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NO. 53509-2-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

I.M.C,

Appellant.

Appeal from Pierce County Superior Court
The Honorable Judge Stanley Rumbaugh

No. 19-8-00024-1

BRIEF OF RESPONDENT

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I. INTRODUCTION

The trial court properly concluded that I.M.C. committed the crime of taking a motor vehicle without permission in the second degree. Sufficient evidence proves that I.M.C. voluntarily rode in the car when he knew that it had been stolen. Two witnesses saw I.M.C. and another juvenile standing on the sidewalk outside the Ballatan home, while other juveniles stole Peter Ballatan's car. When Peter's son Andrew Ballatan burst out of the house, he heard the juvenile on the sidewalk with I.M.C. call out a warning to alert the juveniles stealing the car that someone was coming. When the thieves drove off, I.M.C. was seen running alongside the stolen car as it turned the corner and moved out of sight. About 45 minutes later, a third witness saw an individual matching I.M.C.'s description standing around the stolen car with the same group of individuals. In addition to being seen by three witnesses, an individual matching I.M.C.'s description was caught on surveillance video at the Ballatan home and again 45 minutes later where the car was abandoned.

Because there is more than sufficient evidence supporting the judge's finding of I.M.C.'s guilt, I.M.C.'s conviction should be affirmed.

II. RESTATEMENT OF THE ISSUES

Whether, viewed in the light most favorable to the State, sufficient evidence proves that I.M.C. voluntarily rode in Peter Ballatan's Toyota Avalon when I.M.C. knew it had been unlawfully taken.

III. STATEMENT OF THE CASE

A. Multiple Witnesses and Surveillance Video Placed I.M.C. with the Stolen Car and with the Juveniles Who Drove the Stolen Car

Around 9:45 a.m. on January 15, 2019, Peter Ballatan was at his home cooking breakfast before leaving for work. RP 18. Because it was cold outside that morning, Peter Ballatan's son, Andrew Ballatan, went outside to the driveway and started Peter's 2001 white Toyota Avalon to warm it up. RP 18-19, 50-51. The car was parked in the driveway behind a closed fence. RP 51.

After Andrew Ballatan returned to the kitchen to continue getting ready for work, he heard the fence rattling and saw a female trip and fall into the fence. RP 51. Peter Ballatan looked out of the window and saw the fence hanging wide open. RP 19. Andrew Ballatan ran outside and from about five feet away, observed two males on the sidewalk directly in front of the house and some people in the car. RP 51-52. Both of the males on the sidewalk were black; one was wearing a white hooded sweatshirt, and the other was wearing a black hooded sweatshirt with a black puffy jacket and black pants. RP 51-52. The Ballantans also saw that a male seated in the car's driver's seat was wearing an orange or red sweatshirt. RP 53.

When Andrew Ballatan charged out of the house, the young man who was wearing the white hoodie started yelling from the sidewalk “and warning the people that were inside [the] fence” taking the car. RP 54. Andrew Ballatan recalled that the juvenile wearing white “kept saying, ‘Hey, hey, hey,’” in a hurried manner to alert the other juveniles that “somebody was coming.” *Id.*

The Ballatans watched as the car sped out of their yard, with one of the car’s back doors left open. RP 21, 54-55. Peter Ballatan threw a rock at the retreating car when he realized that equipment from his surveillance camera business was inside. RP 19-20, 52. When the car pulled onto the road, the two juveniles on the sidewalk ran after it, following it as it turned southbound. RP 21-22.

When the police arrived at the Ballatan residence, they reviewed surveillance footage recorded on motion-activated cameras that Peter Ballatan had positioned outside of his house; Peter and Andrew Ballatan own and operate a surveillance business that sells security cameras. RP 17, 23, 25-28, 50. The footage from the surveillance cameras showed several young people taking the car; it also showed the two young men, one dressed in black and one dressed in white, standing on the sidewalk in front of the Ballatan residence. RP 25-27.

Forty-five minutes after the car was taken, Ms. Shiloh Martindale heard a sound outside of her residence at 99th and Golden Given Road, approximately four to five miles from the Ballatan residence. RP 70, 153-54. Ms. Martindale was at home that day because her eight-year-old child had the flu. RP 70-71. Ms. Martindale looked outside to find a small white four door “car full of kids with a blown out tire” pulling up in front of her neighbor’s house. RP 71. She saw a young black male in a puffy black jacket out of the car peering down at the blown out tire. RP 71.

