

[Cite as *State v. Whitman*, 2011-Ohio-1361.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94734**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WILLIAM H. WHITMAN**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-526494

**BEFORE:** Sweeney, P.J., Cooney, J., and Rocco, J.

**RELEASED AND JOURNALIZED:** March 24, 2011

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JAMES J. SWEENEY, P.J.:

{¶ 1} Defendant-appellant William Whitman appeals his conviction for theft. For the reasons that follow, we affirm.

{¶ 2} Two brothers, Adnan and Nassar Wahdan, operated a grocery store with annexed apartments in Cleveland, Ohio. At trial, the Wahdan brothers, two police officers, and defendant testified.

{¶ 3} Adnan hired defendant to remodel the apartments. Adnan supplied defendant with tools, supplies, and materials for the job; which included saws, drills, floor sanders, vanities, toilets, light fixtures, and whatever else defendant said he needed for the job. Defendant was also

living in one of the apartment units rent-free while he was making the repairs. Adnan testified that all the tools and fixtures were kept in defendant's apartment, for which defendant had the only key because he had changed the locks.

{¶ 4} On July 6, 2009, Nassar asked defendant to return a drill. Upon entering his apartment with Nassar, defendant declared, "We been robbed. We been robbed." Later defendant confessed to the Wahdams that he had given the items away to pay a debt. Defendant said he could get the items back, however, he insisted that the Wahdams could not go with him to retrieve the merchandise. Adnan then said he was going to call police. Defendant objected to involving the police, saying there were warrants for his arrest. Defendant started yelling and Nassar attempted to calm him down.

{¶ 5} Adnan had a gun in a holster during this incident. He explained that he carried the weapon due the high-crime nature of the neighborhood. Adnan and Nassar denied that anyone threatened defendant or brandished a gun. While Nassar was outside on the phone with police, defendant tried to cut Adnan with a box cutter (later identified as State's exhibit 1). Adnan ducked and hit defendant's head, which caused his hand to swell. Adnan denied drawing his weapon and said his reaction was just to back up and hit defendant. Adnan was unable to keep hold of defendant due to one broken finger and another shattered finger. Nassar went to find defendant and

located him nearby the store. Defendant told Nassar he was on his way to retrieve the property. At this point, Nassar saw the police and flagged them down as defendant fled.

{¶ 6} Police located defendant hiding under a porch. He complied with their directions, was arrested and taken back to the store where the Wahdan brothers identified him. Both officers testified that defendant admitted to selling the property to pay off a debt.

{¶ 7} According to defendant, Nassar beat him with a pistol when he discovered the property was missing from defendant's apartment. Then, Adnan held him at gunpoint until he was able to escape. Defendant maintained that he broke Adnan's hand while trying to escape his grasp. Defendant admitted that he told the brothers he had given away the property to satisfy a debt but defendant said that this was untrue. He only said that because he was scared. Defendant admitted that he made similar comments when confronted by Nassar on the street. Defendant denied telling officers anything about giving the property away. Defendant acknowledged his prior record, which included offenses for theft of power tools and a car.

{¶ 8} Adnan identified the following property as missing: a drill that cost \$299.99, plus tax; a hammer drill that cost \$89.00, plus tax; and cans of paint worth \$169.00, plus tax. In addition, two new toilets, vanities, sink tops, and other items were missing. Nassar confirmed that the property was

missing and the value of the drill and paint. Defendant asserted his belief that the missing property was less than \$500.00 in value but he estimated the vanities and toilets were alone worth a combined total of \$260.00.

{¶ 9} The jury found defendant not guilty of felonious assault but guilty of theft. Defendant's appeal presents two assignments of error that challenge the sufficiency and weight of the evidence.

{¶ 10} "Assignment of Error I: The trial court erred in denying Appellant's motion for acquittal as to the charge when the state failed to present sufficient evidence to sustain a conviction."

{¶ 11} 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. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541.

{¶ 12} Defendant asserts that the state failed to prove that defendant stole anything or that he committed any crime. Contrary to his assertions, the record contains testimony that defendant admitted to four different witnesses that he gave the Wahdan brothers' property to another person in

order to satisfy a debt that defendant allegedly owed that third party. Although defendant claimed he made these confessions out of fear (and denied making any admissions to the police), they provide sufficient evidence to support his conviction for theft.

{¶ 13} This assignment of error is overruled.

{¶ 14} “Assignment of Error II: Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 15} To warrant reversal of a verdict under a manifest weight of the evidence claim, this Court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 16} Defendant simply contends the jury lost its weight by finding him guilty of theft. Again, the record evidence does not support this conclusion. This assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from 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.

JAMES J. SWEENEY, PRESIDING JUDGE

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COLLEEN CONWAY COONEY, J., and  
KENNETH A. ROCCO, J., CONCUR