

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: A.W., DATE OF  
BIRTH: 05/28/2006. Subject  
Minor/Delinquent Youth,

No. 88932

\_\_\_\_\_  
A.W.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

FILED

JAN 26 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL*

This is an appeal from a juvenile court order adjudicating appellant A.W. a delinquent youth. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge.

Appellant A.W. was 17-years-old at the time of his arrest. Just before his arrest, A.W. was seen sitting in the back passenger seat of a parked car in North Las Vegas that had been stolen thirteen or fourteen hours earlier. Several other boys were also with A.W., including a 13-year-old—the driver. There is no evidence from the record that A.W. ever occupied the vehicle while it was being driven. When A.W. exited the vehicle along with the other boys, he was wearing a black ski mask, or balaclava, even though it was June. A.W. continued walking with the other boys after they abandoned the vehicle. Shortly thereafter, a police officer arrested A.W. The responding officer was also able to observe, from outside the car, that the ignition module had been ripped out. After a contested hearing, A.W. was adjudicated delinquent for possession of a stolen vehicle.

A.W. argues that insufficient evidence supports his delinquency adjudication for possession of a stolen vehicle under NRS 205.273. We agree.

When reviewing the sufficiency of the evidence supporting a delinquency adjudication, this court views all the evidence in the State's favor to determine whether "a rational fact finder could have found the offense's essential elements beyond a reasonable doubt." *In re T.R.*, 119 Nev. 646, 649, 80 P.3d 1276, 1278 (2003). In a juvenile proceeding, the State must prove a child's delinquency beyond a reasonable doubt. NRS 62D.040(4). As in the adult criminal context, reasonable doubt does not mean "mere possible doubt." NRS 175.211(1). Instead, it is the kind of doubt that "would govern or control a person in the more weighty affairs of life." *Id.*

*The State did not present sufficient evidence to prove beyond a reasonable doubt that A.W. had possession of the stolen car*

Under NRS 205.273(1)(b), a person commits a felony "involving a stolen vehicle if the person" (1) "[h]as in his or her possession a motor vehicle," and (2) that "the person knows or has reason to believe [it] has been stolen." A.W. argues that the evidence presented at the adjudicatory hearing proved only that he was a backseat passenger, and that mere presence is insufficient to support a finding of possession of the vehicle. He also argues that the State failed to provide sufficient evidence that he exercised any control or dominion over the vehicle, or that he directed or controlled any other members of the group of minors in the car.

The State alleges that the evidence showed that A.W. possessed the stolen vehicle because he was willingly in the vehicle, remained in the vehicle for a while, exited wearing a ski mask, and then remained with members of the group who were also previously in the vehicle. The State avers that while A.W. was not the actual driver, the evidence showed that A.W. was in possession of the vehicle and had the ability to control it.

The general legal definition of "possession" is "[t]he fact of having or holding property in one's power; the exercise of dominion over

property,” or “[t]he right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.” *Possession, Black’s Law Dictionary* (12th ed. 2024). Possession can be actual or constructive, but the quintessence of the possession inquiry is the individual’s ability “to exercise dominion or control over the property.” *Glispey v. Sheriff*, 89 Nev. 221, 224, 510 P.2d 623, 624 (1973) (addressing possession of a controlled substance). Thus, to establish possession of a stolen vehicle, the State must show that A.W. exercised dominion or control over the car.

A person’s “mere presence cannot support an inference that one is party to an offense.” *Palmer v. State*, 112 Nev. 763, 769, 920 P.2d 112, 115 (1996) (quoting *Baker v. Sheriff*, 93 Nev. 11, 13, 558 P.3d 629, 629 (1977)). However, the person’s presence, accompanied by other circumstances, may support such an inference. *Id.* Thus, A.W.’s mere presence in the stolen car is insufficient to prove that he possessed the car unless other circumstances showed dominion or control.

