

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

IN THE INTEREST OF:	:	
EC,	:	No. JV 214-2016
	:	
A Juvenile	:	

OPINION AND ORDER

An evidentiary hearing was scheduled for October 27, 2016, to address the charges of one count of Theft by Unlawful Taking, a felony of the third degree, and one count of Receiving Stolen Property, a felony of the third degree, and one count of City Ordinance Violation, a summary offense, which were filed on August 29, 2016, against E.C. (hereinafter Juvenile). At the time of the hearing, the Juvenile was present and represented by Don Martino, Esquire. Jeffrey Yates, Esquire was present on behalf of the Commonwealth. At the time of the evidentiary hearing, the following facts were stipulated to by the Attorney for the Commonwealth and the Juvenile Defendant:

On August 29, 2016, at approximately 3:37 a.m., Old Lycoming Township Police Department Corporal Sponhouse conducted a traffic stop on a 2001 Mercury Grand Marquis. When the officer approached, he discovered the Juvenile in the front passenger seat. The driver of the vehicle was also a juvenile. The Juvenile was aware at the time of the vehicle stop that the car was stolen because the driver had told him so; however, the Juvenile was not involved and not present when the vehicle was stolen. Instead, the Juvenile was picked up later by the driver, who was the only operator of the subject vehicle.

Following the placing on the record the stipulated facts and argument by counsel for the Commonwealth and the Juvenile, the Court requested briefs, which were timely filed by the Commonwealth on November 3, 2016, and by counsel for the Juvenile on November 7, 2016. It is noted, however, that the Commonwealth filed their Brief to JV-211-216 which is the incorrect docket. The sole question to be decided by the Court was whether the Commonwealth presented sufficient evidence to support adjudication on the charged offenses of Theft by Unlawful Taking and Receiving Stolen Property, when it asserted that merely being a passenger in a vehicle that was known to be stolen was sufficient to establish that the juvenile exercised dominion and control over the vehicle.

In order for the Commonwealth to meet its burden under Count 1, Theft by Unlawful Taking, 18 Pa.C.S. §3921, evidence beyond a reasonable doubt must have been presented that the Juvenile “unlawfully took or exercised unlawful control over moveable property of another with the intent to deprive the victim thereof.” Counsel for the Juvenile argues that no evidence was presented through the stipulation of facts that the Juvenile took the vehicle in question. In fact, it was specifically stipulated to that the Juvenile was not involved in the taking of the vehicle, and that he was picked up by the other juvenile sometime after the vehicle was taken. There was no evidence presented which would suggest that the Juvenile drove the vehicle or otherwise operated the vehicle at any time. Based upon the stipulated facts, it appears as though the Juvenile was merely in a passenger in a car that he acknowledged was stolen. Counsel for the Juvenile argues that the Commonwealth did not meet its burden on the charge of Theft

by Unlawful Taking and that the Commonwealth appears to concede this point by offering no argument within its brief addressing this charge. This Court agrees and thereby acquits the Juvenile on Count 1, Theft by Unlawful Taking.

Regarding Count 2, Receiving Stolen Property, pursuant to 18 Pa.C.S. §3925(a), the Commonwealth must prove beyond a reasonable doubt that the Juvenile “intentionally received, retained, or disposed of movable property of another knowing that it had been stolen, or believing that it has probably been stolen, unless the property was received, retained, or disposed with intent to restore it to the owner.” As used in the statute, “the word receiving means acquiring possession, control or title, or lending on the security of the property.” 18 Pa.C.S. §3925(b).

In its brief, the Commonwealth argues that the Juvenile’s status as a passenger in a vehicle he knew was stolen is sufficient to prove that he acquired possession or exercised control over the vehicle. The Commonwealth cites the case of Commonwealth v. Carson, 592 A.2d 1318 (Pa.Super. 1991), and its “factual similarities” to the present case, in its brief in support of a finding of adjudication on the charge of Receiving Stolen Property. However, upon review of the Carson decision, in which the Superior Court found a defendant passenger guilty of receiving stolen property and held that “joint possession and thus joint dominion may be found when the totality of the circumstances justifies a finding that all of the occupants of the vehicle were acting in concert,” we find that there are distinct differences between the two sets of circumstances and therefore decline to give it the weight the Commonwealth believes it requires. Id. at 1322. In the Carson case, the stolen car was spotted by police officers a

short time and a short distance from where it had been stolen. Id. at 1320. The officer saw three men leave the stolen car - one of whom was the defendant who exited from the front passenger seat - look in his direction, and run. Id. The stolen vehicle had a broken steering column and a smashed right vent window. Id. Based on the totality of these circumstances, the Superior Court found that Carson had the requisite dominion and control over the car to show that he possessed it and “operated” it jointly with his companions. Id. at 1322.

