

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD D. SMITH,

Defendant-Appellant.

UNPUBLISHED
February 28, 2003

No. 235906
Wayne Circuit Court
LC No. 00-011184-01

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of attempted receiving or concealing stolen property having a value of \$1,000 or more but less than \$20,000, MCL 750.92, MCL 750.535(3)(a), entered after a bench trial. We affirm. This case is being submitted without oral argument pursuant to MCR 7.214(E).

Defendant was charged with receiving or concealing stolen property in connection with the theft of a truck. The complainant testified that his 1996 Dodge Ram truck, for which he had paid \$11,700, was stolen from in front of his home. The complainant did not give anyone permission to take the truck. Two police officers testified that they found the truck, which had been identified on LEIN as stolen, with the ignition removed. The officers conducted surveillance, and after several minutes saw two males get in the truck. The one who entered on the passenger side was identified as defendant. As the officers approached the truck, the men got out and fled the scene. A chase ensued, and defendant was apprehended. Defendant testified that at the time he was arrested he was walking to a gas station to purchase cigarettes. He denied that he was in the truck or that he fled from the police.

The trial court found defendant guilty of attempted receiving or concealing stolen property. The evidence showed that the truck had been stolen and that it was valued between \$1,000 and \$20,000. The court determined that the testimony given by the police officers was more credible than that given by defendant, and found that the officers' testimony established that defendant entered the passenger side of the truck and then fled the scene. The court was not convinced that defendant had taken possession of the truck, however, and convicted him of attempted receiving or concealing stolen property on that basis.

We review a challenge to the sufficiency of the evidence in an appeal from a bench trial by viewing the evidence presented in a light most favorable to the prosecution and determining

whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "A finding is considered to be clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

To establish the offense of receiving or concealing stolen property worth at least \$1,000 but less than \$20,000, the prosecutor must prove: (1) that the property was stolen; (2) that the property had a value of at least \$1,000 but less than \$20,000; (3) the receiving, possession, or concealment of the property by the defendant; (4) the identity of the property as that being previously stolen; and (5) that the defendant had actual or constructive knowledge that the property was stolen. MCL 750.535(3)(a); *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). An attempt consists of: (1) an attempt to commit an offense prohibited by law; and (2) any act towards the commission of the intended offense. MCL 750.92; *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001).

Defendant argues that insufficient evidence was produced to support his conviction. We disagree. The evidence established that the complainant's Dodge Ram truck was stolen. The complainant's testimony that he paid \$11,700 for the truck approximately nine months before it was stolen created the reasonable inference that its value was between \$1,000 and \$20,000. *Vaughn, supra*. The evidence that the truck's ignition was missing supported a reasonable inference that the truck had been stolen. *Id.* A law enforcement information network (LEIN) search verified that the truck was reported stolen. The trial court, sitting as the finder of fact, was entitled to accept the testimony given by the police officers as credible, and to reject the testimony given by defendant. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989).

The officers' testimony established that defendant and another person got in the truck. The mere fact of being a passenger in a stolen vehicle does not constitute possession of the vehicle. *People v Botzen*, 151 Mich App 561, 563-564; 391 NW2d 410 (1986). However, the officers' testimony further established that the truck's ignition was visibly missing and that defendant and the other person got out of the truck and fled the scene when they saw police officers approaching. This evidence supported an inference that defendant was attempting to take possession of the truck and that he knew the truck was stolen. See *People v Salata*, 79 Mich App 415, 421-422; 262 NW2d 844 (1977) (fact that vehicle was tampered with was evidence of knowledge of theft); *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001) ("It is well established that evidence of flight is admissible to show consciousness of guilt."). The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of attempted receiving or concealing stolen property. *Petrella, supra; Quinn, supra*.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray