[Cite as *State v. Rose*, 2015-Ohio-2607.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-L-086**
- vs -	:	
JOSEPH W. ROSE, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 14 CR 000031.

Judgment: Affirmed in part, reversed in part, and remanded.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Charles R. Grieshammer, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant Joseph W. Rose, Jr. appeals from the July 31, 2014 judgment of the Lake County Court of Common Pleas, convicting him on three counts of receiving stolen property and one count of robbery, following a jury trial. Rose argues his conviction must be overturned because it was against the manifest weight of the evidence, the evidence was insufficient, the trial court violated his Confrontation Clause

rights, and his trial counsel was ineffective. For the following reasons, the judgment of the trial court is affirmed in part, reversed in part, and remanded.

{¶2} On January 21, 2014, Rose was indicted on seven counts: Count 1, receiving stolen property (a license plate), a fifth-degree felony in violation of R.C. 2913.51(A); Count 2, aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(1) with a repeat violent offender specification; Count 3, robbery, a second-degree felony in violation of R.C. 2911.02(A)(2), with a repeat violent offender specification; Count 4, robbery, a third-degree felony in violation of R.C. 2911.02(A)(3); Count 5, receiving stolen property (a 1995 Plymouth Voyager minivan), a fourth-degree felony in violation of R.C. 2913.51(A); Count 6, receiving stolen property (a 2000 Dodge Durango), a fourth-degree felony in violation of R.C. 2913.51(A); and Count 7, illegal use or possession of drug paraphernalia, a fourth-degree misdemeanor in violation of R.C. 2925.14(C)(1).

{¶3} Rose pled not guilty to all charges. Count 7 was dismissed at the request of the state prior to trial. The remaining counts were tried before a jury. Defense counsel did not contest that Rose was guilty of Count 4, third-degree robbery, or Count 6, receiving stolen property (Dodge Durango). The following facts were adduced at the trial.

{¶4} Bryan Flanagan, a loss prevention officer at Gabriel Brothers in Mentor, Ohio, testified that he witnessed four individuals attempting a "cart push" on December 23, 2013. A "cart push" occurs when a person quickly fills a cart with merchandise without checking the prices and then quickly leaves the store without paying. The four individuals were Rose, his co-defendant Tammy Clayton, and another unidentified

couple. Mr. Flanagan testified the individuals eventually abandoned the carts, left the store, and drove away in a maroon Plymouth minivan to another store, Ollie's Bargain Outlet, in the same parking lot. Mr. Flanagan watched them enter Ollie's and then took pictures of the front and back of the Plymouth minivan. He then entered Ollie's and gave the manager a description of the four individuals and their attempted "cart push." Upon returning to Gabriel Brothers, Mr. Flanagan sent pictures and descriptions of the individuals, obtained from store surveillance, to Tyler Blevins, a loss prevention officer at Gabriel Brothers in Wickliffe, Ohio.

{¶5} Mr. Blevins testified that he observed Rose and Clayton attempting a "cart push" at the Wickliffe store the very next day, December 24, 2013. As they left the store with the stolen merchandise, Mr. Blevins followed them, announced he was a "store detective," and grabbed Clayton's coat. Clayton broke away from Mr. Blevins, who then went after Rose. He grabbed Rose's arm, who broke free and fled, and Mr. Blevins chased him. When he caught up to Rose, the two "began to tussle" because Mr. Blevins was attempting to handcuff Rose. Mr. Blevins testified Rose began to choke him, and Mr. Blevins defended by hitting Rose in the face with the handcuffs. Mr. Blevins eventually tackled Rose to the ground and sat on top of him. He testified that Rose then instructed Clayton, who was in the maroon Plymouth minivan, to run over Mr. Blevins. Once Mr. Blevins believed Clayton might actually run him over, he let go of Rose who jumped into the minivan through the driver's side door as Clayton drove away.

