[Cite as *State v. Dean*, 2021-Ohio-766.]

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

State of Ohio — Court of Appeals No. WD-20-028

Appellee — Trial Court No. 2019-CR-0310

v.

Andrew Nicholas Dean — **DECISION AND JUDGMENT**

Appellant — Decided: March 12, 2021

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Autumn D. Adams, for appellant.

* * * * *

MAYLE, J.

Introduction

{¶ 1} Following a jury trial, the defendant-appellant, Andrew R. Dean, was convicted of receiving stolen property, in violation of R.C. 2913.51 in the Wood County Court of Common Pleas. Because the property at issue was a motor vehicle, Dean's

offense was classified as a fourth degree felony. R.C. 2913.51(C) and 4501.01. On appeal, Dean challenges the legal sufficiency and weight of the evidence and also argues that the state failed to establish that venue was proper in Wood County. Finding no error, we affirm.

Background

{¶ 2} The following evidence was offered at trial: On Monday, June 10, 2019, Patrolman Corey DiModica of the Bowling Green State University ("BGSU") Police Department "took a report" from a representative with Lake Erie Electric Company that one of its vehicles had been stolen over the weekend. The vehicle had been left, unlocked with the keys inside, at "Lot 13" of the campus parking lot the previous Friday, June 7, 2019, around 3:00 p.m. It was noticed missing from the lot on Sunday. The vehicle was described as dark blue 2001 Ford Econoline van with a wide grey stripe at the bottom. According to the record, Lake Erie Electric has worked on campus "nonstop" for the last 12 years, and it uses the van to shuttle employees from Lot 13 to various project sites on campus.

{¶ 3} BGSU Police Detective Robert Coulson reviewed a surveillance video from a camera that overlooks Lot 13. Lot 13 is open to the public and runs along, and to the north of, Wooster Street. According to Detective Coulson, the video showed the van exiting Lot 13, onto a campus road, and then turning east onto Wooster Avenue, at 12:54 p.m. on Sunday, June 9, 2019.

{¶ 4} After observing the video, Detective Coulson visited three nearby gas stations, all on Wooster Avenue, to see if the surveillance cameras used by those companies had any footage of the van. He found that the camera from "BP" had footage of what appeared to be the same van.

{¶ 5} Upon review, the five minute video clip, which was shown to the jury, shows the van first appearing at 12:55 p.m., headed east on Wooster. The van slows and then turns to the south, onto a public roadway that is adjacent to the BP parking lot. The van remains on the public roadway and disappears from view within a few seconds. Five minutes later, at 1:00 p.m., the van reappears on the same roadway, this time headed north, back to Wooster, where it turns west and drives away. Detective Coulson agreed that it was not possible to see the occupant(s) of the van.

{¶ 6} On Thursday, June 13, 2019, at 7:27 p.m., a "suspicious" van was reported to the BGSU Police as having been "abandoned" at 1020 North Grove Street, in Bowling Green. Campus police had the van towed and secured in a fenced-in area on campus. While searching the van, Detective Coulson found two pieces of evidence on the console that tied the defendant-appellant, Andrew Dean, directly to the van. First, he found a paper receipt with Dean's name on it, indicating a $100 transfer had been made to him that same day, June 13, 2019 at 6:17 p.m. The receipt was from Walmart on Navarre Avenue, in Oregon, Ohio. Next to the receipt was an "Ohio identification card" with Dean's name and picture on it. On the floor or the van, in between the two front seats,

Detective Coulson also found a "generic [VISA] card," with no name on it, and a magnetic Lake Erie Electric sign.

{¶ 7} Detective Coulson contacted Walmart to ask for its assistance in reviewing their surveillance footage from its Navarre Avenue store. Lou Vaugn works as an asset protection associate for Walmart. At trial, Vaugh identified eleven brief video clips that were taken from various surveillance cameras on June 13, 2019 and five "still shots" that were created from the video clips.

{¶ 8} First, Vaugn identified a video clip and picture that appears to be the van at issue moving throughout the parking lot at 6:10 p.m. Through the drivers-side window, which was open, the driver of the van appears to be wearing a royal blue shirt but is otherwise obscured from view. Vaugn testified that it was not possible to determine whether there were any other occupants in the van at the time.

{¶ 9} Next, Vaugn identified video clips and pictures that show Dean, dressed in a royal blue short-sleeved shirt that "match[ed]" what the unidentified driver wore, enter the store at 6:11 p.m. Dean is shown walking directly to a deli case, selecting a sandwich, and then to the customer service counter. At 6:19 p.m., Dean exits the store. Vaugn reviewed customer service records and confirmed that, while at the customer service counter, Dean received a "money transfer for $100."

