

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1762

STATE OF LOUISIANA

VERSUS

RICHARD ALLEN MOTES

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Judgment Rendered: February 12, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 442,343

Honorable Allison H. Penzato, Judge

Walter P. Reed, District Attorney
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and
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State – Appellee

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Defendant – Appellant
Richard Allen Motes

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

The defendant, Richard Allen Motes, was charged by bill of information with one count of aggravated flight from an officer, a violation of La. R.S. 14:108.1(C) and one count of illegal possession of stolen things with a value over \$500.00, a violation of La. R.S. 14:69. He pled not guilty. Following a jury trial, the defendant was convicted as charged. Subsequently, the defendant moved for post verdict judgment of acquittal and for a new trial. The trial court denied both motions. The defendant was sentenced to imprisonment at hard labor for eighteen months on the aggravated flight from an officer conviction and three years at hard labor on the illegal possession of stolen things conviction. The court ordered that the sentence be served concurrently. The defendant was also ordered to pay restitution to the victim in the amount of \$3,700.00. The defendant moved for reconsideration of the sentences. The trial court denied the motion. The defendant now appeals, urging the following assignments of error:

1. There was insufficient evidence to prove that the defendant was guilty of aggravated flight from an officer. The state failed to prove that the police officer had reasonable grounds to believe that the driver committed an offense prior to the flight.
2. There was insufficient evidence to prove that the defendant was guilty of illegal possession of stolen things. The state failed to establish that the value of the stolen thing was in excess of five hundred dollars.

Finding no merit in the assigned errors, we affirm the defendant's convictions and sentences.

FACTS

On January 18, 2008, shortly after midnight, Deputy Edward Vauthier, of the St. Tammany Parish Sheriff's Office, Criminal Patrol Division, received a dispatch regarding a high-speed pursuit in progress. The dispatcher indicated that law enforcement officials from Hancock County, Mississippi, were in pursuit of a truck on Interstate 10 ("I-10") heading towards St. Tammany Parish. Deputy

Vauthier drove to the area of I-10 near Gause Boulevard. Upon spotting the black Dodge truck, followed by several marked Hancock County law enforcement units, Deputy Vauthier activated the sirens and lights on his marked vehicle and joined in the pursuit. The driver of the truck did not stop, but continued along I-10 across the Twin Span bridges to New Orleans. Deputy Vauthier followed the truck, traveling at a speed of over 100 miles per hour.

Meanwhile, Deputy Mark Oster, of the St. Tammany Parish Sheriff's Office, was also dispatched to assist in the pursuit. At the time of the dispatch, Deputy Oster was in route to New Orleans. Based upon information relayed in the dispatch, Deputy Oster traveled to the area of I-10 near the end of the Twin Span. Shortly thereafter, Deputy Oster spotted the truck traveling westbound on I-10. The truck was being followed by several marked law enforcement units with flashing lights and sirens. Deputy Oster activated his lights and siren and joined the chase. The driver of the truck refused to stop. Deputy Oster accelerated to approximately 125 miles per hour and assumed the position of lead vehicle in the pursuit. The high-speed chase continued.

At some point thereafter, several New Orleans Police Department officers and Louisiana National Guard officers also joined in the pursuit. Still, the driver ignored the signals and refused to stop. He traveled at speeds in excess of 100 miles per hour to evade the police. The high-speed chase continued through a construction zone where the posted speed limit was 45 miles per hour. The driver never reduced his speed.

The vehicle pursuit ended when the driver crashed the truck into a gate at a vacant warehouse on Old Gentilly Boulevard in Orleans Parish. The driver, a white male wearing dark clothing and a mullet hairstyle, exited the truck and fled on foot. Deputy Oster exited his vehicle, drew his weapon, and approached the truck to see if there were any other occupants. Upon determining that the truck

was clear, Deputy Oster pursued the driver on foot. Shortly thereafter, the defendant was found hiding in a nearby grassy area approximately 200-250 yards from the truck. The defendant matched the physical description (height, clothing, mullet hairstyle) of the individual Deputy Oster observed exiting the truck. Canine tracking subsequently was used to further search the rather deserted area. According to Deputy Oster, the dog tracked from the truck directly to the area where the defendant was found. No other individuals were discovered in the warehouse building or surrounding area.

Police investigation later revealed that the truck the defendant had been driving was a stolen vehicle with a switched license plate. The defendant was arrested and charged with the instant offenses.

At trial, the defendant testified and denied ever possessing the vehicle in question. He stated that he previously observed an individual named "Ricky" driving the black Dodge truck. According to the defendant, Ricky claimed he got the truck from his father. The defendant stated he questioned the veracity of this claim after Ricky removed the tires and running boards from the "nice" truck and sold them for drugs. The defendant stated that he then concluded that Ricky did not own the truck and that it was actually a stolen vehicle. The defendant denied ever driving the truck.

