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IN THE
COURT OF APPEALS OF INDIANA

D.T.,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-0901-JV-20
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0807-JD-2152

September 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

D.T., a minor, appeals his adjudication as a juvenile delinquent based on the juvenile court's finding that he committed various acts that would be crimes if committed by an adult, including auto theft, a Class D felony if committed by an adult. On appeal, D.T. raises a single issue, which we restate as whether the evidence is sufficient to support the juvenile court's finding that D.T. committed auto theft. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

Between the evening of July 12, 2008, and the early morning of July 14, 2008, six automobiles were stolen from the used car lot of Bill Estes Chevrolet in Indianapolis. One of the cars stolen was a 2006 blue Chevrolet Malibu.

On July 18, 2008, Officer Michael Wright of the Indianapolis Metropolitan Police Department responded to a call reporting a blue Chevrolet Malibu that did not have a license plate. Officer Wright drove to the scene and spotted a vehicle matching the description. He observed an individual, later identified as D.T., driving the Malibu and making a turn in front of him. After confirming that the Malibu had no license plates, Officer Wright initiated a traffic stop by turning on his police car's emergency lights. When the Malibu stopped, D.T. exited from the driver's side and began running away from Officer Wright. Officer Wright ordered D.T. to stop, but D.T. continued to flee. Officer Wright called on his radio for assistance and pursued D.T. on foot. Officer Michael Williams responded to the call and spotted D.T. running. Officer Williams identified himself as a police officer and ordered D.T. to stop, but D.T. continued to flee.

D.T. eventually stopped running, and Officer Williams arrested him without further resistance. Officer Wright arrived on the scene and conducted an electronic record check of D.T., which revealed D.T. had no driver's license and was too young to have ever received a license.

The Malibu was positively identified as one of the cars stolen from Bill Estes Chevrolet through the vehicle identification number. In the back seat of the Malibu was a Bill Estes Chevrolet advertising license plate card, of the kind that typically occupies the place of a license plate on the used cars in Bill Estes Chevrolet's lot. No other identifying paperwork or personal belongings were found in the Malibu. When Officer Wright inspected the Malibu, the interior was clean and free of any "grass particles or gravel particles that you would normally see." Transcript at 27.

The State charged D.T. in juvenile court with auto theft, a Class D felony if committed by an adult; criminal trespass, a Class A misdemeanor if committed by an adult; resisting law enforcement, a Class A misdemeanor if committed by an adult; unlawful entry of a motor vehicle, a Class B misdemeanor if committed by an adult; and operating a vehicle having never received a license, a Class C misdemeanor if committed by an adult. On October 3, 2008, the juvenile court held a denial hearing and adjudicated D.T. to be a delinquent, finding D.T. committed auto theft, resisting law enforcement, and operating a vehicle having never received a license. The juvenile court imposed a suspended commitment to the Department of Correction and placed D.T. on probation. D.T. now appeals.[1]

[1] D.T. does not challenge on appeal the juvenile court's true findings as to resisting law enforcement and operating a vehicle having never received a license.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence supporting a juvenile's adjudication, we neither reweigh the evidence nor judge witnesses' credibility. C.D.H. v. State, 860 N.E.2d 608, 610 (Ind. Ct. App. 2007), trans. denied. Rather, we consider only the probative evidence and reasonable inferences supporting the juvenile court's finding. M.S. v. State, 889 N.E.2d 900, 901 (Ind. Ct. App. 2008), trans. denied. We will affirm the adjudication of delinquency if we conclude that probative evidence exists such that a reasonable factfinder could find the elements of the underlying offense proven beyond a reasonable doubt. Id. Circumstantial evidence alone will sustain an adjudication if the circumstantial evidence supports a reasonable inference of guilt. In re R.L.H. v. State, 738 N.E.2d 312, 315 (Ind. Ct. App. 2000).

II. Sufficiency of the Evidence

When the State seeks to have a juvenile adjudicated a delinquent for an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. C.D.H., 860 N.E.2d at 610. "A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of . . . the vehicle's value or use . . . commits auto theft, a Class D felony." Ind. Code § 35-43-4-2.5(b). To adjudicate D.T. a delinquent for committing what would be Class D felony auto theft if committed by an adult, the State must prove D.T. knowingly or intentionally exerted unauthorized control over Bill Estes

Chevrolet's vehicle with the intent to deprive Bill Estes Chevrolet of its value or use.[2] To "exert control over property" includes to "drive" or "possess," Ind. Code § 35-43-4-1(a), and control is unauthorized if it is without the owner's consent, Ind. Code § 35-43-4-1(b)(1). In general, a conviction of auto theft will be sustained by evidence showing the defendant's unexplained possession of a recently-stolen automobile. Gonzalez v. State, 908 N.E.2d 338, 341 (Ind. Ct. App. 2009).