{¶6} Patrolman Randy Veri, with the Wickliffe Police Department, testified that he was one of several officers who responded to service calls from Gabriel Brothers on

December 24, 2013. He received license plate numbers from both Mr. Blevins and Mr. Flanagan.

{¶7} Detective Pat Hengst, also with the Wickliffe Police Department, testified that the plates on the maroon Plymouth minivan actually were registered to a green Chrysler minivan. Detective Hengst contacted the owner of the Chrysler minivan, Shaunita Shields. He testified that Ms. Shields reacted with surprise when asked where her license plate was. She stated it was on her Chrysler minivan, which was broken down and parked at her brother's apartment complex in Euclid, Ohio. Detective Hengst located the green Chrysler minivan and testified the plates on that vehicle actually were registered to the maroon Plymouth minivan. Detective Hengst then located the owner of the Plymouth minivan, Anne MacDonald.

{¶8} Ms. MacDonald testified that her Plymouth minivan was stolen from the street in front of her residence on December 19, 2013. She further testified that when the vehicle was recovered by the police, the steering column had been "peeled," meaning the ignition was taken out so that it could be started without a key.

{¶9} Patrolman Nicholas Zevnik, with the Mentor Police Department, testified that Rose and Clayton were apprehended on January 1, 2014, while driving another stolen vehicle. The owner of that vehicle, a Dodge Durango, also testified at the trial.

{¶10} The jury found Rose guilty of three counts of receiving stolen property and one count of robbery. Rose was found not guilty of the remaining charges. He was sentenced to 12 months in prison on Count 1 (receiving a stolen license plate); 36 months in prison on Count 4 (felony robbery in the third degree); 18 months in prison on Count 5 (receiving a stolen Plymouth minivan); and 18 months in prison on Count 6

(receiving a stolen Dodge Durango). The trial court ordered the sentences to be served consecutive to each other for a total of 84 months in prison.

{¶11} Rose timely appealed and assigns four errors for our review. His first and second assignments of error state:

> [1.] The trial court erred when it permitted a detective to relay to the jury hearsay statements made by a nontestifying victim in violation of the defendant-appellant's rights to confrontation, fair trial and due process as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10 and 16 of the Ohio Constitution.
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> [2.] The defendant-appellant's constitutional rights to due process and fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10 and 16 of the Ohio Constitution were prejudiced by the ineffective assistance of trial counsel.

{¶12} Rose asserts the "trial court erred when it permitted the detective to testify regarding out-of-court statements allegedly made by the owner of the alleged stolen license plates during police questioning." Rose argues this testimony was inadmissible hearsay and that its introduction violated his Confrontation Clause rights. His trial counsel did not object to this testimony at trial. As a result, Rose further asserts he was denied effective assistance of counsel due to trial counsel's failure to object.

{¶13} The Confrontation Clause prohibits the admission or use of testimonial statements of a witness who does not appear at trial unless that witness is unavailable to testify and the defendant has had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). The Sixth Amendment right to confrontation, however, may only be invoked under situations where hearsay is offered into evidence. *Id.* at 59, fn. 9.

{¶14} The testimony at issue was offered by Detective Hengst, as follows:

> [Prosecutor]: And what did you discuss with Ms. Shields at that time?
>
> [Det. Lt. Hengst]: I asked her about the license plate on her car. I asked her where her license plates were. She seemed surprised. She said her plates were on her car. I said where is your car. She [said] well, it hasn't been running, and it's parked at my brother's apartment complex in the city of Euclid. And then she gave me some specifics about where that was.

{¶15} We first consider whether the testimony at issue was testimonial. The *Crawford* Court declined to adopt a formal definition of "testimonial." *State v. Stahl*, 111 Ohio St.3d 186, 2006-Ohio-5482, ¶19. However, the Ohio Supreme Court noted that the *Crawford* Court did provide three examples of a testimonial statement: (1) in-court testimony or its functional equivalent, including affidavits; (2) statements contained in formal testimonial materials, such as depositions and affidavits; and (3) statements made where an objective declarant would reasonably believe the statement would be available to be used at a subsequent trial. *Id.*, quoting *Crawford*, *supra*, at 51-52.

