

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

In re M.R.

Court of Appeals No. E-13-066

Trial Court No. 2012-F-85

**DECISION AND JUDGMENT**

Decided: April 11, 2014

\* \* \* \* \*

Elizabeth F. Wilber, for appellant.

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Frank Romeo Zeleznikar, Assistant Prosecuting Attorneys, for appellee.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, Juvenile Division, that adjudicated appellant, minor child M.R., delinquent of the offenses of burglary, tampering with evidence, theft and obstructing official business.

For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} The undisputed facts relevant to this appeal are as follows. On the morning of August 10, 2012, a laptop was stolen from the front porch of a home located in Sandusky, Erie County, Ohio. Later that day, appellant, then 17 years old, was arrested in connection with the theft. On August 13, 2012, complaints were filed against appellant, alleging he was a delinquent child in connection with one count of burglary in violation of R.C. 2911.12(A)(1), one count of tampering with evidence in violation of R.C. 2921.12(A)(1), one count of theft in violation of R.C. 2913.02, and one count of obstructing official business in violation of R.C. 2921.31. Appellant was adjudicated delinquent as to all counts on September 20, 2012. At the dispositional hearing on October 23, 2012, however, the trial court rendered disposition only for the burglary and tampering with evidence charges.

{¶ 3} After appellant filed a notice of appeal, this court sua sponte dismissed the appeal without any briefing of the issues, finding that because the trial court did not dispose of all four counts, the judgment was not a final, appealable order. This court then certified the case to the Ohio Supreme Court as being in conflict with another Ohio appellate case; on June 19, 2013, the Supreme Court declined to accept jurisdiction. On September 25, 2013, the trial court held a dispositional review hearing in this matter. The trial court continued its prior orders and also issued specific dispositional orders as to each count to which appellant had been adjudicated delinquent. This timely appeal followed.

{¶ 4} Appellant now sets forth the following assignments of error:

Assignment of Error No. 1 – The trial court violated [M.R.]’s right to due process and a fair trial under the Fifth And Fourteenth Amendments of the United States Constitution, Article One, Section Ten and Article One, Section Sixteen of the Ohio Constitution, and Juv.R. 29(E)(4) when it adjudicated him delinquent of theft, tampering with evidence, and burglary on the basis of unduly suggestive and unreliable eyewitness identification.

Assignment of Error No. 2 – The trial court violated [M.R.]’s right to due process under the Fifth And Fourteenth Amendments of the United States Constitution, Article One, Section Ten and Article One, Section Sixteen of the Ohio Constitution, and Juv.R. 29(E)(4) when it adjudicated him delinquent of tampering with evidence, theft and burglary absent proof of every element of the charge against him by sufficient, competent, and credible evidence.

Assignment of Error No. 3 – The trial court violated [M.R.]’s right to due process under the Fifth And Fourteenth Amendments of the United States Constitution, Article One, Section Ten and Article One, Section Sixteen of the Ohio Constitution when it adjudicated him delinquent of tampering with evidence, theft and burglary, when that finding was against the manifest weight of the evidence.

{¶ 5} In support of his first assignment of error, appellant asserts that the trial court erred by adjudicating him delinquent of all four counts because the evidence against him consisted of unreliable eyewitness testimony. Appellant challenges the arresting officer's testimony that, after Sonya Adcock told him her laptop had been stolen, he observed an individual, half a block from Adcock's house, take a computer from his shorts, throw it on the ground and run; the officer later identified appellant as that individual. Appellant's challenge to the reliability of that testimony is based on arguments that there were no corroborating witnesses and that no fingerprints were taken from the computer. Appellant also asserts that the officer had a limited period for observation and that what he saw took place half a block away.

{¶ 6} Factors to consider in determining reliability include:

the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of the time between the crime and the confrontation. *Neil v. Biggers* (1972), 409 U.S. 188, 199, 93 S.Ct. 375, 34 L.Ed. 2d 401.

{¶ 7} Further, questions as to the reliability of eyewitness testimony are best left to the discretion of the trial court. *State v. Tonn*, 2d Dist. Greene Nos. 2004-CA-36, 2004-CA-37, 2005-Ohio-2021, ¶ 10.

{¶ 8} Given that the eyewitness whose testimony appellant challenges—Officer John Powell—was an officer with 14 years’ experience who had a clear view of the individual as previously described, in broad daylight, within minutes of having been informed of the theft, we are unable to find that the testimony was unreliable or that the trial court abused its discretion by allowing the testimony. Accordingly, appellant’s first assignment of error is not well-taken.

{¶ 9} Appellant’s second and third assignments of error will be considered together.

