[Cite as *State v. Ford*, 2016-Ohio-8350.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 16AP-282
v.	:	(C.P.C. No. 14CR-4077)
AJ Edward V. Ford,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 22, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Michael P. Walton*, for appellee.

On brief: *Megan E. Grant*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, AJ Edward V. Ford, appeals from a judgment of conviction entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} On August 1, 2014, a Franklin County Grand Jury indicted appellant with single counts of burglary in violation of R.C. 2911.12 and theft in violation of R.C. 2913.02. The charges arose out of a break-in at an apartment located at 5011 Godown Road, Columbus, Ohio, on June 24, 2014. Appellant entered a not guilty plea and proceeded to a jury trial.

{¶ 3} At the trial, the tenants of the apartment, Phillip Young and McKenna Wheeler, testified that they were both at work when Wheeler's mother called and told them that their apartment's back sliding door was open. When they got home, they each noticed miscellaneous items missing from the apartment, including: gaming consoles and games, tablets, a camera, a television, a laptop computer, and a black laptop bag. Young and Wheeler both testified that they did not give anyone permission to be in their apartment that day.

{¶ 4} Paul Schwendenman, a resident of the apartment complex, testified that he was working in his apartment on June 24, 2014. His office had a window from which he could see the complex's parking lot. As he worked, he noticed a man walking past his window back and forth multiple times over the course of a couple hours. The man was not carrying anything and did not appear to be going anywhere. Schwendenman became so suspicious that he took a picture of the man. After that, he saw the man walk past his window again but this time he had a white trash bag and a black laptop bag. Schwendenman thought the trash bag looked "lumpy" and that it looked like he had stuff in there that he was moving. (Tr. 52.) Schwendenman did not see the man again for some period of time so he went outside to look for him. He saw the man pulling out of the parking lot in a car, so he wrote down the car's license plate number. Later, when he saw police in the apartment complex, he told them what he had seen that day. Schwendenman identified appellant as the man he saw that day in the apartment complex.

{¶ 5} The police investigating the break-in checked the license plate number Schwendenman gave them and discovered to whom the car was registered. The police talked to that person's mother, Maria Manns, who testified that even though the car was registered in her son's name, the car was owned and driven by appellant, who was her nephew. (Tr. 97.) Manns also identified appellant as the person in the picture Schwendenman took of the person walking around in the apartment complex. The police were unable to find appellant's fingerprints or any other physical evidence in the apartment and subsequent searches of two residences also failed to discover any of the stolen items.

{¶ 6} The jury found appellant guilty of burglary and of a lesser form of theft. The trial court sentenced him accordingly.

II. Appellant's Appeal

{¶ 7} Appellant appeals his convictions and assigns the following errors:

> [1.] The verdict was against the manifest weight of the evidence.
>
> [2.] The evidence against Mr. Ford was insufficient to sustain a jury verdict of guilty.

A. Appellant's Assignments of Error–The Manifest Weight and Sufficiency of the Evidence

{¶ 8} Appellant argues in his assignments of error that his convictions are not supported by sufficient evidence and are also against the manifest weight of the evidence. Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶ 11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's convictions are supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 9} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review 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 trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 10} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the jury's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

B. Analysis

{¶ 11} Appellant argues that his convictions are against the manifest weight of the evidence because Schwendenman's identification of him was questionable and that the only other evidence to support the verdict was circumstantial evidence. We find these arguments unpersuasive.

{¶ 12} Initially, we reject appellant's claim that Schwendenman's identification was questionable. He presents no reasons or arguments to support this claim.

{¶ 13} Next, we note that appellant is correct that the state's case against him is entirely circumstantial. However, "[a] conviction can be sustained based on circumstantial evidence alone." *State v. Franklin*, 62 Ohio St.3d 118, 124 (1991), citing *State v. Nicely*, 39 Ohio St.3d 147, 154-55 (1988). Circumstantial evidence possesses the same probative value as direct evidence. *State v. Sowell*, 10th Dist. No. 06AP-443, 2008-Ohio-3285, ¶ 89. In fact, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence. *State v. McBride*, 10th Dist. No. 10AP-585, 2011-Ohio-1490, ¶ 26, citing *State v. Ballew*, 76 Ohio St.3d 244, 249 (1996).

{¶ 14} No one testified that appellant broke into the apartment and police did not find any physical evidence linking appellant to the break-in. The lack of physical evidence linking appellant to these crimes does not render his convictions against the manifest weight of the evidence. *State v. Berry*, 10th Dist. No. 10AP-1187, 2011-Ohio-6452, ¶ 20, citing *State v. Nix*, 1st Dist. No. C-030696, 2004-Ohio-5502, ¶ 65-71 (rejecting argument that convictions were against the manifest weight of the evidence where testimony

overwhelmingly supported convictions). While physical evidence would have strengthened the case, Schwendenman's testimony placing appellant in the apartment complex initially carrying nothing, but later carrying a laptop bag and a white trash bag filled with items,[1] and Mann's testimony linking him to the car that drove away from the scene placed appellant at the scene and strongly implicated him in the crime. Additionally, Schwendenman testified that appellant left with a black laptop bag. Young testified that a black laptop bag was missing from the apartment. Finally, Mann identified appellant, her nephew, as the person in the picture that Schwendenman took that day. Given this testimony, we cannot say the jury lost its way and created a manifest miscarriage of justice. *State v. Boone*, 10th Dist. No. 14AP-87, 2015-Ohio-2648, ¶ 53; *State v. Jackson*, 7th Dist. No. 09 JE 13, 2009-Ohio-6407, ¶ 13-16 (lack of physical evidence does not make convictions against manifest weight of the evidence where victim's testimony linked defendant to crimes); *State v. Reine*, 4th Dist. No. 06CA3102, 2007-Ohio-7221, ¶ 25 (same).

{¶ 15} In light of the evidence presented, we cannot say that the jury lost its way or created a manifest miscarriage of justice in finding appellant guilty. Accordingly, appellant's convictions are not against the manifest weight of the evidence. This conclusion is also dispositive of appellant's claim that his convictions are not supported by sufficient evidence. *Boone* at ¶ 55; *State v. Green*, 10th Dist. No. 11AP-526, 2012-Ohio-950, ¶ 13. For these reasons, we overrule appellant's two assignments of error.

III. Conclusion

{¶ 16} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN, P.J., and TYACK, J., concur.

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[1] Wheeler testified that she usually uses white trash bags in her house. (Tr. 46.)