

STATE OF MICHIGAN
COURT OF APPEALS

In re MAURICE CORNELL JOHNSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MAURICE CORNELL JOHNSON,

Respondent-Appellant.

UNPUBLISHED

May 7, 2009

No. 284655

Wayne Circuit Court

Family Division

LC No. 07-467523

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Respondent, a minor, was adjudicated delinquent of unlawfully driving away a motor vehicle, MCL 750.413, and was sentenced to 182 days of probation, 20 hours of community service and various other terms and conditions. Respondent appeals as of right. We affirm.

The issue to be decided is whether there was sufficient identification evidence to support the trial court's finding that respondent unlawfully drove away a motor vehicle. This case arose from the theft of a truck. Detroit Police Officer Steven Turner was on patrol when he observed a truck and a Jeep in a convenience store parking lot. The drivers of the two vehicles were talking to each other. The vehicles exited the parking lot, crossing in front of Turner. Turner noticed that the Jeep's rear vent window was broken. He ran a computer check of the Jeep's license plate, which indicated the Jeep was stolen. The Jeep stopped for a traffic light, and Turner pulled up next to it; the truck was behind the Jeep. Turner looked over his shoulder to see the driver of the truck, who was between 5 and 15 feet away. It was a sunny afternoon, and Turner testified that he could clearly see the driver; Turner identified him as respondent. Turner radioed to fellow officers descriptions of both vehicles and both drivers, describing the truck driver as a young black male wearing a black sweatshirt or jacket.

Detroit Police Officers Delawn Steen and Ronald Taylor were on patrol when they received Turner's radio call. Steen, who was driving, spotted the vehicles driving toward them, one in front of the other. He testified that he purposely looked at both drivers as they drove past him, that he was a couple feet away when he observed them, that he viewed them for several seconds, that he clearly saw the truck driver and that it was respondent. Taylor did not see the drivers. Steen made a U-turn and followed the vehicles until they stopped in an alley.

Steen saw both drivers get out of their vehicles and run. He chased and caught the Jeep driver but lost sight of the truck driver. But as Steen was escorting the Jeep driver back to the scene, he saw respondent sitting on the front porch of a house, which was 25 to 50 yards from the truck. Respondent was breathing hard. Steen estimated that five or six minutes had passed since he had first observed respondent driving the truck.

While Steen pursued the Jeep driver, Taylor chased the truck driver but lost sight of him for a short period. Taylor approached L.C. Reynolds, who was standing in a nearby yard, and asked Reynolds whether he had seen "him." Reynolds pointed and said he had seen a person wearing a black jacket with gray sleeves. Although Taylor had not seen the truck driver's face, he observed that the driver was wearing a black jacket with gray sleeves, matching Turner's description. Taylor ran for 15 to 20 seconds in the direction Reynolds had pointed until he saw respondent standing on the front porch of a home, wearing a black jacket with gray sleeves. Taylor testified that respondent looked scared and had an elevated heart rate. Taylor arrested respondent and put him in the back of the police car. Turner arrived and saw respondent in the police car. Turner testified that respondent was the driver of the truck and was wearing the same black clothing Turner had observed him wearing earlier. Turner estimated that 5 to 10 minutes had elapsed between the time he first looked at respondent driving the truck and the time he saw him again in the police car.

Reynolds was a neighbor of respondent who had known respondent for several years, had known respondent's mother since she was young, and saw respondent nearly every day. He testified that he was entering his house when he saw approximately three people, including respondent, sitting on respondent's front porch. Reynolds went inside briefly and was returning to his yard when two vehicles pulled into a nearby alley. The drivers got out of their vehicles and ran out of Reynolds' sight. Reynolds testified that neither of the drivers was respondent. Reynolds saw a police officer running and told him that one of the drivers was wearing a black jacket with gray sleeves.

On appeal, respondent claims there was insufficient identification evidence to support the trial court's finding that he was the driver of the truck. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). This Court must review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Here, we hold there was sufficient identification evidence, both direct and circumstantial, to support the trial court's finding that respondent was the driver of the truck. As for direct evidence, two of the officers made it a point to look at the driver of the truck and got a close and clear look at him. They positively identified the truck driver as respondent.

The third officer's testimony provided circumstantial evidence that respondent was the truck driver. Circumstantial evidence, and the reasonable inferences arising from such evidence, can constitute proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Taylor got a clear look at the driver's clothing when he jumped out of the truck; this clothing was the same as that worn by respondent when he was found moments later

on the porch and also matched the clothing description provided by one of the other officers and by a witness. The fact that Taylor chased the truck driver, temporarily lost sight of him and then found respondent sweating and scared-looking on a nearby porch moments later provided additional circumstantial evidence that he was the truck driver whom Taylor had been chasing.

The trial court could have found that the testimony of the three officers, viewed most favorably to the prosecution, proved respondent's identity beyond a reasonable doubt. There are no inconsistencies within any individual officer's testimony or among the three officers' testimony. Each of the officers had between 10 and 13 years of experience and was trained and practiced in making accurate observations and identifications. Respondent does not dispute any aspect of these officers' testimony.¹

The only contrary evidence is the testimony of Reynolds, which the trial court discredited. The court referred to an alleged but minor inconsistency in Reynolds' testimony.² It is unclear, however, how much weight, if any, the court gave this alleged inconsistency in assessing Reynolds' credibility. The court concluded that "in light of all the other testimony that the Court has taken, I'm satisfied the prosecution has met their burden of showing responsibility, beyond a reasonable doubt, that Maurice Johnson was the individual who was driving the black Dodge Ram truck, on April the 27th, 2007." The court may have been swayed by the prosecution's argument that Reynolds had a motive to lie because he knew respondent and his mother. In addition or in the alternative, the court may have believed Reynolds was simply mistaken, either in his observations of the incident, his memory or his testimony. In any event, the credibility of identification testimony is a matter for the trier of fact to decide. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

We therefore conclude that there was sufficient identification evidence to support the trial court's finding beyond a reasonable doubt that respondent unlawfully drove away a motor vehicle.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens

¹ During trial, counsel for respondent elicited an admission from Steen that he had mistakenly identified someone in the past. We are not persuaded by respondent's implication that Steen's testimony in this case is therefore unreliable.

² The court stated that the officers testified there were two trucks, while Reynolds testified there was a car and a truck. Initially, Reynolds testified that there were two cars. He may have been focusing on the number of vehicles rather than on whether they were cars or trucks, using "car" simply as a substitute for "motor vehicle" (which would encompass "truck"). Later in the trial, the court itself asked Reynolds, "[W]ere they cars or trucks or do you know?" Reynolds responded that there was one truck and one car.