We considered such circumstances in *Palmer*, where this court addressed whether sufficient evidence supported a defendant’s conviction for possession of a stolen jeep. Witnesses testified that they saw the defendant “inside the jeep dismantling the convertible top” and “standing on the side of the jeep, leaning into the jeep, and . . . taking parts off the jeep.” *Id.* (omission in original). We concluded that even though there was no evidence that the defendant had keys for, or ever drove the jeep, sufficient evidence showed that the defendant “was in ‘possession’ of the jeep because he was exercising control over it at that point in time.” *Id.* Instead, we focused on the defendant’s degree of dominion and control over the jeep, rather than mere occupancy of, or presence inside of the vehicle.

Similarly, courts across the nation have identified a number of

circumstances which, in addition to mere presence, support a reasonable inference of possession. See, e.g., *Chism v. State*, 114 Nev. 229, 232-33, 954 P.2d 1183, 1185 (1998) (using a stolen vehicle during the commission of other crimes); *People v. Tucker*, 542 N.E.2d 804, 812 (Ill. App. Ct. 1989) (acting as a lookout for and assisting the driver of a stolen car); *People v. Land*, 35 Cal. Rptr. 2d 544, 549 (Ct. App. 1994) (proximity of residence to location of a stolen vehicle); *Riddle v. State*, 791 S.W.2d 708, 709 (Ark. 1990) (a passenger's attempts not to get caught).

Viewing the evidence in the light most favorable to the State, we conclude that the evidence presented at the adjudicatory hearing by the State was insufficient to demonstrate that A.W. had possession of the stolen vehicle. The State's evidence that A.W. was willingly in the vehicle, wearing a black ski mask, and remaining with others who were in the car after exiting, proves little more than A.W.'s mere presence in the vehicle. The record does not support the proposition that A.W. occupied the vehicle while it was in motion or that he transferred items from the cabin of the car to the trunk. These circumstances are distinguishable from those in *Palmer*, and are insufficient to show that A.W. was in possession of the car. Nor did the State present sufficient evidence of circumstances like those in *Chism*, *Tucker*, *Land*, and *Riddle*, which combined with A.W.'s presence, would likely indicate that he exercised dominion or control over the vehicle. The evidence presented was insufficient to prove that A.W. was in possession of the car beyond a reasonable doubt because this evidence, taken together, does not demonstrate that A.W. exercised dominion or control over the car.

The dissent's point that an appellant bears "[t]he burden to make a proper appellate record," *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980), is well taken. But we must still determine what constitutes a proper appellate record for a given appeal. In *Riggins v. State*—relied

upon by the dissent—we noted that “[i]t is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception.” 107 Nev. 178, 182, 808 P.2d 535, 538 (1991), *rev’d on other grounds by Riggins v. Nevada*, 504 U.S. 127 (1992). Nothing in the record here suggests that A.W. took exception to the video referenced by the dissent. Moreover, we clarified in *Cuzze v. University & Community College System of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007), “that an appellant’s appendix must include any portion of the record *that is necessary* for this court’s determination of the issues raised on appeal.” (Emphasis added.) The *Cuzze* exclusion principle does not apply to information that an appellant omits from their record because they believe it is unnecessary on appeal. Because we believe that the omitted videotape and bodycam surveillance footage are not necessary to support our conclusion, the requirement for the presumption in favor of the district court’s decision explained in *Riggins* and *Cuzze* are inapplicable here.

*The State presented sufficient evidence to prove beyond a reasonable doubt that A.W. knew or had reason to believe that the car was stolen*

NRS 205.273(1)(b) also “requires that the State prove the defendant *knew or had reason to believe* the vehicle was stolen.” *Montes v. State*, 95 Nev. 891, 893, 603 P.2d 1069, 1071 (1979) (emphasis added). A person may be convicted of possession of stolen property without actual knowledge of the stolen nature of the property where the circumstances are such that a reasonable person should know that the property was stolen. *See Gray v. State*, 100 Nev. 556, 558, 688 P.2d 313, 314 (1984). This “reasonable person” standard is an objective one. *See generally* Wayne R. LaFave, *Substantive Criminal Law* § 20.2(d) (3d ed. 2018).

A.W. argues that the State failed to provide sufficient evidence that he was aware that the ignition of the car had been tampered with. He asserts that no evidence was provided to show that, from his position in the back of the car, he could have seen the damaged ignition. A.W. also argues that, while the driver of the car may have been 13-years-old, the State failed to provide any evidence that A.W. was aware of this fact. Finally, while A.W. concedes that he was wearing a black ski mask when he was arrested, such clothing is insufficient to infer knowledge of the car's stolen character.

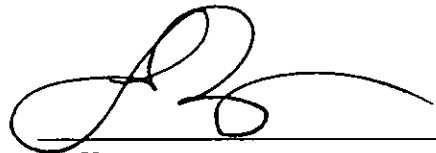
The State argues that A.W. was willingly inside and willfully remained in the stolen car, along with the other minors, and could see that the ignition had obviously been tampered with. The State also argues that A.W. knew or had reason to believe the car was stolen because the driver was only 13-years-old. Finally, the State points out that wearing a black ski mask inside a stolen car, during the month of June, suggested that he was engaged in criminal activity and knew the car was stolen. We agree with the State.

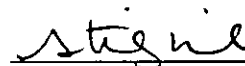
Here, the inquiry is whether a reasonable 17-year-old passenger would know or have reason to believe the car was stolen. Witnesses testified that the damaged ignition could be seen from outside the car. Thus, it is reasonable to infer that A.W., who was sitting inside the vehicle in a position diagonally across from the driver's seat, could also see the damaged ignition. And while the evidence at the adjudicatory hearing did not establish any of the physical characteristics or attributes of the 13-year-old driver, a reasonable factfinder could permissibly infer that a 17-year-old vehicle occupant would know the approximate age of other boys in the car and could conclude that the vehicle did not belong to a 13-year-old driver, and that it was stolen. Finally, the fact that A.W. was wearing a ski mask in June, while none of the other minors were wearing masks, indicates


that A.W. was aware that the car was stolen and intended to conceal his identity in order to evade detection.


Viewing the evidence in the light most favorable to the State, a rational factfinder could have concluded that a reasonable 17-year-old in A.W.'s position would have had reason to believe—if not actual knowledge—that the car was stolen. Therefore, sufficient evidence supported the knowledge prong. Notwithstanding, NRS 205.273(1)(b) requires *both* possession and knowledge. Having failed to satisfy the former, the State has failed to meet its burden of proof on a crime “involving a stolen vehicle.”

Accordingly, we ORDER the judgment of the juvenile court REVERSED.

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Lee

PICKERING, J., with whom HERNDON, C.J., and PARRAGUIRRE, J., agree, dissenting:

I respectfully dissent from the majority's decision to reverse A.W.'s delinquency adjudication based on insufficiency of the evidence. Under Nevada law, possession of a stolen vehicle has two elements: (1) possession of a vehicle, (2) that the defendant knows or has reason to believe

is stolen. NRS 205.273(1)(b). As the majority concludes, the evidence sufficiently established that A.W. knew or had reason to know the car was stolen. The question is whether the record contains sufficient evidence for a reasonable factfinder to also find that A.W. possessed the stolen car. It is on this point—the sufficiency of the evidence of possession—that the majority and I disagree.

A.W.'s failure to include the videotape of him in the car as part of the appellate record should defeat his sufficiency-of-the-evidence challenge

Before addressing the legal and factual issues this appeal presents, I have a threshold concern with the adequacy of the record on appeal. The trial in this case was conducted before a juvenile court judge. Three witnesses testified, two of whom mainly narrated a videotape that showed the stolen car being parked, A.W. and the other juveniles in the car, and later (we do not know exactly how much later) the juveniles getting out of the car. The police investigation identified the car's driver as a 13-year-old juvenile and A.W. as its passenger. The videotape was admitted into evidence and played for the court, along with the testifying police officer's bodycam footage. However, A.W. failed to include either the videotape or the bodycam evidence in the record on appeal.

