

STATE OF MICHIGAN
COURT OF APPEALS

In re DOYLE LAMONE MCGEE, JR., Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DOYLE LAMONE MCGEE, JR.,

Respondent-Appellant.

UNPUBLISHED

September 12, 2006

No. 260580

Wayne Juvenile Division

LC No. 04-426271-DL

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from his juvenile adjudications of receiving or concealing a stolen motor vehicle, MCL 750.535(7), unauthorized driving away an automobile (UDAA), MCL 750.413, third-degree fleeing or eluding a police officer, MCL 257.602a(3), and possession of a replica or facsimile firearm, contrary to Detroit Ordinance, § 38-16-2. For the reasons articulated in this opinion, we affirm defendant's adjudications.

Respondent's adjudications arise from the theft of a 2004 Dodge Stratus automobile. A few days after the vehicle was stolen, Southfield Police Officer Nicholas Smiscik observed respondent driving the vehicle. Two other passengers were inside the vehicle. Officer Smiscik pursued the vehicle, which would not stop, resulting in a high-speed chase that ended when the vehicle hit a curb and bounced into Officer Smiscik's vehicle. Another officer observed respondent get out of the driver's side of the vehicle and drop a replica BB pistol out of his pants. The officer chased and eventually apprehended respondent. A magazine to the pistol was found in respondent's pants pocket. Respondent claimed that he was an innocent passenger and knew nothing about the theft of the vehicle.

I. Sufficiency of the Evidence

We first address respondent's claim that the evidence was insufficient to support his adjudications. Although respondent's statement of this issue purports to challenge each of his adjudications, his discussion of the issue fails to address the fleeing and eluding or possession of a replica or facsimile firearm adjudications. Thus, any claim that the latter two adjudications

were not supported by sufficient evidence has been abandoned. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004). Therefore, we limit our consideration of this issue to respondent's adjudications of UDAA and receiving or concealing stolen property.

This Court reviews a challenge to the sufficiency of the evidence in a bench trial de novo by reviewing the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). All conflicts in the evidence must be resolved in favor of the prosecution. *Id.* Circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of a crime. *Id.*

The elements of UDAA are: (1) possession of a vehicle, (2) driving the vehicle away, (3) the act is done willfully, and (4) the possession and driving away must be done without authority or permission. *Landon v Titan Ins Co*, 251 Mich App 633, 639; 651 NW2d 93 (2002); *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993), *aff'd* 446 Mich 435 (1994).

Gary Stocker testified that the vehicle was taken from his possession, without his consent. The evidence also indicated that the vehicle's ignition had been knocked out. Although respondent denied possessing or driving the vehicle, Officer Smiscik testified that the driver was wearing braids and respondent was wearing braids when he was apprehended after fleeing from the vehicle. Additionally, another officer identified respondent as the only person he saw leaving the driver's side of the vehicle. Also, the two passengers whom are brothers, testified they were the passengers during the police chase, and one of the brothers, Maurice Davis, testified that respondent was driving the vehicle. Viewed in a light most favorable to the prosecution, the evidence was sufficient to find respondent guilty of UDAA.

With respect to the receiving or concealing a stolen vehicle adjudication, respondent claims that there was insufficient evidence to show that he knew the vehicle was stolen. To establish respondent's guilt of this offense, the prosecutor was required to prove that respondent had knowledge of the stolen nature of the vehicle at some time during his wrongful course of conduct. *People v Allay*, 171 Mich App 602, 608; 430 NW2d 794 (1988). Respondent admitted at trial that he realized the vehicle was stolen because the ignition had been punched out. Because we find that there was sufficient evidence for the trier of fact to find defendant guilty of each of the elements of the offense beyond a reasonable doubt, we reject defendant's claim of insufficient evidence.

II. Double Jeopardy and Factual Inconsistency

Next, respondent argues that his dual adjudications for UDAA and receiving or concealing a stolen vehicle violate the double jeopardy prohibition against multiple punishments for the same offense. US Const, Am V; Const 1963, art 1, §15.

The purpose of double jeopardy protections against multiple punishments for the same offense is to ensure that a defendant is not punished more severely than intended by the Legislature. *People v Griffis*, 218 Mich App 95, 100; 553 NW2d 642 (1996). The test set forth in *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932), is used for analyzing claims under the United States Constitution. *People v Denio*, 454 Mich 691, 707; 564

NW2d 13 (1997). Under *Blockburger*, a court looks to see whether each statute requires proof of a fact that the other does not. *Id.* An examination of the statutes proscribing UDAA, 750.413, and receiving or concealing stolen property, MCL 750.535, reveals that each requires proof of a fact that the other does not. UDAA requires the driving away of a vehicle, while receiving or concealing a stolen vehicle does not. Conversely, receiving or concealing requires that the vehicle be stolen, and UDAA does not. Accordingly, respondent's dual adjudications do not violate the Double Jeopardy Clause of the United States Constitution. See *People v Parker*, 230 Mich App 337, 344; 584 NW2d 336 (1998).

