

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYON PAUL GUTHRIE,

Defendant-Appellant.

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UNPUBLISHED

October 24, 2006

No. 261235

Wexford Circuit Court

LC No. 04-007345-FH

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendant Bryon Guthrie appeals as of right from his jury conviction of receiving stolen property valued more than \$1,000 but less than \$20,000.<sup>1</sup> This case involves a stolen flatbed trailer that had a pump and Cummins engine mounted on it. The trial court sentenced Guthrie to 180 days in jail and 30 months' probation. We affirm. This case arose after Guthrie took a semitrailer full of engines and equipment to a mechanic to repair one of the engines and the mechanic discovered that some of the items in the semitrailer were stolen.

**I. Basic Facts And Procedural History**

Robert Ohse testified that he was a farmer who lived in Mason County. On his farm, he had a pump connected to an engine and transmission, and mounted on a four-wheeled, flatbed trailer. The pump was used for pumping manure "into a semitrailer or into a manure applicator." The engine was a Cummins diesel six-cylinder engine that had a cracked and welded engine block. A welder custom made the flatbed trailer for Ohse. Ohse stated that the trailer had an extra step in the back and a distinctive homemade pop-bottle hubcap. According to Ohse, the entire rig was worth about \$15,000, but, according to his research, it would take over \$20,000 to replace.

Ohse testified that on a Sunday or Monday at the end of June 2004, he found that his pump setup, including the flatbed trailer, was missing from his property. Deputy Tom Brown of the Mason County Sheriff's Office testified that he came out to Ohse's property on June 30,

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<sup>1</sup> MCL 750.535(3)(a).

2004, to take a report of Ohse's loss and that Ohse told him that the theft occurred between June 27 and 28.

Chaderick Stefaniak testified that Chris Kapala stole Ohse's trailer and engine rig, and brought it to him using Stefaniak's truck. He testified that he did not participate in the original theft but that he "had an idea" that the items were stolen. According to Stefaniak, he drove alone to a semitrailer he was renting from Guthrie, unhooked the stolen flatbed trailer from his truck, and left the stolen flatbed by the semitrailer. Stefaniak stated that the rented semitrailer was on Guthrie's property, "behind his shop." He said that unhooking the stolen trailer from his truck was easy because all he had to do was pull out the pin and let it drop. Stefaniak testified he never told Guthrie the flatbed trailer setup was stolen and that he had no agreement with Guthrie to help him with the stolen property. He claimed that he did not see Guthrie the night the trailer was stolen.

Stefaniak testified that, on another night, he drove back to Guthrie's trailer and separated the stolen engine from the stolen trailer using Guthrie's backhoe, without Guthrie's permission. He said he was "pretty messed up" at the time on a case of beer, some marijuana, and a few lines of cocaine, and so he did not recall exactly how he separated it. Stefaniak testified that he could not lift the engine alone but claimed that no one helped him put the engine in the rented semitrailer. He testified that Guthrie thought any items Stefaniak had in the rented semitrailer were things Stefaniak brought up from Florida.

Christopher Kapala testified that he and Stefaniak stole Ohse's flatbed trailer and setup. He testified that they pushed it away from Ohse's barn, hooked it up to Stefaniak's truck, and towed it away. He said that, at the time, he just assumed Stefaniak knew someone to buy it. Kapala testified that, after the theft, he slept while Stefaniak drove until about 1:00 a.m., at which point he woke up when they arrived at someone's house. Kapala testified that he did not know whose house it was. He said that Stefaniak got out of the car and went into the house for about 20 minutes before coming back out and telling him that they had to come back the next day to pick up their money. Kapala said Stefaniak told him they had to drop off the flatbed trailer and setup "at a shop." Kapala testified that they then drove down a dirt road, crossed another paved road, then went down the dirt road to what looked like a gravel company. Detective Sergeant Greg Webster testified that, to get to Guthrie's gravel company shop from Guthrie's house, one must drive up a gravel road, cross M-37, and then go another 100 yards.

Kapala testified that, once they reached the gravel company, they tried to pull out the pin holding the flatbed trailer to Stefaniak's truck, but it was too bent to pull out. So, they used wrenches to take four bolts out of the tongue of the flatbed trailer and then left it next to the covered semitrailer. He said they did not put anything inside of the semitrailer. Kapala testified that he and Stefaniak then returned to where they were staying and that they were together continuously until they were arrested while they were leaving the scene of a later break-in they committed.

Michael Buist testified that he was a mechanic who owned his own business in Mesick. He said he fixed heavy equipment, construction equipment, forestry equipment, and agricultural equipment, jobs which included engine repair. He testified that he had occasionally done work for Guthrie over the years.

