

[Cite as *State v. January*, 2010-Ohio-2837.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JEFFREY LYLE JANUARY

Defendant-Appellant

Appellate Case Nos. 09-CA-52, 09-CA-53

Trial Court Case Nos. 09-CR-245
09-CR-1091

(Criminal Appeal from
Common Pleas Court)

.....

OPINION

Rendered on the 18th day of June, 2010.

.....

STEPHEN A. SCHUMAKER, by ROGER A. WARD, Atty. Reg. #0065394, Clark County
Prosecutor's Office, 50 East Columbia Street, Springfield, Ohio 45502
Attorney for Plaintiff-Appellee

SUSAN BRIDGMAN, Atty. Reg. #0047368, 4100 Tam O Shanter Way, Dayton, Ohio
45429
Attorney for Defendant-Appellant

.....

BROGAN, J.

{¶ 1} Jeffrey L. January appeals from his conviction and sentence in Clark County Common Pleas Court on two counts of receiving stolen property. In two assignments of error, January challenges the legal sufficiency and manifest weight of the evidence to support his convictions.

{¶ 2} The record reflects that a grand jury returned separate indictments against January, each charging him with one count of receiving stolen property. Both indictments involved stolen cars. The charges were consolidated for trial, and a jury found January guilty on both counts. The trial court imposed consecutive eighteen-month sentences. This appeal followed.

{¶ 3} January was convicted of receiving stolen property in violation of R.C. 2913.51(A), which provides: “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.” Both charges against January involved him being observed by police driving a stolen car. January contends, however, that the record contains legally insufficient evidence to support a finding that he knew, or had reasonable cause to believe, the cars he was driving had been stolen. He also claims such a finding is against the manifest weight of the evidence.

{¶ 4} When a defendant challenges the sufficiency of the evidence, he is arguing that the State presented inadequate evidence on each element of the offense to sustain the verdict as a matter of law. *State v. Hawn* (2000), 138 Ohio App.3d 449, 471. “An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's

guilt beyond a reasonable doubt. The relevant inquiry is 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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 5} Our analysis is somewhat different when reviewing a manifest-weight argument. When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact “‘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* (1997), 78 Ohio St.3d 380, 387 (citations omitted). A judgment should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 6} Having reviewed the record, we conclude that January’s convictions are based on legally sufficient evidence and are not against the manifest weight of the evidence. The first incident involved a 1998 Honda Civic owned by Rebecca Siders. At trial, Siders testified that her friend, Jennifer Scott, stole the car from a Ramada Inn parking lot. Siders explained that she and Scott had booked a room for the night after having dinner together. Upon checking into the room, Siders realized that she had left her cigarettes in the car. Scott took Siders’ car keys and went to get the cigarettes but never returned. After a few minutes, Siders checked the parking lot and discovered her Honda was gone. Siders reported Scott’s theft of the car to the police.

{¶ 7} A few days later, Springfield police officer David Emmel drove past the Honda Civic while on patrol in his cruiser. He recognized the vehicle and turned around to follow it. Emmel activated his cruiser's overhead lights, and the driver of the Honda stopped in a driveway. As Emmel ordered the driver out of the vehicle, two other officers arrived to assist. One of those officers, Thomas Selnar, recognized January and identified him as the driver of the car, which had no other occupants. January failed to comply with orders to show his hands and exit the vehicle. At that point, one of the officers pointed a Taser at January, who became compliant and was taken to jail. Emmel waited at the scene for Siders, who had been called to retrieve her vehicle. Siders described her car as being "trashed" inside. She testified that several pieces of her mail had been in the car's glove compartment at the Ramada Inn. Upon arriving at the scene, however, she found the mail, which had her name and address on it, scattered in the front and back of the car. None of the mail had Jennifer Scott's name on it.

{¶ 8} The second incident involved a 2003 Pontiac Grand Am stolen from a used-car lot owned by Ken Kordenbrock. At trial, Kordenbrock testified that a woman named Tyfannie Zinn visited his car lot around 2:30 or 3:00 p.m. accompanied by a black male. Zinn went inside and arranged to test-drive the Grand Am. Kordenbrock asked her to return the car within an hour. Kordenbrock's car lot closed at 5:00 p.m. He reported the Grand Am as stolen when Zinn failed to return it by 6:00 p.m.

{¶ 9} A few days later, Springfield police officer Deric Nichols and his partner, Shane Davis, were on patrol in their cruiser when they saw a Grand Am matching the description of the stolen vehicle. They could not get close enough, however, to

determine whether it was Kordenbrock's car. Nichols followed the vehicle, which turned several times and accelerated away, but he never activated his overhead lights. The Grand Am eventually pulled over and parked. Nichols stopped behind it. The officers observed that there was no rear tag on the vehicle. A dealer's tag that had been placed on the rear of the car when Zinn took it for a test-drive had been removed. When Nichols pulled up behind the Grand Am, January, the driver, opened the door and placed his arms and legs outside without being asked to do so. Nichols approached January and questioned him about who owned the Grand Am. January responded that he did not know but thought it belonged to his passenger, Tyfannie Zinn. At some point, Zinn told Nichols that January was not the person who had been with her when she stole the Grand Am. Upon arriving at the scene to retrieve his car, Kordenbrock identified Zinn as the woman who had taken it from his lot. He was unsure whether January was the black male who had accompanied her.

