

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1425

Appellee

Trial Court No. CR0200802297

v.

Stephen Martin Bedrin

DECISION AND JUDGMENT

Appellant

Decided: August 20, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael Loisel, Assistant Prosecuting Attorney, for appellee.

Scott J. Hoffman, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Stephen M. Bedrin, appellant, appeals his conviction for the offense of burglary, a violation of R.C. 2911.12(A)(4) and (C) and a fourth degree felony. The conviction is based upon a guilty verdict returned by a jury after trial in the Lucas County

Court of Common Pleas. In a judgment filed on November 13, 2008, the trial court sentenced appellant to serve a 14 month prison term for the offense.

{¶ 2} Bedrin asserts one assignment of error on appeal:

{¶ 3} "I. The trial court committed reversible error when it denied defendant the ability to admit all potentially exculpatory evidence."

{¶ 4} The evidence at trial was that on May 10, 2008, Barbara Black lived at Woodside Terrace Mobile Home Court in Lucas County, Ohio, in a trailer owned by her and her two children. She and her children leased the lot for the trailer from the trailer court. Black's father acted as a cosigner on the lease of the lot. Black moved to the mobile home park in August 2007.

{¶ 5} Barbara Black testified that she and Bedrin dated for five years and lived together at different places including the trailer at Woodside Terrace. She testified Bedrin last resided with her at Woodside Terrace on March 13, 2008, when Bedrin became angry at Black's son and left the residence. Black described Bedrin as "always drunk, violent, mean to the kids" and testified that she decided she "didn't want to deal with the problems anymore." She told Bedrin: "I did not want him back to my home anymore." Black testified that she subsequently removed his belongings from the trailer and dropped them off at Bedrin's mother's residence.

{¶ 6} The indictment for burglary against Bedrin was filed on June 6, 2008, and alleged an offense date of May 10, 2008. Black testified that on that date she returned to her residence with her children and found a door to the trailer open and Bedrin inside.

Black testified that she had left both doors to the trailer locked. She testified that she did not know if Bedrin had a key to the trailer. Black and her daughter's boyfriend both testified to seeing pry marks at one of the doors to the trailer.

{¶ 7} Two deputies from the Lucas County Sheriff's office responded to a call for assistance. Bedrin ran from the trailer after the deputies arrived at the residence.

{¶ 8} Under Assignment of Error No. I, appellant argues that the trial court erred in its rulings on the admissibility of evidence at trial. He argues first that the court erred by denying admission into evidence a series of letters written by Barbara Black. Secondly, appellant argues that the trial court erred by prohibiting his parents, Rosemary and Dave Border, from testifying at trial.

{¶ 9} On appeal, we review trial court decisions on the admissibility of evidence under an abuse of discretion standard. *Peters v. Ohio State Lottery Comm.* (1992), 63 Ohio St.3d 296, 299; *Reinbolt v. Kern*, 183 Ohio App.3d 287, 2009-Ohio-3492, ¶ 28. An abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

Order Denying Admission of Correspondence into Evidence

{¶ 10} The trial court excluded letters and a Valentine's Day card from evidence at trial. Appellant argues that the correspondence conflicted with testimony by Barbara Black that appellant did not work. Bedrin claims that the correspondence shows that he worked part-time as an independent auto mechanic. Appellant also argues that Exhibit

A2, a note, shows that he had a reasonable belief that he was permitted in the trailer at the time of the incident on which the burglary charge is based.

{¶ 11} We have reviewed the correspondence exhibits. We agree with the trial court that none of the exhibits indicate appellant worked as a mechanic on either a part-time or full-time basis.

{¶ 12} Exhibit A2 is a brief note, written by Barbara Black, indicating she would be back and instructing the reader to "come in the house" as the door was unlocked. While the undated note is evidence of permission to enter a residence when written, Barbara Black testified that the note was written with respect to a different residence and before she moved to Woodside Terrace. We find no abuse of discretion in the trial court's rulings denying admission of these exhibits at trial.

Order Prohibiting Rosemary and Dave Border from Testifying at Trial

{¶ 13} The trial court ordered that Rosemary and Dave Border could not testify as witnesses at trial on behalf of appellant. The Borders are appellant's parents.

