

[Cite as *State v. Paulk*, 2004-Ohio-4082.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83968

STATE OF OHIO,	:	:
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	and
vs.	:	OPINION
	:	
JEFFERY PAULK,	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	AUGUST 5, 2004
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CHARACTER OF PROCEEDING	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-443503

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellee:	William D. Mason, Esq. Cuyahoga County Prosecutor BY: Amy E. Venesile, Esq. Assistant County Prosecutor The Justice Center – 9 th Floor 1200 Ontario Street Cleveland, Ohio 44113
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For defendant-appellant:	Nancy Scarcella, Esq. Superior Building, Suite 2025 815 Superior Avenue, N.E.
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MICHAEL J. CORRIGAN, A.J.

{¶1} The court entered a judgment of conviction against defendant Jeffery Paulk on one count of receiving stolen property. In this appeal, Paulk complains that the judgment of conviction is against the manifest weight of the evidence.

{¶2} When a conviction is challenged on appeal as being against the manifest weight of the evidence, we 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*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Because the trier of fact sees and hears the witnesses, it stands in the better position to evaluate the credibility of witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212. We therefore give substantial deference to factual determinations and will only reverse a judgment as being against the manifest weight of the evidence in exceptional circumstances. *Id.*

{¶3} This case does not present "exceptional circumstances" requiring reversal. The charge of receiving

stolen property arose after the police found Paulk and two others occupying a parked stolen vehicle. Although conceding at trial that the vehicle had in fact been stolen, Paulk insisted that he did not know this at the time he was arrested and had only been a passenger in the vehicle because he offered the driver \$3 for a ride.

{¶4} The evidence suggested otherwise. It showed that the vehicle had been parked in a high crime area late at night. Paulk knew one of the other occupants of the vehicle.

He sat on the passenger side of the vehicle having entered the vehicle through a door that had been "punched." Other evidence showed that the steering column had been "peeled." A screwdriver which the police found laying on the floor near the driver's seat may have been used to peel the column. These facts could have convinced a rational trier of fact that Paulk could not have ignored obvious signs that the vehicle had been stolen, and therefore knowingly entered a stolen vehicle.

{¶5} A final word. In its "statement of the case and facts" the state refers to an "oral statement" Paulk gave to the police. There was no evidence of any such statement at trial. During Paulk's cross-examination, the state asked him whether he made certain statements to questions by a police detective. Paulk denied making specific statements and the state did not offer any proof relating to a conversation, nor

did it present the testimony of the detective who allegedly heard these statements. Absent this proof, no facts relating to this alleged conversation were proved, and it is improper for the state to represent it as such.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN
ADMINISTRATIVE JUDGE

ANN DYKE, J., CONCURS.

ANNE L. KILBANE, J., CONCURS
IN JUDGMENT ONLY.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).