A couple of minutes later, a group of juveniles crossed the street and ran into the nearby apartment complex. RP 72-73. All of the juveniles appeared to be mixed race or black. RP 74. One of the juveniles was a female wearing dark clothing; one was a male wearing a bright red or orange sweatshirt; one male was wearing all white; and, mostly notably, one of the juveniles in the group was a male wearing a puffy black coat. RP 73-74. Ms. Martindale confirmed that no one else was in the street or around the car before or after the group left the car. RP 72-73.

At about that same time, Pierce County Sheriff’s Deputy Michael Meyers was driving along the 9900 block of Golden Given Road East after he was informed of a vehicle stolen from the Portland Avenue area. RP 79 -80. He spotted the vehicle described, radioed it in, and confirmed it was the stolen white Toyota Avalon. RP 79. The vehicle had a blown right

front tire and “was not drivable.” RP 80. Deputy Meyers spoke with Ms. Martindale and learned that a group of juveniles had walked away from the vehicle a few minutes prior. RP 80-81. As Deputy Meyers spoke with Ms. Martindale, Ms. Martindale pointed to an individual at the 99th and Golden Given intersection and said ““There’s one of the kids right there.”” RP 81. She told Deputy Meyers she was “99 percent sure” the driver of the vehicle was standing in the intersection. RP 81. The male turned around and ran when Deputy Meyers looked to see where Ms. Martindale was pointing. RP 81. The male was wearing a red sweatshirt and red sweatpants. RP 81.

Like Peter Ballatan, Ms. Martindale had video cameras positioned on her house surveilling the area in front of her house; she invited Deputy Meyers into her house to view her surveillance footage. RP 81. The video showed the white Toyota Avalon pull up in front of Ms. Martindale’s driveway. RP 83. The video recorded the group of five juveniles walking away from the vehicle. RP 83. Although the juveniles’ faces were not recognizable in the video, Deputy Meyers saw that one of the juveniles was an African American male wearing a dark sweatshirt and dark pants. RP 85. None of the other young men had a similar physical description. RP 84-85.

Five people matching the suspects' descriptions were located and detained by the police approximately seven blocks from where the car was abandoned. RP 108-109. All of the suspects matched the descriptions of the juveniles the Ballatans had seen at the scene of the theft: an olive-skinned white male wearing all black clothing, a black male wearing all black clothing; a black male wearing all white clothing; a black female wearing all black clothing; and a black male wearing all red clothing. RP 51-53, 73-74, 109-111. The young black male wearing all black clothing identified himself as I.M.C. RP 112. Peter Ballatan identified all five of the juvenile suspects as the persons he witnessed stealing his car when he was transported to the location where the juvenile suspects had been detained. RP 85-86.

B. I.M.C. Was Convicted in Juvenile Court

The State charged I.M.C. in juvenile court with taking a motor vehicle without permission in the second degree for voluntarily riding in the vehicle, with the knowledge that it was unlawfully taken. CP 3-4.

In court, Peter Ballatan identified I.M.C. as one of the men standing on the sidewalk when the car was stolen; and Andrew Ballatan identified I.M.C. as the "one that was wearing the black hoodie, puffy jacket, with like black sweatpants with white trim, a backpack" that was standing on the sidewalk during the theft. RP 28-29, 52-53. Deputy

Centoni also identified I.M.C. in court as one of the juveniles finally arrested with the group of suspects about seven blocks from where the car was abandoned. RP 109-12.

At the end of the bench trial, the court noted in its oral ruling that “when the circumstantial evidence related to the interactions of this group cumulatively is considered, the Court is left with no reasonable doubt of [I.M.C.’s] voluntary occupancy of the stolen vehicle....” RP 152-53.

The court declined I.M.C.’s invitation to speculate that I.M.C. somehow used technology to meet back up with his friends after they had abandoned the car: “[T]he Court is prohibited from importing speculation...that would include cell phone or other contact that allowed [I.M.C.] to locate the group after the car was abandoned and join them...to be arrested...4 or 5 miles from the location of the theft.” RP 153.

The court also commented that it was unreasonable to believe that I.M.C. somehow walked or ran to the location where the car was abandoned: “It’s implausible entirely that the 4 or 5 mile distance between the place of the theft and the place of the abandonment of the car would have allowed [I.M.C.] to locate and somehow walk there on his own.” RP 154. Finally, the court found no existing evidence indicating that I.M.C. obtained a ride from some other source from the Ballatan residence to the location where the Avalon was abandoned. RP 153.

