

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN TOLE MOXLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44002

FILED

JUN 29 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction pursuant to a jury verdict of one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On August 27, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of possession of a stolen vehicle. The district court adjudicated appellant to be a habitual criminal, and sentenced appellant to a term of life in the Nevada State Prison with the possibility of parole after ten years.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt of possession of a stolen vehicle. Specifically, appellant argues that insufficient evidence existed to find that appellant knew or should have known that the vehicle was stolen. Appellant contends that the jury's finding that appellant was in the proximity of the car and was seen taking off the license plates did not constitute proof beyond a reasonable doubt. We disagree with appellant's contention.

Determining the weight and credibility of testimony is a question for the jury.¹ The jury's verdict will not be disturbed on appeal when substantial evidence supports the verdict.² "The question for the reviewing court is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"³ "This court is not a fact-finding tribunal; that function is best performed by the district court."⁴ We also note that circumstantial evidence alone may sustain a conviction.⁵ "[A]lthough mere presence cannot support an inference that one is a party to an offense, presence together with other circumstances may do so."⁶

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁷ In particular, we note that on November 12, 2002, a neighbor, Melissa Bifulco, witnessed a man driving a white compact

¹Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002).

²Id.

³Id. (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original).

⁴Peck v. State, 116 Nev. 840, 846, 7 P.3d 470, 474 (2000) (quoting Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983)).

⁵See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

⁶Baker v. Sheriff, Clark County, 93 Nev. 11, 13, 558 P.2d 629 (1977) (citing Winston v. Sheriff, 92 Nev. 616, 555 P.2d 1234 (1976)).

⁷See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).


vehicle into the backyard of 1693 Eddingham, Las Vegas, Nevada. Bifulco testified that she was familiar with appellant and recognized him. Appellant stipulated to the witness's identification in court. As Bifulco watched through her upstairs window, appellant took the license plate off the vehicle, unloaded items from the vehicle, and transferred the items inside the house. Later, items recovered from inside the house included the passport and identification of the individual who owned the car.⁸ Ms. Bifulco called 911, reporting the suspicious activities and expressing concern because she had not seen the owner of the house, Steven Such, for several days.

Officer Thomas Stoll responded to the call, and looking through the open gate, could see a white, compact car missing license plates. Officer Stoll entered the backyard, checked the VIN number of the car and discovered that the car had been reported stolen. Officer Stoll testified that it appeared that someone had left in a hurry. The water hose was left running, music was left playing, and the sliding glass door to the house was left open. Officer Stoll approached the sliding glass door of the house to check on the welfare of Such. Such, was found sleeping inside and consented to a search. During the search of the property, officers found appellant hiding behind boxes in the rafters of the garage. Based on the above, we conclude that the jury could reasonably infer from the

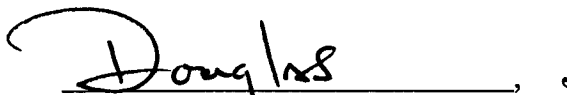
⁸On November 10, 2002, two days before appellant was arrested for the present conviction, Amir Lagstein was robbed at gunpoint in his home by a man wearing a black ski mask. In addition to other personal items, the gunman stole Lagstein's white 1991 Mitsubishi Eclipse. Lagstein could not identify the gunman.

evidence presented that appellant knew or had reason to believe that the vehicle was stolen.


Having concluded that appellant's contention lacks merit, we ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Douglas

 J.

Parraguirre

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk