[Cite as *State v. Armstrong*, 2024-Ohio-4912.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113717
v.	:	
DAVID ARMSTRONG, JR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 10, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-686792-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph Lucchesi, Assistant Prosecuting Attorney, *for appellee*.

Buckeye Law Office and Craig W. Smotzer, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant David Armstrong, Jr., appeals his conviction in this case. Upon review, we affirm.

{¶ 2} On November 17, 2022, appellant was charged under a three-count indictment with burglary, a felony of the second degree in violation of

R.C. 2911.12(A)(1) (Count 1); grand theft, a felony of the fourth degree in violation of R.C. 2913.02(A)(1) (Count 2); and unauthorized use of a vehicle, a misdemeanor of the first degree in violation of R.C. 2913.03(A) (Count 3). Appellant pled not guilty to the charges and waived a jury trial. A bench trial commenced on February 26, 2024.

{¶ 3} The victim in this case testified that on November 8, 2022, she called the police because her car was gone and had been stolen from her house. She stated that she had given appellant, who is the father of her son, permission to use the car for his work with Door Dash that morning; however, he was supposed to come pick her up when she got off work, but he never did and when she arrived home, her car had not been returned. The victim further stated that appellant only had permission to use the car until she got off work about 5:00 or 6:00 p.m., and that at the time the police arrived that evening, appellant did not have permission to have control of her vehicle, which she described as a 2006 or 2007 gray Ford Escape. The victim testified that appellant did not bring the car back, that he took it to Kentucky without her permission, and that she had left items in the vehicle, including important papers, her kids' clothes, and a booster seat. She identified appellant in court.

{¶ 4} The responding officer testified that he was called to the location for unauthorized use and that he observed an empty driveway as he approached the door to the victim's home. The officer had his body camera on, and the video was played for the court. Consistent with the video, the officer testified that he had the victim complete a voluntary witness statement. The victim informed the officer of

where she leaves her car keys, and the officer did not observe any keys to the vehicle in the victim's home. During his investigation, the officer developed a suspect, who was appellant. Other testimony and evidence were presented that this court has thoroughly reviewed.

{¶ 5} The trial court granted appellant's motion for acquittal pursuant to Crim.R. 29 on Count 1. The trial court found appellant guilty as charged in Count 2, for grand theft, and Count 3, for unauthorized use of a vehicle. Following the trial court's merger of those two counts and the State's election to have appellant sentenced on Count 2, the trial court sentenced appellant to a prison sentence of 18 months. Appellant timely filed this appeal.

{¶ 6} Under his two assignments of error, appellant argues that his "convictions are unsupported by sufficient evidence" and "are against the manifest weight of the evidence." Although Counts 2 and 3 were merged for sentencing and any error relating to Count 3 may be deemed harmless, we nonetheless shall address both counts herein. *See State v. Osborne*, 2024-Ohio-2173, ¶ 19, 24 (8th Dist.).

{¶ 7} When determining whether a verdict is supported by sufficient evidence, "'[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. Wilks*, 2018-Ohio-1562, ¶ 156, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. When evaluating the sufficiency of the evidence, a reviewing court considers "whether the evidence, 'if believed, would convince the average mind

of the defendant's guilt beyond a reasonable doubt.'" *State v. Pountney*, 2018-Ohio-22, ¶ 19, quoting *Jenks* at paragraph two of the syllabus.

{¶ 8} In this case, appellant was found guilty of grand theft in violation of R.C. 2913.02(A)(1), which provides as follows:

> (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
>
> (1) without the consent of the owner or person authorized to give consent[.]

{¶ 9} Pursuant to R.C. 2913.02(B)(5), if the property stolen is a motor vehicle, then a violation of the section is grand theft. "Owner" is defined under R.C. 2913.01(D) as "any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services[.]" Appellant was also found guilty of R.C. 2913.03(A) for unauthorized use of a vehicle, which provides that "[n]o person shall knowingly use or operate . . . [a] motor vehicle . . . without the consent of the owner or person authorized to give consent."

{¶ 10} Appellant argues that the State failed to offer evidence demonstrating proof of ownership, such as a title or a license plate number; it is not necessary to prove title ownership for a theft offense under R.C. 2913.02. *See State v. Rhodes*, 2 Ohio St.3d 74, 76-77 (1982); *State v. Jones*, 2010-Ohio-902, ¶ 12-13 (8th Dist.); *State v. Grayson*, 2007-Ohio-1772, ¶ 26-27 (11th Dist.). Rather, under the relevant statutes, it is only necessary to prove that a defendant deprived someone of property who had "possession or control of, or any license or any interest in" that property. *Rhodes* at 76. Thus, "[t]he issue is whether the defendant had lawful possession of

the vehicle." *Id*. As this court has previously stated, "[t]he gist of a theft offense is the wrongful taking by the defendant, not the particular ownership of the property." *Jones* at ¶ 12, citing *State v. Thomas*, 2006-Ohio-6588, ¶ 28 (8th Dist.). In this case, there was sufficient evidence from which a rational trier of fact could conclude that the victim was the "owner" of the vehicle. Appellant also challenges the victim's credibility. However, when conducting a sufficiency review, an evaluation of witness credibility is not involved. *See State v. Yarbrough*, 2002-Ohio-2126, ¶ 79.

{¶ 11} When viewing the testimony and evidence presented in this case in a light most favorable to the prosecution, we find that any rational trier of fact could have found the essential elements of the crimes charged in Counts 2 and 3 were proven beyond a reasonable doubt. The first assignment of error is overruled.

{¶ 12} When evaluating a claim that a verdict is against the manifest weight of the evidence, "we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, 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 we must reverse the conviction and order a new trial." *Wilks*, 2018-Ohio-1562, at ¶ 168, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). Reversing a conviction based upon the weight of the evidence should occur "'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 13} Although appellant challenges the credibility of the victim's testimony and the evidence that was provided, this is not the exceptional case in which the evidence weighs heavily against the conviction. We are not persuaded by appellant's arguments otherwise. The victim's testimony established appellant did not have permission to have the victim's vehicle at the time the police were called, and neither the car nor the keys were observed at the victim's home. Although the victim and appellant were no longer in a relationship, the victim indicated that they were like friends and that appellant stole her vehicle after she tried to do him a favor. She conceded that she was initially angry and that she lied and told the police appellant took the keys from her house, but in fact he failed to bring her car back. She testified that her car was not returned and that she had items in the vehicle. After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of the witnesses, we do not find the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. The second assignment of error is overruled.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant 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.

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SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
WILLIAM A. KLATT, J.,* CONCUR

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)