[Cite as *State v. Collins,* 2012-Ohio-372.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-130 (C.P.C. No. 10CR-6333)
Joseph R. Collins, Sr.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 2, 2012

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*, for appellee.

Steven A. Larson, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Joseph R. Collins, Sr. ("appellant"), appeals from his convictions in the Franklin County Court of Common Pleas on charges of two counts of receiving stolen property. For the reasons that follow, we affirm.

{¶2} On Monday, June 8, 2009, Jan Lenko, an engineer for American Electric Power ("AEP"), arrived for work at AEP's Dolan Lab electrical laboratory in Groveport to discover that, during the previous weekend, someone had cut the security fence and stolen a significant amount of copper wire. Carrie Kim Campbell, AEP's regional security coordinator, received a report that copper wire had also been stolen from AEP's adjacent

facility, the Bixby Road Substation, the same weekend. The stolen wire was taken from the ground as well as from large reels. Some, but not all, of the wire was marked with AEP identifying markers. The stolen wire consisted of speaker wire, which was marked with AEP identifying markers; ground wire, some of which was painted to match AEP's buildings; and generic wire, which was insulated by a black cover. When the black cover is removed from generic wire, it is referred to as bare bright copper wire.

{¶3} Two days prior to the discovery of the thefts, on Saturday, June 6, 2009, appellant sold 113 pounds of copper wire to Recycling Exchange on Westerville Road. He was paid $1.55 per pound for a total of $175.15. At the same time, appellant's son, Joseph R. Collins, Jr. ("Collins Jr."), sold 840 pounds of copper wire to Recycling Exchange for the same price per pound, for a total of $1,302. Jerry Vanderkooi was working at Recycling Exchange when these transactions took place. He identified the wire sold by appellant as bare bright copper wire as depicted in State's Exhibits 1 and 2. Lenko testified that the wire depicted in Exhibits 1 and 2 is not wire from Dolan Lab; however, AEP does use that type of copper wire. These transactions were videotaped. Although she cannot be seen on the videotape, Vanderkooi testified that an unidentified woman accompanied appellant and his son during the transaction. All three individuals arrived and departed in the same vehicle bearing license plate number EPJ 7238. Vanderkooi testified that appellant had sold copper wire at Recycling Exchange previously with no problems.

{¶4} On Monday, June 8, 2009, the same day Lenko discovered the theft of copper wire at Dolan Lab, Rachel Munn ("Munn"), sold 74 pounds of number two insulated wire and 477 pounds of number one bare bright copper wire to IH Schlezinger,

a different recycling company. Munn is Collins Jr.'s girlfriend or mother of his child. (Tr. 136.) The number two insulated copper wire had AEP identifying features and was sold for $0.65 per pound for a total of $48.10. The number one bare bright copper wire sold for $1.90 per pound for a total of $849.30. (Tr. 74-79.) Mike Kerek was working at IH Schlezinger when these transactions took place. He testified that he had been alerted to the theft of AEP copper wire earlier and was suspicious as he watched Munn bring in the wire. Although the number one copper wire was stripped to bare bright copper, and Kerek could not say for sure that the wire was AEP's, AEP had alerted him to the diameter of the number one wire, and he knew it was approximately the "right thing." Kerek identified appellant as the person who helped Munn unload the wire from a van bearing the license plate number EPT 7328.[1] Kerek contacted the Columbus Police Department. The police advised Kerek to set aside the copper wire. A couple of hours later, the same vehicle returned with Munn, appellant's second son Jason Collins, appellant's sister Lisa Williams, and possibly Collins Jr. to sell more copper wire. Appellant was not with Munn at the time. During this transaction, Jason Collins attempted to sell IH Schlezinger number one bare bright copper wire, which was insulated. Some of this wire was marked with the initials "AEP." (State's Exhibits 5, 7, and 8.) Kerek stalled Munn and the others until the Columbus Police arrived and seized the property.

{¶5} Lenko and Campbell identified the wire sold to IH Schlezinger and seized by the police as AEP wire. (Tr. 117-23; 158-66.) Lenko estimated the value of the wire stolen from Dolan Lab to be $2,850. (Tr. 123-24.)

[1] Kerek did testify that the license number was "EPT 7328" (Tr. 77), but State's Exhibit 20, a copy of the receipt from IH Schlezinger, identifies Munn's car license number as "EPJ 7238," the same as the vehicle in which appellant arrived at Recycling Exchange.