{¶ 10} A trial court may enter a finding of delinquency when the evidence demonstrates, beyond a reasonable doubt, that the child committed an act that would constitute a crime if committed by an adult. R.C. 2151.35(A); Juv.R. 29(E)(4). Here, the juvenile court adjudicated appellant delinquent for committing the four offenses set forth above. In determining whether the adjudication for delinquency is against the manifest weight of the evidence and whether it is supported by sufficient evidence, we apply the same standard of review applicable to criminal convictions. *See In re Watson*, 47 Ohio St.3d 86, 91, 548 N.E.2d 210 (1989).

{¶ 11} The term “sufficiency” of the evidence presents a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The relevant inquiry in such cases 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. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 12} “In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion.” *State v. Davis*, 6th Dist. Wood No. WD-10-077, 2012-Ohio-1394, ¶ 17, citing *Thompkins, supra*, at 387. In making this determination, the court of appeals sits as a “thirteenth juror” and, after “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.” *Thompkins, supra*, at 386.

{¶ 13} At trial, the court heard testimony from Sonya Adcock, the victim of the theft. Adcock testified that on the morning of August 10, 2012, she was sitting on her enclosed front porch using her laptop to pay bills when she got up to go inside briefly. She left her laptop open on the porch. While inside, she heard “a commotion.” Thinking it was her son making noise in the house, she did not immediately investigate. She then realized the sound was coming from her porch and went out to check. When she walked onto the porch, which had not been locked, she noticed her laptop was gone. Adcock went to her porch steps and looked toward her parked car, where she saw the shadow of someone running away. She then began walking down the street to see if she could spot anyone. As she was walking along, a passing car slowed down; Adcock told the driver that she was looking for someone because her laptop had just been stolen.

{¶ 14} Officer John Powell, a patrolman with the City of Sandusky Police Department, testified that on the morning of the theft, he was flagged down by Adcock, who told him a black male had taken her laptop from her front porch. Adcock told Powell she thought another individual in a car was following the suspect and indicated the direction they were headed. Powell proceeded as directed by Adcock, where he observed an individual who pointed him in the direction she believed the suspect was headed. Powell then saw a young black male and, seeing that the individual appeared to be hiding something under his shorts and shirt, asked him to stop and answer some questions. Without responding, the individual ducked between some cars, pulled a laptop from underneath his clothing, threw it down and began to run away. Powell then called for assistance and followed the suspect. About fifteen minutes later, Powell and some other officers approached appellant's house at the suggestion of a detective. Powell and the detective went to the door and asked if appellant was home. After one individual told them appellant was not there, another person said he was home. Appellant came to the door and Officer Powell identified him as the subject who had run from him a few minutes earlier. Appellant was taken into custody and later charged with the instant offenses. The record reflects that Powell identified appellant in court as the individual he saw remove the laptop from under his clothing. He further testified that after officers retrieved the laptop, Adcock identified it as hers.

{¶ 15} Detective Dave West testified that he participated in a search of the area where Officer Powell had confronted appellant. During the search, the detective found a

tan shirt and a pair of black shorts. Those items matched the description of the clothing appellant was wearing when Powell saw him. Further, in one of the pockets of the shorts, officers found a power cord for a laptop.

{¶ 16} On September 20, 2012, the trial court adjudicated appellant delinquent as to the allegations of burglary, tampering with evidence, theft and obstructing official business. On September 25, 2013, the trial court held a dispositional review hearing and issued specific orders as to each of the four counts. On appeal, appellant essentially asserts that the state did not prove the charges against him because there was no fingerprint evidence, no clothing identification and no identification by the victim.

{¶ 17} This court has thoroughly reviewed the trial court's record, the testimony at trial and the applicable law. Upon due consideration, we find sufficient evidence was presented to support the trial court's findings that appellant trespassed in the victim's house by stealth while she was home with purpose to commit a theft offense (burglary, R.C. 2911.12(A)(1)); knowingly obtained control over the victim's laptop without the victim's consent (theft, R.C. 2913.02); committed an act which hampered Officer Powell's performance of his lawful duties while investigating the theft (obstructing official business, R.C. 2921.31), and attempted to dispose of the laptop he had just stolen (tampering with evidence, R.C. 2921.12).

{¶ 18} Accordingly, we find that the record contains sufficient evidence to support appellant's adjudication as to all four offenses. In addition, we find, after reviewing the entire record and weighing the evidence and all reasonable inferences, that the trier of

fact did not lose its way in reaching its verdicts. Appellant's second and third assignments of error are not well-taken.

{¶ 19} On consideration whereof, the judgment of the Erie County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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.

Arlene Singer, J.

Thomas J. Osowik, J.

James D. Jensen, J.  
CONCUR.

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JUDGE

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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:  
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