[Cite as *State v. Perez*, 2008-Ohio-471.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-06-1237

Appellee — Trial Court No. CR-0200302869

v.

Johnnie A. Perez — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: February 8, 2008

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, Kevin A. Pituch and Robert A. Miller, Assistant Prosecuting Attorneys, for appellee.

Ann M. Baronas-Jonke, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant guilty of one count of receiving stolen property – motor vehicle. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

{¶ 3} "The verdict was unsupported by sufficient evidence and against the manifest weight of the evidence."

{¶ 4} The undisputed facts relevant to the issues raised on appeal are as follows. On August 22, 2003, a four-count indictment was issued against appellant. Count 3, receiving stolen property, is the only count subject to this appeal. The charge arose from appellant's arrest on the night of August 13, 2003, by Toledo Police officers with the gang task force who were serving arrest warrants. On that night, the task force received information from a confidential informant that appellant, who was wanted on several arrest warrants, was in a particular neighborhood and was driving a "white older Buick" that the informant believed was stolen. Officers began canvassing the area and spotted appellant standing outside talking on a pay telephone next to a white Buick. Toledo Police Detective Keith Zaborowski testified that members of the task force knew appellant from prior investigations of gang-related activities. Zaborowski testified that as soon as they spotted appellant they turned their cruiser around and saw appellant pulling away in the white car. Two other officers followed appellant and turned on their lights to make a traffic stop. The officers observed appellant drive onto a curb, get out of the car and flee on foot. Detective William Noon chased appellant and apprehended him.

{¶ 5} Zaborowski and Noon testified that when they inspected the Buick appellant had been driving, they saw that the steering column had been "peeled" so that the car could be started and driven without the ignition key. They did not find any keys in the car. Noon testified that a peeled steering column is an indication that a car is

stolen. The task force later determined that the car had been reported stolen in Newport, Michigan, and that the license plates were stolen from a car in Ohio.

{¶ 6} In support of his sole assignment of error regarding the sufficiency and weight of the evidence, appellant argues that the state failed to present evidence regarding the ownership of the car he was driving at the time of his arrest. He asserts that there was no evidence he did not have the owner's consent to drive the car and no evidence that he knew or should have known that the car was stolen.

{¶ 7} "Sufficiency" of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court must 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. A conviction that is based on legally insufficient evidence constitutes a denial of due process, and will bar a retrial. *Thompkins*, supra, at 386-387.

{¶ 8} In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, at 387. In making this determination, the court of appeals sits as a "thirteenth juror" and, after "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." *Thompkins*, supra, at 38, citing *State v. Martin*, (1983), 20 Ohio App.3d 172, 175.

{¶ 9} Appellant was convicted of receiving stolen property, pursuant to R.C. 2913.51, which provides:

{¶ 10} "(A) 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."

{¶ 11} Contrary to appellant's assertion, testimony from the owner of the Buick was not necessary for a conviction under R.C. 2913.51. Numerous Ohio appellate courts have addressed this argument in cases where the owner or person reporting the theft of the car did not testify at trial. All that is necessary is "* * * evidence of a wrongful taking from the *possession* of another * * *. Particular ownership is not vital as to the thief." *State v. Emmons* (1978), 57 Ohio App.2d 173, 177. (Emphasis in original.) See, also *State v. Ray*, 9th Dist. No. 21233, 2003-Ohio-2159. Further, "[i]n proving the nature of the property, the state is not required to offer the testimony of the actual owner of the property." *In re Little* (Feb. 25, 1998), 9th Dist. No. 18667. The jury in this case heard testimony from two detectives that appellant fled when he saw the police and that the steering column had been peeled.

{¶ 12} This court has thoroughly considered the entire record of proceedings in the trial court and the law as set forth above. We find that the prosecutor presented sufficient

evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found that appellant had reasonable cause to believe that the car he was driving had been obtained through the commission of a theft offense and that appellant was guilty beyond a reasonable doubt of receiving stolen property pursuant to R.C. 2913.51. See *State v. Jenks*, supra. Further, as this court has consistently affirmed, the trier of fact is vested with the discretion to weigh and evaluate the credibility of conflicting evidence in reaching its determination. It is not within the proper scope of the appellate court's responsibility to judge witness credibility. *State v. Hill*, 6th Dist. No. OT-04-035, 2005-Ohio-5028, ¶ 42. Based on the testimony summarized above and the law, this court cannot say that the jury clearly lost its way or created a manifest miscarriage of justice by finding appellant guilty of the charge of receiving stolen property. Accordingly, we find that appellant's sole assignment of error is not well-taken.

{¶ 13} On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, P.J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE