[Cite as *State v. Scott*, 2010-Ohio-158.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93037

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TANEISHA SCOTT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517498

BEFORE: Kilbane, J., Gallagher, A.J., and McMonagle, J.

RELEASED: January 21, 2010

JOURNALIZED:

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MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Taneisha Scott, appeals her conviction on one count of aggravated burglary, arguing that the State failed to prove each of the required elements beyond a reasonable doubt, and that the trial court improperly relied on a police report that was not admitted into evidence. After reviewing the record and applicable law, we affirm.

{¶ 2} On November 4, 2008, appellant was indicted on one count of aggravated burglary, in violation of R.C. 2911.11(A)(1), a felony of the first degree. On February 12, 2009, appellant waived her right to a jury trial, and the case went forward on a bench trial.

{¶ 3} The following testimony was elicited at trial.

{¶ 4} Appellant was released from prison in September of 2008, after serving a sentence on an unrelated charge. Four days after her release, she gave birth to a child fathered by William Johnson ("Johnson"). Appellant and Johnson also had two other children together, an eleven-year-old daughter and a six-year-old son. However, by the time appellant was released from prison, Johnson was residing with his new girlfriend, Ciara Scott ("Ciara"), at an apartment located at 1360 West 80th Street, in Cleveland, Ohio. (Tr. 8, 9, 51,72-74.)

{¶ 5} On October 10, 2008, at approximately 4:00 a.m., appellant arrived at the apartment shared by Johnson and Ciara. Ciara testified that

she was lying in bed when she heard appellant outside yelling Johnson's name. Ciara woke Johnson up, but before she could react, someone allowed appellant into the building through the security door. Appellant knocked on the apartment door for several minutes. When no one answered, she repeatedly kicked the door. (Tr. 11-14.)

{¶ 6} Johnson stood with his back against the door to prevent it from falling in, while Ciara went into the bedroom and called 911. Despite Johnson's continued efforts to prevent appellant from entering the apartment, the door came off of its hinges and fell inward. Appellant entered the apartment and lunged at Johnson's neck, scratching him. Johnson then held appellant down against the living room floor until the police arrived. (Tr. 11-16, 51-58.)

{¶ 7} Cleveland Police Detective Dale Moran ("Detective Moran") testified that, when he arrived at the apartment later that morning to interview Johnson and Ciara, the door had already been repaired. However, he confirmed with the apartment maintenance man that the door had been off of its hinges and had been repaired earlier that morning.

{¶ 8} Detective Moran also interviewed appellant, who stated that she went to the apartment to pick up two of the children she had with Johnson. Detective Moran noted that there was no indication that children had been present in the apartment, and further, the police report he reviewed did not reference any children being present. (Tr. 45-47.)

{¶ 9} Appellant testified on her own behalf and stated that she was at home with her mother and her four-week-old baby when her older daughter called her twice from Johnson's apartment stating that she wanted appellant to come and pick her up. Appellant stated that, after she received the second call, she called one of Johnson's cousins to determine where Johnson lived. The cousin provided appellant with the address of the apartment building. Appellant stated that she called Johnson and he agreed that she could come to the apartment and pick up their two children. Appellant and one of Johnson's cousins, Nicole Fink ("Fink"), then drove to the apartment. (Tr. 73-74.)

{¶ 10} Appellant denied that she kicked the door off of its hinges and stated that, when she arrived at the apartment door, she and Johnson began to argue and Johnson pulled her into the apartment and held her to the floor. Appellant testified that Johnson stated he would hold her down until the police arrived, during which time her children ran outside and sat in appellant's vehicle. Appellant also maintained that during this time, Fink

was yelling at Johnson to release the appellant. (Tr. 75-80.)

{¶ 11} At the conclusion of the bench trial, the trial court found appellant guilty of one count of aggravated burglary, a felony of the first degree. On March 9, 2009, appellant was sentenced to three years in prison.

{¶ 12} Appellant filed the instant appeal, asserting two assignments of error for our review.

{¶ 13} ASSIGNMENT OF ERROR NUMBER ONE

"THE STATE FAILED TO MEET ITS BURDEN OF PROVING ALL OF THE NECESSARY ELEMENTS OF AGGRAVATED BURGLARY BEYOND A REASONABLE DOUBT."

{¶ 14} Appellant argues that the State failed to prove the elements of aggravated burglary; specifically, that appellant intended to commit a crime when she entered the apartment. After a review of the record, we disagree.

{¶ 15} The State is required to prove each of the elements of a charged offense beyond a reasonable doubt. *State v. Jenks* (1991) 61 Ohio St.3d 259, 272-273, 574 N.E.2d 492. "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." Id. at 273.

{¶ 16} This court conducts a de novo review of the evidence and does not defer to the judgment of the trial court. *State v. Nicholson*, Cuyahoga App. No. 85977, 2006-Ohio-1569, at ¶21, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. The relevant inquiry is "whether after viewing the evidence in the light most favorable to the prosecution, any rationale trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Nicholson*, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 17} Aggravated burglary is defined by R.C. 2911.11(A)(1) as follows:

> **"No person, by force, stealth, or deception, shall trespass in an occupied structure * * *, when another person other than an accomplice of the offender is present, with purpose to commit in the structure * * * any criminal offense, if * * * the offender inflicts, or attempts or threatens to inflict physical harm on another."**

{¶ 18} Appellant only asserts that the State failed to demonstrate that appellant went into the apartment with the purpose to commit a criminal offense; therefore, we will only address that element.

{¶ 19} The State may prove the elements of the charged offense using either direct or circumstantial evidence. *Jenks* at 273. Appellant's intent when entering the apartment can be determined by the surrounding facts and circumstances. *State v. Smith*, Cuyahoga App. No. 84292, 2004-Ohio-6111, at ¶20. "It is reasonable to infer that one who forcibly enters a dwelling does so with the intent to commit a criminal offense therein." *State v. Young*, Cuyahoga App. No. 91321, 2009-Ohio-1598, at ¶18, citing *State v. Flowers* (1984), 16 Ohio App.3d 313, 475 N.E.2d 790, at paragraph one of the syllabus.

{¶ 20} The State presented sufficient evidence to demonstrate that appellant's intent to enter the apartment was not to pick up her children, rather, it was to assault Johnson. Although appellant testified that she only went to Johnson and Ciara's apartment to retrieve her children, the State presented the testimony of Ciara, Johnson, and Detective Moran, all of whom stated that no children were present at the apartment. Detective Moran also stated that there was no evidence that children had ever been in the apartment.

{¶ 21} Both Ciara and Johnson testified that the appellant, immediately upon entering the apartment, lunged at Johnson's neck, scratching him. (Tr. 15.) According to Johnson's testimony, appellant was yelling and appeared to be intoxicated. From this testimony, sufficient evidence existed with

which the factfinder could conclude that appellant's intent when entering the apartment was to physically assault Johnson.

{¶ 22} Finding that the State presented sufficient evidence to support the charged offense, this assignment of error is overruled.

{¶ 23} ASSIGNMENT OF ERROR NUMBER TWO

"THE TRIAL JUDGE IMPROPERLY RELIED ON A POLICE REPORT THAT WAS NEVER INTRODUCED INTO EVIDENCE AT THE TRIAL."

{¶ 24} Appellant argues that the trial court improperly relied on a police report that was never admitted into evidence, meriting reversal. Based on a review of the record, we disagree.

{¶ 25} When reviewing a trial court's judgment on a bench trial, this court must assess whether that judgment was supported by some competent, credible evidence. *Rogers v. Hood*, Summit App. No. 24374, 2009-Ohio-5799, at ¶22. The trial court is presumed to have only considered relevant, competent, and credible evidence. *Gonzalez v. Spofford*, Cuyahoga App. No. 85231, 2005-Ohio-3415, at ¶43, citing *State v. Post* (1987), 32 Ohio St.3d 380, 384, 513 N.E.2d 754. Trial courts have broad discretion when determining the admissibility of evidence. This court will not reverse that judgment absent an abuse of discretion. *Gonzalez* at ¶17, citing *State v. Sage* (1987), 31 Ohio St.3d 173, 510 N.E.2d 343, paragraph two of the syllabus.

{¶ 26} As evidence of the trial court's improper reliance on a police

report that was not admitted into evidence, appellant cites to the trial court's statement at the sentencing hearing when it stated,

> **"The police officers never even saw the kids. They were in the truck. I don't know how the kids could have walked by the police and they not see them. That was one of the reasons I found you guilty as opposed to not guilty." (Tr. 115-116.)**

{¶ 27} Appellant maintains that this statement evidences the fact that the trial court based its guilty verdict, at least in part, on its review of the police report. While we agree with appellant's contention that a trial court cannot base its verdict on evidence that is not part of the record, we disagree that the trial court's statement was based on the police report alone, and conclude that the trial court's statement was based on the testimony of Detective Moran.

{¶ 28} Detective Moran testified that when he arrived at the apartment several hours after the incident, he saw no signs of children's belongings. (Tr. 41.) Further, he testified that he reviewed the police reports and there was no mention of children being present at the apartment. Detective Moran stated that if children had been present it is something police officers would have noted because it could have resulted in additional charges. (Tr. 47.)

{¶ 29} We cannot find that the trial court abused its discretion in relying on the police report, because we find no evidence that the trial court even relied on the unadmitted police report. In light of the fact that the trial

court's statements were supported by the testimony of Detective Moran, appellant's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant 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.

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

MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, A.J., and
CHRISTINE T. McMONAGLE, J., CONCUR