[Cite as *State v. James*, 2009-Ohio-3284.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91499

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DJUAN D. JAMES

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-506066

BEFORE: Boyle, J., Gallagher, P.J., and Stewart, J.

RELEASED: July 2, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Michael P. Maloney
24441 Detroit Road
Suite 300
Westlake, Ohio 44145

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Robert Botnick
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Djuan James, appeals from a judgment convicting him of receiving stolen property. Finding no merit to the appeal, we affirm.

{¶ 2} James was indicted on two counts: felonious assault (peace officer), a violation of R.C. 2903.11(A)(2), and receiving stolen property (motor vehicle), a violation of R.C. 2913.51(A). Count 1 of the indictment, felonious assault, carried a notice of prior conviction and a repeat violent offender specification; however, the state later dismissed them. James entered a plea of not guilty, and the case proceeded to a jury trial where the following evidence was presented.

{¶ 3} The victim, Thomas Ahart, testified that on January 19, 2008, he discovered that his 2004 Jeep Grand Cherokee was missing from his driveway. He said he parked his car in his driveway the night before and had not given anyone permission to drive it after parking it. He left the keys to the Jeep inside the console. He also left personal items inside the Jeep, including an iPod, stereo equipment, and his girlfriend's cell phone.

{¶ 4} Ahart said his girlfriend called her missing cell phone and someone answered it. He then contacted Verizon to see if any numbers had been called from her phone. Verizon gave him two phone numbers, and using a reverse online address search, he found an address connected to one of the numbers, at a house located on East 136th Street. He drove by the house. He then asked

Cleveland police officers to look in the garage, which they did. But they did not find his Jeep.

{¶ 5} Ahart returned to the house on East 136th Street approximately two and a half hours later and saw his Jeep backing into the driveway. He contacted both the Shaker Heights and Cleveland police and parked at the end of the block while officers approached the house. When an officer called him to return to the scene, he said his Jeep was in a different condition than when he last saw it. He said the driver's-side door was all the way open, the front driver's-side tire was flat, the rear window was smashed, and all of his possessions were gone.

{¶ 6} When Ahart recovered his vehicle from the police, he took it to a body shop. Repair costs were $5,600, which his insurance covered except for the deductible. Ahart never recovered his personal items that were in his Jeep.

{¶ 7} Officer Arthur Littell explained that he and his partner, Officer Januszewski, received a radio broadcast around 4:50 p.m. stating that Ahart had seen his stolen Jeep at a house on East 136th Street. They arrived at the address and parked their car on the street. Officer Littell saw the Jeep parked in front of the garage; James was in the passenger seat. Officer Littell approached the driver's side of the car and Officer Januszewski approached the passenger side. They told James to exit the vehicle and show his hands.

{¶ 8} James did not listen to their commands; instead, he reached across and turned on the ignition. Officer Littell said that James began driving the

Jeep from the passenger seat, so he had very little control. James drove the Jeep into the steps of the house, hitting the front driver's side. James then redirected the Jeep and became entangled in a chain-link fence behind the house. James then moved to the driver's seat, put the car in reverse, and disentangled it from the fence. At that point, Officer Littell said that he was standing about 10 to 12 feet behind the Jeep when James began to drive it toward him. Officer Littell moved toward the steps so that James would not hit him.

{¶ 9} James then hit the driver's-side door of the Jeep, which Littell had previously opened, on the steps, and the vehicle stopped, angled down the driveway. James shifted the Jeep into drive, and as the vehicle was about to go forward, Officer Littell testified that Officer Hanz Turner fired his taser gun at James, hitting him. James then hit the house next door and stopped when he hit a small tree. James shifted from reverse to drive, and Officer Littell sprayed him with pepper spray so that he would stop trying to escape.

{¶ 10} Officer Littell said that James continued to shift the Jeep until it stalled about a minute and a half later. James then exited the vehicle and was still trying to get away. He turned toward the front of the house, but officers Littell and Turner wrestled him to the ground and handcuffed him after a slight tussle.

{¶ 11} Officer Littell testified that the vehicle sustained significant damage from the events in the driveway.

{¶ 12} Officer Turner testified last. He explained that he and his partner, Officer Delvecchio, assisted Officers Littell and Januszewski. He basically corroborated Officer Littell's testimony, except that he explained when he saw James driving the Jeep directly at Officer Littell, that is when he shot his taser gun at James. He further explained that one probe hit James in the head and another hit him in the arm. After tensing up for five seconds, James continued his attempt to escape.

{¶ 13} At the close of the state's case, James moved for a Crim.R. 29 acquittal on both counts, which the court denied.

{¶ 14} The jury then found James not guilty of felonious assault (peace officer) and guilty of receiving stolen property (motor vehicle). The trial court then sentenced James to 18 months in prison with credit for time served, three years of postrelease control, and restitution of $500 to Ahart.

{¶ 15} It is from this judgment that James appeals, raising one assignment of error for our review:

{¶ 16} "[1.] The trial court erred in denying appellant's criminal rule 29 motion for acquittal when there was insufficient evidence to prove the elements of receiving stolen property."

{¶ 17} Under Crim.R. 29(A), a trial court "shall not order an entry of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proven

beyond a reasonable doubt. *State v. Bridgeman* (1978), 55 Ohio St.2d 261, syllabus. A motion for judgment of acquittal under Crim.R. 29 should only be granted where reasonable minds could not fail to find reasonable doubt. Id. at 263.

{¶ 18} The test an appellate court must apply in reviewing a challenge based on a denial of a motion for acquittal is the same as a challenge based on sufficiency of the evidence to support a conviction. See *State v. Bell* (May 26, 1994), 8th Dist. No. 65356.

{¶ 19} An appellate court's function in reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. The 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. *Jenks* at 273.

{¶ 20} R.C. 2913.51(A) provides that "[n]o 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."

{¶ 21} James claims that the state did not present any evidence that he knew or should have known that the vehicle was stolen. Specifically, he argues that the state did not present any evidence that he stole the Jeep, there was no evidence that he aided or abetted someone in the theft of the Jeep, and there was no physical evidence (such as damage) on the Jeep that would have alerted someone that it was stolen. We disagree.

{¶ 22} The Supreme Court of Ohio has held that flight is evidence of consciousness of guilt, and thus, guilt. *State v. Taylor* (1997), 78 Ohio St.3d 15, 27; *State v. Williams* (1997), 79 Ohio St.3d 1, 11. Further, "erratic driving and flight from police officers is circumstantial evidence that the driver was aware that the vehicle he was in was stolen." *State v. McNeir* (Nov. 30, 2000), 6th Dist. No. L-99-1406. See, also, *State v. Brown* (June 28, 2001), 10th Dist. No. 00AP-1364; and *In re Houston* (Nov. 25, 1998), 8th Dist. No. 73950.

{¶ 23} In *McNeir*, the Sixth District held that a conviction for receiving stolen property was supported by sufficient evidence where the appellant attempted to flee from police officers pursuing him when he was driving the stolen vehicle. *McNeir* at 16. When the officers in *McNeir* activated their sirens and overhead lights, the appellant sped and drove erratically. Even after the vehicle crashed, the appellant exited the car and attempted to flee from the officers until they caught him.

{¶ 24} Here, James similarly ignored commands from police officers and attempted to flee. When Officer Littell requested that James exit the vehicle and show his hands, James put the Jeep into drive and attempted to maneuver it out of the driveway. He drove erratically in his attempt to escape; he hit the steps, the neighbor's house, a chain-link fence, and a small tree. Further, like the appellant in *McNeir*, James still attempted to escape on foot after the Jeep stalled. In fact, James only stopped after the officers wrestled him to the ground and handcuffed him.

{¶ 25} James's actions suggest a consciousness of guilt and are circumstantial evidence that he was aware that the Jeep was stolen. Accordingly, the evidence is legally sufficient to support a conviction of receiving stolen property beyond a reasonable doubt.

{¶ 26} James's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of 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.

____
MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR