



In the Missouri Court of Appeals Eastern District

DIVISION THREE

STATE OF MISSOURI,	)	No. ED104801
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Perry County
vs.	)	
	)	
MICHAEL LYNN ALLEN,	)	Honorable Michael E. Gardner
	)	
Appellant.	)	Filed: September 26, 2017

OPINION

Michael Lynn Allen (“Defendant”) appeals from the judgment of the trial court following a jury trial where he was found guilty of one count of first-degree tampering, in violation of Section 569.080.¹ Defendant argues the trial court lacked territorial jurisdiction because there was no evidence any part of the offense occurred in Missouri, and the trial court plainly erred in failing to give a jury instruction for the lesser-included offense of second-degree tampering. We find the trial court lacked jurisdiction to convict Defendant, vacate the judgment as void, and order the Defendant discharged.

Factual and Procedural Background

One evening in February of 2014, the owner of a 1986 Ford pickup truck parked his truck on the street in downtown Perryville, Missouri and walked down the street to a bar. The owner

¹ All references to Section 569.080 are to RSMo Cum. Supp. 2005. All other statutory references are to RSMo 2000, unless otherwise indicated.

left the truck unlocked with the keys under the floor mat. When he walked out of the bar less than an hour later, his truck was gone. He walked down the street to the Perryville Police Department and reported the truck missing. The owner also had several items of personal property in the truck, including a car stereo, a new chainsaw, ratchet straps, tow hitches, and a tow chain hook. In total, the personal property was worth just over \$900. The Perryville Police put out a BOLO² alert for the vehicle.

Five or six days later, Defendant went with some friends to the home of Samantha and James Brummett in Knobel, Arkansas. While there, Defendant asked if the Brummetts would be willing to trade their Jeep Cherokee for a 1986 Ford pickup truck. Defendant did not have the truck at the time. A deal was made. The next day, Defendant drove the truck to the Brummetts for the exchange, but Defendant did not have the title to the truck. The Brummetts agreed to trade vehicles that day, but they insisted on keeping the title to their Jeep until Defendant delivered title to the truck. Defendant left the truck with the Brummetts and drove away in the Jeep.

The next day, the Sheriff's Department in Clay County, Arkansas was contacted regarding the missing truck, given a description of the vehicle, and informed that it may be located in Knobel, Arkansas. Later that day, the truck was found at the Brummetts' home. Ms. Brummett explained that Defendant had traded the truck for their Jeep the previous day. After verifying that the truck was the same vehicle that had been taken from Perryville, Missouri a week earlier, the deputies seized the truck, towed it to an impound yard, and inventoried its

² BOLO, which is shorthand for "be on the look-out," refers to an all-points bulletin (APB) alert sharing information concerning a person or item of interest that law enforcement officers are seeking.

contents. The deputies did not find any of the owner's personal property in the truck. Defendant was arrested later that day in Arkansas by the Clay County Sheriff's Department.

Defendant was extradited to Missouri and charged with one count each of first-degree tampering, for operating the truck without the owner's permission, and felony stealing, for taking the personal property in the truck. Defendant was not charged with stealing the truck. The information alleged the crimes occurred in Perry County, Missouri. A jury trial was held, and Defendant was found guilty of first-degree tampering but not guilty of stealing. The court sentenced Defendant to a term of four years' imprisonment. This appeal follows.

Points on Appeal

Defendant raises two points on appeal. In Point I, Defendant argues the trial court erred in denying his motion for judgment of acquittal because the State did not prove his guilt beyond a reasonable doubt, in that there was insufficient evidence that Defendant operated the truck in Missouri, and therefore insufficient evidence to prove the trial court had territorial jurisdiction to prosecute him for the crime of first-degree tampering. In Point II, Defendant argues the trial court plainly erred in failing to give a jury instruction for the lesser-included crime of second-degree tampering.

Discussion

Defendant's first point on appeal challenges the trial court's jurisdiction to convict him of the offense of first-degree tampering, arguing there was no evidence Defendant ever operated the truck within Missouri, which was required for the court to have jurisdiction. Defendant does not dispute that Missouri would have had jurisdiction if the crimes were committed as alleged in the information. Rather, Defendant challenges the sufficiency of the evidence, arguing the State failed to prove the offense occurred within Missouri. We agree.

A claim challenging the trial court lacked jurisdiction because the State failed to prove the offense occurred within Missouri attacks the sufficiency of the evidence to support the conviction. *State v. Williams*, 455 S.W.3d 1, 5-6 (Mo. App. S.D. 2013). Our review of the sufficiency of the evidence is limited to whether the State introduced sufficient evidence for a reasonable juror to find the defendant guilty beyond a reasonable doubt. *State v. Jeffrey*, 400 S.W.3d 303, 312-13 (Mo. banc 2013). When determining the sufficiency of the evidence to support a conviction, appellate courts do not reweigh the evidence, but accept as true all evidence tending to prove guilt together with all reasonable inferences that support the verdict, and ignore all contrary evidence and inferences. *Id.* at 313. However, we will not supply missing evidence, or give the State the benefit of unreasonable, speculative, or forced inferences. *State v. Clark*, 490 S.W.3d 704, 707 (Mo. banc 2016); *State v. Glass*, 439 S.W.3d 838, 842 (Mo. App. E.D. 2014).

Section 569.080 provides: “A person commits the crime of tampering in the first degree if (2) He or she knowingly receives, possesses, sells, alters, defaces, destroys or unlawfully operates an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle without the consent of the owner thereof.” *State v. Plopper*, 489 S.W.3d 848, 853 (Mo. App. S.D. 2016). Defendant was charged with committing the offense of first-degree tampering for operating the truck in Perry County, Missouri.

We find the State failed to prove Defendant committed the offense of first-degree tampering in Missouri because the evidence fails to establish that Defendant operator the truck in Missouri. Missouri courts lack jurisdiction to prosecute violations of Missouri law unless the conduct constituting the offense, or some substantial portion of it, occurred within Missouri. *State v. Taylor*, 238 S.W.3d 145, 149 (Mo. banc 2007); *State v. Kleen*, 491 S.W.2d 244, 245

(Mo. banc 1973); *Pennell v. State*, 467 S.W.3d 367, 375 (Mo. App. E.D. 2015); *see also State ex rel. Laughlin v. Bowersox*, 318 S.W.3d 695, 703 (Mo. banc 2010) (granting motion for post-conviction relief and discharging defendant where crime occurred on federal land because Missouri lacked jurisdiction under Section 541.191). Section 541.191.1 provides:

1. This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:
 - (1) Conduct constituting any element of the offense or a result of such conduct occurs within this state; or
 - (2) The conduct outside this state constitutes an attempt or conspiracy to commit an offense within this state and an act in furtherance of the attempt or conspiracy occurs within this state; or
 - (3) The conduct within this state constitutes an attempt, solicitation, conspiracy or facilitation to commit or establishes criminal accountability for the commission of an offense in another jurisdiction that is also an offense under the law of this state; or
 - (4) The offense consists of an omission to perform a duty imposed by the law of this state regardless of the location of the defendant at the time of the offense; and
 - (5) The offense is a violation of a statute of this state that prohibits conduct outside the state.

Section 541.191.1(1)-(5).

The standard of proof required to establish jurisdiction in a criminal case has not been definitively resolved in Missouri. *State v. Hicks*, No. WD79610, 2017 WL 2436927 at *2 (Mo. App. W.D. June 6, 2017) (citing *Williams*, 455 S.W.3d at 6 (Mo. App. S.D. 2013)). The State's argument that proof of jurisdiction is the same as proof of venue and must only be proven by a preponderance of the evidence, as opposed to beyond a reasonable doubt, lacks merit. There is a "fundamental difference between venue and jurisdiction," therefore "cases discussing the standard of proof for establishing venue offer no support as to the appropriate standard of proof for establishing jurisdiction." *Id.* However, we need not decide this issue because we are convinced the evidence adduced in this case was insufficient to establish Missouri has jurisdiction under either standard of proof.

Here, there was no evidence establishing Missouri had jurisdiction to convict Defendant for first-degree tampering. Defendant was not charged with an attempt or conspiracy, the offense of tampering does not involve an omission to perform a duty imposed by Missouri law, and there is no indication the tampering statute was intended to prohibit conduct outside of Missouri. Therefore, the only relevant basis for jurisdiction in this case was Section 541.191.1(1), which requires “[c]onduct constituting any element of the offense or a result of such conduct” to occur within Missouri. However, there was no evidence Defendant committed any element of the offense within the State of Missouri, or that a result of such conduct occurred in Missouri.

“An essential element of any crime is that the person charged with an offense is the person who committed the offense, and the State bears the burden of proving this fact to the trial court.” *State v. Graves*, 358 S.W.3d 536, 539-40 (Mo. App. S.D. 2012). Given the circumstances of this case, to prove Defendant committed first-degree tampering in Missouri, the State was required to prove Defendant was the individual responsible for taking the truck from the street in Perryville.

Admittedly, there was no direct evidence that Defendant was the individual responsible for taking the truck in Missouri. Four witnesses testified at trial: the owner of the truck; Ms. Brummett; and two sheriff deputies from Clay County, Arkansas. The State concedes none of the witnesses identified Defendant as being in Missouri. The only witness to testify about events occurring in Missouri was the owner of the truck. He testified that the vehicle was parked on the street in Perryville, Missouri and was taken without his consent. However, the owner admitted he did not see who took his vehicle.

There was simply no evidence supporting that Defendant was in Missouri. The other witnesses only testified about events that occurred in Arkansas. Mrs. Brummett, an Arkansas

resident, testified that she observed Defendant operating the truck in Knobel, Arkansas. This was the only evidence of Defendant's operation of the truck. While sufficient to establish that Defendant was operating the truck in Arkansas about a week after it went missing, it was insufficient to prove the offense occurred in Missouri.³ There was no evidence concerning what happened to the truck after it was taken in Perryville, how the truck made its way to Arkansas, or who was responsible for transporting the vehicle there. The sheriff's deputies testified about recovering the vehicle and arresting the Defendant, both of which occurred in Clay County, Arkansas. Neither observed Defendant operate the vehicle in Arkansas or Missouri.