{¶ 10} Next to testify was Chris Hepner, who is a Lake Erie Electric project manager. Hepner testified that the Econoline van was "decaled" with magnetic signs advertising the company's name. The signs were approximately two feet by two feet and

were affixed to the driver-side and passenger-side doors. Hesner testified that the signs "never come off," but after he was shown that the van was recovered with one of the signs inside the van, he agreed that they were "removable." Hepner also testified that the van's gas gauge did not function properly and therefore, the company foreman manually tracked the mileage to prevent it from running out of gas. After the van was recovered, Hepner was told that it had gone through about "two or three tanks of gas," which he "assumed" was the equivalent of about 600 miles.

{¶ 11} Finally, Dan Van Vohris with the Ohio Adult Parole Authority testified. Van Vohris is Dean's parole officer. On June 9, 2019, the day of the vehicle theft, Van Vohris "received a call that [Dean] was out by the Days Inn in Bowling Green, trying to find a ride." Although Dean "was free to go wherever he want[ed] * * * at that point," Van Vohris decided to conduct "supervision" of him. So, Van Vohris went to the Days Inn "to see what was going on or who he was with."

{¶ 12} When Van Vohris arrived at 12:10 p.m., he observed Dean "standing around the [hotel] office with a female." Dean was "on his phone sitting, pacing, sitting, pacing," and it appeared to Van Vohris that Dean "was waiting on a ride or something." Van Vohris kept watch for 15 to 20 minutes until Dean "left the Days Inn area, walked by [the restaurant next door], and walked over behind the BP gas station." Van Vohris walked to the other side of BP, to a neighboring business, hoping to "see if [Dean] was getting in a car there or not," but Van Vohris lost track of him.

{¶ 13} The following week, the BGSU police contacted Van Vohris to tell him that they had "recovered a van that had been stolen and [Dean's] I.D was in[side]." Van Vohris told police that he would try and locate Dean and "find out * * * why his ID might be in a stolen vehicle." Van Vohris was unable to locate him, but about a week or two later, Dean was "arrested [on a] child support warrant." On July 2, 2019, Van Vohris and Detective Coulson interviewed Dean in jail. After Dean was *Mirandized,* he told them the following:

> [Dean] explained there [were] two other people that were involved. * * * He wasn't really in a position to positively ID who they were. But he acknowledged that a [Chrysler] Neon with two people in it * * * went into [BGSU Parking Lot 13]; one person left in the Neon, one person left in the van, and *then the van came over, and he got in it by the BP*. (Van Vohris Tr. at 183; Emphasis added.)

{¶ 14} When told that his ID card had been located in the van, Dean responded, "Oh, that's where I left it," and he lamented, "I can't believe I left my ID in the van." Dean also admitted to driving the vehicle "at least one time." Although Dean claimed not to recall "doing a money transfer" at the Walmart in Oregon, he "acknowledged being at [that store]." According to Van Vohris, Dean has lived in Wood County for the entire 12 years that he has known him. Also, Dean was known to "hang[] with" people who live at Fairview Manor apartment complex, which is located on North Grove Street, "adjacent" to where the van was recovered.

{¶ 15} At the conclusion of the state's case-in-chief, Dean moved for an acquittal under Crim.R. 29. He argued that the state failed to present legally sufficient evidence that he knew or had reasonable cause to believe that the vehicle had been stolen and that the state failed to prove that venue was proper in Wood County. The court denied the motion.

{¶ 16} The jury found Dean guilty, and the trial court convicted him and proceeded directly to sentencing. It imposed a prison sentence of 18 months, plus an additional 708 days for violating the terms of his post-release control in another case, Wood County Court of Common Pleas case No. 2015CR239. The court ordered that the terms be served consecutively to one another, pursuant to R.C. 2929.141.

{¶ 17} Dean appealed and presents two assignments of error for our review:

I. The evidence presented at trial was insufficient to support a conviction for Receiving Stolen Property.

II. The Jury's finding of guilty for Receiving Stolen Property was against the manifest weight of the evidence.

The Receiving Stolen Property Offense

{¶ 18} Dean challenges the legal sufficiency and weight of the evidence supporting his conviction for receiving stolen property, which we consider together. We consider separately, in the next section, his venue challenge.

{¶ 19} Sufficiency of the evidence is a legal standard that tests whether the evidence is legally adequate to support the verdict. "A motion for acquittal

under Crim.R. 29(A) is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence." *State v. Tenace,* 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37. Whether there is sufficient evidence to support a conviction is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). In reviewing a challenge to the sufficiency of evidence, "[t]he 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." (Internal citations omitted.) *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In making that determination, the appellate court will not weigh the evidence or assess the credibility of the witnesses. *State v. Walker*, 55 Ohio St.2d 208, 212, 378 N.E.2d 1049 (1978).

