

[Cite as *State v. Pinkston*, 2016-Ohio-5414.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103833

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

JAMAL D. PINKSTON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-596547-A

BEFORE: S. Gallagher, J., Jones, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: August 18, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Jamal Pinkston was convicted of the unauthorized use of a motor vehicle in violation of R.C. 2913.03(B), which is a fifth-degree felony. The verdict was entered following a bench trial. The trial court sentenced Pinkston to 18 months of community control sanctions, reserving a six-month prison term in the event Pinkston violates the terms. Pinkston was also ordered to pay \$1,357.39 in restitution to Hertz Rental Car to cover the cost of the unpaid rental period and fees associated with the recovery of the vehicle. Pinkston appealed both the finding of guilt and the order of restitution. We affirm.

{¶2} Pinkston needed a truck to pick up his daughter from college. His license was suspended, so his daughter's mother agreed to rent a truck from Hertz for Pinkston's use. The terms of the rental agreement established that only those identified in the rental agreement had authorization to operate the vehicle. Pinkston was not a listed operator and acknowledged as much. The truck was not returned at the end of the rental period, and the daughter's mother reported the vehicle to have been stolen by Pinkston a day before the return date. Hertz terminated the rental agreement and did not charge her for its use because of the report. Pinkston was arrested as he slept in the truck in a parking lot during a time the lot was closed to public access.

{¶3} Although Pinkston phrases his appeal in terms of a manifest weight of the evidence review, the gravamen of his first assigned error is that the state failed to

demonstrate that his daughter's mother withheld consent for him to use the vehicle because she had not testified at trial. Such an argument is more in the nature of a sufficiency of the evidence challenge because it does not turn on the credibility of a witness.

{¶4} A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶5} The current appeal largely hinges on Pinkston's illogical claim — that because his daughter's mother never testified to withholding consent for his use of the vehicle, the state failed to prove every element of R.C. 2913.03(B) at trial. According to Pinkston, the indictment stated that he “did knowingly use or operate a motor vehicle without the consent of Hertz Rental Company *and/or [the daughter's mother]*, the owner or person authorized to give consent.” (Emphasis added.) The state, however, was not required to prove that both Hertz and the mother withheld consent or that Pinkston had used the vehicle for a significant length of time. The mother was not authorized to give consent in the first place, and Pinkston was aware of that fact.

{¶6} At trial, Pinkston conceded that Hertz had not authorized his use of the truck and that he was aware that he had to be listed as a driver on the rental agreement to be so authorized. Tr.121:17-25 (the prosecutor asked if Pinkston was aware that he had to sign the agreement to be an authorized operator, to which he eventually replied, “I do know I should be on there.”). Importantly, no trial testimony demonstrated that anyone other than Hertz could authorize Pinkston’s use of the vehicle. Although the indictment was drafted in the alternative, no trial testimony provided that the daughter’s mother was a person authorized to give consent, and therefore, the failure to have the daughter’s mother testify at trial is a red herring. The state need only have established that Hertz was the owner or person authorized to give consent under the statute, which was accomplished, and that Pinkston knowingly operated the vehicle without Hertz’s permission. The reliance on the failure of the mother to testify is misplaced.

{¶7} Pinkston attempts to avoid this conclusion by seeking an unwarranted extension of the decision in *State v. Vrazalica*, 8th Dist. Cuyahoga No. 84412, 2005-Ohio-1164, ¶ 23. In that case, another panel reached the same conclusion on similar facts, interestingly involving Hertz as well. At that trial, the renter and Hertz established that the defendant lacked any consent to operate the vehicle. *Id.* As the panel noted, however, the defendant was aware that Hertz had not authorized the defendant to operate the rental car. *Id.* Thus, the only difference between *Vrazalica* and our current case is that in the former, the state presented redundant testimony, that of the renter also denying the defendant permission to use the vehicle. Accordingly, the renter’s testimony in

Vrazalica was irrelevant in light of the fact that the defendant knew the car was a rental and he lacked the rental company's consent to operate the vehicle.¹ *Vrazalica* does not stand for the proposition that both the renter and the rental company must withhold consent for the purpose of R.C. 2913.03(B) in all cases. Such a requirement would graft a requirement into the unambiguous language of the statute.

