IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 67228-2-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
M.G. (D.O.B.: 8/25/1994),	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 30, 2012

Spearman, A.C.J. — M.G. was adjudicated guilty of theft of a motor vehicle and reckless driving following a hearing. M.G. appeals his conviction for theft of a motor vehicle, claiming that (1) theft of a motor vehicle and taking a motor vehicle without permission in the second degree are concurrent offenses, so the State should have charged him with the latter and (2) insufficient evidence supports his conviction. Because a defendant can commit the crime of taking a motor vehicle without permission in the second degree without committing theft of a motor vehicle, we hold that these crimes are not concurrent and therefore the State properly charged M.G. We also find that sufficient evidence supports M.G.'s conviction for theft of a motor vehicle. We therefore affirm.

FACTS

On January 24, 2011 at approximately 4:00 p.m. Steven Rubey left his maroon 1996 Toyota Tacoma pickup truck at the Lopez Island ferry terminal parking lot, with the doors unlocked and the keys inside the center console. The next day at approximately 5:19 p.m. Anna Lease was walking her dog when she saw a maroon or red Toyota Tacoma pickup truck heading in her direction and travelling, in her estimation, 50 miles per hour (mph) in a 25-mph zone. She jumped out of its way. Lease looked through the windshield as the truck passed and recognized the driver as M.G., whom she had known for several years and saw around the island on a regular basis. She returned home and told her fiancé, Luke MacKinnon, that she had almost been hit by a maroon Toyota Tacoma, although she did not tell him that M.G. was the driver.

MacKinnon immediately left in search of the truck. MacKinnon soon saw a truck matching the one described by Lease and attempted to signal it to stop. When it did not, Lease followed it on a number of roads going as fast as 65 mph in 35-mph zones. MacKinnon also recognized the driver as M.G. Eventually MacKinnon gave up, and as he passed a school, he saw a patrol car in the parking lot. He went inside the school to find the deputy to explain what had happened. Deputy Scott Taylor then searched for the truck, including at the ferry terminal parking lot, but did not find it. MacKinnon also continued to look for the truck and saw it at one point, but stopped at his home to get his cell phone. He went out again in his car and looked for the truck at several places, including the

ferry terminal parking lot. He did not see the truck.

Around 10:00 a.m. on January 27, 2011, Rubey returned to Lopez Island and found his truck in the ferry terminal parking lot where he had left it, but with two floor mats missing and mud smeared on the side of the truck and the dashboard. Rubey's truck, which gets approximately 18-20 miles to the gallon on Lopez Island, was missing more than a gallon of gas. On February 2, Lease was at home when she saw the same maroon truck drive by. This time the driver was an older man. She and MacKinnon went to the market on Lopez Island, where they saw the truck and spoke to the driver, Rubey, about what had happened with his truck on January 25. Deputy Taylor was called and interviewed the witnesses.

The State charged M.G. with one count of theft of a motor vehicle and one count of reckless driving. Following testimony by Rubey, Lease, MacKinnon, and Taylor, the trial court adjudicated M.G. guilty on both counts.

DISCUSSION

M.G. makes two claims on appeal: (1) theft of a motor vehicle and taking a motor vehicle without permission in the second degree are concurrent offenses, so the State should have charged him with the latter, more specific offense and (2) insufficient evidence supports his theft of a motor vehicle conviction. In connection with the second claim, he challenges the trial court's findings of fact related to his intent to deprive Rubey of the use of his truck. We

hold that the theft and taking statutes are not concurrent and conclude that there is sufficient evidence to support M.G.'s conviction. We therefore affirm.

Concurrency of Theft of a Motor Vehicle and Taking a Motor Vehicle in the Second Degree

We review de novo the question of whether two statutes are concurrent. State v. Wilson, 158 Wn. App. 305, 314, 242 P.3d 19 (2010). When a more specific statute is concurrent with a general statute, the defendant must be prosecuted under the more specific statute. Id. at 313-14. This is to promote equal protection of the laws by subjecting persons committing the same misconduct to the same potential punishment. State v. Cann, 92 Wn.2d 193, 196, 595 P.2d 912 (1979). We determine if two statutes are concurrent by examining whether someone can violate a specific statute without violating the general statute. Two statutes are not concurrent if there are any situations in which the specific statute can be violated without violating the general statute. State v. Chase, 134 Wn. App. 792, 800, 142 P.3d 630 (2006).

Under RCW 9A.56.065, "A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle." "Theft" is defined, in pertinent part, in RCW 9A.56.020(1)(a) as "[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; . . ." RCW 9A.56.075(1) defines the offense of taking a motor vehicle without permission in the second degree, as follows:

> A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

In State v. Walker, 75 Wn. App. 101, 879 P.2d 957 (1994), we addressed the similar issue of whether taking a motor vehicle without permission is concurrent with theft in the first degree.[1] In Walker, the defendant was convicted of theft in the first degree after taking a Lincoln Town Car valued at $6,300 that belonged to his boss, Joe Velasquez. Velasquez occasionally gave Walker permission to use the Lincoln, but on the Friday in question he refused Walker's repeated requests to borrow it. Velasquez noticed the car was missing after Walker visited his home and reported it stolen when Walker did not return it the following Monday. Walker was pulled over while driving the Lincoln in Los Angeles the following day and was charged with taking a motor vehicle without

[1] In 1990 when the crime in Walker occurred, taking a motor vehicle without permission was not divided into degrees. The statute at the time read:

> (1) Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, the property of another, shall be deemed guilty of a felony, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.
>
> (2) Taking a motor vehicle without permission is a class C felony.

Former RCW 9A.56.070 (1975)(2003).This statute is effectively identical to the current crime of taking a motor vehicle without permission in the second degree as codified by RCW 9A.56.075, which M.G. contends is concurrent with theft of a motor vehicle.

permission. The charge was later amended to theft in the first degree. Upon conviction, Walker appealed, arguing that the two crimes were concurrent. Id. at 103-105. We held that taking a motor vehicle without permission was not concurrent with theft in the first degree because (1) theft required the value of the stolen property to exceed $1,500,[2] and (2) "the intent elements [of the two crimes] differ based on the duration of deprivation." Id. at 106, 107 (emphasis added).

Here we address the question of whether taking a motor vehicle in the second degree is concurrent with theft of a motor vehicle. M.G. argues that Walker is not dispositive because there is not a fixed dollar amount under the theft of a motor vehicle statute. However, the second distinction drawn in Walker between the crimes of taking a motor vehicle without permission and theft in the first degree is applicable here. As in Walker, the theft of a motor vehicle statute requires "intent to deprive," whereas the taking a motor vehicle without permission statute requires only that a defendant intentionally take or drive away a motor vehicle without the owner's permission. Thus, a person who takes a car for a brief joyride or spin around the block has taken a motor vehicle without permission, but has not committed theft of a motor vehicle due to the lack of intent to deprive, as shown by the brevity of the taking. Accordingly, we conclude that it is possible to commit the offense of taking a motor vehicle without

[2] This value was amended to $5,000 in 2009. RCW 9A.56.030.

permission in the second degree without committing theft of a motor vehicle.

Because the more specific statute can be violated without violating the more general statute, the two crimes are not concurrent. The State was not required to charge M.G. with taking a motor vehicle without permission in the second degree.

Sufficiency of the Evidence

We review a claim of insufficient evidence to determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Brown, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). The trial court's undisputed findings[3] establish that Rubey did not give anyone permission to use his truck from January 24 to January 27, 2011 and that M.G. drove Rubey's truck a distance of at least 18 miles sometime during that period. Although the evidence does not establish the specific amount of time that M.G. drove the truck, MacKinnon gave chase over a significant distance and in his own brief M.G. claims he had the truck for "several hours." The Walker court clarified the theft statue as proscribing "the continued or permanent unauthorized use of a vehicle." Walker, 75 Wn. App. at 108 (emphasis omitted). Viewing the evidence in a light most favorable to the State, the evidence of M.G.'s unauthorized use of Rubey's truck over a distance of at least 18 miles and during a period of several hours was

[3] Unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

sufficient to show that such use was continued and supports the trial court's finding that M.G. acted with intent to deprive. Thus, there was sufficient evidence to support M.G.'s conviction for theft of a motor vehicle.[4]

Affirmed.

Spearman, A.C.J.

WE CONCUR:

Becker, J.

[4] M.G. argues that the State had the burden to prove that he had the intent to permanently deprive Rubey of his truck, citing common law doctrine. But as we held in State v. Crittenden, 146 Wn. App. 361, 370, 189 P.3d 849 (2008), "The common law element of intent to permanently deprive has been purposefully omitted by the Legislature and is no longer required."