In explaining his presence in the area on the day in question, the defendant stated that he lived in a FEMA trailer at the junkyard next to the vacant warehouse. He claimed that he and several other individuals were "hanging out" inside the vacant warehouse when the truck came "speeding around the corner." Ricky jumped out of the truck and announced that "the police were on the way." All of the other occupants of the warehouse building jumped out of the window and ran across the street into the woods. The defendant testified that his physical condition prevented him from running, so he walked down and stood behind the truck.

Shortly thereafter, Military Police officials approached and indicated that they were looking for “Ricky.” The defendant told the officers that Ricky ran into the building, and they left. The defendant was neither handcuffed nor arrested at that time. Instead, he claimed he was walking to a nearby truck stop when he was approached by New Orleans Police Department officers. According to the defendant, the New Orleans Police officers stated that “St. Tammany” wanted to talk with the defendant. The defendant voluntarily entered the police vehicle and the officers drove him around the corner where the St. Tammany Parish Sheriff’s officials handcuffed and arrested him on an outstanding attachment. The defendant claimed the officers charged him with two other offenses after he arrived at the jail.

AGGRAVATED FLIGHT FROM AN OFFICER

In this assignment of error, the defendant contends the evidence presented by the State is insufficient to support the aggravated flight from an officer conviction. Specifically, he argues that the State failed to prove that the police officer who initiated the pursuit in Mississippi had reasonable grounds to believe that the defendant committed an offense prior to the flight, an essential element of the offense.¹

The constitutional standard for testing the sufficiency of the evidence was enunciated by the U. S. Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The standard requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime charged beyond a reasonable doubt. **State v. Rosiere**, 488 So.2d 965, 968 (La. 1986). This standard is codified in La. C.Cr.P. art. 821. The **Jackson** standard of

¹ Although the defendant raised the issue of misidentification in his trial testimony, he does not challenge the sufficiency of the evidence of his identity on appeal.

review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

At the time of the instant offense, La. R.S. 14:108.1 provided, in pertinent part:²

A. No driver of a motor vehicle shall intentionally refuse to bring a vehicle to a stop knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle.

* * * *

C. Aggravated flight from an officer is the intentional refusal of a driver to bring a vehicle to a stop, under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle.

D. Circumstances wherein human life is endangered shall be any situation where the operator of the fleeing vehicle commits at least two of the following acts:

- (1) Leaves the roadway or forces another vehicle to leave the roadway.
- (2) Collides with another vehicle.
- (3) Exceeds the posted speed limit by at least twenty-five

² Louisiana Revised Statutes 14:108.1 was subsequently amended by Acts 2009, No. 6 § 1.

miles per hour.

(4) Travels against the flow of traffic.

At the trial of this case, Deputies Vauthier and Oster testified that once they were advised, via dispatch, that the Hancock County law enforcement officials were attempting to stop the fleeing truck, they joined in the efforts. Both deputies testified that visual (emergency lights) and audible (sirens) signals to stop were used by all of the marked vehicles involved in the pursuit. The defendant failed to respond to any of the signals. Instead, he continued to travel at an excessive rate of speed, swerving in and out of traffic. The deputies further testified that the defendant's reckless driving and extreme efforts to evade the police also resulted in several other vehicles, including a law enforcement vehicle, being forced off the roadway to avoid collision.

Considering the foregoing, we are convinced that the evidence is sufficient to prove the essential elements of aggravated flight from a police officer beyond a reasonable doubt. Contrary to the defendant's assertions, we do not find that testimony from the officer who initiated the pursuit in Mississippi was required. There was sufficient testimony by the St. Tammany Parish Sheriff's deputies to establish that the defendant was being pursued by marked law enforcement vehicles with sirens and emergency lights engaged when he entered St. Tammany Parish. He was observed driving at an excessive rate of speed to evade the authorities. This flight (from the Hancock County law enforcement officials) provided reasonable grounds for the St. Tammany Parish deputies to stop the defendant. However, even after being signaled to stop by the St. Tammany Parish deputies, the defendant refused to stop the vehicle until he crashed into a gate in Orleans Parish. Thus, it is evident that the defendant intentionally refused to bring the truck to a stop even though he had to be aware of the numerous visual and audio signals directed to him to stop. The evidence also establishes that human life

was endangered under the circumstances. The uncontradicted testimony of Deputies Vauthier and Oster established that, in his efforts to evade the authorities, the defendant, at several times during the pursuit the defendant: (1) veered off of the roadway, (2) forced other vehicles to leave the roadway, and (3) traveled in excess of 100 miles per hour through a construction zone where the posted speed limit was 45 miles per hour. La. R.S. 14:108.1(D)(1) & (3). Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find the essential elements of the crime charged and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. This assignment of error lacks merit.

ILLEGAL POSSESSION OF STOLEN THINGS

In this assignment of error, the defendant argues that the evidence was insufficient to establish that the victim's truck was valued at \$500.00 or more. He argues that there was no evidence presented as to the value of the truck at the time of the offense. The State responds that all of the elements of the crime were proven and thus, the defendant's conviction should be upheld.

Louisiana Revised Statutes 14:69(A) defines illegal possession of stolen things as:

[T]he intentional possessing, procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses.

Louisiana Revised Statutes 14:69(B)(1) sets forth the punishment for illegal possession of stolen items "when the value of the things is five hundred dollars or more." The State must present evidence of the value of the stolen items at the time of the theft. **State v. Hoskin**, 605 So.2d 650, 652 (La. App. 4th Cir. 1992).

In the instant case, Dustin Clouatre testified that he purchased the black,

2004 Dodge 2500 pickup truck from a Rolls Royce dealership in Florida shortly before Christmas in 2007. The truck was delivered to Clouatre on December 28, 2007. According to Clouatre, the truck was equipped with 22 inch custom rims and was in “immaculate” condition when he purchased it. Clouatre testified he was very proud of his truck.

Less than two weeks later, on January 8, 2008, at approximately 2:30-3:00 p.m., the truck was stolen from the Pop ‘N’ Go gas station in Prairieville, Louisiana. Clouatre left the key in the ignition and the truck’s engine running when he went to open the door for someone. An unidentified individual drove away in the truck. Clouatre immediately reported the matter to the police.

On January 18, 2008, the date of the defendant’s arrest, the police identified the truck as Clouatre’s using the vehicle’s identification number. Clouatre was contacted and advised that his truck had been located. Clouatre testified that the condition of his recovered truck differed significantly from its condition at the time it was stolen. The custom rims were no longer on the truck and the tires had been changed. The dashboard was completely torn out, the radio was missing, and the carpet was ripped. Photographs of the truck were introduced into evidence at the trial.

Herein, Clouatre testified that the truck was taken without his permission. Thus, the State proved that the truck was stolen. The State also proved that the defendant intentionally possessed the stolen truck. In addition, the defendant’s own testimony established that he knew the truck was stolen. As previously noted, the defendant only argues the State’s evidence failed to prove that the truck was valued over \$500.00. He asserts the photographs introduced by the State show that the truck was in “deplorable” condition when recovered. He argues that there was no evidence to establish that the truck was not also in deplorable condition when it was taken. He further notes that the State could have easily established the value

of the truck by producing the purchase contract, sales receipt, cancelled check, registration and/or testimonial evidence regarding the condition of the truck at the time of the theft, but it neglected to do so.

In support of his argument, the defendant cites **Hoskin**, wherein the court found sufficient evidence of value to support the conviction. The victim testified the car was only six years old when it was stolen, was in good working condition, and had no dents. The defendant crashed the car just prior to being apprehended, and the victim testified it was worth \$3,000.00. The defendant notes that the **Hoskin** case provides that testimony of value by the owner is sufficient, but “[i]f the testimony is devoid of the value of the property by the owner the State must present additional evidence to prove the value is clearly in excess of the statutory amount.” **Hoskin**, 605 So.2d at 652. He argues that the record is devoid of any testimony regarding the truck’s value, and the State failed to present any additional evidence. In response, the State cites **State in Interest of B.J.**, 617 So.2d 238 (La. App. 5th Cir. 1993), where the juvenile was adjudicated delinquent based upon possessing a stolen vehicle valued at \$500.00 or more even though there was no testimony as to the actual value of the stolen automobile. On appeal, the court found that the State failed to prove the vehicle was worth more than \$500.00, but found that based on the type, condition, and age of the vehicle, it was worth more than \$100.00. The court reversed and modified the adjudication and remanded for a new disposition.

In this case, evidence of the value of the truck was presented through the testimony of Clouatre, the truck’s owner. According to Clouatre, the model year of the truck was 2004, making it less than five years old when it was stolen in 2008. The evidence also established that the truck was driven from Mississippi to Orleans Parish at speeds of over 100 miles per hour on the date of the defendant’s arrest. Thus, it was clearly in operable mechanical condition. Clouatre did not

state the purchase price of the truck; however, he stated he bought it from a Rolls Royce dealership only ten days before it was stolen. Contrary to the defendant's assertions, Clouatre provided testimonial evidence regarding the condition of the truck when it was stolen. He described the truck as being in immaculate condition, with "not a scratch on [it]." Although they were not in place when the truck was recovered, Clouatre further testified that the truck was equipped with 22-inch custom rims. In his own trial testimony, the defendant even described the 2004 truck as a "nice truck." Although the photographs show the truck had been damaged and was filled with trash, the condition does not appear to be "deplorable" as described by the defendant.

Considering the foregoing, viewed in the light most favorable to the prosecution we find that the jury reasonably could have concluded that the recently purchased truck, less than five years old, drivable, and in decent condition, was valued at \$500.00 or more at the time of the offense. We cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662.

This assignment of error lacks merit.

CONCLUSION

For the foregoing reasons, defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.