{¶ 20} The offense of receiving stolen property, as set forth in 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." The "reasonably plain language" of R.C. 2913.51(C) means that "the state need establish only two elements to gain a conviction for this offense: (1) the defendant received, retained or disposed of property which was not his own; and (2) the defendant knew or had reasonable cause to believe the property was stolen." *State v. Emery*, 6th Dist. Lucas No. L-11-1228, 2013-Ohio-208, ¶ 15. Dean challenges both elements.

{¶ 21} Before addressing Dean's arguments, we offer the following observations in response to the state's appellate brief. The state did not specifically address Dean's first assignment of error. Indeed, it makes no reference to R.C. 2913.51 or its elements. Nonetheless, the state proclaims that "[t]here is really no question that Dean stole" the van, "drove it to the Wal-Mart in Oregon," and "dumped it" at the apartment complex, and it repeats variations of those claims throughout its brief. We find no support for the state's claims.

{¶ 22} At trial, the state did not argue, much less charge, Dean with the underlying theft of the van. And, contrary to its claim, the campus surveillance video did not record "a man" driving away from the university. Likewise, the state presented no evidence that Dean "drove the stolen van from Bowling Green to the Wal-mart in Oregon." While Dean admits that he was at that store, and circumstantial evidence was presented that he was behind the wheel in the parking lot there, no evidence was presented that he drove it "from Bowling Green * * * to Oregon." Also, no evidence was offered that Dean "dumped" the van in Bowling Green "near where his friends lived." To the contrary, after Dean was identified as a suspect, police showed his picture to the woman who reported the abandoned vehicle to the police. According to Detective Coulson, the woman was not able to identify Dean, "as the person who left the van."

{¶ 23} Turning to Dean's first argument, he claims that no evidence was presented of him "taking the van or disposing of it" and that "merely driving the van"—which he

concedes he did—is insufficient to support a conviction for receiving stolen property. Dean fails to cite any legal authority in support of his position.

{¶ 24} "In order to receive or retain property in the sense required by R.C. 2913.51(A), one must exercise dominion or control over the property." *State v. Bates,* 10th Dist. Franklin No. 97APA02-171, 1997 WL 750789 (Dec. 2, 1997); *see also Emery* at ¶ 17 (Noting that "a generally accepted definition of 'receive' is to acquire control in the sense of physical dominion over or the apparent legal power to dispose of said property.").

{¶ 25} Here, Dean admits to being both driver—"at least one time"—and passenger—when he accepted a ride in the van, just minutes after it had been stolen. Either is sufficient to establish that Dean "received" the stolen vehicle. A driver of a stolen vehicle may be said to have exercised dominion and control of the property and therefore to have "received" it under R.C. 2913.51(A). *See e.g. State v. Doyle,* 4th Dist. Pickaway No. 04CA23, 2005-Ohio-4072, ¶ 35 (Deputy's positive identification of defendant as the driver of the stolen vehicle constitutes "ample competent, credible evidence that appellant received stolen property."); *see also Matter of Windle,* 10th Dist. Franklin No. 93AP-746, 1993 WL 498053 (Dec. 2, 1993), * 2 ("[T]he exercise of dominion and control is not limited to he who operates the [stolen] motor vehicle.").

{¶ 26} Further, under the facts of this case, Dean's status as passenger in the stolen van also establishes that he "received" it. Although the "mere presence in a stolen vehicle is never sufficient to convict for receiving stolen property," a passenger who uses

a stolen vehicle "for transportation or for his own personal entertainment" will be found to have received and retained that vehicle. *In re. Bromfield,* 1st Dist. Hamilton No. C-030446, 2004-Ohio-450, ¶ 14. Thus, where a juvenile sat in the back seat of a stolen vehicle with a "peeled" steering column that he had observed being started with a screwdriver and "notwithstanding such observations," he "continued to ride in the automobile for approximately five hours," a rational trier of fact could find him guilty of receiving stolen property. *Windle* at *3; *see also State v. Dilldine,* 2d Dist. Greene No. 09-CA-61, 2010-Ohio-3648, ¶ 13 (Defendant-passenger received stolen vehicle when he "used the truck for transportation and entertainment [as demonstrated by] the video recording of his purchasing a beer at the general store."); *Bates* at *5 (Where the defendant was found in the rear of a stolen van "within a few minutes" and "approximately one block" from where it had been stolen, "such conduct manifests a clear intent to exercise dominion and control over the van.").