In analyzing a double jeopardy claim under the state constitution, more traditional means of determining legislative intent are used, such as the subject, language, and history of the statutes. *Denio, supra* at 708. To ascertain the intent of the Legislature, a court considers factors such as whether the respective statutes prohibit conduct violative of distinct social norms, the punishments authorized by the statutes, whether the statutes are hierarchical or cumulative, and any other factors indicative of legislative intent. *Id.*; *Griffis, supra* at 101. The protection against multiple punishments for the same offense restrains the prosecutor and the courts, not the Legislature. *People v Shipley*, 256 Mich App 367, 378; 662 NW2d 856 (2003), citing *People v Mitchell*, 456 Mich 693, 695; 575 NW2d 283 (1998). If there is a clear indication the Legislature intended to impose multiple punishment for the same offense, there is no double jeopardy violation. *Id.*

In this case, the respective statutes prohibit conduct violative of distinct social norms. The receiving or concealing stolen property statute prohibits conduct that violates the social norm against theft of property. *People v Ainsworth*, 197 Mich App 321, 326; 495 NW2d 177 (1992). On the other hand, the UDAA statute is not principally aimed at preventing theft; rather, it is intended to deter the trespassory taking and use of property. *People v Hendricks*, 446 Mich 435, 448-449; 521 NW2d 546 (1994), reh den 447 Mich 1202 (1994). Moreover, each offense is punishable by up to five years' imprisonment. The fact that both statutes provide the same penalty evidences a legislative intent to separately punish the violation of each statute. "When two statutes prohibit violation of the same social norm, even if in a somewhat different manner, it may be concluded that the Legislature did not intend multiple punishment. However, statutes prohibiting conduct that violates distinct social norms can generally be viewed as separate and as permitting multiple punishment. The key is to identify the type of harm or conduct the Legislature intended to prevent" *People v Kaczorowski*, 190 Mich App 165, 170; 475 NW2d 861 (1991), lv den 439 Mich 974 (1992).

In *Denio, supra*, our Supreme Court observed:

Our criminal statutes often build upon one another. Where one statute incorporates most of the elements of a base statute and then increases the penalty as compared to the base statute, it is evidence that the Legislature did not intend punishment under both statutes. [*Denio, supra*, 454 Mich at 708.]

Respondent also claims that there is a factual inconsistency in convicting him of both crimes because "[e]ither he took the car or he received it from someone who stole it. He cannot be both actors." The genesis of defendant's argument is flawed because it erroneously assumes that the only way he could be adjudicated guilty of receiving or concealing a stolen vehicle is if he received it from someone else. In this case defendant has possession of the automobile, which

is sufficient to sustain a conviction for receiving or concealing stolen property. *People v Hastings*, 422 Mich 267; 373 NW2d 533 (1985).

Defendant's argument is also flawed because it fails to take into consideration that statutes may be cumulative. However, these statutes both have a maximum penalty of five years imprisonment and are found in different chapters of the Penal Code. *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996), lv den 454 Mich 861 (1997). UDAA is in the "Motor Vehicles" chapter and receiving or concealing a stolen vehicle is in the "Stolen, Embezzled or Converted Property" chapter. Accordingly, there is no double jeopardy violation under the Michigan Constitution, nor can we find any factual inconsistencies in the verdicts.

III. Sufficiency of the Trial Court's Findings

MCR 6.403 provides:

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.¹

Following conclusion of the trial, the trial court stated as follows:

I find beyond a reasonable doubt that Mr. McGhee indeed was the driver of the car. So I find him responsible for Count 1 stolen property and I find him responsible for Count 2 unlawfully driving away an automobile, I find him responsible for Count 3 fleeing and eluding and I will find him responsible for the 4th Count of resisting arrest and I will find him responsible for the 5th Count of the violation of Detroit ordinance.

While case law stands for the proposition that a trial court need not make specific findings of fact on each element of the crime, *People v Legg*, 197 Mich App 131; 494 NW2d 797 (1992), here the trial court made only one finding of fact. In some cases, such limited findings of fact may be insufficient to sustain the verdict and necessitate remand. However, the defense set forth by respondent in this case makes it unique to this issue because respondent contested a single issue. Respondent's defense of the action was predicated on the theory that he was not the driver but merely an innocent passenger in the vehicle. Therefore, the only issue for the trial court to determine was whether respondent was the driver of the vehicle. Having simply concluded that respondent was the driver does not therefore lead us to a holding that there was an insufficiency of factual findings by the trial court. Rather such a single finding of fact constitutes confirmation that the trial court was aware of, and satisfied, its obligation as the fact finder. Because the trial court's brevity of fact finding in this case was predicated on the single

¹ This court rule incorporates MCR 2.517. *People v Legg*, 197 Mich App 131, 134 n 1; 494 NW2d 797 (1992).

issue contested by respondent, we cannot conclude that further explication of the facts was required in this case.

Affirmed.

/s/ Alton T. Davis

/s/ Stephen L. Borrello