

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-L-099
KEVIN WEIZER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 000622.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Craig J. Morice, Craig J. Morice, Esq., L.L.C., 1940 East Sixth Street, 7th Floor, Cleveland, OH 44114 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Kevin Weizer, appeals from his conviction and sentence following a jury trial on one count of burglary, one count of receiving stolen property, and one count of possession of marijuana. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} Officer James Perkins from the Eastlake Police Department responded to a reported burglary in progress on August 25, 2009. When he arrived at the scene of

the incident, Officer Perkins spoke to the victim, Sandra Stih. Ms. Stih stated that when she arrived at her residence, she noticed its entrance was not as she had left it that morning. Entering her home, she observed numerous items missing, including, inter alia, items from her curio cabinet, credit cards, and her ex-boyfriend's adult video and magazine collection.

{¶3} Officer Perkins searched the inside of the home. He then searched the immediate vicinity. Officer Perkins spoke with Anthony Fistek, the owner of a business located across from Ms. Stih's home. Mr. Fistek stated that he observed a man walking around the neighborhood that afternoon who did not appear to be one of its residents. Mr. Fistek stated the individual approached Ms. Stih's front door and eventually made his way to the rear of her home; he was later seen sitting on the front porch of an adjacent residence.

{¶4} Officer Perkins approached the gentleman on the front porch, who retreated into the residence. Upon knocking at the door, Tianna Sopnicar, the owner of the residence, answered. Ms. Sopnicar allowed Officer Perkins to enter her home. Appellant was located in the bedroom. Ms. Sopnicar indicated to Officer Perkins that appellant was not wanted in her home, and, consequently, Officer Perkins escorted appellant outside and placed him in his police cruiser. Officer Perkins then returned into the residence and recovered a purple bag from an area that was within "arm's length" from where appellant was found. The bag contained a small silver tray and a pill bottle containing marijuana cigarettes.

{¶5} The remaining items taken from Ms. Stih's home were located within close proximity to her residence. These items were identified by Ms. Stih and Richard Felts, Ms. Stih's ex-boyfriend.

{¶6} A jury trial was held and appellant was found guilty. Appellant was sentenced to a four-year term of imprisonment on the burglary charge and a six-month sentence on the receiving stolen property charges, to be served concurrent with each other. Appellant filed a timely notice of appeal and, as his first assignment of error, he asserts:

{¶7} "The guilty verdict and conviction entered by the trial court against Mr. Weizer was based upon insufficient evidence."

{¶8} When measuring the sufficiency of the evidence, an appellate court must consider whether the state set forth adequate evidence to sustain the jury's verdict as a matter of law. *Kent v. Kinsey*, 11th Dist. No. 2003-P-0056, 2004-Ohio-4699, at ¶11. A verdict is supported by sufficient evidence when, after viewing the evidence most strongly in favor of the prosecution, there is substantial evidence upon which a jury could reasonably conclude that the state proved all elements of the offense beyond a reasonable doubt. *State v. Schaffer* (1998), 127 Ohio App.3d 501, 503, citing *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, at *14-15.

{¶9} Appellant alleges that the state did not present sufficient evidence to convict him on one count of burglary, a violation of R.C. 2911.12(A)(3), which states:

{¶10} "(A) No person, by force, stealth, or deception, shall do any of the following:

{¶11} “***

{¶12} “(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense[.]”

{¶13} Appellant presents two arguments for our review. First, appellant maintains that there is no direct link between him and the instant crime. Second, appellant asserts there is a lack of evidence placing him either inside the victim’s home or possessing the items belonging to the victim and her ex-boyfriend.

{¶14} Although appellant notes that his conviction was based on circumstantial evidence, the Supreme Court of Ohio, in *State v. Jenks*, 61 Ohio St.3d 259, 272, held:

{¶15} “Circumstantial evidence and direct evidence inherently possess the same probative value. In some instances certain facts can only be established by circumstantial evidence. Hence, we can discern no reason to continue the requirement that circumstantial evidence must be irreconcilable with any reasonable theory of an accused’s innocence in order to support a finding of guilt. *** Since circumstantial evidence and direct evidence are indistinguishable so far as the jury’s fact-finding function is concerned, all that is required of the jury is that it weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt. Nothing more should be required of a factfinder.” (Citations omitted.)

{¶16} The evidence presented demonstrates that appellant was seen by Mr. Fistek looking around the victim’s residence on the day of the burglary. Mr. Fistek further testified that the individual he had previously seen at Ms. Stih’s residence was

the same individual sitting on the front porch of Ms. Sopnicar's residence. Ms. Sopnicar testified that when appellant arrived at her residence, he told her that he "came across a lick," a term she understood as stealing from someone. Further, when Officer Perkins arrived at Ms. Sopnicar's residence, appellant retreated inside. Having permission from Ms. Sopnicar to enter her residence, Officer Perkins located appellant and, within arm's length, found a purple bag containing a silver tray. These items were later identified as items stolen from Ms. Stih's residence.

{¶17} Ms. Sopnicar testified that, upon entering her home, appellant used her telephone. Further, the jury heard testimony that the remaining items were located in a wooded area behind Ms. Stih's residence. Evidence was also produced that appellant did not possess a driver's license nor did he own a vehicle. This testimony, when combined, could have led the jury to believe that after he stole the items from Ms. Stih's house, appellant hid the items in the wooded lot until he was able to secure a ride or a vehicle to transport the items from the scene of the incident.

{¶18} Additionally, Ms. Stih testified that appellant stopped by her home the night before the burglary and was "acting kind of funny [and] looking around." Although circumstantial, we find that appellant's conviction was supported by sufficient evidence, and, therefore, appellant's first assignment of error is without merit.

{¶19} Appellant's second assigned error states:

{¶20} "The guilty verdict and conviction entered by the trial court against Mr. Weizer was against the manifest weight of the evidence."

{¶21} In determining whether a verdict is against the manifest weight of the evidence, the Supreme Court of Ohio has adopted the following language as a guide:

{¶22} “The 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 the conviction.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. (Citations omitted.)

{¶23} In weighing the evidence submitted at a criminal trial, an appellate court must defer to the factual findings of the jury regarding the weight to be given the evidence and credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶24} Appellant argues that none of the state’s witnesses could place appellant at Ms. Stih’s house on the day of the burglary. However, as noted, the jury heard evidence that appellant was perusing Ms. Stih’s house on the day of the burglary. The jury then heard evidence from Officer Perkins that appellant was found in Ms. Sopnicar’s residence, and within his arm’s length were items that belonged to the victim. Although the jury heard appellant’s grandmother testify that those items belonged to appellant, it is the role of the jury to judge the credibility of the witnesses and to determine the amount of weight to be given to her testimony. Therefore, the jury was free to believe, based on the testimony of the victims, that the purple bag containing a silver tray was pilfered from Ms. Stih’s home.

{¶25} We therefore hold there was sufficient, credible evidence on which the jury could rely to support its verdict. Appellant’s second assignment of error is without merit.

{¶26} The judgment of the Lake County Court of Common Pleas is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.