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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1905**

In the Matter of the Welfare of:
C. R. S., Child.

**Filed June 22, 2010
Affirmed
Johnson, Judge**

Anoka County District Court
File No. 02-JV-09-1271

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant C.R.S.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, Minnesota (for respondent State of Minnesota)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

C.R.S. was adjudicated delinquent of theft of a motor vehicle and driving without a valid driver's license. On appeal, he makes two arguments. First, he argues that the

evidence is insufficient to prove the offense of theft of a motor vehicle because the state did not introduce any evidence of the value of the vehicle. Second, he argues that his rights under the Confrontation Clause were violated when the district court admitted evidence concerning statements that C.R.S.'s parents made to a deputy sheriff. We affirm.

FACTS

On April 26, 2009, at approximately 3:00 a.m., Anoka County Deputy Sheriff Freddy Munoz was patrolling the area of Round Lake Boulevard and Bunker Lake Road when he observed a green Volkswagen Passat without illuminated tail lights or brake lights. Deputy Munoz initiated a stop of the vehicle, which pulled into a parking lot. Deputy Munoz identified the driver as C.R.S., who was 16 years old at the time. Four other juveniles were in the car, including C.R.S.'s 15-year-old brother. None of the juveniles had a valid driver's license.

In response to Deputy Munoz's questions, C.R.S. stated that the car belonged to his mother. Deputy Munoz asked C.R.S. if his mother knew that he was driving her car, and C.R.S. replied that his mother did not know. Deputy Munoz then called C.R.S.'s parents. Deputy Munoz later testified that he asked C.R.S.'s mother if she knew where her son was and that she replied that he was supposed to be at home. Deputy Munoz informed her that C.R.S. was with him in a parking lot. Deputy Munoz further testified that he asked C.R.S.'s mother if she had given C.R.S. permission to drive the car that night, and she replied that she had not.

C.R.S.'s parents arrived at the scene a few minutes later. Deputy Munoz asked C.R.S.'s father if he had given C.R.S. or C.R.S.'s brother permission to drive the car, and the father indicated that he had not. C.R.S.'s father was angry with C.R.S. and told Deputy Munoz that he wanted C.R.S. to be charged with the most serious crime possible.

The state charged C.R.S. with unauthorized use of a motor vehicle, in violation of Minn. Stat. § 609.52, subds. 2(17), 3(3)(d)(v) (2008), which is a felony. The state later amended the petition to add a count of driving without a driver's license, in violation of Minn. Stat. § 171.02, subd. 1(a) (2008).

Deputy Munoz was the state's only witness at trial. C.R.S.'s parents were present but were not called to testify. When the state rested, defense counsel moved for a judgment of acquittal on the charge of unauthorized use of a motor vehicle. Defense counsel argued that, because C.R.S. is entitled to confront his accusers, the state needed to call the owner of the vehicle to testify that she did not give her permission. The district court denied the motion, stating that "Deputy Munoz testified that the Defendant told him that the car belonged to his mother and that his mother did not know he was driving the car," which the court stated was "sufficient, at least at this point, to survive the motion for judgment of acquittal."

At the conclusion of trial, the district court made oral findings on the record and found C.R.S. guilty of both counts. The district court placed C.R.S. on probation for one year and ordered him to complete a 30-day rehabilitative program at the Anoka County Juvenile Center. C.R.S. appeals.

DECISION

I.

C.R.S. first argues that the evidence is insufficient to support the finding of guilt on the charge of unauthorized use of a motor vehicle because the state did not present any evidence of the value of his mother's vehicle.

“Due process requires that every element of the offense charged must be proven beyond a reasonable doubt by the prosecution.” *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998); *see also In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001). In reviewing an argument of insufficient evidence, an appellate court will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010); *see also In re Welfare of S.J.J.*, 755 N.W.2d 316, 318 (Minn. App. 2008). “We review criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions.” *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008); *see also In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004) (stating standard of review of juvenile delinquency trials).

The district court found C.R.S. guilty of unauthorized use of a motor vehicle, in violation of Minn. Stat. § 609.52, subds. 2(17), 3(3)(d)(v). Under that statute, a person commits theft if he or she “takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the

owner or an authorized agent of the owner did not give consent.” Minn. Stat. § 609.52, subd. 2(17). A person who commits such a theft “may be sentenced . . . to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if . . . the value of the property . . . stolen is not more than \$1,000, and . . . the property stolen is a motor vehicle.” *Id.*, subd. 3(3)(d)(v).