{¶6} Appellant was charged with two counts of receiving stolen property in violation of R.C. 2913.51. Because prosecutors determined that the value of the property involved was equal to or more than $500 but less than $5,000, the offense level charged in both counts was felony of the fifth degree pursuant to R.C. 2913.51(C). The state also proceeded under the theory of complicity to receiving stolen property, pursuant to R.C. 2923.03, alleging that appellant aided and abetted in the commission of receiving stolen property both with the transaction conducted by his son, Collins Jr., at Recycling Exchange and the transaction conducted by Munn at IH Schlezinger.

{¶7} A jury trial was held, and the jury was instructed on complicity. Appellant was found guilty of two counts of receiving stolen property. The jury made a specific finding, as to both counts, that the value of the property involved was $500 or more and less than $5,000.

{¶8} Appellant appeals the guilty verdicts, setting forth the following two assignments of error for this court's review:

> I. THE TRIAL [COURT] EERRED [sic] WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION OF TWO COUNTS OF RECEIVING STOLEN PROPERTY.
>
> II. THE TRIAL COURT VIOLATED JOSEPH R. COLLINS, SR. RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED JUDGMENT OF CONVICTION FOR TWO COUNTS OF RECEIVING STOLEN PROPERTY WHEN THE EVIDENCE WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND THE FIFTH AND FORUTEENTH [sic] AMENDMENTS TO THE U. S. CONSTITUTION, AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.

{¶9} Appellant's first assignment of error asserts that the evidence was insufficient as a matter of law to sustain his convictions for receiving stolen property. He first argues that, with regard to both counts, the evidence was insufficient to prove a felony, thereby challenging the jury's findings as to the value of the property involved. In the same context, appellant argues that the evidence was insufficient to infer that appellant was aiding and abetting the sale of copper by his son Collins Jr. in Count 1 and by Munn in Count 2. Appellant next argues that the evidence was insufficient to prove that he had knowledge or reasonable cause to believe that the property in Counts 1 and 2 was obtained through commission of a theft offense. He makes these same arguments in his second assignment of error, claiming that his convictions were against the manifest weight of the evidence. Because appellant challenges the same evidence, or lack thereof, we will discuss his two assignments of error together.

{¶10} In reviewing a challenge to the sufficiency of the evidence, an appellate court must determine "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, superseded by constitutional amendment on other grounds as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102, 684 N.E.2d 668 (1997). In reviewing a challenge to the manifest weight of the evidence, " '[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *State v. Thompkins*, 78 Ohio St.3d

380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 17 L.Ed.2d 652 (1982). This discretionary authority " 'should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175.

{¶11} The receiving stolen property statute prohibits an individual from "receiv[ing], retain[ing], or dispos[ing] of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense." R.C. 2913.51(A). As to both Counts 1 and 2, the state proceeded under a theory of complicity to commit receiving stolen property. Complicity may be stated in terms of R.C. 2923.03 or in terms of the principal offense. R.C. 2923.03(F). The jury here was instructed in terms of the principal offense that, in order to find appellant guilty of receiving stolen property, it was required to find beyond a reasonable doubt that appellant received, retained or disposed of property of another, or aided or abetted another who received, retained or disposed of said property, while *knowing or having reasonable cause to believe that the property had been obtained through the commission of a theft offense*. Appellant has not appealed this instruction. In finding the appellant guilty on both counts, the jury necessarily must have found that appellant had knowledge or reasonable cause to believe that the property had been obtained through the commission of a theft offense. Because this finding is central to the jury's finding as to the value of the property

involved and as to appellant aiding and abetting Collins Jr. and Munn, we will address this issue first.

{¶12} " '[A] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.' " *State v. Skinner*, 10th Dist. No. 08AP-561, 2008-Ohio-6822, 2008 WL 5381930, ¶12, quoting R.C. 2901.22(B). Further, this court has stated that " 'one has "reasonable cause to believe" property was obtained through a theft offense when, after putting oneself in the position of this defendant, with his knowledge, lack of knowledge, and under the circumstances and conditions that surrounded him at the time, the acts and words and all the surrounding circumstances would have caused a person of ordinary prudence and care to believe that the property had been obtained through the commission of a theft offense.' " *Id.*, quoting *State v. Kirby,* 10th Dist. No. 06AP-297, 2006-Ohio-5952, 2006 WL 3240662, ¶11. The Ohio Supreme Court also has pointed to the surrounding circumstances as evidence from which a jury could infer knowledge or reasonable cause to believe. " 'Possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which [a jury] may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew that the property had been stolen.' " *State v. Arthur*, 42 Ohio St.2d 67, 68, 325 N.E.2d 888 (1975), quoting *Barnes v. United States*, 412 U.S. 837, 839, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973). Mere possession, however, standing alone, is not sufficient. "Rather[,] there must be some additional circumstance

that reasonably indicates that the property was stolen." *State v. Bezak*, 9th Dist. No. 18533, 1998 WL 103336, *3 (Feb. 18, 1998).

