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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002310-MR

JOSEPH L. CASEY

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 10-CR-00438

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, STUMBO AND VANMETER, JUDGES.

VANMETER, JUDGE: Joseph Casey appeals from the Kenton Circuit Court judgment convicting him of theft of motor vehicle registration plate (renewal decal), a class D felony; theft of motor vehicle registration plate, a class D felony; theft by unlawful taking under \$500, a class A misdemeanor; and persistent felony offender (“PFO”) in the first degree. The court sentenced Casey to fifteen years’

imprisonment, in accordance with the jury's recommendation. For the following reasons, we affirm.

On May 7, 2010, Casey was driving his GMC truck when he was involved in a motor vehicle accident. Officer Scott Hardcorn of the Kenton County Police Department responded to the scene and routinely checked the police database for the validity of the license plate and license plate registration decal of each car involved. Casey's truck had an expired license plate, and the plate had a registration decal belonging to Troy Schadler's 1997 Mitsubishi automobile ("Mitsubishi"). Officer Hardcorn removed the plate, which he kept to investigate further.

During a follow-up visit to Casey's house, which he was renting from Schadler, Officer Hardcorn observed that Casey's truck had a handwritten, paper registration plate attached to where a normal license plate would be placed. Upon removing the plate, Officer Hardcorn found a second registration plate, this one from Schadler's Mitsubishi. According to Schadler, he never gave Casey permission to remove either the decal or the plate from his Mitsubishi for use in any way and Casey was in possession of his wrecked Mitsubishi for purposes of repairing it. On May 29, 2010, Casey was arrested and charged with felony counts of theft on both the registration decal and the license plate of Schadler's Mitsubishi. Then, on June 6, 2010, Casey took Schadler's Mitsubishi to Walton recycling and scrapped the car, receiving \$199 for it.

On October 27, 2010, a jury found Casey guilty of theft of a motor vehicle registration plate (renewal decal), theft of a motor vehicle registration plate and theft by unlawful taking of property, under \$500. In addition, the jury found Casey guilty of being a first-degree PFO and recommended that he receive enhanced felony sentences and that the sentences run concurrently for a total of fifteen years' imprisonment. On December 13, 2010, the court sentenced Casey pursuant to the jury's recommendation, including ordering restitution to Schadler in the amount of \$499 for the loss of his car. This appeal followed.

On appeal, Casey contends that the trial court erred by denying his motion for a directed verdict regarding the theft of a license plate charge. Specifically, Casey claims that the evidence did not support the jury's conclusion that he acted with intent to steal the registration plate. We disagree.

A directed verdict for the defendant is appropriate if the prosecution produces "no more than a mere scintilla of evidence." *Commonwealth v. Benham*, 816 S.W.2d 186, 188 (Ky. 1991). When considering a motion for a directed verdict,

the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserve for the jury questions as to the credibility and weight to be given to such testimony. "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be

clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.”

Banks v. Commonwealth, 313 S.W.3d 567, 570 (Ky. 2010) (internal citations omitted).

KRS¹ 186.990(6) provides: “Any person who steals a motor vehicle registration plate or renewal decal shall be guilty of a Class D felony. Displaying a canceled registration plate on a motor vehicle shall be prima facie evidence of guilt under this section.” KRS 514.030 states:

(1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:

(a) Takes or exercises control over movable property of another with intent to deprive him thereof; ...

KRS 514.010(1) defines “deprive” as:

(a) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value or with intent to restore only upon payment of reward or other compensation; or

(b) To dispose of the property so as to make it unlikely that the owner will recover it.

Intent can be established by circumstantial evidence. *McClellan v. Commonwealth*, 715 S.W.2d 464, 466 (Ky. 1986). Also, the weight of the evidence and the credibility of the witnesses are functions peculiarly within the jury’s determination and will not be disturbed on appeal. *Partin v. Commonwealth*, 918 S.W.2d 219, 221 (Ky. 1996) (citations omitted).

¹ Kentucky Revised Statutes.

Casey argues that the registration plate was not “displayed” on his truck because it was concealed in paper and plastic with the words “LOST TAG” written on it, so no *prima facie* evidence of guilt existed. He also argues that he was only temporarily using the plate as a sturdy prop for his homemade plate. Based on this, Casey contends that the Commonwealth failed to present sufficient evidence of his intent to permanently deprive Schadler of his registration plate.

However, the record shows that Casey removed the license plate from Schadler’s Mitsubishi and placed it on his truck. Schadler testified that he did not have permission to do so. Though evidence existed to support Casey’s defense that he was merely using the plate as a prop, viewing all of the evidence in a light most favorable to the Commonwealth, we cannot say that it was unreasonable for the jury to conclude that Casey stole the registration plate. Therefore, Casey’s motion for a directed verdict was properly denied.

The Kenton Circuit Court’s judgment is affirmed.

ALL CONCUR.

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