[Cite as *State v. Evett*, 2015-Ohio-2722.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO Appellee v. NATHAN R. EVETT Appellant	C.A. No. 14CA0008-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 13CR0234

DECISION AND JOURNAL ENTRY

Dated: July 6, 2015

MOORE, Judge.

{¶1} Defendant-Appellant Nathan R. Evett appeals from the judgment of Medina County Court of Common Pleas. We affirm.

I.

{¶2} In April 2013, Mr. Evett was indicted on one count of burglary, in violation of R.C. 2911.12(A)(1), and one count of theft, in violation of R.C. 2913.02(A)(1). The charges involved Mr. Evett's entry into the apartment of Tina Schwabe and the theft of her purse on April 3, 2013. The matter proceeded to a bench trial, after which the trial court found Mr. Evett guilty of both counts. The trial court sentenced him to an aggregate term of three years in prison.

{¶3} Mr. Evett has appealed, raising four assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

MR. EVETT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE,

> AND THE TRIAL COURT ERRED IN NOT GRANTING HIS CRIMINAL RULE 29 MOTION FOR ACQUITTAL.

{¶4} Mr. Evett asserts in his first assignment of error that the trial court erred in denying his Crim.R. 29 motion and that his conviction was based upon insufficient evidence because there was no evidence that Mr. Evett trespassed or entered the apartment via force, stealth or deception or that he entered the structure with the intent to commit a criminal offense. Additionally, Mr. Evett maintains that his convictions are against the manifest weight of the evidence due to the presence of conflicting testimony.

Crim.R. 29 and Sufficiency

{¶5} "We review a denial of a defendant's Crim.R. 29 motion for acquittal by assessing the sufficiency of the State's evidence." *State v. Bulls*, 9th Dist. Summit No. 27029, 2015-Ohio-276, ¶ 6, quoting *State v. Frashuer*, 9th Dist. Summit No. 24769, 2010-Ohio-634, ¶ 33. The issue of whether a conviction is supported by sufficient evidence is a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In making this determination, an appellate court must view the evidence in the light most favorable to the prosecution:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶6} We note that, in light of Mr. Evett's argument, it does not appear that Mr. Evett challenges his theft conviction under this portion of his assignment of error. Accordingly, we will likewise focus on whether the finding of guilt on the burglary count is supported by

sufficient evidence. Mr. Evett asserts that there was no evidence that he, by force, stealth, or deception, trespassed into the apartment and there is no evidence that he trespassed with the intent to commit a criminal offense.

{¶7} Pursuant to R.C. 2911.12(A)(1), the statute prohibiting burglary,

> [n]o person, by force, stealth, or deception, shall * * * [t]respass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense[.]

{¶8} "'Force' means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). "This Court has held that opening an unlocked door can be sufficient to show force under the burglary statutes." *State v. Shelly*, 9th Dist. Wayne No. 10CA0032, 2011-Ohio-4301, ¶ 12. It is a trespass for any person, "without privilege to do so, to * * * [k]nowingly enter or remain on the land or premises of another[.]" R.C. 2911.21(A)(1); *see also* R.C. 2911.10 ("As used in sections 2911.11 to 2911.13 of the Revised Code, the element of trespass refers to a violation of section 2911.21 of the Revised Code.").

{¶9} The victim in the case, Ms. Schwabe, testified that she lived in an apartment in Brunswick with her elderly father and her four children. Ms. Schwabe knew Mr. Evett through her ex-husband. She indicated that her ex-husband and Mr. Evett used to be best friends and she would see Mr. Evett frequently when she and her ex-husband were married. After the divorce, Ms. Schwabe continued to see Mr. Evett as she felt bad for him. She would let him come over to the apartment and stay on the couch "because he was living out on the streets." Ms. Schwabe did not believe Mr. Evett had any money as he had a hard time keeping a job. According to Ms. Schwabe, he would "stay a night or so here and there." However, Ms. Schwabe testified that he

never lived there, could not just come over whenever he pleased, and did not have keys to the apartment.

