NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DERRICK SEDDEN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2057 EDA 2013

Appeal from the Judgment of Sentence July 15, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0013303-2010

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and PLATT, J.*

MEMORANDUM BY LAZARUS, J.: **FILED JUNE 26, 2014**

Derrick Sedden appeals from the judgment of sentence imposed by the Court of Common Pleas of Philadelphia County following his convictions for receiving stolen property[1] and unauthorized use of a motor vehicle.[2] After careful review, we affirm.

On July 29, 2010, at approximately 3:00 a.m., Sedden was driving south on Old York Road in Philadelphia in a gray Mitsubishi Galant, accompanied by two male passengers. Philadelphia Police Officers Robert Tavarez and Michael Gentile were driving behind the Galant. Officer Tavarez

---

* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. § 3925.

[2] 18 Pa.C.S. § 3928.

testified that the vehicle made a sharp turn onto Lycoming Street and parked with the passenger-side wheels completely on the curb. The officers checked the Galant's license plate and discovered it belonged to a stolen vehicle. The officers did not stop immediately because they were responding to another incident. Several minutes later, the officers returned and found the Galant parked where they had last seen it.

Officer Tavarez parked behind the Galant. Both officers exited the police car to investigate. Sedden was sitting in the driver's seat, but the passengers had left the vehicle. Officer Tavarez asked Sedden whether the car belonged to him, and Sedden stated that the car belonged to a friend but was unable to state the friend's name. N.T. Trial, 5/7/13, at 12-13. Sedden did not have a key to the car and indicated that one of the passengers who had been in the car earlier took the keys with him. ***Id.*** at 14. Officer Gentile testified to the condition of the vehicle, indicating that the car's radio was missing, the console was damaged, and no keys were present. ***Id.*** at 42. The officers verified that the vehicle identification number matched the license plate belonging to the aforementioned stolen car. Officer Taverez requested that Sedden get out of the vehicle. Sedden complied, with a crowbar in his hand, which he put down when asked to do so. However, when the officers attempted to arrest Sedden, he resisted by flailing and kicking. The officers called a patrol wagon, which was necessary to assist them in taking Sedden into custody.

At trial, Sedden testified to an entirely different version of events. Sedden testified that he was drunk and high and attempting to buy more drugs when he encountered a man who invited him into the Galant to drive to an area to purchase crack cocaine. ***Id.*** at 44-45. Sedden asserted that he was a passenger and did not drive the Galant. He explained that he moved into the driver's seat of the car to wait for the driver to return because people on a nearby porch were shooting at him with BB guns. ***Id.*** at 47.

Following a bench trial held on May 7, 2013, the Honorable Chris R. Wogan found Sedden guilty of receiving stolen property and unauthorized use of a motor vehicle. On July 15, 2013, the court sentenced him to 19 to 38 months' incarceration plus 24 months' probation. The instant appeal challenging the sufficiency of the evidence was timely filed on July 24, 2013.[3]

---

[3] On August 15, 2013, Sedden was ordered to file a statement of errors complained of within 21 days, pursuant to Pa.R.A.P. 1925(b). Sedden's counsel failed to file a timely statement of errors due to a clerical error. On September 18, 2013, Sedden's counsel filed a motion seeking to file a statement of errors *nunc pro tunc*. A statement of errors was included with the motion as well as a request to file a supplemental statement of errors. The trial court did not rule on the motion. Instead, the trial court filed an Opinion on October 10, 2013, addressing the merits of the issues raised in the submitted statement of errors. When counsel has filed an untimely Rule 1925(b) statement and the trial court has addressed the issues raised, we need not remand and may address the merits of the issues. ***Commonwealth v. Thompson***, 39 A.3d 335, 340 (Pa. Super. 2012); ***Commonwealth v. Burton***, 973 A.2d 428, 433 (Pa. Super. 2009).

Where an appellant challenges the sufficiency of the evidence, this Court "must determine whether the evidence and all reasonable inferences deducible therefrom, when viewed in the light most favorable to the verdict-winner . . . are sufficient to establish all elements of the crime charged beyond a reasonable doubt." ***Commonwealth v. Rakowski***, 987 A.2d 1215, 1217 (Pa. Super. 2010) (quoting ***Commonwealth v. Parker***, 957 A.2d 311, 317 (Pa. Super. 2008) (citations omitted)). Further, "the Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." ***Commonwealth v. Abed***, 989 A.2d 23, 26 (Pa. Super. 2010) (citations omitted).

A person commits the offense of receiving stolen property "if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen." 18 Pa.C.S. § 3925(a). A person is guilty of the unauthorized use of a motor vehicle if he or she operates an automobile without the owner's consent. 18 Pa.C.S. § 3928(a).

On appeal, Sedden asserts that the evidence was insufficient to show that the Galant he was driving had been stolen. Sedden also claims the evidence was insufficient to show that he had reason to know the vehicle was stolen or was reckless regarding its stolen status. After a careful review of the record, we conclude that sufficient evidence was presented as to each of these issues.

In an earlier hearing, Chungja Chung testified to owning a 2000 Mitsubishi Galant that was stolen between July 17 and July 23, 2010 from 6351 Overbrook Avenue, Philadelphia. N.T. Pretrial Hearing, 3/22/11, at 4-5. Chung's son recovered the Galant from a police impound lot in August 2010 and noted damage to the vehicle, including a broken window and missing audiocassette and GPS systems. ***Id.*** at 10-12. Based upon this testimony, Sedden stipulated to "ownership and non-permission" as related to the Chungs' Galant. ***Id.*** at 3-4. Further, Officer Tavarez had reason to believe the Galant was stolen after checking the vehicle's license plate and receiving information identifying the vehicle as stolen. This constituted probative evidence, which the trial court was free to believe. ***See Commonwealth v. Foreman***, 797 A.2d 1005, 1012 (Pa. Super. 2002) (court free to give detective's testimony its natural probative effect, where detective relied on hearsay statements from police reports to confirm property had been reported stolen and no hearsay objection was made). Therefore, the Commonwealth presented sufficient evidence to prove that the Galant was stolen.

In considering whether Sedden had the requisite *mens rea*, "mere possession of stolen property is insufficient to permit an inference of guilty knowledge; there must be additional evidence, circumstantial or direct, which would indicate that the defendant knew or had reason to know that the property was stolen." ***Commonwealth v. Matthews***, 632 A.2d 570, 572 (Pa. Super. 1993) (citing ***Commonwealth v. Williams***, 362 A.2d 244,

248 n.7 (Pa. 1976)). Additional evidence supporting an inference of guilty knowledge includes whether the arrested individual was cooperative with the police, whether the car showed physical signs that it had been stolen, and whether the individual offered an explanation for his possession of the vehicle. ***Matthews***, 632 A.2d at 573. Unexplained possession of recently stolen goods supports an inference that the individual has reason to know the goods have been stolen, ***Williams***, 362 A.2d at 248-49, as well as an inference of recklessness for purposes of the unauthorized use of a motor vehicle. ***Commonwealth v. Hogan***, 468 A.2d 493, 497 (Pa. Super. 1983). Whether possession is recent or unexplained are questions for the trier of fact. ***Williams***, 362 A.2d at 249.

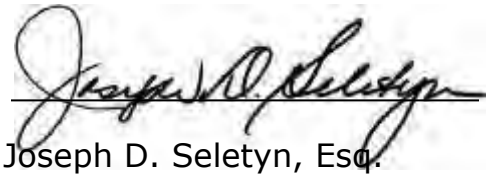
Here, Sedden's possession of the Galant six days after it was reported stolen qualifies as recent possession. ***See Hogan***, 468 A.2d at 497-98 (possession four weeks after theft considered to be recent). To explain his presence in the vehicle, Sedden indicated that the Galant belonged to "a friend," but was unable to elaborate or provide the friend's name. The trial court was free to disregard this explanation as unsatisfactory and to consider Sedden's possession to be unexplained. ***See Williams***, 362 A.2d at 249. Additionally, the Galant was damaged, including a missing radio and damaged console area. Such damage supports an inference that Sedden knew, or should have known, that the vehicle was stolen. ***Id.*** at 247, n.3. Finally, Sedden was uncooperative when the officers attempted to arrest him. ***Matthews***, ***supra***. For these reasons, the trial court determined that

Sedden's possession of the Galant was recent and unexplained, and that Sedden therefore possessed "guilty knowledge" as to whether the car was stolen. ***See Williams***, 362 A.2d at 248.

Based on the foregoing, we agree with the trial court that the Commonwealth provided sufficient evidence to prove that the Mitsubishi Galant the officers observed Sedden driving was stolen and that Sedden had reason to know it was stolen.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/26/2014