

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92668

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANGELO WILLIAMS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-507076

BEFORE: Blackmon, P.J., Boyle, J., and Jones, J.

RELEASED: December 24, 2009

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this

court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Angelo Williams appeals his convictions for burglary, vandalism, and possession of criminal tools. He assigns the following error for our review:

“I. Appellant was deprived of his liberty without due process of law, where his convictions for burglary, vandalism, and possession of criminal tools were against the manifest weight of the evidence.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Williams's convictions. The apposite facts follow.

Facts

{¶ 3} Williams was indicted for one count each of burglary, vandalism, and possession of criminal tools. He waived his right to a jury trial; the matter proceeded before the bench.

{¶ 4} On January 11, 2008, Officer William Feador and his partner responded to a radio broadcast that a break-in was occurring at 1405 East 85th Street in Cleveland, Ohio. Upon arriving at the scene, the officers noticed the back door was off its hinges; they heard noises emanating from the basement. Officer Feador yelled, “Police.”

{¶ 5} Someone responded from the basement, “Well, I don’t want no trouble.” Two men came out of the basement. They were patted down and placed in the zone car while the officers ascertained no one else was on the premises. The officers found a tool bag in the basement containing tools appropriate for removing wires and metal. Wiring and copper pipes were observed on the basement floor.

{¶ 6} Upon returning to the car, Officer Feador questioned the men about their identities. In response, Williams stated that he had only been in the house a few minutes and had just started cutting the wires. No one had lived in the house since September 18, 2007; however, the property was owned by an out-of-state entity. The property was managed by Transactional Realty, which was responsible for checking the property once a week and allowing realtors access to the property. The broker from Transactional Realty testified that photos were taken of the house once a week to prove to the owner that the management contract was being complied with. The previous periodic checks revealed no damage to the house. Although the broker had never physically been to the home, the records indicated that prior to the vandalism, the house

was worth \$9,000. The broker stated that because the electrical and plumbing systems were damaged, the house was now worthless.

{¶ 7} Williams testified that he accompanied his co-defendant, Glenn Kellogg, to the house. Kellogg did not tell him where they were going. He stated that Kellogg went into the house and that the only reason he followed him inside was to tell Kellogg to leave. He denied telling the officers that he cut the wires and claimed the door was already off its hinges when he arrived.

{¶ 8} The trial court found Williams guilty of burglary, vandalism, and possession of criminal tools. The court sentenced Williams to 18 months of community control.

Manifest Weight of the Evidence

{¶ 9} In his sole assigned error, Williams contends his convictions were against the manifest weight of the evidence. We disagree.

{¶ 10} At the outset, we note that Williams, by arguing that the state failed to prove the elements of burglary and vandalism, is presenting a sufficiency of the evidence argument, not a manifest weight of the evidence argument. In *State v. Wilson*,¹ the Ohio Supreme Court

¹113 Ohio St.3d 382, 2007-Ohio-2202.

addressed the difference in the standard of review for a criminal manifest weight challenge and a sufficiency of the evidence review as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. Id. at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. Id. at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive—the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. ‘When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.’ Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.”

Burglary

{¶ 11} A conviction for burglary pursuant to R.C. 2911.12(A)(3) requires the state to prove that Williams, by force, stealth, or deception, and with the intent to commit any criminal offense, entered an occupied structure with the purpose to commit in the structure a criminal offense. Williams

contends the evidence failed to demonstrate that he used force or deception to enter the house or that the house was an occupied structure.

{¶ 12} We conclude sufficient evidence was presented showing Williams entered the house with stealth. “Stealth” has been defined as “any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within a residence of another without permission.”² Williams contends because no witnesses to the break-in testified, there was no evidence regarding how he entered the house. Although there was no testimony as to how Williams gained entrance to house, circumstantial evidence supports the inference he gained entrance by stealth. Williams and his co-defendant did not attempt to gain entrance via the front or side doors. Instead, the door in the back of the house was forced off its hinges. Although we cannot discern whether Williams or his co-defendant forced the door open, there is no question that entry was made in the back of the home to prevent detection by neighbors. Because circumstantial evidence is given the same weight as direct evidence, sufficient evidence was presented that Williams committed the burglary with stealth.³

²*State v. Ward* (1993), 85 Ohio App.3d 537, 540, 620 N.E.2d 168, quoting *State v. Lane* (1976), 50 Ohio App.2d 41, 47. See, also, *State v. Stewart*, Cuyahoga App. No. 86396, 2006-Ohio-1072.

³*State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph one of the syllabus.

{¶ 13} The evidence also sufficiently proved that the house was an occupied structure as defined pursuant to R.C. 2909.01. R.C. 2909.01(C)(1) defines an occupied structure as follows:

“‘Occupied Structure’ means any house * * * to which the following applies:

“(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.”

{¶ 14} Williams contends the house was not occupied because no one had lived there for over four months; however, the relevant question in determining if a structure is “occupied” concerns the residential purpose of the dwelling, rather than the presence or absence of an occupant.⁴ “Thus, a structure which is dedicated and intended for residential use, and which is not presently occupied as a person’s habitation, but, which has neither

⁴See *State v. McLemore* (Aug. 30, 1995), 9th Dist. No. 95CA006037 (finding that the vacant lower portion of duplex was still an “occupied” structure even though it had been secured by court order pending forfeiture and had the windows boarded up and padlocks placed on the home); *State v. Green* (1984), 18 Ohio App.3d 69 (finding that a home left vacant after the owners moved to another residence was still an “occupied” structure because it was being maintained as a dwelling); *State v. Merriweather* (May 13, 1998), 9th Dist. No. 97CA006693 (finding that an apartment maintained by the police as a surveillance post was an “occupied” structure); *State v. Dillard* (Jan. 14, 2000), 2nd Dist. No. 17761 (finding a home in which the owner was sick and had gone to stay with his daughter ten months before the burglary occurred was found to be an occupied structure); *State v. Tornstrom* (Nov. 19, 1998), Cuyahoga App. No. 72898 and *State v. Woodruff*, 6th Dist. No. L-04-1125, 2005-Ohio-3368 (homes uninhabitable while undergoing major renovations were found to be occupied structures).

been permanently abandoned nor vacant for a prolonged period of time, can be regarded as a structure ‘maintained’ as a dwelling within the meaning of division (A).”⁵

{¶ 15} Here, although no one had been living in the house for over four months, the house was not abandoned. Despite its vacancy, it still had a residential purpose. In fact, it was owned by an out-of-state entity that was selling the property as a residential dwelling. Given these facts, we find that the building was an “occupied structure” within the meaning of R.C. 2909.01(C)(1). Accordingly, we conclude there was sufficient evidence presented in support of Williams’s burglary conviction.

Vandalism

{¶ 16} Williams also contends that no evidence was presented regarding the incurred cost of the damages caused by the vandalism. We disagree.

{¶ 17} Williams was convicted of vandalism pursuant to R.C. 2909.05(A), which provides in pertinent part:

“(A) No person shall knowingly cause serious physical harm to an occupied structure or any of its contents.”

{¶ 18} Therefore, the state had to prove serious physical harm occurred as an element of the offense. The degree of the offense is determined based on the damage done to the property. Pursuant to R.C. 2909.05(E), the

⁵ *State v. Green*, 18 Ohio App.3d, at 72.

offense is a felony of the fourth degree if “the value of the property or the amount of physical harm involved is five thousand dollars or more but less than one hundred thousand dollars * * *.” Williams contends no evidence was presented that over \$5,000 in damages was incurred.

{¶ 19}When computing the value or amount of physical harm involved for purposes of determining whether a violation of R.C. 2909.03(A)(1) is a fourth degree felony, the trial court must employ the criteria set forth at R.C 2909.11(B), which states in pertinent part:

“(3) If the property is not covered under division (B)(1) of this section and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, * * * in the case of real property * * * is the difference in the fair market value of the property immediately before and immediately after the offense.”

{¶ 20}The staff notes to R.C. 2909.11 state that the determination of the value of the loss need not be precise because the purpose of the value of the incurred damage is not to award damages, but to ascertain the extent of the crime and the appropriate degree of felony that correspondingly should apply.

{¶ 21}Photographs depicting the damage to the property were entered into evidence. The person who took the photographs did not testify at trial, but Officer Feador testified the photographs accurately portrayed the condition of the property. The photographs depicted numerous wires

hanging from the basement ceiling and strewn on the floor, showing the damage was extensive.

{¶ 22}The real estate broker did not personally go the property to view the damage; however, as the broker for the property, he did have knowledge as to the value of the property. He testified that the value of the property prior to the vandalism was \$9,000 and that because the electrical and plumbing systems were damaged, it was now worthless. Given the fact the original value of the home was low, it was not outside the realm of reason that gutting the electrical and plumbing systems would make the house worthless. Because the value of the home was so low, it would not be worth repairing the wiring and plumbing. Therefore, we conclude sufficient evidence was presented that the damage exceeded \$5,000 dollars.

Criminal Tools

{¶ 23}Williams contends his criminal possession conviction was against the manifest weight of the evidence because he did not use or bring the tools onto the premises. Officer Feador, however, testified that Williams told him that he had just “just started to cut the wires” when the officer arrived, indicating that Williams did use the tools. Although Williams denies he told the officers he “cut the wires,” resolving which witness was

more credible was for the trier of fact.⁶ It is not inconceivable that Williams, in an attempt to minimize his involvement, would tell officers that he had “just started to cut the wires.” Thus, we conclude the court did not create a miscarriage of justice by concluding the officer was a more credible witness. Therefore, we conclude Williams’s possession of criminal tools conviction was not against the manifest weight of the evidence. Accordingly, Williams’s assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and
LARRY A. JONES, J., CONCUR.

⁶*State v. Wilson*, 113 Ohio St.3d 382.

