

[Cite as *State v. Griffin*, 2009-Ohio-2482.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080392
	:	TRIAL NO. B-0708475
Plaintiff-Appellee,	:	
vs.	:	<i>DECISION.</i>
MICHAEL GRIFFIN,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed as Modified

Date of Judgment Entry on Appeal: May 29, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Tanner B. McFall*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

William R. Gallagher and *Arenstein & Gallagher*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant, Michael Griffin, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of receiving stolen property under R.C. 2913.51(A), a felony of the fifth degree as charged. He was convicted after a bench trial.

{¶2} Early one morning, David Warner discovered that an intruder had been in his garage the night before and had stolen the global-positioning-system (“GPS”) unit from his car. That same morning, Warner looked for the unit on Craigslist, an Internet website on which people sell used items.

{¶3} Warner saw a GPS unit similar to the one that had been stolen, and he arranged to meet the seller. Before going to the appointed place, Warner alerted the police. Police Officer Carlos Sherman arrived before Warner and spoke with a person later identified as Griffin.

{¶4} Griffin told Sherman that he had arranged to meet someone so that he could purchase a GPS unit. Further investigation, though, revealed that Griffin was in possession of Warner’s GPS unit. The unit was hidden beneath the driver’s seat in Griffin’s car, and numerous other stolen items were also found in the vehicle.

{¶5} At trial, Warner testified that he had purchased the GPS unit for around \$800 several months before it had been stolen. He produced a more recent advertisement for the device that listed a retail price for a new unit of the same model as \$589.27.

{¶6} Griffin testified that he had purchased the GPS from Craigslist with the intention of reselling it, but he denied any knowledge that it had been stolen. The trial court found him guilty and sentenced him to the maximum term of 12 months’ imprisonment.

{¶7} In his first and second assignments of error, Griffin now argues that his conviction was based on insufficient evidence and was against the manifest weight of the evidence. We address the assignments together.

{¶8} In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court “is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”¹ To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.²

{¶9} 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.” In a prosecution for receiving stolen property, the trier of fact may find the defendant guilty by inference when the defendant’s possession of recently stolen property is not satisfactorily explained under all the circumstances developed from the evidence.³ Where the value of the property is \$500 or more but less than \$5000, receiving stolen property is elevated from a misdemeanor of the first degree to a felony of the fifth degree.⁴

{¶10} In this case, the trial court did not err in finding Griffin guilty. The GPS unit was listed for sale almost immediately after it had been stolen. Griffin lied to the officer about his reason for meeting Warner, and he had the GPS unit hidden

¹ *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

² *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

³ See, e.g., *State v. Kirby*, 10th Dist. No. 06AP-297, 2006-Ohio-5952, ¶14.

⁴ R.C. 2913.51(C).

in his car along with numerous other stolen items. The court therefore reasonably inferred that Griffin had known that the property had been stolen.

{¶11} But Griffin also argues that the state failed to prove that the value of the GPS unit was at least \$500. Under R.C. 2913.61(D)(3), the value of personal property is determined by its “fair market value,” which is defined as “the money consideration that a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.”

{¶12} The “fair market value” defined in R.C. 2913.61(D)(3) is distinguished in the statute from replacement value, which is the measure of value for heirlooms and collector’s items,⁵ and for items that are used in the victim’s profession, business, trade, or occupation.⁶

{¶13} In this case, the state did not present evidence of the “fair market value” of the GPS unit. Warner’s testimony established only that he had paid \$800 for the item and that, at the time of the trial, he could have replaced it with a new device for \$598.27. The state did not establish what a willing buyer would have paid a willing seller for a used GPS device. And in light of the evidence that the model owned by Warner was rapidly depreciating in value, the trial court could not have reasonably inferred that a used model would have retained a value of at least \$500.

{¶14} Accordingly, we sustain the first and second assignments of error in part. Although the finding of guilt was proper, Griffin could have been properly convicted of only a misdemeanor of the first degree and sentenced to a maximum term of six months’ incarceration.⁷

⁵ R.C. 2913.61(D)(1).

⁶ R.C. 2913.61(D)(3).

⁷ R.C. 2929.24(A)(1).

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{¶15} In his third and final assignment of error, Griffin argues that his trial counsel was ineffective in failing to present evidence that the value of the GPS was less than \$500. Our disposition of the first and second assignments of error renders this assignment moot, and we need not address it on its merits.

{¶16} We hereby enter a conviction for a violation of R.C. 2913.51(A) as a misdemeanor of the first degree and order Griffin incarcerated for a period of six months.

Judgment accordingly.

HILDEBRANDT, P.J., PAINTER and SUNDERMANN, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.