

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-147
	:	(C.P.C. No. 09CR-165)
Daniel Fugate,	:	
	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 9, 2010

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

Toki Clark, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Daniel Fugate is appealing from his conviction on a misdemeanor charge of receiving stolen property. He assigns two errors for our review:

[I.] A TRIAL COURT COMMITS REVERSIBLE ERROR AS A MATTER OF LAW WHEN IT GIVES AN ARTHUR CHARGE, AS SET FORTH IN *STATE V. ARTHUR* (1975), 42 OHIO ST.2d 67, INSTRUCTING JURORS THEY MAY INFER CRIMINAL KNOWLEDGE FROM SIMPLE POSSESSION, BUT FAILS TO ALERT THE JURY THAT THE NON-TESTIFYING DEFENDANT'S POSSESSION OF RECENTLY STOLEN PROPERTY MAY BE SATISFACTORILY

EXPLAINED FROM INDEPENDENT EVIDENCE CONTAINED IN THE RECORD.

[II.] THE CONVICTION OF APPELLANT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶2} For convenience of understanding the case, we address the second assignment of error first.

{¶3} Between December 26 and 29, 2008, several engine blocks were stolen from a business called G-Cor. When G-Cor's manager became aware of the thefts, he contacted area scrap yards of the thefts. He also notified police.

{¶4} Derek Hull, the manager of Ace Iron and Metal ("Ace"), contacted both police and G-Cor and informed them that his business had purchased some of the engine blocks.

{¶5} Daniel Fugate and Lloyd Jewell were at Ace selling more engine blocks when police arrived. Fugate claimed that he had helped transport the engine blocks from Jewell's house to Ace. Fugate claimed that Jewell had told him a third man had given Jewell the engine blocks.

{¶6} Police told Fugate that they had surveillance video showing him loading engine blocks into Jewell's truck at G-Cor, not Jewell's house. Fugate then changed his story and acknowledged that he had helped remove the engine blocks from G-Cor's property, but continued to claim that he thought Jewell was the owner of the engine blocks.

{¶7} The evidence clearly supported a verdict of guilty of receiving stolen property. R.C. 2913.51(A) reads:

No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

{¶8} The jury had evidence which clearly showed Fugate taking the engine blocks. Fugate was helping to sell the engine blocks when police arrived. The only issue was Fugate's mental state. The jury was free to disbelieve Fugate's claim that he thought Jewell owned the engine blocks, especially since Fugate lied to police about where he got or helped transport the engines in the first place. The jury could clearly find that Fugate knew or had reasonable grounds to believe the engine blocks were stolen.

{¶9} The second assignment of error is overruled.

{¶10} The first assignment of error questions the trial court giving a jury instruction derived from *State v. Arthur* (1975), 42 Ohio St.2d 67. The charge reads:

Possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably draw the inference and find, in light of surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen.

(Tr. 234.)

{¶11} The charge given is consistent with Ohio law on the subject of guilty knowledge.

{¶12} Fugate did not choose to testify at his trial, so his statements to police were not further explained or modified. Still, his claim that he did not know he was helping steal the engine block was before the jury.

{¶13} The evidence at Fugate's trial did not rely solely on Fugate's possession of property recently stolen. Fugate went into G-Cor's property, helped remove the blocks from a bin where stored and helped take them to Ace for sale. The engine blocks had metal tags on them which identified them as G-Cor's property.

{¶14} Under the circumstances, the trial court did not err in giving the jury charge.

{¶15} The first assignment of error is overruled. Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.
