STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HUSSAIN ALSALEHI

Defendant-Appellant.

UNPUBLISHED
December 17, 2013

No. 312504
Wayne Circuit Court
LC No. 12-000868

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant appeals by right from his bench trial convictions of receiving and concealing stolen property of $20,000 or more, MCL 750.535(2)(a), and failing to record transactions as a used car parts dealer, MCL 257.1355(a). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant owned and operated a used auto parts business. When officers from the City of Detroit Police Department conducted a routine inspection of that business, they found that defendant did not possess the records of transactions required by law. Additionally, officers found a Caterpillar bulldozer, which had been reported stolen nearly a year earlier. The bulldozer had been "hotwired" and the officers found evidence that it had been recently used. At trial, defendant argued that he hired employees to maintain his records and paperwork. He also claimed he was merely storing the bulldozer for someone else, but had no documentation to prove it.

The trial court convicted defendant and sentenced him to two years of probation, conditioned on $46,000 of restitution. The trial court also imposed a one-year jail sentence, which would be suspended if defendant paid the full restitution amount during the probationary period and otherwise successfully completed his probation. Defendant now appeals by right. We affirm defendant's convictions and sentence.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence to support his convictions, and that the trial court therefore erred in finding him guilty. On appeal, we review a defendant's challenge to the sufficiency of the evidence de novo, taking the evidence in the light most

favorable to the prosecution. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). This Court must determine, considering the evidence as a whole, whether a rational trier of fact could have found that the crime's essential elements were proven beyond a reasonable doubt. *Ericksen*, 288 Mich App at 196. However, witness credibility and the weight of evidence are for the fact finder to determine, *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012), as are any inferences that may be drawn, *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Furthermore, because of the difficulty in proving one's state of mind, minimal circumstantial evidence, inferred from all the evidence, will suffice. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Thus, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Finally, the prosecutor need not disprove every reasonable theory of innocence, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), and any conflicts in the evidence must be resolved in the prosecution's favor, *Kanaan*, 278 Mich App at 619.

A. RECEIVING AND CONCEALING STOLEN PROPERTY OF $20,000 OR MORE

MCL 750.5352(a) provides that "[a] person shall not buy receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, or having reason to know or reason to believe, that the money, goods, or property is stolen, embezzled, or converted." The elements of this offense are: "(1) the property was stolen; (2) the property has a fair market value of [the statutory requirement]; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the property was identified as being previously stolen." *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993). Defendant challenges only the third element, regarding his knowledge that the property was stolen.

Viewed in the light most favorable to the prosecution, ample evidence was presented to prove beyond a reasonable double that defendant knew he possessed stolen property. The stolen bulldozer was found on defendant's lot, hotwired to make it functional. Officers testified that there were also track marks around the vehicle, indicating its recent use. At trial, defendant denied it was ever used and claimed that he was simply storing the bulldozer for an overseas customer until it could be shipped. However, defendant was unable to produce any documentation in support of this claim. Defendant also denied having any knowledge that the vehicle was stolen or that it was hotwired. Moreover, defendant now argues that a hotwired vehicle is not evidence that he knew the vehicle was stolen, because it is common practice to hotwire heavy equipment since replacement of a damaged ignition switch costs significant amounts of money. Defendant cites no authority for this proposition.

The trial court found that defendant did know, or had reason to know, that the bulldozer was stolen. The court did not believe that there was an agreement for defendant to store the vehicle, and found that evidence of hotwiring and the recent use of it was enough to find that defendant knew the bulldozer was stolen. Given the deference this Court affords to the trier of fact, *Eisen*, 296 Mich App at 331, defendant has failed to establish the insufficiency of the evidence on the charge of receiving stolen property.

B. FAILURE TO RECORD TRANSACTION AS A USED CAR PARTS DEALER

MCL 257.1355(a), penalizes a used motor vehicle parts dealer who "[t]otally fails to record a transaction on a record of transaction form as required by Section 2 [MCL 257.1352]." MCL 257.1352 provides that, "[a] dealer shall maintain a permanent record of each transaction concerning the buying or receiving of any used motor vehicle part."

At trial, defendant admitted that he did not have the required records for all the parts on his lot. Defendant argued first at trial and now on appeal that he is not responsible for this because he hired employees to handle this task. However, the statute names the dealer as responsible for maintaining records. MCL 257.13355(a). Sufficient evidence was presented at trial to convict defendant of this offense.

III. DOUBLE JEOPARDY

Next, defendant argues that his two convictions violate his constitutional protection from double jeopardy. Defendant argues that double jeopardy prevents an individual from being convicted of two crimes, with multiple punishments, if those two offenses were enacted for protection of the same harm. Further, defendant asserts that both crimes of which he was convicted (receipt/concealing of stolen property and failure to record transactions) were intended to prevent the social harm of motor vehicle larceny. Thus, he contends, he cannot be convicted of both crimes without a violation of his rights under the Constitutions of the United States and the State of Michigan. US Const, Am V; Const 1963, art 1, § 15.

Claims are not preserved if not raised at trial. Defendant did not preserve this issue at trial. However, this Court may review issues of constitutional questions under the plain error standard. *People v McGee*, 280 Mich App 680, 682; 761 NW2d 753 (2008). "Reversal is appropriate only if the plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id*.

Both the Michigan Constitution and the United States Constitution protect a defendant from successive prosecutions and multiple punishments for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). The purpose of double jeopardy protection is to prevent more punishment than was intended by the Legislature, by imposing multiple punishments for the "same offense." *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003). Whether two crimes are the "same offense" is a question, then, of legislative intent. *People v Denio*, 454 Mich 691, 706; 564 NW2d 13 (1997). Under the Michigan and United States Constitutions, whether the crimes are the "same offense" depends on the "same elements" standard established in *Blockburger v United* States. 284 US 299, 304 (1932). The test considers the elements of the two crimes, and if one requires proof of at least one fact that the other does not require, then the test is satisfied, and the convictions are constitutional. *Id*. In determining legislative intent, a court must focus its comparison on the abstract legal elements of each offense. *People v Garland*, 286 Mich App 1, 5; 777 NW2d 732 (2009). However, even when two offenses have some common elements, they remain separate offenses if the Legislature clearly intended so. *People v Harding*, 443 Mich 693, 707; 506 NW2d 482 (1993).

Defendant claims that the two offenses are intended to protect the same social norm. To support this claim, defendant cites *People v Allay*, 171 Mich App 602, 609; 553 NW2d 642 (1988), in which this Court held that a defendant's convictions of both possession of stolen property and operating a chop shop violated his constitutional right against double jeopardy because both statutes were aimed at "protecting society from persons whose activities amounted to profiteering from or otherwise furthering larcenous activity." Defendant also cites *People v Oxendine*, 201 Mich App 372, 375-76; 506 NW2d 885 (1993), in which this Court extended *Allay's* holding to find a double jeopardy violation when the defendant was convicted of operating a chop shop and altering a vehicle identification number without intent to mislead, because both statutes were intended to deter theft, prevent profiteering, and larcenous activity. However, the crimes for which defendant was convicted do not contain the same or even similar elements. Moreover, in *People v Griffis*, 218 Mich App 95, 103; 553 NW2d 642 (1996), this Court limited the holdings in *Oxendine* and *Allay*, declining to extend the protection to a defendant convicted of receiving and concealing stolen property and concealing or misrepresenting identity of motor vehicle with intent to mislead. The *Griffis* Court noted that neither *Allay* nor *Oxendine* addressed the "precise crimes currently in issue," and thus declined to apply either of their standards. *Id*.

Defendant also argues that *People v Robideau*, 419 Mich 458, 355 NW2d 592 (1984), overruled by *People v Smith*, 478 Mich 292, 733 NW2d 351 (2007), should be determinative in his case. The *Robideau* Court abandoned the *Blockburger* test and created a new standard requiring the court to identify the type of harm the statute was intended to prevent, in determining multiple punishment inquiries. 419 Mich at 486-87. The *Robideau* Court held, "[w]here two statutes prohibit violations of the same social norm, albeit in a somewhat different manner, as a general principle it can be concluded that the Legislature did not intend multiple punishments." *Id*. at 487. However, our Supreme Court in *Smith*, 478 Mich at 316, explicitly overruled this, and held that when the Legislature's intent to authorize multiple punishments is not clear, *Blockburger's* "same elements" test controls. Applying the test in *Robideau*, defendant argues that his convictions were based on statutes that were both "designed to prevent the larceny of motor vehicles." However, not only has *Robideau* been overruled, but defendant cites no authority to justify his conclusion regarding the Legislature's intent. Moreover, if the Legislature's intent is unclear, *Blockburger's* "same elements" test applies; thus, because the elements are different, his convictions are constitutional. *Smith*, 478 Mich at 316.

Alternatively, defendant requests the rule of lenity be applied in his favor, on the grounds that the legislative intent is unclear. The *Robideau* Court stated that "[i]f no conclusive evidence of legislative intent can be discerned, the rule of lenity requires the conclusion that separate punishments were not intended." 419 Mich at 488. However, there is no evidence that the legislative intent behind either offense is unclear.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering