[Cite as *State v. Dilldine*, 2010-Ohio-3648.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY, OHIO

STATE OF OHIO	:	
	:	Appellate Case No. 09-CA-61
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-266
v.	:	
	:	(Criminal Appeal from
DENNY W. DILLDINE	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 6th day of August, 2010.

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BROGAN, J.

{¶ 1} Denny Dilldine has appealed the trial court's decision that overruled his motion, under Crim.R. 29(A), for judgment of acquittal, and has appealed his conviction, under R.C. 2913.51(A), of receiving stolen property. Dilldine contends that the evidence is insufficient to find that he retained property that he knew was

stolen, and he further contends, with respect to these elements, that his conviction is contrary to the manifest weight of the evidence. We disagree with both contentions, so we will affirm.

{¶ 2} Early on the morning of August 28, 2008, between 7 a.m. and 8 a.m., Officer Shawn Bradley, a deputy with the Greene County Sheriff's Office, was out in the countryside on patrol. He came upon a Ford F-350 outfitted as a dump truck parked along the side of a country road. Officer Bradley then saw two men standing about 200 yards away from the truck. He pulled alongside the two and asked them about the truck. They replied, "It's not ours." Bradley learned that the name of the man he talked with mostly was Denny Dilldine. The man's name with him was John Shouse, Jr. They told Bradley that one of their mothers had dropped them off at the general store a mile or two up the road. They were waiting for a ride from Shouse's father, but they got tired of waiting so they started walking. While Bradley was talking with them, Shouse's father came along and picked them up. Officer Bradley checked for any active warrants for the two, and he ran the plates on Shouse's father's car through his computer. All came back clean, so he let them go.

{¶ 3} Bradley then went to examine the truck. He saw no signs of forced entry on the truck, nor did he see any markings identifying who might be the owner. In the bed of the truck, under a tarp, Bradley found a riding lawnmower. He called dispatch to check the registration. The truck had not been reported stolen. Bradley asked the dispatcher to contact the truck's owner and let him know where the truck was. The dispatcher called Bradley back after contacting the owner and told Bradley that, according to the owner, he had just discovered that the truck had been

stolen from the Miami County job-site where he was working.

{¶ 4} Officer Bradley drove to the general store where the men said they had been. There he discovered that the store had surveillance cameras trained on the parking lot, so he reviewed the recent recordings. He watched the truck he had found pull into the store's parking lot with two occupants. He then watched Dilldine exit the passenger side and go inside the store. (On the internal camera's recording he saw Dilldine purchase a beer.) He watched Dilldine exit the store and get back into the truck. The truck's driver could not be seen clearly enough to identify.

{¶ 5} Officer Robert Morando from the Miami County Sheriff's Office went to the jobsite where the truck's owner was working. Looking around, he saw two wooden scaffolding planks covered with muddy tire tracks that he suspected were used to load the lawnmower onto the truck. Officer Morando drove down to Greene County and met with Officer Bradley. Morando watched the videorecording with Bradley. He then went to examine the truck. Morando dusted the truck for fingerprints. When the prints were later analyzed, it was discovered that Dilldine's prints were scattered in places on the passenger side.

{¶ 6} Dilldine was charged with one count of receiving stolen property in violation of R.C. 2913.51(A), a fourth-degree felony. After the prosecution rested its case, Dilldine orally moved under Crim.R. 29 for a judgment of acquittal, arguing that he was only a passenger in the truck and the prosecution had failed to prove that he knew the truck was stolen. The trial court overruled his motion. The jury found Dilldine guilty, and the trial court sentenced him to 18 months in prison. Dilldine timely appealed.

{¶ 7} In two assignments of error, Dilldine argues that the prosecution failed to prove that he retained the truck knowing that it had been stolen. First he argues that the trial court erred by overruling his motion for acquittal because the evidence was insufficient. And second Dilldine argues that the verdict is contrary to the manifest weight of the evidence.

First Assignment of Error

{¶ 8} "THE TRIAL COURT ERRED IN OVER RULING (sic) APPELLANT'S RULE 29 MOTION FOR ACQUITTAL."

{¶ 9} Dilldine was charged by indictment with receiving stolen property, a violation of R.C. 2913.51(A). This section of the Revised Code makes it a crime to "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." R.C. 2913.51(A). After the prosecution rested its case, Dilldine orally moved for judgment of acquittal. He argued that the prosecution failed to present sufficient evidence that he retained the truck knowing that it had been stolen.