{¶ 27} Here, the state presented evidence that, at the time he got into the van behind the BP, he did so because he was "in need of a ride." Dean's use of the stolen vehicle for transportation purposes occurred within minutes of, and walking distance from, the site of the vehicle theft. Two days later, Dean—either as driver or passenger—was transported in the van to Walmart, where he was seen selecting a deli sandwich and conducting personal banking. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find that Dean "received" stolen property under R.C. 2913.51.

{¶ 28} Next, Dean argues that the state failed to show that he knew or should have known that the van was stolen.

{¶ 29} "A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B). When a disputed element of an offense is not susceptible of proof by direct evidence, circumstantial evidence may be used to provide an inference of guilt. *Emery* at ¶ 18, citing *State v. Hollenstein,* 6th Dist. No. L–08–1164, 2009–Ohio–4773, ¶ 27. Thus, "[i]n a prosecution for receiving stolen property, the jury may infer guilty knowledge when the defendant's possession of recently stolen property either goes unexplained or is not satisfactorily explained in the context of the surrounding circumstances, as shown by the evidence." *Id.,* citing *State v. Arthur,* 42 Ohio St.2d 67, 68–69, 325 N.E.2d 888 (1975); *see also State v. Collins,* 10th Dist. Franklin No. 11AP–130, 2012–Ohio–372, ¶ 14.

{¶ 30} Dean offered no explanation, much less a plausible one, as to why he had no cause to believe that the van was stolen. In fact, Dean never professed that he did not know the van was stolen, only that he was not the one who had stolen it. And his conduct suggests that he had every reason to know it was stolen. That is, just minutes before the theft, Dean was observed "on his phone * * * pacing" inside a hotel lobby before walking behind the BP, where he was last spotted at 12:30 p.m. The van was driven off the campus parking lot at 12:54 p.m., and appellant admitted that "the van came over, and he got in it." After his arrest in another case, Dean "acknowledged" his understanding of the scheme to his parole officer. While he "wouldn't specifically" identify the "two people"

who took the van, he did identify the model of the car that they used. The timeline also supports the inference that Dean knew, when he accepted a ride, that it was stolen, given his proximity in time (25 minutes) and space (across the street) to the theft. And, Dean's personal belongings were found in the van, near the company sign that was removed from the front door. Finally, the van was recovered in an area of town where Dean was known to frequent, less than two hours after he was known to have been in it. Although appellant *now* claims that the "people" who took the van "could" have been employees of Lake Erie Electric—as if to suggest that he had no reason to know it was stolen—his claim flies in the face of his previous statements to the police.

{¶ 31} In sum, the absence of any explanation by Dean as to why he was riding in or driving a stolen vehicle gave the jury sufficient evidence from which they could rationally conclude that Dean knew or should have known that it was stolen. *Accord, State v. Terry,* 186 Ohio App.3d 670, 2010–Ohio–1604, 929 N.E.2d 1111, ¶ 33 (4th Dist.2010) ("[Defendant] did not testify and thus explain why he thought the [forged] check was legitimate. All other circumstances could reasonably indicate to jurors that [he] knew the check was stolen."); *State v. Caldwell,* 10th Dist. Franklin No. 99–AP–1107, 2000 WL 1707841 (Nov. 16, 2000), * 6 (noting that defendant neither testified nor called witnesses on his behalf to rebut the inference of guilty knowledge, and finding his "only" explanatory statement to police "weak"). Based upon the record in this case, there is no question that sufficient evidence was presented from which the jury could infer,

beyond a reasonable doubt, that Dean received stolen property and that he knew or had reasonable cause to believe was stolen.

{¶ 32} Dean also challenges the weight of the evidence, specifically with regard to his knowledge that the van was stolen. Under a manifest weight standard, an appellate court must sit as a "thirteenth juror" and may disagree with the fact-finder's resolution of the conflicting testimony. *Thompkins,* 78 Ohio St.3d at 387, 678 N.E.2d 541. The appellate court, "'reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against conviction.'" *Id.,* quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 33} Dean argues that it "should be very interesting" to this court that the gas gauge did not work, and he asks that we share in his "amaze[ment] that the van was not just abandoned the first time it ran out of gas and died." But, there is no evidence that the van ever ran out of gas during its weekend sojourn. Perhaps the driver of the van filled up the tank multiple times over the weekend, not knowing how often it needed to be refilled. Or, as Dean suggests, perhaps the person who stole it knew that it had a defective gas gauge. Theft of the van is not an element of the offense, and the state was not required to prove the underlying theft. *Emery* at ¶ 15, citing *State v. Hill,* 4th Dist.

