

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-037

Appellee

Trial Court No. 09 CR 516

v.

Russell Uncapher

**DECISION AND JUDGMENT**

Appellant

Decided: May 27, 2011

\* \* \* \* \*

Paul A. Dobson, Wood County Prosecuting Attorney,  
Melissa A. Schiffel and David E. Romaker, Jr., Assistant  
Prosecuting Attorneys, for appellee.

J. Scott Hicks, for appellant.

\* \* \* \* \*

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas which found appellant guilty of receiving stolen property, a felony of the fifth degree, in violation of R.C. 2913.51. For the reasons set forth below, this court reverses the judgment of the trial court.

{¶ 2} Appellant, Russell Uncapher, sets forth the following sole assignment of error:

{¶ 3} "THE TRIAL COURT ERRED WHEN IT FOUND THE DEFENDANT GUILTY OF RECEIVING STOLEN PROPERTY, AS A FELONY OF THE FIFTH DEGREE. SPECIFICALLY A LICENSE PLATE REGISTRATION VALIDATION STICKER IS NOT INCLUDED IN PROPERTY LISTED IN 2913.71 AND THEREFORE THE RECEIVING OF SAID PROPERTY IS NOT A FELONY BUT RATHER A MISDEMEANOR."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On October 16, 2009, appellant pulled his motor vehicle he was driving into the driveway of his residence. A police cruiser had been following appellant and pulled into the driveway directly behind appellant. Both appellant and his motor vehicle were subsequently searched. Based upon the evidence recovered in the course of these searches, two indictments were issued against appellant.

{¶ 5} On December 17, 2009, appellant was indicted on one count of drug possession, in violation of R.C. 2925.11(A), a felony of the fifth degree, and one count of receiving stolen property, in violation of R.C. 2913.51(C), a felony of the fifth degree.

{¶ 6} On June 7, 2010, as relevant to the focus of this case, appellant pled no contest to the count of receiving stolen property in violation of R.C. 2913.51(C). Appellant was found guilty of a fifth degree felony. The basis employed to enhance the charge from a first degree misdemeanor offense to a fifth degree felony offense was the

recovery of a stolen license registration validation sticker. Appellee contended that this item qualified as a felony enhancement item pursuant to R.C. 2913.71.

{¶ 7} Appellant was found guilty of both charges for which he was indicted. This appeal is limited to the disputed classification of the receiving stolen property offense as a felony of the fifth degree. Appellant asserts that the offense should have been treated as a first degree misdemeanor as the underlying item should not have been construed to enhance the offense. At sentencing, appellant was given a three-year term of community control encompassing both counts. Timely notice of appeal was filed.

{¶ 8} In the single assignment of error, appellant asserts that the trial court erred in treating his receiving stolen property offense as a felony of the fifth degree.

{¶ 9} The receiving stolen property statute, R.C. 2913.51(C), establishes that, "if the property involved is any of the property listed in section 2913.71 of the Revised Code, receiving stolen property is a felony of the fifth degree." In conjunction with this, R.C. 2913.71(C) expressly delineates felony enhancement property items to include, "a motor vehicle identification license plate as prescribed by R.C. 4503.22 of the Revised Code, a temporary license placard or windshield sticker as prescribed by section 4503.182 [4503.18.2] of the Revised Code, or any comparable license plate, placard, or sticker as prescribed by the applicable law of another state or the United States."

{¶ 10} Relevant case law reveals that other jurisdictions considering this scenario have consistently held that vehicle registration validation stickers placed on license plates are distinguishable from the license plate itself and not encompassed by the plain

language of R.C. 2913.71(C). As such, registration validation stickers do not enable enhancement of the offense to felony status.

{¶ 11} As succinctly held in the Fifth District case of *State v. Bennett*, 185 Ohio App.3d 54, 2009-Ohio-6092, "R.C. 4503.22 defines 'license plate' and specifies the license plate shall consist of a placard 'made of steel', upon which appears the name of this state and the slogan 'BIRTHPLACE OF AVIATION'. Applying a strict construction, we find that a validation sticker does not qualify as a license plate. Further, R.C. 4503.191 contains language requiring a license plate be accompanied by a validation sticker, thereby differentiating the two." Given this determinative conclusion, the court went on to rule that, "therefore, we hold that a validation sticker for a license plate is not a form of property that elevates an R.C. 2913.51(A) receiving stolen property offense from a first-degree misdemeanor to a fifth degree felony pursuant to R.C. 2913.71(C)." See, also, *State v. Seward* (Mar. 31, 1999), 2d Dist. No. 98-CA-107.

{¶ 12} We have carefully reviewed and considered this matter. We likewise conclude that a registration sticker cannot reasonably be construed as the substantive equivalent of a vehicle license plate or temporary license placard or windshield sticker as defined by R.C. 2913.71(C) so as to enhance the offense to a felony of the fifth degree. They are materially distinguishable items. Given our concurrence with the rationale set forth in *Bennett*, we find appellant's sole assignment of error to be well-taken.

{¶ 13} Wherefore, the receiving stolen property judgment of the Wood County Court of Common Pleas is reversed. This matter is remanded for further proceedings

consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.