In the present case, it was stipulated that the juvenile was not present when the vehicle was stolen, but that he was aware that it was stolen. The last time the owner of the vehicle saw it was at approximately 12:30 a.m., which means the vehicle could have been stolen as many as three hours before the traffic stop. At the time of the stop, neither occupant fled the police. Neither the police report, nor the facts stipulated to at the time of the hearing indicate that there were obvious signs that the vehicle was stolen, such as the broken passenger side vent window and steering column that were present in the Carson case. The Superior Court found in Carson that the totality of the circumstances supported a conclusion that the passenger was involved with the theft and therefore that the passenger had exercised the requisite control over the vehicle to be found to have acted in concert with the other occupants of the vehicle. In the present case, the totality of the circumstances do not support a finding that the Juvenile, despite knowing that the vehicle was stolen, jointly possessed the vehicle and exercised sufficient control over it, such that the elements of Receiving Stolen Property have been met.

Counsel for the Juvenile, in his brief, argues that the case of Commonwealth v. Scudder, 416 A.2d 1003 (Pa. 1980), provides the controlling law on the issue of when a passenger exercises sufficient dominion and control over a vehicle to be guilty of the offense of Receiving Stolen Property. Scudder was a passenger in a stolen van which was found to contain two riding lawnmowers. Id. at 1005. Additionally, a can of spray paint which was used to paint the van's side windows was also found. Id. A jumped ignition switch was observable under the dashboard indicating the van had been started without a key. Id. In overturning the trial court's conviction for Receiving Stolen Property, which was affirmed by the Superior Court, the Supreme Court held that simply being in proximity to stolen goods was insufficient to convict a person that crime under 18 Pa.C.S. §3925. The law of the Commonwealth of Pennsylvania does not support the conclusion that a mere passenger in a stolen vehicle, without evidence that the passenger exercised dominion or control over the stolen goods, is guilty of Receiving Stolen Property even if he had knowledge that the vehicle was stolen.

This Court agrees that Scudder is controlling law. This Court further finds that in the present case, there was even less evidence that the Juvenile exercised control or dominion over the stolen vehicle than the defendant in Scudder. As previously stipulated, the Juvenile was not present when the vehicle was stolen. He did not drive or otherwise operate the vehicle. He never obtained or retained possession of the keys. He neither caused damage to the vehicle nor fled from the police during the vehicle stop. The Commonwealth has failed to meet its burden of establishing that the Juvenile intentionally received, retained, or disposed of movable property of another knowing

that it had been stolen and therefore the Juvenile must be acquitted on Count 2, Receiving Stolen Property.

The Commonwealth sets forth, in its brief, an argument indicating that the *mens rea* for the Unauthorized Use of a Motor Vehicle has been met because, as stated in Carson, “the *mens rea* burden under the Unauthorized Use of a Motor Vehicle charge is not as strict as the one for Receiving Stolen Property. . . For the intent element of the latter offense, the Commonwealth must show that the defendant was reckless with respect to the owner’s lack of consent in that he had consciously disregarded a substantial and unjustifiable risk that the owner has consented.” Because this Court finds that the Commonwealth has failed to meet its burden of proof that the Juvenile should be adjudicated on the charge of Receiving Stolen Property, the Court declines to accept that the elements of Unauthorized Use of a Motor Vehicle have automatically been met. However, further discussion or analysis by the Court is not necessary because Unauthorized Use of a Motor Vehicle is not one of the offenses charged on either the Affidavit of Probable Cause dated August 29, 2016, or the Petition Alleging Delinquency filed on September 2, 2016.

Lastly, Count 3 of the Petition alleging delinquency charges a Summary Offense for violation of a local ordinance for curfew violation. At no time did either counsel for the Commonwealth nor counsel for the Juvenile make any statements or arguments in regard to Count 3, Violation of a Local Curfew Ordinance. Though there is a stipulation as to what time the traffic stop occurred, the Court was not presented with any evidence

indicating the terms and conditions of the local curfew ordinance. Therefore, the Court does not find that the Commonwealth has met its burden in regard to Count 3.

ORDER

AND NOW, this 23rd day of **November, 2016**, following a hearing and argument, the Juvenile is **ACQUITTED** on Count 1, Theft by Unlawful Taking, Count 2, Receiving Stolen Property, and Count 3, Local Ordinance-Curfew Violation.

By The Court,

Joy Reynolds McCoy, Judge