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IN THE
COURT OF APPEALS OF INDIANA

V.R.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Plaintiff.

October 28, 2022

Court of Appeals Case No. 22A-JV-759

Appeal from the Perry Circuit Court

The Honorable Lucy Goffinet, Judge

Trial Court Cause No. 62C01-2106-JD-177

Pyle, Judge.

Statement of the Case

[1] V.R. ("V.R.") appeals his juvenile adjudication that he committed an act that would constitute Level 6 felony auto theft if committed by an adult.[1] V.R. argues that there is insufficient evidence to support his juvenile adjudication. Concluding that there is insufficient evidence to support V.R.'s auto theft adjudication, we reverse his adjudication and remand for resentencing.

[2] We reverse and remand.

Issue

Whether there is sufficient evidence to support V.R.'s juvenile adjudication.

Facts

[3] In June 2020, Tell City Police Department Officer Matt Leisener ("Officer Leisener") responded to a dispatch of a suspicious individual near a resident's garage. When Officer Leisener arrived on the scene, he saw a silver car with a plate that matched the description and plate of a car that had been reported stolen out of Spencer County. Officer Leisener initiated a traffic stop on the car. Officer Leisener saw sixteen-year-old V.R. driving the car and arrested V.R.

[4] Later that month, the State filed a petition alleging that V.R. was a delinquent child for committing an act that would constitute Level 6 felony auto theft if

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[1] V.R. does not challenge his juvenile adjudication that he committed Class C misdemeanor operating a motor vehicle without ever receiving a license if committed by an adult.

committed by an adult.[2] The trial court held a fact-finding hearing in February 2022. At this hearing, the trial court heard the facts as set forth above. Additionally, Officer Leisener testified that he had seen V.R. operating the silver car. On cross-examination, Officer Leisener testified that he had "just witnessed [V.R.] operating the vehicle" and had "made a traffic stop based on the . . . stolen status of the car." (Tr. Vol. 2 at 19). Officer Leisener further testified that V.R. had made no admissions about how he had possessed the car and that another officer had spoken with V.R. "at the scene on how the vehicle [had been] obtained[.]" (Tr. Vol. 2 at 20).

[5] V.R. testified in his own defense. V.R. testified that he had taken possession of the vehicle the previous night. V.R. further testified that his grandmother had told him to come home to Tell City when he was in Dale. V.R. testified that he "kn[e]w somebody that live[d] in Dale" named Alex who had "t[aken] [him] home from Holiday World once in a car[.]" (Tr. Vol. 2 at 22). V.R. testified that he had spoken with Alex, who agreed to let V.R. borrow his car if he returned it the next morning with a full tank of gas. V.R. also testified that he "thought [that] it was [Alex's] car because [Alex had] taken [him] home" in the same car. (Tr. Vol. 2 at 23). V.R. further testified that Alex had the keys to the car and that he had "no knowledge that [the car] was stolen." (Tr. Vol. 2 at 23).

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[2] The State also alleged that V.R. had committed what would constitute Class A misdemeanor criminal trespass and Class C misdemeanor operating a motor vehicle without ever receiving a license if committed by an adult. The State ultimately dismissed the criminal trespass allegation, and V.R. does not challenge the operating a motor vehicle without ever receiving a license true finding on appeal.

On cross-examination, V.R. admitted that he did not know Alex's last name. V.R. also testified that he did not know Tyler Oliver, the registered owner of the silver car.

[6] At the conclusion of the fact-finding hearing, the trial court determined that V.R. had committed the act of auto theft as alleged and entered a true finding for the allegation. The trial court held a dispositional hearing and placed V.R. in the Department of Correction ("the DOC") for an indeterminate term.

[7] V.R. now appeals.

Decision

[8] We first note that there are many legal principles which express the values we adhere to in the administration of justice. Perhaps, the most important is the constitutional requirement that the State prove every element of a charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 362-363 (1970); *Dobbins v. State*, 721 N.E.2d 867, 875 (Ind. 1999). This heightened standard of proof is required by the Due Process Clause for the following reasons: (1) it reduces the risk of wrongful convictions; (2) it provides the basis for the presumption of innocence; (3) it requires the State to prove the allegations in such a way that the fact finder is firmly convinced of guilt; and (4) it is necessary to "command the respect and confidence of the community in applications of the criminal law." *Winship*, 397 U.S. at 364. This fundamental requirement applies to both adult and juvenile proceedings. *Id*.

