[Cite as *State v. Botan*, 2010-Ohio-6414.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- ABDIRASHID BOTAN Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J. Case No. 10-CA-60 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 09CR613
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 28, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
EARL L. FROST Assistant Prosecuting Attorney Licking County Prosecutor's Office 20 S. Second St. 4th Floor Newark, Ohio 43055	TODD W. BARSTOW 4185 East Main Street Columbus, Ohio 43213

Hoffman, P.J.

{¶1} Defendant-appellant Abdirashid Botan appeals his conviction and sentence entered by the Licking County Court of Common Pleas, on one count of grand theft, following a jury trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On September 4, 2009, the Licking County Grand Jury indicted Appellant on one count of burglary, one count of grand theft, and one count of theft, each with an attendant one-year firearm specification. Appellant appeared before the trial court for arraignment and entered a plea of not guilty to the Indictment. The matter proceeded to jury trial on May 17, 2010.

{¶3} The following evidence was adduced at trial. On June 16, 2009, Officer Michelle Fulton was working routine patrol during second shift when she was dispatched to Millstream Village, an apartment area, to assist in the investigation of a burglary. Officer Fulton arrived at 8764 Millwheel Drive, and noticed the screen of a front window had been pulled out and the blinds were hanging out of the window. The occupant, Bryan Lundquist, had returned home and found the front door unlocked.

{¶4} Amanda Pritt, who lives at 8731 Millwheel Drive, recalled sometime before noon on June 16, 2009, she observed a vehicle, which she had never seen before, parked across the street at Lundquist's residence. Pritt was outside with her 3 year old son, talking on the phone at the time, and was, as she described, "a little preoccupied". Pritt heard the door of Lundquist's residence close, and looked. She did not recognize the people exiting the home. One of the individuals was carrying two large white cases.

Not knowing her neighbor, Pritt waited several hours before contacting the police. Officers showed Pritt a photo array, but she was unable to identify Appellant.

{¶5} Detective Kevin McDonnell of the Reynoldsburg Police Department testified he was involved in the investigation of the burglary of the Lundquist residence. On July 6, 2009, the detective received a call from Blendon Township Police Department, advising him a stolen Marlin Rifle had been sold to Lev's Pawn Shop in Columbus. Detective McDonnell and Bryan Lundquist proceeded to the pawn shop the following day. Lundquist identified the rifle as the one which had been stolen from his home. The firearm was returned to Lundquist. After checking the pawn slip, the detective spoke with the employee who purchased the rifle. Based upon the conversation, Detective McDonnell determined Appellant was the individual who pawned the weapon.

{¶6} Detective McDonnell spoke with Appellant the same day. Appellant informed the officer he (Appellant) had received the firearm from a friend, Abdirahman Isse, and subsequently sold it to Lev's Pawn Shop. During a second conversation, Appellant changed his story, saying he received the firearm from a boy in his neighborhood, but did not know the boy's name. Detective McDonnell had recorded the first conversation, and reminded Appellant of such. Appellant stated the only thing he did wrong was sell the stolen firearm.

{¶7} Detective McDonnell showed a photo array to Amanda Pritt on July 21, 2009. Pritt was able to identify Abdirahman Isse from the photo array. She was unable to identify Appellant.

{¶8} Bryon Lundquist testified he arrived home at approximately 7 pm on June 16, 2009, and found the screen of one of the windows torn off and the window open. When he looked in the window, he realized two laptops were missing. Lundquist discovered his fiancé's engagement ring, an Ipod, two cameras, and two firearms, including a Marlin .22 rifle, were also missing. The total of the property taken was over $5,000.

{¶9} Abdirahman Isse testified he is serving a two year prison sentence for his involvement in the instant crime. Isse, who was driving a 1996 Oldsmobile Aurora, picked up Appellant on June 16, 2009. Appellant called someone, then Isse drove to a warehouse on Wagner Road, where they picked up another individual. Appellant stated he knew a good neighborhood and suggested the three do a "lick", stealing from cars. The men drove to Millstream Village. Appellant's friend noticed the open window at the Lundquist residence. Isse dropped Appellant's friend at the entrance to act as look out, and he and Appellant returned to the open window. Isse cut the screen and removed it from the window. Appellant climbed through the window. Appellant opened the front door for Isse. Isse removed two laptops from the home. Appellant came downstairs with two plastic boxes, which Isse carried to his car. Appellant also took two cameras. Upon returning to Isse's neighborhood, the three divided the property. Appellant took the rifle, indicating he intended to sell it.

{¶10} Brooke Cochran testified on Appellant's behalf. Cochran taught summer school at Westerville South High School during the summer of 2009. Her classes ran from 8:00 a.m. to 10:00 a.m., and from 10:00 a.m. to 12:00 p.m. Cochran's attendance sheet for June 16, 2009, showed Appellant was in her class at the 10:00 a.m. session.

On cross-examination, Cochran could not say whether Appellant was the actual individual in her class on June 16, 2009.

{¶11} At the close of his case, Appellant made an oral Crim. R. 29 motion for acquittal, which the trial court denied. The trial court instructed the jury on the applicable law. After hearing the instructions and deliberating, the jury found Appellant guilty of grand theft and the attendant firearm specification, but acquitted him of the remaining counts. The trial court sentenced Appellant to an aggregate term of incarceration of two years.

{¶12} It is from this conviction and sentence Appellant appeals, raising the following assignment of error:

{¶13} "I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF THEFT AS THAT VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶14} In his sole assignment of error, Appellant challenges his conviction as based upon insufficient evidence and as against the manifest weight of the evidence.

{¶15} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. "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 paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶16} On review for manifest weight, a reviewing court is to examine 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 jury 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. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins,* 78 Ohio St.3d 380, 678 N.E.2d 541, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶17} Appellant was convicted of grand theft, in violation of R.C. 2913.02(A)(1)(B)(4), which provides:

{¶18} "(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: (1) Without the consent of the owner or person authorized to give consent; * * * (B)(4) If the property stolen is a firearm or dangerous ordnance, a violation of this section is grand theft. * * *"

{¶19} Appellant contends the State failed to present evidence he knew the firearm was stolen when he pawned it. We disagree. Detective Kevin McDonnell testified he interviewed Appellant following his arrest and Appellant acknowledged the firearm was stolen. Appellant specifically told Detective McDonnell the only thing he

had done wrong was selling a stolen firearm. We find, despite Appellant's assertion, the statement is not ambiguous.

{¶20} Accordingly, we find Appellant's conviction was based upon sufficient evidence and not against the manifest weight of the evidence.

{¶21} Appellant's sole assignment of error is overruled.

{¶22} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ABDIRASHID BOTAN	:	
	:	
Defendant-Appellant	:	Case No. 10-CA-60

For the reasons stated in our accompanying Opinion, the judgment of the Licking County Court of Common Pleas is affirmed. Costs to Appellant

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE