

Following a bench trial in Marion Superior Court, Richard E. Dabbs (“Dabbs”) was convicted of Class D felony auto theft. Dabbs appeals and claims that the evidence was insufficient to support his conviction. We affirm.

Facts and Procedural History

The facts most favorable to the conviction reveal that on the night of February 11, 2008, Karl Moore was working on a blue Mercury Topaz owned by his grandmother, Peggy Higgins. Moore installed a water pump on his grandmother’s car and left the car running to check for leaks. When Moore went into his house for a moment, he heard a noise, and went back outside only to see his grandmother’s car being driven away. Moore was unable to see who was driving the car. Moore telephoned the police, but was told that he could not file a report because he did not own the car. He then contacted his grandmother, who subsequently reported that her car had been stolen.

In the early morning hours of February 13, 2008, Lawrence Police Department Officer Ronnie Sharp noticed a car in a gas station parking lot. Despite the cold weather, the driver’s side window on the car was not up. As the car pulled out of the lot and onto the street, Officer Sharp decided to check the license plate number of the car. The license plate check revealed that the car had recently been reported as stolen. Officer Sharp then pulled the vehicle over and found Dabbs in the driver’s seat and Anthony Baker in the passenger’s seat. Officer Sharp noticed that the front seat contained broken glass, and that the interior of the car had looked as if it had been ransacked. When questioned, both Dabbs and Baker indicated they did not know Higgins and did not have her permission to be in her car.

Moore retrieved his grandmother's car from an impound lot and also noted the broken driver's side window, the "trash" inside the car, and that the car would no longer start. Specifically, he testified:

The condition of the vehicle was pretty bad. Inside was trash everywhere, stuff everywhere, the window was busted, a steering column - when you tried to turn the key to start the car, it didn't want to start. All my tools and everything that was in the trunk was missing, my jack, my suit that I had on that I was working in.

Tr. pp. 16-17. Moore also found in the trunk a bag which he later gave to the police. Inside this bag was a crowbar and a screwdriver.

On February 14, 2008, the State charged Dabbs with Class D felony auto theft. A bench trial was held on April 15, 2008. At the conclusion of the State's evidence, Dabbs moved for involuntary dismissal, which the trial court denied. The trial was then continued to April 22, 2008, without objection by Dabbs. When the trial recommenced, Dabbs testified on his own behalf, but his other witnesses apparently failed to appear. At the conclusion of the evidence, the trial court found Dabbs guilty as charged and scheduled a sentencing hearing to be held on April 29, 2008. At the sentencing hearing, the trial court noted Dabbs's extensive criminal history and sentenced him to two years incarceration. Dabbs now appeals.

Discussion and Decision

Dabbs claims that the evidence is insufficient to support his conviction for auto theft. In reviewing this claim, we will neither reweigh the evidence nor judge witness credibility. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008). Instead, we consider only the evidence which supports the conviction along with the reasonable

inferences to be drawn therefrom, and we will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

Dabbs first claims that there was insufficient evidence to establish that the car he was found driving was the same 1994 Mercury Topaz that belonged to Higgins. We do not agree. First, Dabbs testified that the car he was driving was indeed a blue Topaz. More importantly, Dabbs testified that when he told Officer Sharp that he thought someone named “Sheldon” owned the car, Officer Sharp told him it belonged to Peggy Higgins. Officer Sharp testified that this blue Topaz had been reported stolen on February 11, the same day that Higgins’s car was reported as stolen. Officer Sharp testified that the car had a broken driver’s side window and appeared to have been ransacked. Moore testified that when he retrieved his grandmother’s car, the window had been broken and that there was “trash” strewn about the car. From this, the trial court, as the trier of fact, could reasonably conclude that the car Dabbs was driving was indeed the same car which belonged to Higgins.¹ See Trotter v. State, 838 N.E.2d 553, 557 (Ind. Ct. App. 2005) (evidence was sufficient to support reasonable inference that defendant was driving car belonging to auto theft victim where license plate check of car driven by defendant revealed that car had been stolen and victim recovered his car from police the day defendant was arrested).

¹ It appears that Dabbs’s strategy at trial was not to deny that the car belonged to Higgins. Instead, his strategy appears to have been to argue that he did not know that the car had been stolen and that he was not the one who had stolen the car.

Dabbs also claims that there was insufficient evidence to establish that he stole Higgins's car. Dabbs acknowledges that the unexplained possession of recently stolen property may be sufficient to support a conviction for theft of that property. See J.B. v. State, 748 N.E.2d 914, 916 (Ind. Ct. App. 2001). Possession remains "unexplained" if the trier of fact rejects the defendant's explanation. Id. Dabbs claims that the car he was found in possession of was not "recently" stolen. When determining whether possession was recent, we consider not only the length of time between the theft and the possession but also the circumstances of the case, such as the defendant's familiarity or proximity to the property at the time of the theft, and the character of the goods, such as whether they are readily salable and easily portable or difficult to dispose of and cumbersome. Allen v. State, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), trans. denied. Where the length of time between the crime and the possession is short, that fact itself makes the possession recent. Id.