Pickaway No. 02CA-11, 2002-Ohio-7368, ¶ 15. Neither scenario causes the court to doubt the evidence put forth by the state that Dean knew or had reasonable cause to believe that, when he rode in and/or drove the van, that it was stolen.

{¶ 34} In short, we cannot conclude that the jury "clearly lost its way" in finding Dean guilty, nor are we persuaded that the "evidence weighs heavily against conviction." *Thompkins* at 386-387. We find that his conviction is not against the manifest weight of the evidence.

Venue

{¶ 35} Finally, Dean argues that the state failed to prove that he "committed a crime within the boundaries of Wood County." Dean frames his venue argument as a challenge to the weight of the evidence, but the substance of his claim is one of sufficiency. That is, he argues that that state "failed to put forth sufficient evidence" of venue and that "no evidence" was presented that he drove the van "in Wood County."

{¶ 36} The Ohio Constitution provides that a criminal defendant is guaranteed "a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed." Ohio Constitution, Article I, Section 10. The statutory counterpart is set forth in R.C. 2901.12(A) which provides that venue is proper in any county where "the offense, or any element of the offense, was committed." R.C. 2901.12(A) is a "general venue provision" while other sections of the statute are "more specific" in nature, providing for "fictionalized venue in some of the more difficult cases." Baldwins Ohio Practice Criminal Law, *Venue*, Section 56:3. In this case, the

state requested that the jury also receive an instruction under R.C. 2901.12(C) which provides that, "[w]hen the offense involved the unlawful taking or receiving of property * * *, the offender may be tried in any jurisdiction from which or into which the property * * * was taken, received, or enticed."

{¶ 37} Venue is not a material element of any crime, but is a fact that must be proven beyond a reasonable doubt. *State v. Headley*, 6 Ohio St.3d 475, 477, 453 N.E.2d 716 (1983). It is "not essential that the venue of the crime be proven in express terms, provided it be established by all the facts and circumstances in the case, beyond a reasonable doubt, that the crime was committed in the county and state as alleged in the indictment." *State v. Hampton,* 134 Ohio St.3d 447, 2012-Ohio-5688, 983 N.E.2d 324, ¶ 19, quoting *State v. Dickerson,* 77 Ohio St. 34, 82 N.E. 969 (1907), paragraph one of the syllabus.

{¶ 38} Dean argues that the state "merely proved" that he drove the van, but it failed to show that he ever drove it in Wood County. In making that argument, Dean limits his focus to his status as driver of the stolen vehicle. Even so, under R.C. 2901.12(A), venue is proper in any county where "the offense, *or any element of the offense*, was committed." (Emphasis added.). As discussed, Dean's criminal intent was established when he accepted a ride behind the BP in Wood County. Therefore, even if the state did not show that he ever *drove* the vehicle in Wood County, venue is proper as one of the elements, his knowledge that the van was stolen, did occur there. *See State v. Noser*, 6th Dist. Lucas No. L-00-1154, 2001 WL 1556491 (Dec. 7, 2001), *6 (Rejecting

defendant's argument that merely forming the *mens rea* to commit a crime is insufficient to establish venue) citing *State v. Smith,* 87 Ohio St.3d 424, 435-437, 721 N.E.2d 93 (2000) ("Here, the jury could reasonably find that prior calculation and design took place in Lorain County, and, as a result, venue in Lorain County was proper.").

{¶ 39} Moreover and as also discussed, Dean's status as passenger established the actus reus element of the offense, i.e. that he received stolen property by merely accepting a ride, which also occurred in Wood County. Accordingly, venue was properly established under R.C. 2901.12(A). Venue was also proper under R.C. 2901.12(C) because the stolen vehicle was "taken" from and "received" in Wood County. *See e.g. State v. McCollum,* 12th Dist. Clermont No. CA2014-11-077, 2015-Ohio-3286, ¶ 14.

{¶ 40} Upon review, we cannot find that the jury lost its way or that the evidence was insufficient to show that the offense occurred in Wood County.

Conclusion

{¶ 41} We find that Dean's conviction for receiving stolen property is supported by legally sufficient evidence and is not against manifest weight of the evidence. We also find that venue was proper. Accordingly, Dean's first and second assignments of error are found not well-taken, and the March 17, 2020 judgment of the Wood County Court of Common Pleas is affirmed. Pursuant to App.R. 24, Dean is ordered to pay the costs of this appeal.

Judgment affirmed.

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

Thomas J. Osowik, J.

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JUDGE

Christine E. Mayle, J.

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JUDGE

Gene A. Zmuda, P.J.
CONCUR.

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JUDGE