

[Cite as *State v. Sturgill*, 2010-Ohio-2090.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93158

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RYAN STURGILL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-507245

BEFORE: Gallagher, A.J., Dyke, J., and Sweeney, J.

RELEASED: May 13, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Ryan Sturgill, appeals his conviction for aggravated theft and his sentence. For the reasons stated herein, we affirm.

{¶ 2} On February 22, 2008, Sturgill was indicted for one count of burglary, four counts of aggravated theft, and two counts of receiving stolen property. He entered a plea of not guilty to the charges, and the case proceeded to a jury trial.

{¶ 3} The victim testified that on the night of January 2, 2008, she left her purse in her car, which was parked in her garage. She thought she put the garage door down, but the next morning she discovered it was open throughout the night. She indicated that between 2:00 and 3:00 a.m., she heard a noise in her garage that sounded like a car door was opening and closing.

{¶ 4} Around 8:30 a.m. the next morning, January 3, 2008, the victim received a phone call from National City Bank regarding unusual activity on her account. She went to her car, retrieved her purse, and discovered her debit and credit cards were gone. The victim does not know Sturgill, did not give him permission to use her cards, and did not use any of her cards on January 3, 2008.

{¶ 5} Carl Catucci, a loss prevention officer for Giant Eagle, and Detective Alex Bakos of the Olmsted Falls Police Department also testified for the state. Surveillance video and register journals were introduced to show who was using the victim's credit cards and when they were used. Her cards were used at Giant Eagle and GetGo locations in the early morning hours of January 3, 2008.

The videos showed three transactions of an individual matching Sturgill's description using the victim's cards. The cards were used at 7:11 a.m., 8:30 a.m., and 8:36 a.m.

{¶ 6} Detective Bakos testified that Sturgill admitted he had a drug addiction and was high when he committed crimes in which he would go into developments, break into cars, take credit cards, and use the cards as quickly as possible after the theft. When Det. Bakos informed Sturgill that one of the stolen credit cards in this case was connected to an organization involving the homeless, Sturgill conceded that he "f* * *d up."

{¶ 7} Detective Kevin Ross of Medina County testified that he had an arrest warrant for Sturgill regarding an incident in Medina County. During the investigation, Sturgill admitted that he had a drug problem and that he would go into neighborhoods seeking unlocked vehicles and would steal credit cards and use them to purchase prepaid gift and credit cards. No statements were made to Detective Ross concerning the charges in the present case.

{¶ 8} The jury found Sturgill guilty of one count of aggravated theft (R.C. 2913.02(A)(1)) and one count of receiving stolen property (R.C. 2913.51(A)). The trial court sentenced him to a prison term of ten months on each count to run concurrently to each other, but consecutive to a sentence already imposed in a Medina County case.

{¶ 9} Sturgill timely filed this appeal. He raises two assignments of error for our review. His first assignment of error provides as follows: “The evidence was insufficient to sustain a conviction of theft.”

{¶ 10} When an appellate court reviews a claim of insufficient evidence, “the relevant inquiry 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. Leonard*, 104 Ohio St.3d 54, 67, 2004-Ohio-6235, 818 N.E.2d 229, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. Tenace*, 109 Ohio St.3d 255, 260, 2006-Ohio-2417, 847 N.E.2d 386.

{¶ 11} Sturgill challenges his conviction for theft in violation of R.C. 2913.02(A)(1). The statute provides: “No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: (1) Without the consent of the owner or person authorized to give consent[.]”

{¶ 12} Sturgill argues that although he admitted to possessing the cards, there was no evidence to establish that he stole the victim’s credit cards from the car in her garage. He states that another individual could have stolen the cards before he possessed them.

{¶ 13} Proof of guilt may be made by real evidence, circumstantial evidence, and direct or testimonial evidence, or any combination of the three, and all three have equal probative value. *State v. Nicely* (1988), 39 Ohio St.3d 147, 529 N.E.2d 1236. In this case, the testimony of the victim indicates that her credit cards were stolen from her purse, which was left in her car overnight. She heard what sounded like her car door opening and closing between 2:00 and 3:00 in the morning. Her cards were used only a few hours later at Giant Eagle and GetGo locations. The person using the cards matched the description of Sturgill, who was unknown to the victim and lacked permission to use her cards. Sturgill admitted to Detective Bakos that he would go into developments, break into cars, take credit cards, and use the cards as quickly as possible after the theft. While talking about a card taken in this case, Sturgill conceded to Detective Bakos that he “f* * *d up.”

{¶ 14} Upon our review, we find the evidence in this case, as well as the reasonable inferences that can be drawn therefrom, was sufficient to support Sturgill’s conviction for theft. We conclude that any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. Sturgill’s first assignment of error is overruled.

{¶ 15} Sturgill’s second assignment of error provides as follows: “The trial court erred by sentencing the appellant to serve consecutive sentences.”

{¶ 16} Sturgill argues that the trial court erred by failing to make findings of fact to support running his sentence consecutive to a prison sentence he was serving on a Medina County case.

{¶ 17} Under current Ohio law, a trial court “now has the discretion and inherent authority to determine whether a prison sentence within the statutory range shall run consecutively or concurrently.” *State v. Elmore*, 122 Ohio St.3d 472, 480, 2009-Ohio-3478, 912 N.E.2d 582; *State v. Bates*, 118 Ohio St.3d 174, 178, 2008-Ohio-1983, 887 N.E.2d 328. Although recognized, the Ohio Supreme Court has yet “to address fully all ramifications of [*Oregon v. Ice* (2009), ___ U.S. ___, 129 S.Ct. 711, 172 L.Ed.2d 517.]” In *Elmore*, the court followed its *Foster* decision, and reiterated that trial courts “are no longer required to make findings or give their reasons for maximum, consecutive, or more than the minimum sentences.” *Elmore*, supra at 482, quoting *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Until the Ohio Supreme Court states otherwise, this court continues to follow *Foster*. *State v. Pinkney*, Cuyahoga App. No. 91861, 2010-Ohio-237; *State v. Eatmon*, Cuyahoga App. No. 92048, 2009-Ohio-4564. Accordingly, Sturgill’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 issue out of this court directing the common pleas 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

ANN DYKE, J., and
JAMES J. SWEENEY, J., CONCUR