{¶8} In the current case, the mother was not authorized to give consent based on the evidence introduced at trial. The only relevant testimony as to consent in this particular case was that of Hertz's representative and Pinkston himself. In order to be found guilty of the unauthorized use of a motor vehicle, the state need only prove that the defendant knowingly used a motor vehicle without the consent of Hertz, the owner, or Hertz's representative, the person authorized to give Hertz's consent. R.C. 2913.03(B). Pinkston conceded he was aware at the time he had possession of the truck that Hertz had not authorized him to operate it, a fact confirmed by Hertz's representative. Pinkston goes to great lengths to point out that Hertz's representative stated that Hertz does not really punish renters for violating their authorized-user clause in the rental agreement. That testimony is irrelevant. Whether Hertz has a policy regarding breaches of the rental agreement is one of contract between Hertz and the renter. A violation of R.C. 2913.03

¹It is conceivable that in some cases, an offender may not be aware of the fact that the vehicle is a rental or of the fact that the renter lacks authority to allow another to operate the vehicle; therefore, to establish that the offender knowingly operated a vehicle without the consent of the owner or person authorized to provide consent, it may be relevant whether the renter had given the offender permission to do so in order to establish the "knowingly" element of the crime. In this case, as in *Vrazalica*, the facts demonstrated that the offender was aware that the vehicle was rented and only the rental company could authorize its use.

does not depend on Hertz asserting its contractual rights to terminate the rental agreement before a prosecution can be had. It is undisputed that Hertz had not authorized Pinkston to use the vehicle and Pinkston was aware that such authorization was required. Accordingly, the finding of guilt was supported by legally sufficient evidence that Pinkston knowingly operated a vehicle without the consent of the owner or person authorized to give consent.

{¶9} Finally, Pinkston complains that he was not afforded an opportunity to rebut the amount of restitution because he claims to have paid the daughter's mother for the use of the vehicle. We summarily overrule Pinkston's final assignment of error because, quite simply, the restitution was ordered to be paid to Hertz as the owner of the vehicle, not to the daughter's mother. As a result, Pinkston was not actually disputing the amount of the restitution imposed, but to whom it had been paid. *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, ¶ 27 (hearing required if the offender, victim, or survivor disputes the amount of restitution ordered).

{¶10} Before imposing an order of restitution, a sentencing court must determine that “the amount of restitution bears a reasonable relationship to the loss suffered.” *State v. McLaurin*, 8th Dist. Cuyahoga No. 103068, 2016-Ohio-933, ¶ 13, quoting *State v. Borders*, 12th Dist. Clermont No. CA2004-12-101, 2005-Ohio-4339, ¶ 36. The amount of restitution must be determinable to a reasonable degree of certainty and be supported by competent, credible evidence. *Id.*, citing *State v. Warner*, 55 Ohio St.3d 31, 69, 564 N.E.2d 18 (1990). The state demonstrated, through uncontested evidence, that Hertz had

not received compensation for the rental period, during which Pinkston had unauthorized possession and use of the rental car, and also incurred miscellaneous costs in recovering its property that were not disputed.

{¶11} Pinkston's claim that he paid his daughter's mother for the rental is irrelevant to Hertz's damages. Pinkston only testified to the fact that he and the mother shared an account, out of which Hertz should have been paid. Pinkston admitted in his trial testimony that he did not actually pay Hertz for the rental and that his daughter's mother was supposed to pay Hertz because Pinkston was not a party to the rental agreement. Further, at sentencing, Pinkston admitted he had no evidence to support his claim that Hertz had been paid for the rental. According to the undisputed trial testimony, Hertz never billed the mother for the rental after she reported the truck stolen, and the mother never paid for the rental. The restitution order was supported by competent, credible evidence.

{¶12} Having overruled both of Pinkston's assigned errors, we affirm the conviction.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
TIM McCORMACK, J., CONCUR