The court found beyond a reasonable doubt that I.M.C. committed the crime of taking a motor vehicle without permission in the second degree. CP 36. The court ordered 30 hours of community restitution, 10 months of community supervision, and 16 days of house arrest with electronic monitoring. RP 39. I.M.C. timely appealed. RP 47.

IV. ARGUMENT

I.M.C.'s conviction is supported by sufficient evidence. Witnesses saw a young black man, wearing black, at the scene of the theft; he was seen standing on the sidewalk with the other juvenile who shouted a warning to the thieves. He was also seen chasing the car down the road, and he was seen at the location where the car was abandoned. A juvenile meeting that same description was also caught on surveillance video at the site of the theft and where the car was abandoned. And finally, at each location, witnesses saw the young man with the same group of juveniles. Viewed in full, the evidence is sufficient to support the conviction.

Under RCW 9A.56.075, "a person is guilty of taking a motor vehicle without permission in the second degree if he...without permission of the owner...voluntarily rides in or upon the automobile...with knowledge of the fact that the automobile was unlawfully taken." To convict I.M.C. of taking a motor vehicle without

permission in the second degree, the State proved each of the following elements beyond a reasonable doubt:

1. That on or about January 15, 2019, I.M.C. voluntarily rode in an automobile;
2. That the automobile was the property of another;
3. That the automobile had been intentionally taken or driven away without the permission of the owner or the person entitled to possession;
4. That at the time of riding, I.M.C. knew that the automobile was unlawfully taken; and
5. That I.M.C.'s act occurred in the State of Washington.

Washington Pattern Jury Instruction – Criminal (WPIC 74.04).

Because the State produced sufficient evidence of all elements of the crime, the decision of the trier of fact should be upheld. Viewing the evidence in the light most favorable to the State, a rational trier of fact would have found that the State proved beyond a reasonable doubt that I.M.C. voluntarily rode in Peter Ballatan's vehicle, knowing that it was stolen. Therefore, this Court should affirm I.M.C.'s conviction.

A. I.M.C. Was Identified Both Where the Car Was Stolen and Where It Was Abandoned

I.M.C.'s conviction is supported by the testimony of numerous witnesses. He was seen where the car was stolen, and was present on the sidewalk with the juvenile who warned the thieves. RP 51-55. Forty-five

minutes later, he was seen where the car was abandoned, at a location over four miles from the scene of the theft. RP 71-73.

Both Andrew and Peter Ballatan identified I.M.C. in court as one of the people in Peter Ballatan's surveillance video of the theft of the car. RP 28-29, 52-53. Specifically, Andrew Ballatan identified I.M.C. as one of the people on the sidewalk standing by as the car pulled out of the Ballatan's yard; Andrew recalled that the morning the car was stolen, the defendant was wearing a black hoodie under a black puffy jacket and black sweatpants with white trim while standing on the sidewalk. RP 52-53. Both Peter and Andrew Ballatan saw I.M.C. chase after the stolen Avalon after the driver floored it out of the Ballatan's driveway. RP 22, 43-44, 54. Not only did I.M.C. chase the car westbound out of the driveway, but he also followed it as it turned southbound onto Portland Avenue East. RP 22.

About 45 minutes later, Shiloh Martindale saw the small white car "full of kids" pull up out in front of her house four to five miles away from where the car had been taken; Ms. Martindale thought she heard the car driving on its rim. RP 70-71, 153, 154. After the car stopped, Ms. Martindale saw a young black male wearing a black puffy black coat looking down at the blown tire on the car. RP 71. Then, Ms. Martindale saw him with a group of juveniles cross the street into from the location of

the abandoned car into a nearby apartment complex. RP 72-73. Ms. Martinale noticed that the juveniles broke into a run once the group reached the apartment complex. RP 72.

Only a few minutes after that, a Pierce County Sheriff's Deputy reported that he had detained five people matching the suspects' descriptions. RP 108-09. The suspects were detained approximately seven blocks from the location on Golden Given Road where the car had been recovered. RP 109. One of the juveniles detained was a black male wearing all black clothing; police identified him as I.M.C. RP 110, 112.

I.M.C. questions the reliability of the testimony, but in challenging the sufficiency of the evidence, a defendant is required to acknowledge the truth of the State's evidence. *Washington v. Farnsworth*, 185 Wn.2d 768, 775, 374 P.3d 1152 (2016). All reasonable inferences from the evidence must be drawn in favor of the State, and interpreted most strongly against the defendant. *State v. Scanlan*, 193 Wn.2d 753, 770, 445 P.3d 960 (2019). In addition, deference must be given the trial court's resolution of conflicting testimony, and evaluation of the credibility of witnesses and the persuasiveness of the evidence presented. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). Here, the witness testimony and video recordings properly support the conviction. There is no basis for overturning the conviction.