{¶ 10} By rule, "[t]he court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. * * *" Crim.R. 29(A). The Ohio Supreme Court has said that the evidence is sufficient to sustain a conviction if after viewing the evidence in the light most favorable to the prosecution a reasonable mind could find the essential elements of the crime proven

beyond a reasonable doubt. *State v. Coleman* (1999), 85 Ohio St.3d 129, 139, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 11} For a defendant to be guilty of receiving stolen property, the state must prove that he received, retained, or disposed of property that the defendant knew or had reasonable cause to believe was stolen. See R.C. 2913.51(A). So the question here is whether, after viewing the evidence in the light most favorable to the prosecution, a reasonable mind could find proven beyond a reasonable doubt that Dilldine retained the truck knowing, or having reasonable cause to believe, that it was stolen.

{¶ 12} We agree with the First District that a defendant's mere presence in a stolen vehicle is not alone a sufficient basis on which to find him guilty of receiving stolen property. See *In re Bromfield*, Hamilton App. No. C-030446, 2004-Ohio-450, at ¶12. Rather, "[t]he passenger must have reasonable cause to believe that the vehicle is stolen and either remain for some time in the vehicle after that knowledge or participate or aid in the theft itself." Id. We have said that from a defendant's unexplained possession of a recently stolen vehicle, particularly when combined with other incriminating evidence, a jury may infer that the defendant knew that the vehicle was stolen. *State v. January*, Clark App. Nos. 09-CA-52, 09-CA-53, 2010-Ohio-2837, at ¶14, citing *State v. Reese*, Clark App. Nos. 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."). Dilldine stipulated to the fact that the truck was recently stolen, and we find in the evidence no explanation for Dilldine's possession. (Dilldine did not take the stand in his own defense.) What we do find in the evidence is Officer Bradley's testimony that when he asked Dilldine and his friend about the truck they replied, "It's not ours." (Tr. 44). This was their reply despite the fact that video cameras recorded Dilldine exiting and entering the truck at the general store a couple of miles up the road, and despite the fact that Dilldine's fingerprints were found on the passenger-side of the truck. The only reason for Dilldine's denial (or, having heard Shouse's denial, his failure to speak up) is his guilty knowledge that the truck was stolen.

{¶ 13} We further agree with the First District, and other courts, that "where a passenger used a stolen vehicle for transportation or for his own personal entertainment, the passenger received and retained that vehicle." *In re Bromfield*, at ¶14 (defining "retain," based on Webster's Third New International Dictionary [1993], 1938, as "'to hold or continue to hold in possession or use: continue to have, use, recognize, or accept'"), citing *In re Windle* (Dec. 2, 1993), Franklin App. No. 93AP-746, and *State v. Smith*, Cuyahoga App. No. 79527, 2002-Ohio-2145. Dilldine

used the truck for transportation and entertainment, as the video recording of his purchasing a beer at the general store suggests.

{¶ 14} Finally, the close temporal proximity between the purchase at the store and the denial regarding the truck permits the inference that Dilldine knew the truck was stolen when he stopped at the store. But instead of ending his association with the crime, Dilldine chose to continue riding in the stolen truck.

{¶ 15} Based on the evidence, reasonable minds could find that Dilldine retained the truck knowing that it had been stolen. The trial court, therefore, did not err when it overruled his motion for judgment of acquittal.

{¶ 16} The first assignment of error is overruled.

Second Assignment of Error

{¶ 17} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 18} Dilldine premises his argument in the second assignment of error on his argument in the first, arguing that the jury's verdict is also contrary to the manifest weight of the evidence because it is insufficient with respect to the "retained" and knowledge elements. In determining whether a verdict is contrary to the manifest weight of the evidence, a court must weigh the evidence and all reasonable inferences derived therefrom, consider the credibility of witnesses, and determine 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* (1997), 78 Ohio St.3d 380, 387. "[T]he party

having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, * * * the *greater amount of credible evidence* sustains the issue which is to be established." Id. Based on the evidence, which we reviewed above, and for in essence the same reasons that we found the evidence sufficient, we conclude that the verdict is not contrary to the manifest weight of the evidence presented by the state.

{¶ 19} The second assignment of error is overruled.

{¶ 20} We have overruled each assignment of error presented in this case. Accordingly, the trial court's judgments (overruling the motion for judgment of acquittal and of conviction) are Affirmed.

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FAIN and FROELICH, JJ., concur.

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