“The burden to make a proper appellate record rests on [the] appellant,” *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980), and materials omitted from the record on appeal “are presumed to support the district court’s decision,” *Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991), *rev'd on other grounds by Riggins v. Nevada*, 504 U.S. 127 (1992). *Accord Acosta v. State*, 141 Nev., Adv. Op. 40, 573 P.3d 1258, 1270 n.3 (2025). To decide a sufficiency-of-the-evidence challenge to a delinquency adjudication, this court considers “whether, *when viewing all of the evidence in the State's favor*, a rational fact finder could have found

the offense's essential elements beyond a reasonable doubt." *In re T.R.*, 119 Nev. 646, 649, 80 P.3d 1276, 1278 (2003) (emphasis added). The majority decision denies that it is adopting a categorical rule that a passenger cannot commit the offense of possession of a stolen vehicle. But reversing based on insufficiency of the evidence when the record on appeal omits key evidence that was presented to the finder of fact suggests the opposite, because it effectively concludes that the State's case failed as a matter of law, regardless of what the omitted evidence showed.

The record, viewed in the light most favorable to the State, supports the juvenile court's delinquency adjudication

It is, of course, true that the "mere presence" of a defendant as a passenger in a stolen vehicle "will not create an inference of possession if there is no other evidence to establish a connection between the defendant and the vehicle." *State v. McCoy*, 561 A.2d 582, 586 (N.J. 1989) (collecting cases); accord *People v. Land*, 35 Cal. Rptr. 2d 544, 548 n.3 (Ct. App. 1994) (stating that "the fact a person is a passenger in a stolen vehicle is not, standing alone, enough to establish [the offense of] possession of the stolen vehicle") (collecting cases). A hitchhiker who accepts a ride from a stranger driving a stolen car, for example, does not thereby commit the offense of possession of a stolen vehicle. For a conviction, there would need to be evidence supporting the inference that the hitchhiker knew or should have known the car was stolen and that the hitchhiker exercised dominion or control over the car (or its driver) inconsistent with the owner's right of exclusive possession. See *McCoy*, 561 A.2d at 587.

But a passenger's "words or conduct, as well as other evidence, may sufficiently substantiate his or her relationship to the stolen [vehicle] to support an inference of possession." *Id.*; see also *Land*, 35 Cal. Rptr. 2d at 549 (identifying various types of evidence that may give rise to an

inference of possession). Under Nevada law, the crime of possession of a stolen vehicle does not “require the state to prove that [the defendant] intended to deprive the owner permanently of his vehicle,” only that the defendant “had possession of the vehicle and that the owner had not consented to his possession.” *Montes v. State*, 95 Nev. 891, 894, 897, 603 P.2d 1069, 1071, 1073 (1979). And, importantly, “[p]ossession may be actual or constructive and may be exercised jointly by two or more persons. *Thus, the driver and passengers may all have possession of the vehicle.*” *State v. Gary*, 2008 WL 926592, at \*2 (N.J. Super. Ct. App. Div. 2008) (emphasis added).

The record, properly viewed in the State’s favor, contains sufficient evidence for the juvenile court judge to have found that 17-year-old A.W. jointly possessed the vehicle with its 13-year-old driver. The home security camera showed the car being parked in front of a house that the owner of the car testified was a three-minute drive from her home, where it had been stolen from earlier that same day. The ignition was ripped out, the steering column was damaged, and items the owner kept in the car had been moved from its interior to the trunk. A police officer passed by the car, then received a call reporting suspicious activity by juveniles in the neighborhood. The officer returned to the car’s location and spoke to the homeowner whose house it was parked in front of. The homeowner reported that he and a neighbor had determined the car did not belong to any neighbors or their guests and that his home security camera had captured video of the car and its occupants, who appeared to be juveniles. The police officer viewed the video, which showed the juveniles getting out of the car, including A.W., who exited the vehicle from a rear seat. Although it was June in North Las Vegas, and hot, A.W. was wearing a black balaclava or

ski mask over his face, a hoodie, and dark jeans. And, after they got out of the car, A.W. and the driver left together on foot.

There is “no single factor or specific combination of factors” that establishes possession of a stolen vehicle by a passenger. *Land*, 35 Cal. Rptr. 2d at 549. Rather, the determination depends “on the unique factual circumstance of each case.” *Id.* In my view, the factual circumstances in this case align with those in cases where appellate courts elsewhere have found sufficient evidence to sustain a passenger’s conviction of possession of a stolen vehicle.

First and foremost, as the majority acknowledges, the evidence sufficiently established that A.W. knew or had reason to know the vehicle was stolen. This fact, alone, supports an inference of possession, because it shows that A.W. occupied the vehicle adversely to the owner’s right of exclusive possession, knowing he did not have the owner’s permission to be in the car. *See People v. Tucker*, 542 N.E.2d 804, 810, 812 (Ill. App. Ct. 1989) (stating that the crime of possession of a stolen vehicle requires “only a showing that someone other than the defendant had a superior interest in the property” and upholding the passenger’s conviction based in part on proof the passenger knew or had reason to know the vehicle was stolen).

Additional circumstantial evidence supports an inference that A.W. possessed the car. Witnesses testified that the video showed A.W. in the car the same day it was stolen, a few minutes’ drive away from where it had been taken; the proximity in both time and location to the crime scene suggest A.W.’s involvement in the crime. *New Jersey v. Alexander*, 522 A.2d 464, 467 (N.J. Super. Ct. App. 1987) (noting as evidence supporting an inference of possession the fact the defendant was riding in a stolen vehicle six hours after its theft); *Palmer v. State*, 112 Nev. 763, 769, 920 P.2d 112, 115 (1996) (finding sufficient evidence to support conviction of possession of

a stolen vehicle where, among other facts, the vehicle was found parked within a mile of the location from which it had been stolen hours before). That A.W. was in the vehicle after its ignition and the owners' items had been removed and put in the trunk has been found, on analogous facts, to support an inference of possession. *See id.* at 769, 920 P.2d at 115 (deeming evidence the defendant was seen "standing on the side of the jeep, leaning into the jeep, and . . . taking parts off the jeep" sufficient to support "possession" because the defendant "was exercising control over it at that point in time"). And, the factfinder could fairly infer that A.W. and the driver knew one another, since they were both in the car together and left together on foot, and that A.W., as the older boy, had some measure of control over the 13-year-old driver and, therefore, the car. *See McCoy*, 561 A.2d at 588 (noting that evidence the passenger knew the driver supports that the passenger had "both the intention and the capacity to control the stolen vehicle"). Finally, the fact A.W. was wearing a balaclava to cover his face on a hot June day in North Las Vegas supports the inference that he sought to conceal his identity and illegal occupancy in the vehicle without the owner's permission. *See Commonwealth v. Namey*, 852 N.E.2d 116, 121 (Mass. App. Ct. 2006) (finding sufficient evidence "the defendant was more than a mere passenger" in part because of a disguise found in the back seat).

Evaluating sufficiency of the evidence to sustain a conviction or delinquency adjudication requires the appellate court to show deference to the finder of fact. The question "is not whether this court is convinced of the defendant's guilt beyond a reasonable doubt," but whether a factfinder, "acting reasonably," could be so convinced. *Edwards v. State*, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974). The evidence in this case was sufficient for that purpose. The fact A.W. as appellant omitted the videotape and police bodycam footage from the record on appeal confirms the correctness

of that conclusion. For these reasons, I would affirm the district court's adjudication of delinquency.

                    Pickering                    , J.  
Pickering

We concur:

                    A                    , C.J.  
Herndon

                    Parraguirre                    , J.  
Parraguirre

cc: Hon. Amy Mastin, District Judge, Family Division  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Clark County District Attorney/Juvenile Division  
Eighth District Court Clerk