{¶ 14} The record reflects that appellant filed a request for discovery from the state on July 23, 2008. The state served its response to the discovery request on July 31, 2008, accompanied by a written reciprocal demand for discovery. The request included a request for identification of appellant's potential trial witnesses. On August 13, 2008, appellant filed a response to the state's request. Appellant identified himself as the only trial witness to testify on his behalf. Appellant did not supplement the response by naming any other trial witnesses.

{¶ 15} The case proceeded to trial on October 15, 2008. Appellant did not disclose to the state his intent to call the Borders as witnesses until the second day of trial. The state objected. The state argued that appellant violated his obligations to provide pretrial discovery under Crim.R. 16.

{¶ 16} The court conducted a hearing outside the presence of the jury on objections to the testimony of the Borders. The state argued that Crim.R. 16(E)(3) sanctions for failure to provide pretrial discovery of trial witnesses was appropriate but also raised objections to the proposed testimony on alternative evidentiary grounds. The court considered the objections together and made its ruling precluding testimony by the Borders under both evidentiary grounds and as sanctions under Crim.R. 16(E)(3).

Nature of Proposed Testimony

{¶ 17} During the hearing on objections, the trial court requested counsel to identify witnesses appellant intended to call in his case and to state the nature of their intended testimony. Counsel for appellant stated that the Borders would testify to "the defendant's [Bedrin's] tenancy on the premises." Counsel stated that the Borders would testify that the Borders paid rent for Bedrin and Black on the day they moved into Woodside Terrace. In the proposed testimony, counsel indicated the Borders would also testify that Black requested money to pay rent on seven to 10 times in the past and that they made payments to Black.

{¶ 18} The trial court reminded counsel that trial testimony indicated that Bedrin and Black had lived together at different places for a period of five years and asked

whether the witnesses would provide a time period in which the events detailed in their proposed testimony occurred. Counsel did not respond to the question and in the formal proffer of the Borders' testimony provided no time frame for the claimed requests for rent money or payments made, other than that the Borders would testify that they paid rent on the day Black and Bedrin moved into Woodside Terrace. The record discloses that Black moved to Woodside Terrace in August 2007.

{¶ 19} In the evidentiary proffer, counsel for appellant stated that the Borders would also testify that they witnessed appellant use his key to enter the trailer at different times until March of 2008.

Whether Proper Foundation Existed for Borders' Testimony

{¶ 20} Appellant argued in the trial court that the testimony of the Borders was offered to prove a right in tenancy held by Bedrin and thereby presenting a legal right or privilege to be present in the trailer on May 10, 2008. Proof of trespass is an element of burglary, a violation R.C. 2911.12 (A)(4) and (C). R.C. 2911.12(A)(4). The criminal trespass statute, R.C. 2911.21, prohibits any "person, without privilege to do so" from knowingly entering or remaining on the land or premises of another. R.C. 2911.21(A) and 2911.21(A)(1)-(4).

{¶ 21} Black and Bedrin lived together for five years prior to March 13, 2008, at different locations. Without testimony as to when claimed payments were made, there is no basis to conclude that such payments pertained to the trailer at Woodside Terrace. All but one of the claimed payments lacked any evidence of when they were made. In our

view, it was speculative whether proposed testimony as to rental payments of unspecified dates even related to the trailer at Woodside Terrace.

{¶ 22} Evid.R. 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." As to testimony of a single payment of rent made nine months before the incident on which the criminal charge was brought, we find no abuse of discretion by the trial court in precluding such testimony on evidentiary grounds. The single payment was remote in time and without more does not tend to prove the existence of any right or privilege for Bedrin to remain on the premises on May 10, 2008.

{¶ 23} Whether appellant held a key to the trailer was not an issue at trial. Black testified at trial that she and Bedrin had resided together at different places for five years before March 13, 2008, and that Black did not recall whether he had a key to the trailer.

{¶ 24} We find no abuse of discretion in the trial court's decision to preclude the testimony of the Borders at trial on evidentiary grounds. It is unnecessary for this court to consider whether under Crim.R. 16(E)(3) the order was also an appropriate sanction for violation of criminal discovery rules. Appellant's sole assignment of error is not well-taken.

{¶ 25} On consideration whereof, the court finds that substantial justice was done the party complaining and appellant was not denied a fair trial. The judgment of the Lucas

County Court of Common Pleas is affirmed. Appellant is ordered to pay costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J .

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