[9] In this case, V.R. argues that there is insufficient evidence to support his juvenile adjudication for auto theft. "In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt." *A.B. v. State*, 885 N.E.2d 1223, 1226 (Ind. 2008). When we review a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* "Reviewing solely the evidence and the reasonable inferences from that evidence that support the fact finder's conclusion, we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find *beyond a reasonable doubt* that the defendant committed the crime." *Id*. (internal quotations omitted) (emphasis added).

[10] The theft statute, INDIANA CODE § 35-43-4-2, provides that "[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with *intent* to deprive the other person of any part of its value or use, commits theft[.]" The statute also provides that a person commits a Level 6 felony if the theft is of a motor vehicle. I.C. 35-43-4-2(a)(1)(B)(i) (emphasis added). "[T]he mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft. Rather, such possession is to be considered along with the other evidence in a case, such as . . . the circumstances of the possession[]." *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010). The fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational fact finder could find the defendant guilty beyond a reasonable doubt. *Id.*

[11] V.R. contends that the evidence was insufficient because the State "merely proved that [V.R.] was in possession of a vehicle that had been stolen" and "did not present any evidence to support an inference that V.R. was the [person] who stole the car[.]" (V.R.'s Br. 8). We agree.

[12] Our review of the record reveals that the State presented no evidence that V.R. knowingly or intentionally exerted unauthorized control over the car with the intent to deprive the owner of its value. The State's sole witness, Officer Leisener, explicitly testified that he had "just witnessed [V.R.] operating the vehicle" and had "made a traffic stop based on the . . . stolen status of the car." (Tr. Vol. 2 at 19). Officer Leisener further testified that V.R. had made no admissions about how he had possessed the car and that another officer had spoken with V.R. "at the scene on how the vehicle [had been] obtained[.]" (Tr. Vol. 2 at 20). The State's evidence only proved beyond a reasonable doubt that V.R. had possession of a vehicle that had been reported stolen.

[13] The State argues that elements of a crime can be established entirely by circumstantial evidence. The State contends that V.R.'s intent can be inferred because he had possession of the car "at a time when he admitted to being stranded in another city without a way to get home." (State's Br. 7). The State further argues that V.R. "could not provide identifying information for the person who allegedly let him borrow the car." (State's Br. 8). The State argues that these two facts combined with possession of the car provide enough circumstantial evidence to support the auto theft adjudication. We disagree.

[14] Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn. *Jackson v. State*, 758 N.E.2d 1030, 1036 (Ind. Ct. App. 2001), *trans. denied*. An inference is a process of reasoning by which a fact sought to be established is deduced as a logical consequence from other facts already proved or admitted. *Lewis v. State*, 535 N.E.2d 556, 559 (Ind. Ct. App. 1989). A properly drawn inference constitutes relevant evidence to be considered by the factfinder. *Id*. In addition, an inference is not disqualified from consideration by the fact finder simply because it is disputed by another witness. *Id.* "However, a factfinder's determination cannot stand if it is based upon mere speculation or conjecture or on an inference on another inference." *Id*.

[15] Here, V.R.'s need to return home does not lead to an inference that V.R. intended to deprive anyone of the vehicle's value or use. The State cites to *Donovan v. State*, 937 N.E.2d 1223, 1227 (Ind. Ct. App. 2010), *trans. denied*, for the proposition that the failure to provide identifying information for the person who allegedly gave permission for a defendant to drive a stolen vehicle was circumstantial evidence of auto theft. However, in *Donovan*, our Court affirmed an auto theft conviction not only because of the failure to provide identifying information, but also because the VIN number of the car had been scratched off and the car had been hot-wired. *Id.* The case before us is distinguishable because V.R. had the keys for the allegedly stolen car and there was no evidence that the VIN number had been removed.

[16] The State failed to prove that V.R. exerted unauthorized control of the vehicle with the intent to deprive anyone of its value or use. The State chose to call Officer Leisner as its sole witness. Officer Leisner's testimony proved that V.R. was in possession of a car that had been reported stolen. However, for whatever reason, no one was called to testify about how V.R.'s possession of the vehicle deprived them of its value or use. The trial court was free to question the credibility of V.R.'s testimony, but its conclusion that V.R. had intentionally deprived someone of its value or use was not based upon any fact that was proven beyond a reasonable doubt. V.R.'s explanation as to how he came to possess the vehicle might have sounded suspicious, but it does not lead to the logical conclusion that he intended to deprive someone of its value or use. Even when combined with the testimony of Officer Leisner, that conclusion is based upon speculation, conjecture, or another inference. No evidence was introduced (direct or circumstantial) to prove V.R.'s intent to deprive anyone of the vehicle's value or use. Accordingly, we hold that there was insufficient evidence to support V.R.'s adjudication for auto theft. Thus, we reverse V.R.'s adjudication and remand to the trial court for resentencing on his remaining unchallenged adjudication.

[17] Reversed and remanded.

Bradford, C.J., dissents with opinion.

Weissmann, J., concurs.

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Bradford, Chief Judge, dissenting.

[18] Because I disagree with the majority's conclusion that the evidence is insufficient to sustain V.R.'s juvenile adjudication, I dissent.

A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with the intent to deprive the other person of any part of the vehicle's value or use, commits Level 6 felony theft. Ind. Code § 35-43-4-2(a)(1). Thus, in order to convict V.R., the State was required to prove that V.R., knowingly or intentionally, exerted unauthorized control over the motor vehicle of another, with the intent to deprive the other person of any part

of the vehicle's value or use. "It is well established that 'circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Donovan v. State*, 937 N.E.2d 1223, 1224 (Ind. Ct. App. 2010) (quoting *Pratt v. State*, 744 N.E.2d 434, 437 (Ind. 2001)). Further, "[i]ntent is 'a mental function, and without a confession, it must be determined from a consideration of the conduct and the natural consequences of the conduct' giving rise to the charge that the defendant committed theft." *Long v. State*, 935 N.E.2d 194, 197 (Ind. Ct. App. 2010) (quoting *Duren v. State*, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999), trans. denied.) "Accordingly, intent may be proven by circumstantial evidence, and it may be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *Id.* (citing *Duren*, 720 N.E.2d at 1201).

[19] As the majority notes, in *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010), the Indiana Supreme Court held that "the mere unexplained possession of recent stolen property standing alone does not automatically support a conviction for theft." The Supreme Court continued:

> Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away). In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt.

Id.

[20] The State acknowledges that mere possession, standing alone, does not automatically support a conviction for theft. The State argues, however, that the other evidence, together with V.R.'s possession, is sufficient to prove that V.R. committed what would be Level 6 felony auto theft if committed by an adult. I agree.

[21] The evidence establishes that Officer Leisener responded to a call of a suspicious vehicle near a garage in Tell City. Upon responding to the call about the suspicious vehicle, Officer Leisener observed V.R. operating a vehicle which he confirmed had been reported as stolen. The license plate of the reported suspicious vehicle matched the license plate of the vehicle being driven by V.R.

[22] V.R. admitted that he was in possession of the vehicle, claiming that he had borrowed it from an acquaintance named "Alex" the night before. V.R. acknowledged that he did not know "Alex's" last name. We have previously concluded that being unable to provide identifying or contact information for the individual who allegedly gave a defendant permission to drive a stolen vehicle can be considered as additional evidence tending to support a conviction. *See Donovan*, 937 N.E.2d at 1225. As the majority notes, there was other additional evidence presented in *Donovan* which is not present in this case, but I do not believe *Donovan* sets a standard for what is required in the way of additional evidence.

[23] It is well-established that the trial court was not obligated to believe V.R.'s claim that he had borrowed the vehicle from an individual known only to the court as "Alex." *See Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004) ("As a general rule, factfinders are not required to believe a witness's testimony even when it is uncontradicted."). As in this case, intent to deprive the vehicle's owner of its use and value can be inferred from the record. *See Long*, 935 N.E.2d at 197. Furthermore, while there was no testimony indicating when the vehicle was reported as stolen, the evidence demonstrates that the vehicle was registered to an individual who resides in Dale, *i.e.*, the town from which V.R. drove the vehicle and to which he claimed to be returning. In addition, V.R. chose to testify and the juvenile court weighed and rejected his version, which is further additional evidence to support his adjudication as a juvenile delinquent.

[24] Because I believe that the evidence is sufficient to sustain V.R.'s juvenile adjudication and V.R.'s contention to the contrary amounts to nothing more than an invitation to reweigh the evidence, I respectfully dissent and would vote to affirm the judgment of the juvenile court.