Accordingly, the evidence was insufficient to allow the jury to find beyond a reasonable doubt that Defendant operated the truck in Missouri. While the evidence is sufficient to infer that someone stole the truck in Missouri, any inference that Defendant was the one who took it would be speculative. Although we must accept all reasonable inferences supporting a finding of guilt, we cannot supply missing evidence, or give the State the benefit of unreasonable, speculative or forced inferences. *Clark*, 490 S.W.3d at 707. Where proof of an essential element of a crime relies solely on circumstantial evidence, "a conviction must rest upon inferences, which inferences must be strong enough to support a finding of guilt beyond a reasonable doubt." *State v. Waller*, 163 S.W.3d 593, 596 (Mo. App. W.D. 2005) (reversing a conviction for littering because evidence that defendant's address was on mail contained in a bag on trash on the side of the road was insufficient to prove defendant was responsible for leaving it there because the bag also contained mail addresses to another individual and there was no evidence as to how the bag

³ The evidence in this case would have been sufficient to prove Defendant was guilty of first-degree tampering of a motor vehicle in Arkansas, assuming Arkansas has a statute similar to Section 569.080. However, evidence that Defendant was operating the truck in Arkansas does not lead to a reasonable inference that Defendant also operated the truck in Missouri, which was necessary for the trial court to have jurisdiction to convict Defendant of tampering in Missouri.

came to rest there, therefore it was just as easy to infer the other individual, and not defendant, was who committed the crime). Based on the evidence presented at trial, there was no basis for believing Defendant had been in Missouri, let alone that he was the individual responsible for taking the truck from the street in Perryville. It was equally likely that Defendant received the truck in Arkansas from the individual responsible for taking it in Missouri.

The State argues it was reasonable for the jury to infer that Defendant was the individual responsible for taking the truck in Perryville, and concomitantly operating the vehicle in the process, based on the fact he was found in possession of the truck about a week later. We disagree. In prosecutions for the offense of stealing or burglary, courts have recognized that evidence a defendant had unexplained exclusive possession of recently stolen property raises a permissible inference of guilt. *State v. Brown*, 744 S.W.2d 809, 811 (Mo. banc 1988) (“An inference of guilt is permissible from the unexplained possession of property recently stolen in a burglary, and the inference exists both as to the offense of burglary and of stealing.”); *State v. Bowen*, No. ED103919, 2017 WL 361185, at *3 (Mo. App. E.D. Jan. 24, 2017). However, this is a case of neither burglary nor stealing. The State did not prove, nor was Defendant charged with, stealing the truck. Therefore, the cases relied on by the State to support this inference are not applicable.⁴

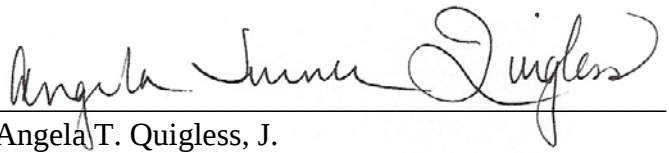
Operating a stolen vehicle in Arkansas, without more, does not establish a sufficient factual basis to allow an inference of guilt to convict a defendant of first-degree tampering in

⁴ The State relies on *State v. Holleran*, 197 S.W.3d 603, 611 (Mo. App. E.D. 2006), in arguing that unexplained exclusive possession of recently stolen property raises an inference of guilt in the context of a tampering offense. We find *Holleran* is distinguishable in that the court was addressing the *mens rea* of tampering, specifically whether there was sufficient evidence the defendant *knew* the vehicle he was operating was stolen. *Id.* This is an entirely different question from the issue involved in this case, which concerns the *actus reus* of tampering, specifically whether there was sufficient evidence Defendant was *operating* the vehicle within Missouri. Courts are generally more liberal in allowing the use of purely circumstantial evidence to establish *mens rea* because “[d]irect proof of a required mental state is seldom available and such intent is usually inferred from circumstantial evidence.” *Id.* (quoting *State v. Brown*, 660 S.W.2d 694, 699 (Mo. banc 1983)).

Missouri. *See State v. Presberry*, 128 S.W.3d 80, 96 (Mo. App. E.D. 2003). Accordingly, we find there was insufficient evidence to allow a reasonable juror to believe Defendant operated the truck within Missouri, which was necessary for the court to have jurisdiction to convict Defendant for tampering. Because Defendant was convicted by a state court without the jurisdiction to do so, his conviction is void and must be reversed and vacated. *Laughlin*, 318 S.W.3d at 703. Point I is granted. Our holding in Point I is dispositive. Therefore, we need not address the issue Defendant raises in Point II, which is denied as moot.

Conclusion

The judgment of the trial court is reversed and vacated, and Defendant is ordered discharged.



Angela T. Quigless, J.

Gary M. Gaertner, Jr., P.J., and
Robert M. Clayton III, J., concur.