A lapse of two days or more between an automobile theft and the defendant's arrest means the automobile is not recently stolen and further evidence of guilt is required. See, e.g., Trotter v. State, 838 N.E.2d 553, 557-58 (Ind. Ct. App. 2005) (reversing auto theft conviction when sole evidence was defendant's possession of automobile five days after theft); Gibson v. State, 533 N.E.2d 187, 189 (Ind. Ct. App. 1989) (possession two days after theft was not recent, but additional evidence supported auto theft conviction). In cases where the automobile is not recently stolen, the State must either show the defendant's exclusive possession of the automobile during the time since the original theft or offer additional evidence supporting the defendant's conviction. Gonzalez, 908 N.E.2d 338 at 341.[3] Both exclusive possession of stolen goods and

[2] The charging information alleges that "[o]n or about the 18th day of July, 2008, [D.T.] did knowingly or intentionally exert unauthorized control over the motor vehicle of Bill Estes Chevrolet, that is: a 2006 Chevrolet, with the intent to deprive the owner of its value or use." Appellant's Appendix at 12.

[3] We note that in Shelby v. State, 875 N.E.2d 381 (Ind. Ct. App. 2007), trans. denied, this court articulated a differing rule "requiring, for purposes of supporting a theft conviction in cases of considerable lapse of time, a showing that the defendant had exclusive possession of the stolen [automobile] during the period of time since the theft occurred." Id. at 384 (relying on Muse v. State, 419 N.E.2d 1302, 1304 (Ind. 1981)). Yet the Shelby court acknowledged the plain language of Indiana Code section 35-43-4-2.5(b) does not restrict the crime of auto theft to the first taker of a stolen vehicle, but extends to any subsequent unauthorized user who knows the vehicle was stolen and intends to deprive the true owner. Id; see J.B. v. State, 748 N.E.2d 914, 918 (Ind. Ct. App. 2001) (affirming auto theft adjudication on theory that juvenile was not vehicle's original taker, but received and controlled it knowing it had been stolen).

knowledge that they were stolen may be proven by circumstantial evidence. Muse v. State, 419 N.E.2d 1302, 1303-04 (Ind. 1981).

D.T. argues correctly that when he was arrested in possession of the Malibu on July 18 the vehicle was not recently stolen because the original theft took place four to six days earlier. D.T.'s adjudication for auto theft therefore cannot be sustained based solely on his unexplained possession of the Malibu. We do not agree, however, with D.T.'s contention that his possession of the Malibu is the only evidence supporting the charge of auto theft. The State further showed the Malibu had no license plate and the Bill Estes Chevrolet advertising license plate card was lying in the Malibu's back seat. Moreover, D.T. fled as soon as Officer Wright made the traffic stop of the Malibu and continued running away from Officer Wright despite the officer's command to stop.

D.T. argues this case is like Buntin v. State, 838 N.E.2d 1187 (Ind. Ct. App. 2005), where evidence the defendant drove an automobile five days after it was stolen and walked back inside a liquor store to avoid confronting a police officer was held insufficient to sustain the conviction for auto theft. Id. at 1191. But unlike Buntin, where the vehicle had a license plate that was not altered and the defendant's guilty behavior was not in direct relation to his possession of the vehicle, id., D.T. was driving an automobile that had no license plate and D.T.'s flight was an attempt to elude an officer upon a traffic stop of that automobile. These circumstances make D.T.'s case more like Gibson, 533 N.E.2d at 189-90, where evidence supporting the defendant's auto theft conviction was sufficient because the vehicle had a busted ignition, the defendant

possessed a screwdriver for operating the busted ignition, and the defendant refused to identify himself when apprehended and falsely claimed he had never been in the vehicle.

Here, the State presented circumstantial evidence that D.T. exercised control over the Malibu knowing it belonged to Bill Estes Chevrolet. Indiana automobiles must display license plates, Ind. Code § 9-18-2-26, and failure to do so is a civil infraction, see Ind. Code § 9-18-2-40. The Malibu driven by D.T. had no license plates, indicating it was no longer under its lawful owner's control. At the same time, the Malibu's true ownership was clearly indicated by the Bill Estes Chevrolet advertising license plate card lying in the Malibu's backseat. A reasonable factfinder therefore could conclude D.T. knew the Malibu belonged to Bill Estes Chevrolet and chose to drive it anyway. See Muse, 419 N.E.2d at 1304 (presence inside vehicle of true owner's license plate and registration was evidence defendant knew vehicle was stolen).

D.T. urges us to discount as evidence he knew the Malibu was stolen the fact that he fled Officer Wright as soon as the Malibu was pulled over and disregarded the two officers' commands to stop running. D.T. argues he "likely ran from Officer Wright because he knew he was guilty of operating a vehicle without a driver's license," not because of guilty knowledge with respect to the Malibu's ownership. Brief of the Appellant at 8. D.T.'s argument is essentially an invitation to reweigh the evidence,

which under our standard of review we will not do, C.D.H., 860 N.E.2d at 610.

Conclusion

Sufficient evidence supports the juvenile court's finding that D.T. committed acts that would constitute auto theft, a Class D felony, if committed by an adult. D.T.'s delinquency adjudication is therefore affirmed.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.