Dabbs claims that the testimony regarding when the Mercury Topaz was stolen is in conflict. For purposes of our discussion, however, we consider only the facts most favorable to the conviction along with the reasonable inferences to be drawn therefrom. Baumgartner, 891 N.E.2d at 1137. Higgins was obviously confused as to the exact date when her car was stolen, but she testified that she called the police the day her grandson, Moore, called her and told her that her car had been stolen. Moore initially testified that he thought the car had been stolen on February 3, 2008, but that he "kn[e]w" it was on a

Friday.² Tr. p. 19. However, when his recollection was refreshed by the police report, he testified that the car had been stolen on February 11.³ When confronted by this inconsistency on cross-examination, Moore confirmed that he had only called the police once. He also testified that he called the police at approximately 9:45 or 10:00 p.m., “immediately” after the car had been stolen. Officer Sharp also testified that Higgins’s car had been reported stolen on February 11.

Thus, the facts most favorable to the conviction establish that the car was stolen at approximately 10:00 p.m. on February 11, 2008. Officer Sharp stopped Dabbs in this stolen car at 4:30 a.m. on February 13, 2008. Dabbs was therefore in possession of the stolen car approximately thirty and one-half hours after it had been stolen. The question before us, then, is whether this amount of time is recent.

In Gibson v. State, 533 N.E.2d 187, 189 (Ind. Ct. App. 1989), the court read our supreme court’s holding in Kidd v. State, 530 N.E.2d 287 (Ind. 1988) to mean that “recent” means a lapse of time of less than twenty-four hours. However, we later noted that the Gibson court seemed to have read the holding in Kidd too broadly:

It may well be . . . that the holding in Kidd looked to the totality of the circumstances there presented and held that in that case, unexplained possession of stolen property within one to four days following the burglary was insufficient for a burglary conviction.

Allen, 743 N.E.2d at 1230 n.11. The Allen court further wrote that twenty-four hours was not necessarily the outer limitation of “recent” for each and every case. Id. (citing

² February 3, 2008 was a Sunday.

³ February 11, 2008 was a Monday.

Underhill v. State, 247 Ind. 388, 390, 216 N.E.2d 344, 345 (1966) (noting that “an elapse of a few hours or a day or two or even a week under some circumstances would create such an inference [of guilt of burglary], particularly if the property was concealed.”)).

We therefore cannot say that Dabbs’s possession cannot be recent simply because he was found in possession of the stolen car more than twenty-four hours after it had been stolen. Dabbs was found in possession of the stolen car only thirty and one-half hours after it had been stolen. The car was stolen on the night of February 11 and seen with Dabbs behind the wheel early on the morning of February 13. This short length of time between the theft and the unexplained possession is sufficient to support a conclusion that Dabbs’s possession was recent. See Allen, 743 N.E.2d at 1230 n.11; Underhill, 247 Ind. at 390, 216 N.E.2d at 345.

Furthermore, the evidence of Dabbs’s guilt did not consist solely of his unexplained possession of the recently stolen automobile. Dabbs was found driving a car which had the driver’s side window broken out. A bag containing a crow bar and a screwdriver were found in the trunk of the car. The car appeared to have been ransacked. And although Officer Sharp testified on cross-examination that Dabbs never admitted to stealing the car, he also testified that, when questioned, Dabbs admitted he “did not know the owner of the vehicle and did not have permission from the owner to be in the vehicle.” Tr. pp. 28-29. From this evidence, and Dabbs’s unexplained possession of the car that had been stolen for just over one day, the trier of fact could reasonably conclude that Dabbs knowingly exerted unauthorized control over a motor vehicle belonging to

Higgins, with the intent to deprive Higgins of the vehicle's value or use. See Ind. Code § 35-43-4-2.5 (2004) (defining crime of auto theft).

Dabbs's citation to Trotter, supra, is unavailing. In that case, the defendant was not found with the stolen car until five days after it had been stolen. See 838 N.E.2d at 557. Since Trotter's possession of the stolen car was not "recent," the State was required to show that the defendant had exclusive possession of the property since it had been stolen. See id. at 558 (citing Muse v. State, 419 N.E.2d 1302, 1304 (Ind. 1981)). In Trotter, there was no such evidence, nor was there additional circumstantial evidence that the theft had been "recent." In contrast, here, Dabbs's possession of the stolen car was much more recent, and there was other circumstantial evidence indicating that Dabbs had committed auto theft.

In summary, the evidence presented, including but not limited to Dabbs's unexplained possession of the recently stolen vehicle, was sufficient to support a reasonable inference that Dabbs committed the crime of auto theft.

Affirmed.

BAILEY, J., and BARNES, J., concur.