{¶10} Ms. Schwabe allowed Mr. Evett to spend the night April 2, 2013. At the time, Ms. Schwabe believed Mr. Evett had a job and was doing well. He left the next day, saying he was going to work and came back looking like "he was high[.]" At the time he had a cigarette, and dropped it on the front of his shirt. Ms. Schwabe then told him that "he could not be there that day, that he had to leave because [she] didn't want him around [her] children." No one else was present when Ms. Schwabe told Mr. Evett to leave. Mr. Evett complied by leaving; however, around a half hour to an hour later he returned.

{¶11} Ms. Schwabe indicated that while the front door was open, the screen door was shut. Mr. Evett entered the home and called Ms. Schwabe's name. At the time, Ms. Schwabe was in her bedroom on the phone with Tony M., a neighbor. Tony M.'s daughter, C.M., who was 12 years old at the time, was in the bedroom with Ms. Schwabe. C.M. was there to watch Ms. Schwabe's children for her so she could run an errand. C.M. was also friends with Ms. Schwabe's children and considered Ms. Schwabe to be like a mother to her. While C.M.'s testimony corroborated much of Ms. Schwabe's testimony, C.M. averred that Mr. Evett did not return to the apartment until several hours later. C.M. also testified that it was common for people who knew Ms. Schwabe to enter her apartment without knocking. Thus, C.M. was not surprised that Mr. Evett, who was a frequent visitor, entered the apartment without knocking.

{¶12} Upon entering the apartment, Mr. Evett proceeded into Ms. Schwabe's bedroom. C.M. indicated that, as Ms. Schwabe was on the phone, she told Mr. Evett to hold on for a minute. However, Mr. Evett reached over Ms. Schwabe, grabbed her purse, and ran off with it. Ms. Schwabe and C.M. ran after him, but were unable to catch up with him. Ms. Schwabe had

approximately $1700 to $1800 cash in her purse. Ms. Schwabe had power of attorney over her father's affairs. She cashed his Social Security and pension checks and used the cash to pay bills. Ms. Schwabe also had her car and house keys in her purse at the time Mr. Evett ran away with her purse. She testified that Mr. Evett was aware that Ms. Schwabe would have the money in her purse because he knew when her father got the checks. Ms. Schwabe also testified that Mr. Evett did not have permission to take her purse.

{¶13} Tony M. testified that he was sitting on his patio having a beer with a friend when he saw Mr. Evett "[r]unning between the apartments towards the lake." Mr. Evett was running from the area where Ms. Schwabe lived. Tony M. did not recall being on the phone with anyone at the time.

{¶14} The police were called, and when Officer Heather Stask arrived on the scene, Tony M., C.M. and Ms. Schwabe were all in a common area near the parking lot talking loudly. Ms. Schwabe was visibly upset. Officer Stask obtained statements from Ms. Schwabe and C.M. but did not take a statement from Tony M. Officers were unable to locate Mr. Evett in the vicinity and did not recover Ms. Schwabe's purse. Officer Stask testified that, later, Ms. Schwabe told her that Ms. Schwabe sent Mr. Evett a text asking about the money and, according to Ms. Schwabe, Mr. Evett only responded with, "What money?"

{¶15} Given the foregoing, we conclude there was sufficient evidence from which a trier of fact could conclude that Mr. Evett used force to enter the apartment, knowing that he was not permitted to be there. *See Shelly*, 2011-Ohio-4301, at ¶ 12. There was evidence that, earlier that day, Ms. Schwabe told Mr. Evett that he had to leave and could not come back that day. There was also evidence that Mr. Evett nonetheless returned that day and would have opened the screen door of the apartment to enter it, thereby trespassing in the structure. *See id.*

