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IN THE
COURT OF APPEALS OF INDIANA

A.G.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-1007-JV-450
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause No. 71J01-1004-JD-280

March 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

A.G. appeals from his adjudication as a delinquent child for receiving stolen property,[1] which would be a Class D felony if committed by an adult, and criminal trespass,[2] which would be a Class A misdemeanor if committed by an adult. He raises the following restated issue: whether the evidence presented was sufficient to sustain his adjudication because he alleges that the witness's testimony was incredibly dubious.

We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 7:30 a.m. on April 28, 2010, Patricia Austin went outside to start her maroon 2002 Chevrolet Impala, which was parked in her driveway. After starting the car, she went back inside her home to wait for her stepson so she could drive him to school. When she walked back outside at 7:40 a.m., her car was gone.

The next day, April 29, in the early afternoon, Officer Bryan Fox of the Mishawaka Police Department was in his patrol car at a different apartment complex a few blocks away from where Austin lived. Officer Fox observed a maroon, four-door Chevrolet Impala parked in the lot with its engine running and saw a male sitting in the driver's seat. Vehicles at that particular apartment complex are required to have a sticker and visitors must obtain visitor tags. The maroon Impala did not have a sticker or visitor tag. The male exited the Impala, and Officer Fox was able to observe him from fifteen to twenty feet away. After exiting the car, the male entered the apartment complex.

Officer Fox ran the license plates on the Impala and discovered that it had been

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[1] *See* Ind. Code § 35-43-4-2(b).

[2] *See* Ind. Code § 35-43-2-2(a)(4).

stolen. He called for additional officers and contacted Austin to obtain her consent before searching the inside of the Impala. During the search of the car, a backpack with the name of C.C. was found in the backseat along with a pair of shoes. The male seen in the driver's seat, however, was not found that day. On the morning of April 30, 2010, Officer Fox, while stopped at a red light, observed the male subject walking on the sidewalk. The individual, who was wearing the same clothes as when Officer Fox initially observed him in the Impala, was identified as A.G.

The State filed a delinquency petition alleging that A.G. committed receiving stolen property, which would be a Class D felony if committed by an adult, and criminal trespass, which would be a Class A misdemeanor if committed by an adult. A fact-finding hearing was held on June 8, 2010. At the hearing, C.C., who was fourteen years old at the time, testified that he had known A.G. for "a couple of months" in April 2010. *Tr*. at 34. A.G. was in the eleventh grade, and C.C. was not in high school yet, but they hung out together at the end of April, and C.C. considered A.G. his friend. C.C. testified that, on April 28, 2010, A.G. had shown up in a "maroonish" four-door car. *Id*. at 24. Before that, C.C. was not aware that A.G. had a car to drive. A.G. drove the car around "all night" and into the next morning while C.C. rode in the passenger seat. *Id*. at 25, 27. In the morning, A.G. drove the car to school, and C.C. left his backpack in the car. C.C. testified that he never drove the car and did not know it was stolen until a police officer told him. C.C. received use immunity in exchange for his testimony. At the conclusion of the hearing, the juvenile court adjudicated A.G. a delinquent for committing receiving stolen property and criminal trespass. After a dispositional hearing, the trial court

awarded guardianship of A.G. to the Department of Correction for assignment to Boys' School. He now appeals.

DISCUSSION AND DECISION

When reviewing the sufficiency of the evidence to support a delinquency adjudication, we must consider only the probative evidence and reasonable inferences supporting the adjudication. *D.W. v. State*, 903 N.E.2d 966, 968 (Ind. Ct. App. 2009), *trans. denied*. We do not assess witness credibility or reweigh the evidence. *Id*. We consider conflicting evidence most favorably to the trial court's ruling. *R.H. v. State*, 916 N.E.2d 260, 267 (Ind. Ct. App. 2009) (citing *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)), *trans. denied*. We affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id*. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id*.

A.G. argues that his adjudications on both counts of the delinquency petition were not supported by sufficient evidence. He specifically contends that the State failed to present evidence that he knew the Impala had been the subject of a theft from Austin in order to prove his adjudication for receiving stolen property. He also claims that the State failed to present evidence that he had entered and driven Austin's Impala without her permission. A.G. further claims that the evidence presented was insufficient because C.C.'s testimony was incredibly dubious.

In order to support an adjudication for receiving stolen property, which would be a

Class D felony if committed by an adult, the State was required to prove that A.G. knowingly or intentionally received, retained, or disposed of property belonging to Austin, specifically the Impala, which property had been the subject of a theft. Ind. Code § 35-43-4-2(b). Knowledge that property is stolen may be inferred from the circumstances surrounding the possession. *Fortson v. State*, 919 N.E.2d 1136, 1139 (Ind. 2010). Mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft or receiving stolen property. *Id*. at 1143. "Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away)." *Id*.

In the present case, the surrounding circumstances support that A.G. knew the car was stolen. The evidence presented showed that A.G. possessed the Impala at his address in Mishawaka, Indiana, which was only five or six blocks from Austin's home, where the car was stolen. A.G. also had possession of the car on the same day that it was reported stolen. Austin reported her car stolen on April 28, 2010, and C.C. testified that he rode as a passenger in the car while A.G. drove around on the night of April 28 and into the morning of April 29. *Tr*. at 25, 27. On April 29, the day after the car was stolen, Officer Fox observed A.G. sitting in the driver's seat with the car running. Further, prior to riding around with A.G. in the Impala, C.C. did not know A.G. to have a car to drive. We conclude that the factfinder could have reasonably inferred that A.G. knew that the car was stolen because of the proximity of the vehicle to Austin's house, the fact that he

was driving the car on the very same day it was reported stolen, and because he did not previously have a vehicle to drive.

In order to support an adjudication for criminal trespass, which would have been a Class A misdemeanor if committed by an adult, the State was required to prove that A.G. knowingly or intentionally interfered with the possession or use of Austin's car without her permission. Ind. Code § 35-43-2-2(a)(4). The petition alleging delinquency also specified that A.G. interfered with the possession and use of the car by entering and driving the Impala without Austin's permission. *Appellant's App*. at 9.

At the fact-finding hearing, C.C. testified that A.G. drove a "maroonish" four-door car around "all night" and into the morning while C.C. was a passenger. *Tr*. at 24-25, 27. The testimony showed that A.G. was the only one who drove the car. *Id*. at 35. C.C., who had known A.G. for a couple of months prior to this incident, did not know A.G. to have a vehicle to drive. The day after the car was reported stolen, Officer Fox observed A.G. sitting in the driver's seat of the Impala in a parking lot with the engine running. Considering this evidence, we conclude that a reasonable inference could be made that A.G. drove the car and, therefore, interfered with Austin's possession or use of her property.

A.G. next argues that there was insufficient evidence to support his adjudications because C.C.'s testimony was incredibly dubious. Under the incredible dubiosity rule, a defendant's conviction may be reversed if a sole witness presents inherently improbable testimony, and there is a complete lack of circumstantial evidence. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). The rule is applicable only where the court has confronted

inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Id*. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Id*.

Initially, we note that, in the present case, the State did present two witnesses that testified to seeing A.G. in the car, Officer Fox and C.C. Although C.C. was the only witness who testified that A.G. drove the car, the State presented circumstantial evidence through Officer Fox of A.G. driving the car. The officer observed A.G. sitting in the driver's seat in a parking lot with the engine running. Further, we do not believe that C.C.'s testimony was "so internally and inherently contradictory as to preclude any reasonable trier of fact from believing it." *See Appellant's Br*. at 9. C.C. testified at one point as follows:

> Q: After the officer said that you tell us what we need to know and we'll get you out of this, you told the police officers about what [A.G.] had done, about driving you around?
>
> A: Um, I was just -- I really just told him I didn't know the car was stolen and we, you know, we -- I don't know it was like -- what were you doing -- I don't know we were riding around and then it was like, um, it was like well we just saw the car or whatever parked and then we said we were about to go get it and he asked me did I know who he was and I said no.

Tr. at 34.

We conclude that this testimony could logically be interpreted two ways. First, his comment about not knowing "who he was" could be a reference to the owner of the parked car since he also stated that they had just seen the car parked and they were about

"to go get it." *Id*. Second, C.C.'s statement could also be interpreted that he did not know the identity of the officer to whom he had spoken. Prior to the above testimony, C.C. was asked questions about the officer with whom he had spoken about use immunity, and C.C. stated that he did not know the officer's name. *Id*. at 30-33.

We do not find C.C.'s testimony to be so incredibly dubious or inherently improbable that no reasonable person could believe it. It was made known to the factfinder that C.C. had received use immunity for his testimony, and we do not find that his testimony was coerced. Because we do not find the testimony to be incredibly dubious, we will not impinge on the trial court's responsibility to weigh the evidence or judge the credibility of the witnesses. We therefore conclude that sufficient evidence was presented to support A.G.'s delinquency adjudications.

Affirmed.

CRONE, J., and BRADFORD, J., concur.