vehicles. Appellant contends that he did not have a motive to steal vehicles and sell them for scrap because he made a substantial profit from his business and scrapping vehicles provides a relatively small profit margin. However, appellant testified at trial and presented the same argument to the jury. The jury's verdict indicates that it did not find appellant's testimony credible, and we defer to the jury's credibility determinations. *See State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

Affirmed.