{¶ 10} For his part, January did not testify at trial. The only evidence he presented came from Aaron Moten, an inmate at the Clark County jail. Moten testified that he knew January and Jennifer Scott, the woman who had stolen Siders' Honda Civic. He testified that he had seen Scott with the Honda, that she had the keys to it, and that "she let people use it for drugs." Moten testified that he thought Scott owned the Honda. He further testified that Scott had told January he could use it. On cross examination, Moten admitted that he "hung out" in the vicinity of a drug house and that he knew January from there. Moten also admitted having convictions for receiving stolen property, having weapons while under disability, breaking and entering, and a drug offense.

{¶ 11} On appeal, January advances the same arguments when challenging the legal sufficiency and manifest weight of the State's evidence. With regard to the Civic, January claims the State presented no evidence "explaining how [he] came to be driving the car or what he knew about its ownership." January further claims there is no evidence Siders' mail was strewn about the car while he was driving it. According to January, the record indicates that the mail was found scattered throughout the car after it had been towed to a police impound lot. Therefore, he contends the only reasonable inference is that the mail fell out of the glove compartment while the vehicle was being towed.

{¶ 12} With regard to the Grand Am, January stresses that Zinn stole the car and that he could not be identified as the person who was with her when she did so. January also alleges an absence of evidence about his relationship to Zinn. Without such evidence, he contends the jury could not infer that he had reason to know Zinn had stolen the car. Finally, January argues that the absence of license plates on the Grand Am when he was stopped does not support his conviction. He cites Officer Davis' testimony that it is not uncommon to see a car on the road without license plates. He further contends the record is devoid of evidence establishing a connection between a lack of a license plate and a vehicle being stolen.

{¶ 13} Upon review, we find January's arguments to be unpersuasive. Police discovered January driving the stolen Honda Civic just days after it had been reported stolen. He was the only occupant of the vehicle when police stopped it. Moreover, the record does not support his argument that Siders' mail must have fallen out of the glove compartment while the vehicle was being towed to an impound lot. In fact, the record

does not reflect that the vehicle was towed at all. Siders testified that she was called to the scene to retrieve her car so that it would not be towed. (Trial transcript at 99). Upon arriving, she saw her mail, which had her name and address on it, scattered throughout the car. (Id. at 100-101). Siders' testimony is consistent with officer Emmel's testimony that he waited at the scene for Siders to pick up her car. (Id. at 120-121). Emmel also recalled that the car was "very messy inside." (Id.).

{¶ 14} January's unexplained possession of the recently stolen Civic, particularly when combined with evidence that Siders' mail was visible inside, allowed the jury to infer that he knew, or had reasonable cause to believe, the car was stolen. *State v. Reese*, Clark App. No. 2001-CA-48, 2002-Ohio-937 ("A jury may infer that a defendant has knowledge of facts based on the surrounding circumstances. * * * More specifically, a jury may infer guilty knowledge based on a defendant's failure to satisfactorily explain his possession of stolen property."); *State v. Reed*, Franklin App. No. 08-AP-20, 2008-Ohio-6082, ¶44 ("In a prosecution for receiving stolen property, the jury may arrive at a finding of guilt by inference when the accused's possession of recently stolen property is not satisfactorily explained in light of surrounding circumstances developed from the evidence."); *State v. McAllister* (1977), 53 Ohio App.2d 176, 180. ("It has long been established in Ohio that the unexplained possession by a defendant of recently stolen property may give rise to a permissive inference from which a jury may conclude, beyond a reasonable doubt, that the accused is guilty of the theft."); *State v. Fredd* (Sept. 30, 1999), Cuyahoga App. No. 74812 ("[T]estimony regarding the contents of the automobile itself at the time of defendant-appellant's arrest was, in fact, admissible to prove defendant-appellant's knowledge that the vehicle was the 'property of another.'")

The presence of a bank book owned by a third party as well as a social security card from another unidentified third party demonstrates knowledge or, at the very least, reasonable cause to believe that the vehicle was the property of another.”).

{¶ 15} We reach the same conclusion with regard to the Grand Am. When police observed January driving the recently stolen car, his passenger was Zinn, the person who had stolen it. Upon seeing the Grand Am, Officer Nichols attempted to follow it without ever activating his overhead lights. He had trouble catching up, however, because January kept accelerating and turning. (Trial transcript at 147). Officer Davis testified that the Grand Am “took off at a high rate of speed” and appeared to be speeding away from the police. (Id. at 155). From this testimony, the jury reasonably could have inferred that January was taking evasive action, which supports an inference that he knew, or had reasonable cause to believe, the unlicensed car was stolen. *State v. McNeir* (Nov. 30, 2000), Lucas App. No. L-99-1406 (recognizing that “[e]rratic driving and flight from police officers is circumstantial evidence that the driver was aware that the vehicle he was in was stolen”). This inference is strengthened by January’s subsequent actions. He eventually stopped the Grand Am, without being directed to do so, and voluntarily “placed his hands outside the window to show that he had nothing in his hands.” (Id. at 156). From this conduct, the jury reasonably could have inferred a consciousness of guilt.

{¶ 16} Having reviewed the record, we believe a rational trier of fact could have found January guilty of receiving stolen property, and the evidence does not weigh heavily against his convictions. Accordingly, we overrule the two assignments of error and affirm the judgment of the Clark County Common Pleas Court.

.....

DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

Stephen A. Schumaker
Roger A. Ward
Susan Bridgman
Hon. Richard J. O'Neill