

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-08-017
- vs -	:	<u>OPINION</u>
	:	4/9/2012
RICKY W. MICK,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 11 CRI 00120

Jess C. Weade, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee
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PIPER, J.

{¶1} Defendant-appellant, Ricky Mick, appeals his conviction and sentence in the Fayette County Court of Common Pleas on one count of receiving stolen property. We affirm the decision of the trial court.

{¶2} During the early morning hours of May 20, 2011, Anna Everheart called the Fayette County Sheriff's Office to report that she had seen a suspicious vehicle, a truck with no lights on, heading toward the Buckeye Hills Golf Course (Buckeye Hills), and that the truck

was making a loud noise, presumably coming from the muffler. Deputies Eric Scott and Charles Kile responded to the area of Buckeye Hills, and began searching for the vehicle Everheart had seen. They observed what they believed to be fresh golf cart tracks on the dewy grass leading away from the golf course onto an area of Limes Road. The deputies entered the clubhouse building and found that a large walk-in freezer had been entered. Deputies saw "a big chunk of meat" near the entrance to the freezer, as well as bags of chicken tenders strewn on the floor of the freezer.

{¶3} The deputies called William Troutner and Toni Graves, Buckeye Hills employees, and the two came to the golf course to verify that golf cart number 19 was missing, as well as several cases of beer and other food items from the freezer.

{¶4} A few hours later, Penny Robinson called Deputy Kile, whom she knew personally, to report that she had observed a small pickup truck pulling a golf cart by a chain, and that the truck was making a loud noise. While she spoke to Deputy Kile, Robinson witnessed a passenger, later identified as Mick, exit the passenger side of the truck and begin to drive the golf cart around. Robinson observed Mick drive the golf cart into someone's yard and drive the cart around in circles until it stopped and would not run anymore. Robinson also saw Mick kick the side of the golf cart after it stopped, and then saw Mick get back into the pickup truck as a passenger. Robinson gave Deputy Kile the license plate number of the pickup truck and continued to follow it until police officers pulled the truck over.

{¶5} After stopping the truck, Deputy Kile came upon the golf court and noticed that it was running, but was in reverse. There were no keys in the ignition, and ignition wires were pulled from around the steering column and ignition, stripped, and twisted together. The golf cart, which bore a number 19 on the side, was later identified by Buckeye Hills as the missing golf cart.

{¶6} Mick was charged with one count of receiving stolen property, specifically the golf cart. Mick pled not guilty to the charge, and the matter proceeded to a jury trial. The jury found Mick guilty of receiving stolen property, and the trial court sentenced him to one year in prison. Mick now appeals his conviction and sentence, raising four assignments of error. For ease of discussion, we have combined three assignments together.

{¶7} Assignment of Error No. 1:

{¶8} THE TRIAL COURT ERRED BY DENYING APPELLANT'S RULE 29 MOTION FOR ACQUITTAL.

{¶9} Assignment of Error No. 3:

{¶10} THE TRIAL COURT ERRED BY FINDING APPELLANT GUILTY BASED UPON INSUFFICIENT EVIDENCE.

{¶11} Assignment of Error No. 4:

{¶12} THE TRIAL COURT ERRED BY FINDING APPELLANT GUILTY AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶13} In Mick's first, third, and fourth assignments of error, he challenges his conviction based on the sufficiency and manifest weight of the evidence. Because the standard of review for a Crim.R. 29 motion for acquittal is the same as reviewing the sufficiency of the evidence, we will review these issues together. We will also analyze whether the conviction was against the manifest weight, as such a review requires us to evaluate the same evidence.

{¶14} Pursuant to Crim.R. 29(A), "[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 * * *, if the evidence is insufficient to sustain a conviction of such offense or offenses." On review, "an appellate court 'will not reverse the trial court's judgment unless reasonable minds could only reach the conclusion that the

evidence failed to prove all elements of the crime beyond a reasonable doubt." *State v. Adams*, 12th Dist. No. CA2006-07-160, 2007-Ohio-2583, ¶ 19, quoting *State v. Miley*, 114 Ohio App.3d 738, 742 (1996). In order to affirm the denial of a Crim.R. 29 motion, we need only find that there was legally sufficient evidence to sustain the guilty verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52.

{¶15} As to Mick's challenge that his conviction is against the manifest weight of the evidence, manifest weight and sufficiency of the evidence are quantitatively and qualitatively different legal concepts. *Thompkins*, 78 Ohio St.3d at 386. When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, 12th Dist. No. CA2006-01-007, 2007-Ohio-2298. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any reasonable 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, superseded on other grounds.

{¶16} While the test for sufficiency requires an appellate court to determine whether the state has met its burden of production at trial, a manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other. *Wilson*, 2007-Ohio-2298.

In determining whether a conviction is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts in the evidence, the tier 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. Cummings, 12th Dist. No. 2006-09-224, 2007-Ohio-4970, ¶ 12.

{¶17} While appellate review includes the responsibility to consider the credibility of

witnesses and weight given to the evidence, "these issues are primarily matters for the trier of fact to decide since the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence." *State v. Walker*, 12th Dist. No. CA2006-04-085, 2007-Ohio-911, ¶ 26. Therefore, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances to correct a manifest miscarriage of justice, and only when the evidence presented at trial weighs heavily in favor of acquittal. *Thompkins*, 78 Ohio St.3d at 387.

{¶18} "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency. Thus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Wilson* 2007-Ohio-2298 at ¶ 35, citing *State v. Lombardi*, 9th Dist. No. 22435, 2005-Ohio-4942, fn. 4.

{¶19} Mick was charged with one count of receiving stolen property in violation of R.C. 2913.51(A), which states, "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." According to R.C. 2901.22(B), "a person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶20} Mick essentially argues that the state failed to present sufficient evidence that he had knowledge that the golf cart was stolen or that he had reasonable cause to believe so. However, after reviewing the record, we cannot agree.

{¶21} The jury heard testimony from Deputies Scott and Kile that they were called to the area of the Buckeye Hills golf course to investigate a suspicious vehicle that emitted a loud noise. Once there, they found fresh golf cart tracks leading from the golf course to the road. Penny Robinson testified that she called Deputy Kile to report a pickup truck pulling a golf cart by a chain, and that the truck had a muffler that emitted a loud noise. Robinson also

testified that she witnessed Mick exit the truck and start driving the golf cart around in circles in someone's yard until it stopped. Robinson further stated that once the cart stopped, Mick got out, kicked it on the side and then re-entered the pickup truck.

{¶22} Deputy Kile testified that he located the stopped golf cart in the yard, which was within a mile or two of the golf course. Deputy Kile also testified that the cart was beeping, as if it were in reverse, but there were no keys in the ignition, and that the ignition wires were pulled beside the steering column and ignition and twisted together. Deputy Kile further testified that a number 19 was on the side of the cart, and that it was "obvious" that the cart had been "hotwired."

{¶23} This evidence, when viewed in a light most favorable to the prosecution, demonstrates that Mick had knowledge that the golf cart was stolen, or at least probably had been stolen. After viewing the witness testimony and determining that such evidence was credible, the jury found that Mick had knowledge that the golf cart was stolen. The jury was correctly instructed as to the definition of "knowledge," and we presume that the jury followed the instructions when reaching its verdict. We cannot say that the jury clearly lost its way or created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

{¶24} Having found that the conviction was supported by sufficient evidence and that such conviction was not against the manifest weight of the evidence, the trial court properly denied Mick's Crim.R. 29 motion. Mick's first, third, and fourth assignments of error are overruled.

{¶25} Assignment of Error No. 2:

{¶26} THE TRIAL COURT ERRED BY ADMITTING UNAUTHENTICATED EVIDENCE.

{¶27} Evid.R. 901 governs the authentication of evidence, and permits authentication

by a witness with knowledge who testifies that the “matter is what it is claimed to be.” Evid.R. 901(B)(1); *State v. Jackson*, 12th Dist. No. CA2011-01-001, 2011-Ohio-5593, ¶ 15. The requirement of authentication is satisfied by introducing "evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A); *State v. Bettis*, 12th Dist. No. CA2004-02-034, 2005-Ohio-2917, ¶ 26. This threshold requirement for authentication of evidence is low and does not require conclusive proof of authenticity. *State v. Easter*, 75 Ohio App.3d 22, 25 (1991). Instead, the proponent must only demonstrate a “reasonable likelihood” that the evidence is authentic. *State v. Bell*, 12th Dist. No. CA2008-05-044, 2009-Ohio-2335, ¶ 30.

{¶28} A trial court's decision to admit or exclude evidence will not be reversed absent an abuse of discretion. *State v. Moshos*, 12th Dist. No. CA2009-06-008, 2010-Ohio-735, ¶ 10. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 130.

{¶29} Mick argues that the trial court abused its discretion by admitting a replacement quote, via a faxed document, from the company that supplies golf carts to Buckeye Hills. This fax and accompanying testimony was used to establish the value of the stolen golf cart, which ultimately determined the classification of the theft offense as a fifth-degree felony. R.C. 2913.51(C).¹ Toni Graves, the Pro Shop manager at the golf course, testified that she received a quote that the golf cart number 19 had a replacement value of \$1,995. Mick challenges the admissibility of the invoice on authentication grounds. After reviewing the record, we disagree.

{¶30} Graves testified that part of her job responsibilities were to maintain the golf carts and to keep an inventory of the carts. She testified that Buckeye Hills purchases golf

1. According to R.C. 2913.51(C), “* * * If the value of the property involved is one thousand dollars or more and is less than seven thousand five hundred dollars, * * * receiving stolen property is a felony of the fifth degree.”

carts from a "golf company in Heath and I asked them to do me a replacement cart ... cost on the cart. That replacement cost was \$1995." The state then approached Graves and asked her to identify an invoice, labeled as State's Exhibit 11. The state asked whether Graves recognized the fax, and Graves indicated that she did. "That is what we call as a replacement [sic]. I give them a year, 2002 Yamaha, and a particular cart and they look in their book as far as the replacement value on the cart. Yes, this was faxed to me."

{¶31} Graves testimony clearly indicates that she had knowledge that the fax was what it was claimed to be, mainly a representation of the cost required to replace the golf cart. Graves' testimony that she contacted the golf cart supplier and specifically requested the replacement estimate, and that the fax was the estimate she requested, is sufficient evidence to support a finding that the fax was the requested evidence. Evid.R. 901(A); *Bettis*, 2005-Ohio-2917.

{¶32} Mick argues that the fax was not properly authenticated because Graves had not created it. However, Evid.R. 901 does not state that the only person who can authenticate evidence is the same person who creates it. For example, Ohio law is well-settled that the photographer need not testify as to the authenticity of photographs offered as evidence, but rather, anyone who has knowledge that the photographs are a fair and accurately depiction may authenticate the photographs. *State v. Hundley*, 12th Dist. No. CA98-03-022 (Oct. 12, 1998). While Graves may not have created the fax, she nonetheless requested the fax and was able to authenticate that Exhibit 11 was the fax she requested, which contained the replacement estimate for the golf cart she requested. Once her testimony was presented and subjected to cross-examination, it was up to the jury to assign the amount of weight to be accorded the testimony and exhibit.

{¶33} We cannot say that the trial court's decision to admit the exhibit was arbitrary, unreasonable, or unconscionable. Having found no abuse of discretion, Mick's second

assignment of error is overruled.

{¶34} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.