Evidence of the value of stolen property may be essential to a theft offense if the severity of the sentence depends on value. *See State v. Tennin*, 437 N.W.2d 82, 86 (Minn. App. 1989) (concluding that testimony valuing stolen guns at \$3,000 was sufficient to support conviction for possessing stolen goods worth more than \$300), *review denied* (Minn. Apr. 24, 1989). But if an offense involves the theft or unauthorized use of a motor vehicle, the offense is a felony regardless of value. Minn. Stat. § 609.52, subd. 3(3)(d)(v). The penalty provisions of the theft statute contain no misdemeanor sentence for theft or unauthorized use of a motor vehicle. *See* Minn. Stat. § 609.52, subds. 3(2) (2008) (authorizing felony sentence if value exceeds \$5,000), 3(3)(a) (2008) (authorizing felony sentence if value is between \$1,000 and \$5,000), 3(3)(d) (2008) (authorizing felony sentence if value is “not more than \$1,000”); *see also* Minn. Sent. Guidelines cmt. II.A.05 (2008) (assigning severity level III to unauthorized use of motor vehicle). C.R.S. was convicted of the least serious form of theft or unauthorized use of a motor vehicle, which applies to motor vehicles worth \$1,000 or less. *See* Minn. Stat. § 609.52, subd. 3(3)(d)(v). Evidence of the value of his mother’s motor vehicle could have served only to support a more serious charge with a longer sentence. *See id.*, subds.

3(1) (2008) (authorizing maximum sentence of 20 years if value exceeds \$35,000), 3(2) (authorizing maximum sentence of 10 years if value exceeds \$5,000). In light of the manner in which the state chose to charge C.R.S., the absence of evidence of the value of the motor vehicle did not affect C.R.S.'s sentence or otherwise prejudice him in any way.

Thus, the value of the motor vehicle is not an essential element of the offense, and the absence of such evidence does not cause the state's evidence to be insufficient to support the finding of guilt on the offense of unauthorized use of a motor vehicle.

II.

C.R.S. also argues that the district court committed plain error by admitting Deputy Munoz's testimony concerning statements by C.R.S.'s parents after C.R.S. was stopped. Deputy Munoz testified that both of C.R.S.'s parents told him that C.R.S. did not have permission to drive that vehicle that night. C.R.S. contends that the evidence is hearsay and that it is inadmissible in light of the Confrontation Clause of the Sixth Amendment.

At trial, C.R.S. did not object to Deputy Munoz's testimony concerning the parents' statements. Thus, we review the admission of the evidence for plain error. *See* Minn. R. Crim. P. 31.02; *State v. Tscheu*, 758 N.W.2d 849, 863 (Minn. 2008) (applying plain-error test to confrontation and hearsay challenges). Under the plain-error test, we may not grant appellate relief on an issue to which there was no objection unless (1) there is an error, (2) the error is plain, and (3) the error affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is "plain" if it is

clear or obvious under current law, *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002), and an error is clear or obvious if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the first three requirements of the plain-error test are satisfied, we then consider the fourth requirement, whether the error “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *State v. Washington*, 693 N.W.2d 195, 204 (Minn. 2005) (quotation omitted).

The first and second requirements of the plain-error test are satisfied because the state concedes that evidence of the parents’ statements is inadmissible under the Confrontation Clause. The question then becomes whether C.R.S. can satisfy the third requirement of the test -- that the plain error affected his substantial rights. *See Griller*, 583 N.W.2d at 740. A plain error affects a person’s substantial rights if there is a “reasonable likelihood that the absence of the error would have had a significant effect on” the outcome of the trial. *See State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007) (quotations omitted).

In this case, it is relatively easy to discern that the erroneously admitted evidence did not affect the outcome of the trial. When making its oral findings, the district court expressly stated that it was *not* relying on the testimony that the state now concedes was erroneously admitted. The district court stated:

With regard to the unauthorized use of a motor vehicle, the evidence shows that on April 26th, 2009, at about 3:08 a.m., the Defendant was driving a motor vehicle in Anoka County, Minnesota. He had four underage passengers,

including his brother who was in the front seat, and it was past curfew. *The Court is focused not on the conversation between Deputy Munoz and Mrs. [S.], but rather the conversation between Deputy Munoz and the Defendant. The Defendant stated that he was driving the vehicle that belonged to his mother. Again, that he was driving the vehicle even though he did not have a driver's license, and the Defendant further stated that his mother did not know that he was driving the car.* That is sufficient to convince the Court beyond a reasonable doubt, which is different than beyond all possibility of doubt, but does in fact convince the Court beyond a reasonable doubt that the Defendant is guilty of the charge of unauthorized use of a motor vehicle.

(Emphasis added.) The trial transcript supports the district court's findings. Deputy Munoz testified that, after being stopped, C.R.S. stated that his mother did not know that he was driving her car at that time. Because the district court expressly stated that it was *not* relying on the erroneously admitted evidence, and because the district court expressly stated that it *was* relying on other, properly admitted evidence, C.R.S. cannot satisfy his burden of showing that the erroneously admitted evidence affected his substantial rights.

Thus, the erroneous admission of Deputy Munoz's testimony about statements made by C.R.S.'s parents is not plain error warranting a new trial.

Affirmed.