{¶16} In its brief, the state concedes the statements at issue were testimonial. We agree. A declarant who makes a statement to a detective during the course of an investigation would reasonably believe those statements could be used at a subsequent trial of the matter being investigated. Therefore, the out-of-court statements allegedly made by Ms. Shields, the owner of the license plate, were testimonial.

{¶17} We next determine whether the statements at issue were hearsay such that Rose's right to confrontation was triggered. Hearsay is a statement, other than one made by a declarant while testifying, offered to prove the truth of the matter asserted. Evid.R. 801(C).

{¶18} The state contends Detective Hengst's testimony was not hearsay, however, because he was merely describing the course of his investigation and it was not offered to prove the truth of the matter asserted. We do not agree. This testimony was the only evidence offered to prove that the license plate was stolen. Even if it also explained why the detective followed a certain course in his investigation, it is ancillary to the primary purpose of showing the owner of the license plate was surprised it was not on her vehicle. We therefore conclude that the detective's testimony was hearsay and implicated Rose's right to confrontation.

{¶19} The dissent asserts that because the statement offered via the officer's testimony was false (i.e., the license plates were *not* on Ms. Shields' vehicle) it cannot be claimed that the testimony was offered to prove that the license plates were in fact on the vehicle. We disagree with this analysis. By the dissent's reasoning, a witness could offer into testimony any statement allegedly made by a third party and it would never trigger the criminal defendant's right to confrontation—so long as it was determined to be "false." The constitutional right to confrontation exists precisely to guard against this type of outcome.

{¶20} Here, the "matter asserted" was not that the license plates were on Ms. Shields' vehicle; the "matter asserted" was that Ms. Shields believed they were on her vehicle. The "truth" of the matter asserted, therefore, was that Ms. Shields was unaware that her license plates were not on her vehicle. The officer's testimony was offered to prove this "truth." In other words, it is relevant to a theft offense whether the owner of the stolen item knew the item was missing, which is why the prosecution followed this line of questioning.

{¶21} Rose's trial counsel did not object to the admission of this testimony, thus his first assigned error has been waived except for plain error. "Plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). "Plain error is present only if the error is obvious and, but for the error, the outcome of the trial clearly would have been different." *State v. Turner*, 11th Dist. Ashtabula No. 2010-A-0060, 2011-Ohio-5098, ¶34, citing *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶108.

{¶22} We need not decide the question of whether admission of this testimony rose to the level of plain error, however, as we find trial counsel's failure to object rose to the level of ineffective assistance of counsel.

{¶23} In order to prevail on an ineffective assistance of counsel claim, an appellant must demonstrate that trial counsel's performance fell "below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance." *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus (adopting the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)). In order to show prejudice, the appellant must demonstrate a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at paragraph three of the syllabus. If a claim can be disposed of by showing a lack of sufficient prejudice, there is no need to consider the first prong, i.e., whether trial counsel's performance was deficient. *Id.* at 143, citing *Strickland*, *supra*, at 695-696. There is a general presumption that trial counsel's conduct is within the broad range of professional assistance. *Id.* at 142-143.

{¶24} The state was required to prove that the license plate was stolen because Rose was charged with receiving stolen property in violation of R.C. 2913.51. The statute provides: "(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." We have already determined that the detective's testimony regarding statements allegedly made by the owner of the license plate was offered to prove that the license plate was stolen and, as such, was inadmissible hearsay in violation of Rose's right to confrontation. Trial counsel failed to object to this testimony. Because this testimony was the only evidence presented that the license plate was stolen, there is a reasonable probability that the result of the trial would have been different as to the charge of receiving stolen property regarding the license plate. If the license plate was abandoned or discarded by the original owner, for instance, Rose's conduct may have amounted to unauthorized use of a license plate, but not receiving stolen property. Thus, under the second prong of *Strickland*, Rose was prejudiced by admission of the testimony into evidence.

