[Cite as *State v. Johnson*, 2010-Ohio-3296.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 25161
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
KIEVE JOHNSON	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 09 05 1415

DECISION AND JOURNAL ENTRY

Dated: July 14, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Kieve Johnson, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} Michael Wassil purchased a 1997 Thunderbird in December 2008. He kept the car in his driveway, but left it unlocked because of a broken locking mechanism. Further, he kept a spare key in the car's console. When Wassil awoke one morning in late April or early May, his car was gone. He later filed a report with the Kent Police Department, indicating the vehicle had been stolen.

{¶3} On May 2, 2009, two officers from the Akron Police Department were dispatched to a residence on Reed Avenue based on a report that a car was parked, blocking a driveway, and the driver had marijuana. When officers arrived on scene, they drove past a moving car that matched the description they had received. The officers ran the car's license plate through their

computer system and discovered the car was stolen. The officers pursued the car and executed a stop. As soon as the officers stopped the car, they ran up and took the keys from the driver. The driver, later identified as Johnson, asked "what, is the car stolen?" The officers found Wassil's personal effects inside the car.

{¶4} On May 14, 2009, a grand jury indicted Johnson on one count of receiving stolen property, in violation of R.C. 2913.51(A). The matter proceeded to a bench trial on November 5, 2009. The court found Johnson guilty and sentenced him to twelve months in prison.

{¶5} Johnson now appeals from his conviction and raises two assignments of error for our review.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED IN DENYING MR. JOHNSON'S MOTION FOR ACQUITTAL FOR LACK OF SUFFICIENT EVIDENCE BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE MR. JOHNSON (sic) KNEW OR SHOULD HAVE KNOWN THAT THE VEHICLE WAS STOLEN."

{¶6} In his first assignment of error, Johnson argues that his conviction is based on insufficient evidence. Specifically, he argues there was no evidence to show that he knew or should have known that the car at issue was stolen. We disagree.

{¶7} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

> "An appellate court's function when 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. 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." Id. at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

"In essence, sufficiency is a test of adequacy." *Thompkins*, 78 Ohio St.3d at 386.

{¶8} 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." "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶9} Wassil testified that his 1997 Thunderbird was in his driveway when he went to sleep at 8:00 p.m. and was gone when he woke up at 4:45 a.m. the next morning. Wassil had left his car unlocked and parked in his driveway with a set of spare keys in the car's console. According to Wassil, he had recently moved and still had a large amount of personal effects in his car, including a photo I.D. Wassil testified that he reported his car as stolen after confirming that his friends had not borrowed it or moved it as a joke. Wassil stated that he did not know Johnson and never gave him permission to use his car.

{¶10} Officer Drew Reed testified that he stopped Johnson on May 2, 2009 after discovering that Johnson was driving a stolen car. He testified that Johnson immediately asked, "what, is the car stolen?" when officers stopped him and that, although Johnson claimed he purchased the car, he could not give officers the name of the person from whom he had purchased it or any evidence of ownership. Officer Reed confirmed that police found Wassil's personal effects, including his photo I.D., in the car when they searched it.

{¶11} The State presented evidence that Johnson was driving Wassil's car, which still contained Wassil's personal effects, and that Wassil did not give him permission to drive the car.

Wassil testified that he reported the car as stolen. Further, when police stopped the stolen car, Johnson immediately asked the police, without any prompting, whether they believed the car was stolen. Based on the foregoing, a rational trier of fact could have concluded that Johnson knew he was driving a stolen car. Johnson's first assignment of error is overruled.

Assignment of Error Number Two

> "MR. JOHNSON'S CONVICTION FOR RECEIVING STOLEN PROPERTY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶12} In his second assignment of error, Johnson argues that his conviction is against the manifest weight of the evidence. We disagree.

{¶13} When considering a manifest weight argument, the Court:

> "[M]ust 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 the conviction must be reversed and a new trial ordered." *State v. Otten* (1986), 33 Ohio App.3d 339-340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. Id. Therefore, this Court's "discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶14} Johnson argues that his conviction is against the weight of the evidence because nothing about the car suggested it was stolen. Johnson also suggests that he only asked police if

the car was stolen because there was a "lack of any other activity in his life which could be criminal in nature."

{¶15} Wassil admitted that his friends had moved his car in the past as a practical joke, but testified that he reported the car was stolen after no one admitted to moving it. Upon cross-examination, he agreed that it might be possible that one of his friends took the car and sold it to Johnson, but he reiterated that he was not aware of any such arrangement and reaffirmed that none of his friends admitted to doing so. Wassil said that he did not know Johnson and never gave him permission to use his car. Moreover, Wassil's car was stolen within a short time frame, 8:00 p.m. to 4:45 a.m., and still had his personal effects inside of it. Johnson could not explain how he had purchased the car and specifically asked the police if it was stolen. The court could have believed that Johnson bought the car, with Wassil's personal effects included, and only asked the police if the car was stolen because he could not fathom any other purpose for the stop. On the other hand, the court could have believed that Johnson knew he had taken possession of a stolen car. This Court has repeatedly held that the trier of fact is in the best position to determine the credibility of witnesses and evaluate their testimony accordingly. *State v. Saini*, 9th Dist. No. 09CA0030-M, 2010-Ohio-2813, at ¶7. The trial court did not err by choosing to believe the State's version of the events. Johnson's second assignment of error is overruled.

III

{¶16} Johnson's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

KIMBERLY L. OLIVER, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.