B. Four Separate Witnesses Identified a Suspect Matching I.M.C.'S Description Within the Group of Associated Juveniles Suspected of Taking the Car

The presence of I.M.C. as the black male juvenile wearing all black clothing was consistent within each description of the group. The description of the suspects associated with the theft of the car remained static throughout the incident. The circumstantial evidence and direct evidence supporting I.M.C.'s conviction are equally reliable. *Scanlan*, 193 Wn.2d at 770; *State v. Nguyen*, 10 Wn. App. 2d 797, 816, 450 P.3d 630 (2020) (holding that circumstantial evidence is not less reliable than direct evidence). A juvenile matching I.M.C.'s description was identified within the group by four separate witnesses.

First, Peter Ballatan described the driver of the car as wearing all red clothing, recalled that one of the passengers was a female, and remembered another was wearing a black jacket. RP 20. He also described the males on the sidewalk as juveniles, with one wearing a white hoodie and the other "in a black hoodie with white stripes...short pants...all in black." RP 21.

Second, Andrew Ballatan noticed a female associated with the group and also described the juveniles on the sidewalk as black males; one was wearing a white hooded sweatshirt, and the other wearing a black hooded sweatshirt with a black puffy jacket and black pants. RP 51-52. He

also described the person seated in the driver's seat as a male wearing an orange or red sweatshirt. RP 53.

Third, Ms. Martindale described the suspects who abandoned the car in a similar manner: "There was a young man in a black, puffy coat...They were all either mixed race or black. There was one girl in dark clothing...one young man had on either a bright red or orange coat and one was in all white." RP 73-74.

Finally, when the suspects were apprehended by police, they matched the descriptions of the juveniles that the Ballatans had seen earlier taking the car: an olive-skinned white male wearing all black clothing, a black male wearing all black clothing; a black male wearing all white clothing; a black female wearing all black clothing; and a black male wearing all red clothing. RP 51-53, 73-74, 109-111. The suspect who identified himself to the police as I.M.C. was the black male wearing all black clothing. RP 110.

The court agreed that the similarity between the witnesses' descriptions was noteworthy. The court found that "the descriptions of all the witnesses of the clothing that were worn by the various members of the group, both at the time of the theft and at the time of arrest [was] remarkably similar." RP 153-54. Accordingly, the trial court found that sufficient evidence existed to convict I.M.C. of taking a motor vehicle

without permission in the second degree under the “riding” prong. In its oral ruling, the court held that “when the circumstantial evidence related to the interactions of this group cumulatively is considered, the Court is left with no reasonable doubt of [I.M.C.’s] voluntary occupancy of the stolen vehicle....” RP 152-53. I.M.C. offers nothing on appeal that would warrant overturning the trial court judge’s decision.

The court properly declined I.M.C.’s invitation to speculate that I.M.C. arrived at the location where the Avalon was abandoned by running that distance and using technology to find the other suspects. “[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation.” *Scanlan*, 193 Wn.2d at 771. Consistent with *Scanlan*, the trial court recognized that it was “prohibited from importing speculation...that would include cell phone or other contact that allowed [I.M.C.] to locate the group after the car was abandoned and join them...to be arrested...4 or 5 miles from the location of the theft.” RP 153.

The court further held that it was not reasonable to believe that I.M.C. somehow walked to where the car was abandoned: “It’s implausible entirely that the 4 or 5 mile distance between the place of the theft and the place of the abandonment of the car would have allowed [I.M.C.] to locate and somehow walk there on his own.” RP 154. Finally, the court found that no evidence existed indicating that I.M.C. obtained a

ride from the Ballatan residence to the location where the Avalon was abandoned. RP 153.

Because the trial court properly considered the direct and circumstantial evidence, this Court should affirm I.M.C.'s conviction for taking a motor vehicle without permission in the second degree. Sufficient evidence proves that I.M.C. voluntarily rode in Peter Ballatan's Toyota Avalon when I.M.C. knew that it had been stolen.

V. CONCLUSION

The trial court properly concluded that there is sufficient evidence to satisfy each of the statutory elements of the crime. Therefore, this court should affirm I.M.C.'s conviction.

RESPECTFULLY SUBMITTED this 26th day of March, 2020.

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03/26/20 S/ Aeriele Johnson
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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