Buist testified that in July 2004, Guthrie called him about fixing his semitrailer engine. He said that Guthrie also offered to sell him a Cummins engine. Buist testified that Guthrie never said that the Cummins engine was his, just that he had it for sale. Buist testified Guthrie brought over his semitrailer and trailer to be repaired. He said Guthrie's semitrailer was unlocked and contained a smaller trailer, a Cummins engine, a lawn tractor, and other equipment. Buist testified that the trailer in Guthrie's semitrailer had marks like an engine had been cut off of it with a blowtorch, marks that matched the Cummins engine in Guthrie's trailer. He also said the hitch was missing from the trailer. Buist testified that Guthrie never told him he was renting his semitrailer to anyone else when he dropped it off at Buist's business.

Buist testified that his cousin's child, who worked for Ohse, approached him in church and asked him to keep an eye out for a Cummins engine with a welded engine block that Ohse had reported stolen. Buist said that he recognized the engine as matching the description of the engine in Guthrie's semitrailer, and he called the police to report it. Detective Sergeant Webster testified that he came out to Buist's business on July 12, 2004, examined the contents of Guthrie's trailer, and then later had Ohse verify that the trailer and Cummins engine were items stolen from his farm.<sup>2</sup>

At trial, after Guthrie had made a point of the fact that it was his business to buy, salvage, and sell used engines and equipment, the prosecution sought to have CJI2d 26.6, which imposes a duty of reasonable inquiry on dealers or collectors who receive stolen property, given to the jury. The trial court granted the prosecution's request, over Guthrie's objection, because Guthrie had brought up the issue as part of his defense strategy and because it was only an alternate charge, not an additional charge. The jury convicted Guthrie on the original charge of knowingly receiving stolen property.

## II. Sufficiency Of The Evidence Claim

### A. Standard Of Review

Guthrie argues that there was insufficient evidence for the jury to find that he had knowledge that the property he received was stolen. To determine whether there was sufficient evidence to support a conviction, we review the evidence *de novo*, in the light most favorable to the prosecution, and decide whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt.<sup>3</sup>

### B. The Evidence

The elements of the offense of receiving and concealing stolen property are:

(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with

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<sup>2</sup> The pump was not recovered.

<sup>3</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen.<sup>[4]</sup>

“[A] defendant’s knowledge that the property was stolen, embezzled, or converted can be established by circumstantial evidence.”<sup>5</sup>

Chris Kapala testified that he and Chaderick Stefaniak stole the flatbed trailer and attached equipment. Kapala’s testimony, combined with that of Detective Sergeant Webster’s, supports the reasonable inference that the house he and Stefaniak drove to with the stolen property was Guthrie’s house. Kapala testified that after Stefaniak spoke with someone inside the house for about 20 minutes, Stefaniak returned to the car and indicated that they had to return the next day to receive payment. Stefaniak and Kapala then drove to a nearby site and left the stolen property outside of Guthrie’s semitrailer, which Stefaniak was renting from Guthrie. Kapala testified that neither he nor Stefaniak returned to the semitrailer. Guthrie then showed up at Buist’s business with Ohse’s trailer and Cummins engine in his semitrailer. It was reasonable to infer that if Stefaniak and Kapala did not load the engine and trailer into the semitrailer, then it was Guthrie who did so.<sup>6</sup> Further, Buist testified that Guthrie had offered to sell him the Cummins engine.

We conclude that a rational trier of fact could reasonably find from this circumstantial evidence that Guthrie knew the farming equipment in his semitrailer was stolen. The fact that Stefaniak’s testimony contradicts Kapala’s is irrelevant. The jury, as trier of fact, was free to believe Kapala’s testimony while disregarding Stefaniak’s testimony.<sup>7</sup>

### III. Prosecutorial Misconduct Claim

#### A. Standard Of Review

Guthrie argues that the prosecutor mischaracterized the evidence in two statements made during his closing argument. Because Guthrie did not timely object to either of these alleged instances of prosecutorial misconduct, we review for plain error affecting substantial rights.<sup>8</sup> “Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial

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<sup>4</sup> *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2003).

<sup>5</sup> *Echelon Homes LLC v Carter Lumber Co*, 472 Mich 192, 200; 694 NW2d 544 (2005).

<sup>6</sup> See *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

<sup>7</sup> See *People v Taylor*, 185 Mich App 1, 8; 460 NW2d 582 (1990).

<sup>8</sup> *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

proceedings.”<sup>9</sup> Reversal is not required “where a curative instruction could have alleviated any prejudicial effect.”<sup>10</sup>

## B. Mischaracterization Of Evidence

Guthrie objects to the following remarks from the prosecutor’s closing argument:

Fifth, that the defendant, as a dealer of merchandise, did not make a reasonable inquiry into whether the person who was selling or delivering the property to the dealer or collector had a legal right to do so.

Did Stefaniak say anything about that inquiry? Did he say anything about calling, any conversations about, you know, how we are going to sell this stuff, sell it for me, give me the money in jail, anything like that? No. Was he in jail the next night? Yeah. If somebody calls you from jail and says sell that stuff I got in the trailer at your place, that trailer that’s supposedly rented to me, should you have either made a reasonable inquiry to whether he had the legal right to sell this stuff, let alone cut it all apart and sell it? Why did he cut it apart and sell it? Isn’t it worth more put together? You cut it all apart because you’re fencing part of it at a time and hope it’s not recognized.

Guthrie’s allegation of error focuses on the prosecutor’s hypothetical about calling someone from jail. A prosecutor is free to argue all reasonable inferences arising from the evidence as they relate to his theory of the case.<sup>11</sup> Further, the prosecutor explicitly prefaced the hypothetical with an acknowledgment that Stefaniak never testified to any conversation between himself and Guthrie about selling the stolen items. In any event, the trial court instructed the jury that arguments made by counsel were not evidence and that the jury “should only accept things the lawyers have said that are supported by the evidence.” We presume that the jury followed these instructions.<sup>12</sup> Moreover, a curative instruction could have cured any potential improper prejudice.<sup>13</sup>

Guthrie also faults the following statement: “Is [Kapala] . . . telling the truth about stopping at [Guthrie]’s home and he stayed in the car and Stefaniak got out for 20 minutes . . . ?” Guthrie argues that this mischaracterized the evidence because Kapala testified that he did not know whose house they stopped at following the robbery. We disagree. The prosecutor never argued that Kapala identified the house as belonging to Guthrie. Rather, the prosecutor was merely combining evidence provided by Detective Sergeant Webster identifying the house as

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 329-330.

<sup>11</sup> *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

<sup>12</sup> *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993).

<sup>13</sup> *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

belonging to Guthrie with Kapala's testimony about what happened on the night of the robbery. This is proper argument based on the record.

#### IV. Instructional Error Claim

##### A. Standard Of Review

Guthrie argues that he was denied a fair trial when the jury was instructed on receiving stolen property as a dealer or collector.<sup>14</sup> We review de novo alleged jury instruction errors.<sup>15</sup> We then examine the relevant instructions in their entirety to determine if reversal is required. But "reversal is not required as long as they fairly presented the issues to be tried and sufficiently protected the defendant's rights."<sup>16</sup>

##### B. The Instruction

A defendant is entitled to a properly instructed jury.<sup>17</sup> Jury instructions must include all elements of charged crimes, but must not exclude consideration of relevant issues, defenses, or theories that are supported by the evidence.<sup>18</sup> Even if jury instructions are misleading or confusing, the validity of a verdict is presumed, and the defendant bears the burden of proof to show that an error resulted in a miscarriage of justice that, in the context of the whole case, more likely than not changed the outcome of the case.<sup>19</sup>

Guthrie was on notice that he was charged under MCL 750.535, of which sub§ (9) provides as follows:

A person who is a dealer in or collector of merchandise or personal property, or the agent, employee, or representative of a dealer or collector of merchandise or personal property who fails to reasonably inquire whether the person selling or delivering the stolen, embezzled, or converted property to the dealer or collector has a legal right to do so or who buys or receives stolen, embezzled, or converted property that has a registration, serial, or other identifying number altered or obliterated on an external surface of the property, is presumed to have bought or received the property knowing the property is stolen, embezzled, or converted. This presumption is rebuttable.

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<sup>14</sup> CJI2d 26.6.

<sup>15</sup> *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253, remanded on other grounds 467 Mich 888 (2002).

<sup>16</sup> *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

<sup>17</sup> *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000).

<sup>18</sup> *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

<sup>19</sup> *Rodriguez*, *supra* at 473-474.

Further, Guthrie introduced evidence that could qualify Guthrie as a dealer or collector of merchandise as part of his defense. Thus, he cannot be heard to complain that the dealer jury instruction was not fair. The jury instructions fairly presented the issues to be tried, were sufficiently based on the evidence, and protected Guthrie's rights.<sup>20</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski

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<sup>20</sup> Further, Guthrie did not ask for proofs to be reopened after the prosecutor's request for the additional dealers and collectors jury instruction. In any event, any possible error here is harmless because the jury found Guthrie had actual knowledge that the property in question was stolen.