{¶25} We note that debatable trial tactics do not generally constitute deficient performance. *State v. Phillips*, 74 Ohio St.3d 72, 85 (1995), citing *State v. Clayton*, 62 Ohio St.2d 45, 49 (1980). Further, "[i]t is a well established principle that Confrontation Clause rights, like other constitutional rights, can be waived." *State v. Pasqualone*, 121 Ohio St.3d 186, 2009-Ohio-315, ¶14. Not only can a defendant waive this right, but "a defendant's counsel generally is capable of waiving Confrontation Clause rights without the specific approval of the defendant." *Id.* at ¶22.

{¶26} However, it is clear from the transcript that waiving Rose's right to confront this particular witness against him was not a trial tactic. In fact, in his Crim.R. 29 motion for acquittal, trial counsel specifically relied on the fact that this testimony—the only evidence in support of this count—was inadmissible hearsay.

> [Defense Counsel]: Your Honor, the Defense makes a Rule 29 motion for acquittal at this time. In particular I would like to argue with respect to the license plate, which I believe the State intended to prove belongs to Shaunita Shields. Ms. Shields did not testify in this case. We have no testimony that the license plate was stolen, and furthermore even if there was testimony that it was stolen, there's no testimony that any of the individuals in this case did not have permission to use that license plate for whatever it was used for. Therefore I think – and the motion is as to all counts – however, it's appropriate to argue with regard to the license plate count in particular.
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> [Court]: The State's response?
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> [Prosecutor]: The State's response is that there was testimony that Det. Hengst spoke to the owner of the license plate, that she indicated that the plate was on her vehicle, and that she was surprised to learn that the vehicle had – or that plate was on a vehicle that had been stolen, and that Det. Hengst found the vehicle. And that the vehicle, he matched VIN numbers to determine it was in fact Ms. Shields's plate, and that the plate was not on her vehicle. And under that basis there is some evidence to believe that the plate was in fact stolen, and the State would ask to proceed on that count.
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> [Court]: Your response?
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> [Defense Counsel]: No response, Your Honor.
>
> [Court]: Okay. You didn't object though, to that testimony.
>
> [Defense Counsel]: Honestly I'm, as I stand here now, I don't recall.

{¶27} Thus, it is clear that counsel recognized the testimony should have triggered an objection and that waiving the objection was not a trial tactic on trial counsel's part. This falls below an objective standard of reasonable representation

under the first prong of *Strickland*. If an objection had been made, the trial court would have been required to sustain it.

{¶28} The state contends that even without this statement, there is sufficient inferential evidence that, if believed by the jury, would allow it to conclude that the license plate was stolen. The state claims that because the maroon Plymouth minivan was stolen, the plates belonged to a green Chrysler minivan, and the Chrysler had plates from the stolen Plymouth, it could be inferred that the plates from the Chrysler were stolen. We do not agree. The fact that an incorrect license plate is on a stolen vehicle is not, without more, evidence that the license plate itself was stolen or taken wrongfully. There are many reasons why someone might discard license plates or even permit someone else to use them, even if that use is wrongful.

{¶29} The dissent states that our holding on this matter "creates the incongruous situation where Rose is convicted of Receiving Stolen Property with respect to the vehicle used in the robberies, but not with respect to the license plates on the vehicle, as if the plates possessed a nature distinct from the vehicle to which they were attached." This statement itself is incongruous. The license plates clearly have a nature distinct from the vehicle to which they were attached—as evidenced by the separate and distinct Receiving Stolen Property charge for the license plate (Count 1) and the separate and distinct sentence Rose received for Count 1 (12 months in prison).

{¶30} Rose's second assignment of error has merit, and his first assignment of error is overruled as moot.