{¶13} Appellant did not testify in this case. This is significant because: (1) the possession of stolen copper wire was never satisfactorily explained; and (2) there was no direct evidence that appellant knew or had reasonable cause to believe that the copper wire had been obtained through theft. Therefore, the jury was left to consider only evidence of surrounding circumstances.

{¶14} In a case involving water meters stolen from the City of Cleveland Water Department which were received by the defendant and ultimately sold as scrap, the Eighth District Court of Appeals outlined four factors, or surrounding circumstances, to consider when determining whether reasonable minds could conclude whether a defendant knew or should have known property has been stolen: " '(a) the defendant's unexplained possession of the merchandise, (b) the nature of the merchandise, (c) the frequency with which such merchandise is stolen, (d) the nature of the defendant's commercial activities, and (e) the relatively limited time between the thefts and the recovery of the merchandise.' " *State v. Davis*, 49 Ohio App.3d 109, 112, 550 N.E.2d 966 (8th Dist.1988), quoting *State v. Brooks*, 8th Dist. No. 50384, 1986 WL 2677, *3 (Feb. 27, 1986).

{¶15} Here, neither the appellant, Collins Jr., Munn, Jason Collins, nor any other person involved in the three transactions at the Recycling Exchange and IH Schlezinger, provided a satisfactory explanation for the possession of the copper wire. Campbell testified that the nature of the copper wire was that it was used "mostly in utilities, a lot of times in big industrial commercial construction * * * [not in homes]." (Tr. 166.) She also

testified that AEP's wire is frequently stolen. (Tr. 166-67.) Vanderkooi testified that appellant had sold copper wire to him before, but there was no evidence that appellant was involved in the utility business or industrial construction. Finally, Lenko testified that she learned of the theft of AEP's copper wire from Dolan Lab on Monday, June 8, 2009, and Campbell testified she learned of the theft of wire from the Bixby Road Substation the same day. The thefts occurred over the weekend immediately prior to these discoveries. The copper wire was sold to the Recycling Exchange on Saturday, June 6, 2009, and to IH Schlezinger on Monday, June 8, 2009. This is certainly a relatively limited time between the thefts and the recovery of the copper wire. All of these surrounding circumstances point to appellant knowing or having reasonable cause to believe that the copper wire was stolen.

{¶16} Other surrounding circumstances also point to appellant knowing or having reasonable cause to believe that the copper wire was stolen. Campbell testified that the individuals who steal copper wire often will "burn the rubber coating off of it because of its value or they will cut it and remove it before they take it in for scrap." (Tr. 167.) Detective Jack E. Addington, a 20-year veteran of the Columbus Police Department and a detective for three years in the property crimes/recovery unit of the department, testified that he is responsible for investigating thefts of copper and other scrap metals. As part of his job, he patrols metal scrap yards. Detective Addington testified that sometimes thieves "try to throw you off by burning the insulation off of it. It takes the name of whatever it says on it. It's harder to identify copper that's had the insulation burned off of it." (Tr. 139.) Detective Addington further testified that scrap yard operators are required to electronically provide reports of their transactions to the police department. When investigating the attempted

sale of AEP copper wire to IH Schlezinger by appellant's son Jason Collins, who was accompanied by Munn, Lisa Williams, and possibly Collins Jr., Detective Addington researched the vehicle and names of the persons involved through the electronic reporting system. He learned that the same vehicle was involved in the attempted transaction involving Jason Collins, the transaction involved in Count 2 with Munn and appellant, and the transaction involved in Count 1 with appellant and Collins Jr. He also learned there were two different Joseph R. Collins, one being a junior and one being a senior, and that both had the same address. This prompted Detective Addington to request the videotape of the transaction involved in Count 1 at Recycling Exchange. (State's Exhibit 15.) Detective Addington testified that sometimes he sees those who attempt to sell stolen scrap try to conceal what is actually going on by taking scrap to multiple locations, dividing up the load, or by having family members deliver it. (Tr. 139-41.) Kerek also testified that sometimes individuals come in as a group and do separate transactions "[because] if they split up the material, it's less likely they're going to get caught." (Tr. 92.) He further testified that there are individuals who try to keep below the level of what is considered a felony; at the time, a value under $500.

{¶17} Thus, there was direct evidence of several significant facts common to the three transactions at the Recycling Exchange and IH Schlezinger. First, the same vehicle was used. Second, a member of the Collins family was involved. Third, the copper wire involved was identified as copper wire used by AEP.

{¶18} Furthermore, there is indirect evidence of even more significant facts common to the three transactions. First, although direct evidence only pointed to her involvement in the transactions at IH Schlezinger, a jury could infer that Munn was also

involved in the transaction at Recycling Exchange as the unidentified woman who accompanied appellant and Collins Jr. Second, a jury could infer that, in an effort to "throw off" suspecting scrap yard operators and police investigators, appellant and members of his family removed or burned off the black insulation coating on the AEP insulated wire leaving only the bare bright copper wire, sold the wire to different recyclers, and alternated family members to conduct the transactions. Finally, although the copper wire involved in Counts 1 and 2 was not identifiable to laypersons as AEP's wire, the copper wire involved in the attempted transaction by Jason Collins was marked with the initials "AEP." This knowledge may be imputed to appellant because of his involvement with Munn in the same type of transaction earlier in the day and because of his close association with Jason Collins (his son) and the other persons involved in the third transaction (his sister and possibly his son, Collins Jr.). *See State v. Asberry*, 10th Dist. No. 04AP-1113, 2005-Ohio-4547, 2005 WL 2087879, ¶10 (holding that knowledge of a rental car being stolen could be imputed to the defendant). Ultimately, a jury could infer from this imputed knowledge that appellant had knowledge or reason to believe that the copper wire was obtained through a theft offense.

{¶19} Therefore, taking all the direct and indirect evidence into consideration, we find there was both sufficient evidence and that it was reasonable for the jury to infer and find that appellant had knowledge or reasonable cause to believe that the property involved in Counts 1 and 2 was obtained through a theft offense.

{¶20} Next, we consider the question of whether appellant aided or abetted Collins Jr. and Munn because it is central to the determination of value.

{¶21} This court has held that a person aids or abets another when he supports, assists, encourages, cooperates with, advises or incites the principal in the commission of the crime and shares that criminal intent of the principal. *Columbus v. Bishop*, 10th Dist. No. 08AP-300, 2008-Ohio-6964, 2008 WL 5423342, ¶41, citing *State v. Lett,* 160 Ohio App.3d 46, 2005-Ohio-1308, 825 N.E.2d 1158, ¶28 (8th Dist.). "Such intent may be inferred from the circumstances surrounding the crime." *Bishop* at ¶41, citing *Lett* at ¶28 and *State v. Buelow,* 10th Dist. No. 07AP-317, 2007-Ohio-5929, 2007 WL 3257247, ¶30. Mere presence at the scene of the crime is not enough, by itself, to prove the defendant aided and abetted. *Bishop* at ¶42, citing *State v. Johnson,* 93 Ohio St.3d 240, 243, 754 N.E.2d 796 (2001). Aiding and abetting may be shown by both direct and circumstantial evidence, and participation may be inferred from presence, companionship, and conduct before and after the offense is committed. *Bishop* at ¶42, citing *Johnson* at 245, *Buelow* at ¶29, *Lett* at ¶29. The state must establish that appellant took some role in causing the offense. *Lett* at ¶27; *Buelow* at ¶29.

{¶22} The same evidence we outlined above regarding whether appellant had knowledge or reasonable cause to believe that the copper wire had been stolen also constitutes surrounding circumstances we must consider in determining whether appellant aided and abetted Collins Jr. and Munn. Considering the same evidence, as well as the fact that appellant actually sold copper wire with his son, Collins Jr., at the Recycling Exchange and unloaded the copper wire for Munn to sell the copper wire at IH Schlezinger, we find there was sufficient evidence and that it was reasonable for the jury to find that appellant aided and abetted both Collins Jr. as to Count 1 and Munn as to Count 2.

{¶23} Finally, we will consider appellant's challenge to the value of the property involved in both Counts 1 and 2. At the time of the transactions involved in this case, if the value of the stolen property involved was less than $500, the crime of receiving stolen property was considered a misdemeanor of the first degree. If the value of the property was $500 or more and less than $5,000, it was considered a felony of the fifth degree. R.C. 2913.51(C).[2]

{¶24} As to both counts, the jury made special findings that the value of the property involved was more than $500 and less than $5,000. Appellant challenges these findings. Although the state suggests in its brief that value should be determined by fair market value (appellee's brief at 4), the jury was instructed that value should be determined pursuant to R.C. 2913.61(D)(2),[3] and that value is the cost of replacing the property with new property of like kind and quality. (Tr. 215.) Neither the state nor appellant objected to or appealed this instruction.

{¶25} The only evidence presented regarding the replacement cost of the copper wire was the testimony of Lenko that the value of the wire stolen from Dolan Lab was roughly $2,850. However, Lenko did not specifically testify as to how much of that figure was attributable to the copper sold by appellant and Collins Jr. at the Recycling Exchange and how much was attributable to the copper sold by Munn at IH Schlezinger. Lenko also testified that 4/0 solid wire costs AEP $4.22 per pound (Tr. 123), but it is not clear from

[2] R.C. 2913.51(C) was subsequently amended to provide that receiving stolen property is a felony of the fifth degree if the value of the property is $1,000 or more and less than $7,500. 2011 Am.Sub.H.B. No. 86.

[3] The value of personal effects and household goods and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation or avocation of its owner, which property is not covered under division (D)(1) of this section and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality. Because this instruction was not challenged, we do not decide whether the instruction was proper or the appropriate measure of value for scrap of materials owned by utility companies.

the record how much of the wire involved was 4/0 solid wire. State's Exhibits 16 and 17 represent the fair market value of the copper wire sold by appellant and Collins Jr. at the Recycling Exchange, and State's Exhibit 22 represents the fair market value of copper wire sold by Munn at IH Schlezinger.

{¶26} Appellant's challenge to the sufficiency and manifest weight of the evidence pertains to the issue of whether appellant aided and abetted Collins Jr. and Munn, not to whether evidence of fair market value can be used to determine replacement cost.[4] Furthermore, Lenko testified that the value of copper wire sold for scrap is less than the replacement value of the same copper wire. (Tr. 124.) Finally, again we note that the state suggests in its brief that this court use a fair market value approach to determine the value of the copper wire involved. Therefore, we focus our discussion on the evidence of fair market value presented for the copper wire involved in Counts 1 and 2.

{¶27} Appellant argues that, at the Recycling Exchange, he sold 113 pounds of wire for a total price of $175.15; whereas, his son Collins Jr., sold wire for a total price of $1,302.00. Appellant posits that, even though he and his son came together and left together, Recycling Exchange wrote him a separate ticket and paid him with a separate check. He argues that this evidence is not sufficient to infer that appellant was aiding and abetting the sale of the wire sold by his son in the amount of $1,302 or that his separate transaction was somehow part of a greater scheme. Appellant argues that, at best, the evidence only supports a conviction for a misdemeanor.

{¶28} Obviously, the fair market value of the copper wire which appellant himself sold, $175.15, does not equal or exceed $500.00. Therefore, as appellant suggests, the

[4] Because it is not the question presented to us, we decline to address whether evidence of fair market value can be used to determine replacement cost where no specific evidence of replacement cost exists.

real question here is whether he aided and abetted his son, Collins Jr., in the sale of wire. As explained above, we find that appellant aided and abetted Collins Jr. in the sale of copper wire. Therefore, we also find that there was both sufficient evidence and that it was reasonable for the jury to find that the value of copper wire involved in Count 1, appellant's transaction of $175.15 added to the value of Collins Jr.'s transaction of $1,302.00, equals or exceeds $500.00.

{¶29} IH Schlezinger paid Munn $897.40 for the wire that she sold on June 8, 2009. Here, again, the real question is whether appellant aided and abetted Munn in the sale of wire. Appellant argues that he did not participate in this sale and that the evidence of his presence at the time is not sufficient to infer that he aided and abetted Munn. He challenges the evidence that Kerek saw him helping Munn unload material from a van and the testimony of Kerek that he had been on the lookout for specific stolen wire because AEP had notified him of the theft earlier that day. We reject these arguments, and for the reasons explained above, we find that there was both sufficient evidence and that it was reasonable for the jury to find the value of copper wire involved in Count 2 equals or exceeds $500.

{¶30} For the foregoing reasons, both of appellant's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN, P.J., and KLATT, J., concur.

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