{¶31} Appellant's third and fourth assignments of error state:

> [3.] The trial court erred to the prejudice of the defendant-appellant when it denied his Crim.R. 29(A) motion for judgment of acquittal in violation of his rights to fair trial and due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10 and 16 of the Ohio Constitution.
>
> [4.] The trial court erred to the prejudice of the defendant-appellant when it returned a verdict of guilty against the manifest weight of the evidence.

{¶32} Under his third assignment of error, appellant asserts the trial court should have granted his motion for acquittal regarding two of the receiving stolen property counts (the license plate and the Plymouth minivan). Although we are reversing and remanding the conviction on Count 1, receiving a stolen license plate, we proceed to analyze whether there was sufficient evidence to overrule Rose's motion for acquittal on this count. If there was insufficient evidence, Count 1 would be vacated and final judgment entered for Rose on that count.

{¶33} A trial court shall grant a motion for acquittal when there is insufficient evidence to sustain a conviction. Crim.R. 29(A). When determining whether there is sufficient evidence presented to sustain a conviction, "[t]he 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*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979). Thus, the claim of insufficient evidence invokes a question of due process, the resolution of which does not allow for a weighing of the evidence. *State v. Habo*, 11th Dist. Portage No. 2012-P-0056, 2013-Ohio-2142, ¶14.

{¶34} The Ohio Supreme Court has held that "'circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof.'" *State v. Biros*, 78 Ohio St.3d 426, 447 (1997), quoting *Jenks*, *supra*, paragraph one of the syllabus. Further, when conducting a sufficiency of the evidence analysis, this court is to look at the actual evidence admitted at trial, both admissible and inadmissible. *See State v. Dengg*, 11th Dist. Portage No. 2008-P-0063, 2009-Ohio-4101, ¶68, citing *Lockhart v. Nelson*, 488 U.S. 33, 34 (1988). Thus, for the purposes of this analysis, we consider the inadmissible hearsay testimony of Detective Hengst.

{¶35} The two counts at issue are 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." Rose argues that the state did not present sufficient evidence that the Plymouth minivan and the license plate were obtained through commission of a theft offense.

{¶36} Detective Hengst testified that Ms. Shields was surprised when asked about the location of her license plate. He further testified that the vehicle registered to the license plate, Ms. Shields' green Chrysler minivan, was found with the wrong license plate on it; the license plate that was registered to the maroon Plymouth minivan was on it instead. The inclusion of this statement from Ms. Shields is circumstantial evidence from which a jury could infer that the license plate was stolen from Ms. Shields' green Chrysler minivan. Without it, as stated above, there was *not* sufficient evidence that would allow such an inference.

{¶37} Anne MacDonald testified that her vehicle, the maroon Plymouth minivan, was stolen from her residence four days before Rose was seen with the vehicle. Ms. MacDonald testified that the keys were not left inside the vehicle, that none of the keys to the vehicle were missing, and that she had not given anyone permission to use the vehicle. She further testified that when the minivan was recovered, the steering column had been stripped.

{¶38} The state presented sufficient evidence for the jury to find beyond a reasonable doubt that Rose committed these two offenses of receiving stolen property.

{¶39} Rose's third assignment of error is without merit.

{¶40} Appellant further asserts, under his fourth assignment of error, that his convictions on these two counts were against the manifest weight of the evidence.

{¶41} To determine whether a verdict is against the manifest weight of the evidence, a reviewing court must consider the weight of the evidence, including the credibility of the witnesses and all reasonable inferences, to determine whether the trier of fact "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). In weighing the evidence submitted at a criminal trial, an appellate court must defer to the factual findings of the trier of fact regarding the weight to be given the evidence and credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus.

{¶42} Upon review of the evidence outlined under the previous assignments of error, we find that the jury did not lose its way or create a manifest miscarriage of justice

by finding Rose guilty of receiving stolen property as it pertains to the license plate and the Plymouth minivan.

{¶43} Rose's fourth assignment of error is without merit.

{¶44} For the reasons stated under Rose's second assignment of error, the conviction and sentence of the Lake County Court of Common Pleas regarding Count 1, receiving stolen property (license plate), is reversed and remanded for further proceedings. In all other respects, the judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶45} I dissent from the majority's decision to reverse Rose's conviction for Receiving Stolen Property (Count 1), that is, the license plate belonging to Shunita C. Shields. Contrary to the majority's opinion, Detective Hengst's testimony did not contain inadmissible hearsay statements.

{¶46} Detective Hengst testified as follows regarding a conversation with Shields: "I asked her where her license plates were. She seemed surprised. She said her plates were on her car. I said where is your car. She [said] * * * it's parked at my brother's apartment complex in the city of Euclid."

{¶47} Hearsay is "a statement, other than one made by the declarant while

testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Neither of Shields' statements were offered to prove the truth of the matter asserted. Shields said her license plates (or plate) were on her car. This was a false statement. It cannot be claimed that the statement was offered to prove that, in fact, the license plates were on her vehicle.

{¶48} Detective Hengst already knew that the statement was false – that Shields' license plate was on the Plymouth mini-van used to commit the robbery at Gabriel Brothers, not on her vehicle parked in Euclid. Rather, as the State properly argues, Shields' statement was offered to explain the course of the investigation. The really significant information provided by Shields was the location of her Chrysler mini-van, a fact that was irrelevant for the purposes of proving the license plate stolen, but essential for furthering the investigation. *State v. Thomas*, 61 Ohio St.2d 223, 232, 400 N.E.2d 401 (1980) ("[i]t is well established that extrajudicial statements made by an out-of-court declarant are properly admissible to explain the actions of a witness to whom the statement was directed," such as "subsequent investigative activities").

{¶49} Once Detective Hengst located Shields' mini-van, he found the license plate belonging to Anne MacDonald's mini-van, the one used in the Gabriel Brothers robbery. This enabled Detective Hengst to locate MacDonald, who did testify at trial. Based on his own investigation, Detective Hengst was able to testify that the license plates from MacDonald's stolen mini-van had been switched with the license plates from Shields' mini-van.

{¶50} Yet the majority concludes that Detective Hengst's testimony was "the only evidence offered to prove that the license plate was stolen * * * showing the owner

of the license plate was surprised it was not on her vehicle." *Supra* at ¶ 18. As shown above, the fact that Shields' license plate was on MacDonald's stolen vehicle is certainly evidence that the plate was stolen. Shields' "surprise" is not a testimonial statement. Moreover, Shields' statement is not necessary to prove the crime of Receiving Stolen Property. Regardless of what Shields believed, Detective Hengst knew that the mini-van did not belong to Rose and that the license plates did not belong to Rose or the mini-van.

{¶51} It is well-established that "the testimony of the owner is not necessary to sustain a theft charge." *Sylvania v. Johnson*, 6th Dist. Lucas No. L-14-1001, 2015-Ohio-567, ¶ 13 (cases cited).

> All that is necessary in a [Receiving Stolen Property] case * * * with respect to the element 'property of another,' which is analogous to a larceny case in this regard, is evidence of a wrongful taking from the *possession* of another because the exact state of the title of the stolen property on the date of the crime is of no concern to the thief except that it must have been in someone else. Particular ownership is not vital as to the thief.

(Citation omitted.) *State v. Ray*, 9th Dist. Summit No. 21233, 2003-Ohio-2159, ¶ 11.

{¶52} Finally, the majority's decision creates the incongruous situation where Rose is convicted of Receiving Stolen Property with respect to the vehicle used in the robberies, but not with respect to the license plates on the vehicle, as if the plates possessed a nature distinct from the vehicle to which they were attached. That the vehicle and the license plates had different owners was established by Detective

Hengst independent of anything learned from either Shields or MacDonald.

{¶53} For the foregoing reasons, I respectfully dissent.