{¶16} With respect to the element of trespassing with an intent to commit a criminal offense, Mr. Evett argues that he had to have the intent upon entering the apartment. However, for purposes of "defining the offense of burglary under R.C. 2911.12(A), a defendant may form the purpose to commit a criminal offense at any point during the course of a trespass." *State v. Tyson*, 10th Dist. Franklin No. 10AP-830, 2011-Ohio-4981, ¶ 31, quoting *State v. Moore*, 12th Dist. Butler No. CA2205-06-148, 2006-Ohio-2800, ¶ 8 and citing *State v. Fontes*, 87 Ohio St.3d 527, 530, 2000-Ohio-472 (aggravated burglary) and *State v. Frederick*, 9th Dist. Medina No. 03CA0045-M, 2003-Ohio-7175, ¶ 22. Moreover, "this Court has stated that purpose or intent can be established by circumstantial evidence." *State v. Hill*, 9th Dist. Summit No. 26771, 2013-Ohio-5725, ¶ 19.

{¶17} Nonetheless, after reviewing the evidence, we conclude there was sufficient circumstantial evidence whereby a trier of fact could conclude that Mr. Evett possessed the requisite intent upon entering Ms. Schwabe's residence. There was evidence that Mr. Evett did not have much if any money, and there was testimony that Mr. Evett knew that Ms. Schwabe had money in her purse. Further, given that Ms. Schwabe had just thrown him out of her house and Mr. Evett had difficulty securing housing, a trier of fact could infer that Mr. Evett was in need of money and that he formed the intent to steal Ms. Schwabe's purse at the time he trespassed in her residence later that day. Finally, Ms. Schwabe and C.M. testified that, shortly after he entered the residence, they saw Mr. Evett take Ms. Schwabe's purse and flee. Given all the foregoing circumstances, Mr. Evett has not established that the trial court erred in denying his Crim.R. 29 motion or that his conviction is based upon insufficient evidence.

{¶18} Mr. Evett's argument is overruled.

Manifest Weight

{¶19} When a defendant asserts that his conviction is against the manifest weight of the evidence:

> [A]n appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). "In making this determination, this Court is mindful that '[e]valuating evidence and assessing credibility are primarily for the trier of fact.'" (Citations omitted.) *Bulls*, 2015-Ohio-276, ¶ 17, quoting *State v. Winchester*, 9th Dist. Summit No. 26652, 2013-Ohio-4683, ¶ 4.

{¶20} With respect to Mr. Evett's argument that his convictions are against the manifest weight, it appears he is challenging both of his convictions. Essentially, he argues that the State's witnesses presented such conflicting versions of events that the trier of fact lost its way in finding Mr. Evett guilty of burglary and theft.

{¶21} This Court previously discussed the elements of burglary above. Mr. Evett was also found guilty of violating R.C. 2913.02(A)(1). It provides that, "[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services * * * [w]ithout the consent of the owner or person authorized to give consent[.]"

{¶22} We acknowledge that the witnesses' testimony was not in exact agreement on the events of April 3, 2013. Moreover, there was evidence in the record that Mr. Evett was previously allowed to stay at Ms. Schwabe's residence on multiple occasions and that his behavior that day of entering the apartment without knocking was typical given his previous

status as a frequent visitor. The trier of fact was additionally made aware that Ms. Schwabe had told police that Mr. Evett could have taken money from her on another occasion and the thief actually ended up being one of Ms. Schwabe's children's friends. Ms. Schwabe acknowledged that, in her statement to police, she did not report that she asked Mr. Evett to leave and not come back or that she thought he was high. Finally, C.M.'s testimony indicated a different timing of events than that testified to by Ms. Schwabe and Tony M. could not remember being on the phone with anyone at the time he saw Mr. Evett run towards the lake.

{¶23} Nonetheless, both Ms. Schwabe and C.M. testified that Mr. Evett came into the apartment, walked into Ms. Schwabe's bedroom, took her purse, and fled. Ms. Schwabe testified that Mr. Evett was told earlier that day to leave and not come back that day. The trier of fact is primarily charged with weighing the evidence and evaluating the credibility of the witnesses. *See Bulls*, 2015-Ohio-276, at ¶ 17, quoting *Winchester*, 2013-Ohio-4683, at ¶ 4. While the evidence did not require the trier of fact to believe Ms. Schwabe's version of events, the record does not support that the trier of fact committed a manifest miscarriage of justice in convicting Mr. Evett of theft and burglary. After thoroughly and independently reviewing the record, we cannot say the trier of fact lost its way in making these determinations. Mr. Evett's convictions are not against the manifest weight of the evidence.

{¶24} Mr. Evett's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT ERRED IN NOT GRANTING [MR. EVETT'S] MOTION TO DISMISS AFTER IT WAS DETERMINED THAT THE STATE FAILED TO DISCLOSE DISCOVERY MATERIALS UNTIL AFTER THE COMMENCEMENT OF TRIAL.

{¶25} Mr. Evett asserts in his second assignment of error that the trial court erred in overruling his motion to dismiss. We do not agree.

{¶26} We note that Mr. Evett has failed to cite any law to support his argument. *See* App.R. 16(A)(7). Mr. Evett's argument concerns the State's failure to disclose, prior to trial, a written statement of a defense witness, Carl Halenar, along with corresponding supplements to police reports.[1] The State conceded below and on appeal that its failure to disclose was a discovery violation.

{¶27} "[A] trial court has discretion in determining a sanction for a discovery violation." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, ¶ 33. It abuses that "discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary." *Id.* at ¶ 34. "[A] trial court must inquire into the circumstances surrounding a discovery rule violation and, when deciding whether to impose a sanction, must impose the least severe sanction that is consistent with the purpose of the rules of discovery[.]" *Id* at syllabus, quoting *Lakewood v. Papadelis*, 32 Ohio St.3d 1 (1987), paragraph two of the syllabus. "The purpose of the discovery rules 'is to prevent surprise and the secreting of evidence favorable to one party.'" *Darmond* at ¶ 19, quoting *Papadelis* at 3. Three factors the trial court should consider in fashioning a sanction are "(1) whether the failure to disclose was a willful violation of Crim.R. 16, (2) whether foreknowledge of the undisclosed material would have benefited the accused in the preparation of a defense, and (3) whether the accused was prejudiced." *Daramond* at ¶ 35.

{¶28} Midway into Mr. Evett's counsel's direct examination of defense witness Mr. Halenar, the State came forward and presented Mr. Evett's counsel with Mr. Halenar's prior written statement. Upon receiving the statement, the trial court allowed a short recess, and Mr. Evett's counsel returned to questioning Mr. Halenar. Shortly thereafter, Mr. Evett's counsel requested a side bar and discussion was held off the record. When the parties were back on the

[1] These items are not part of the record on appeal.

record, the trial court noted that the case was being recessed to allow Mr. Evett's counsel to explore "other evidence that the State may offer." Mr. Evett's counsel objected to allowing the State to use the statements that were not disclosed, but the trial court overruled the objection. To give Mr. Evett's counsel time to investigate the matter, the trial court recessed the matter from Monday until Friday.

{¶29} That Friday morning, Mr. Evett's counsel filed a motion to dismiss or in the alternative, a motion to strike in its entirety Mr. Halenar's testimony. Mr. Evett's counsel noted that the State had multiple opportunities to provide Mr. Evett's counsel with the discovery and that the State knew that Mr. Halenar was going to be called as a witness. In addition, because there was a hearing on a motion by Mr. Halenar to quash his subpoena to appear, the State was aware that Mr. Halenar was expected to testify to picking up Mr. Evett on April 3, 2013 and taking him to lunch, despite the fact that Mr. Halenar's statements would indicate he had not seen Mr. Evett that day. Accordingly, Mr. Evett's counsel argued that the statements withheld by the State affected Mr. Halenar's credibility as a witness.

{¶30} At trial, the trial court began by discussing Mr. Evett's counsel's motion. The State pointed the trial court to *Darmond* and the trial court took a recess to consider the issue. The trial court then denied the motion. Mr. Halenar retook the witness stand, but prior to testifying, Mr. Halenar's attorney indicated that Mr. Halenar was going to invoke his Fifth Amendment Right not to testify.

{¶31} At this point, rather than further continue the matter, the State offered that it would be willing to strike Mr. Halenar's testimony to resolve the issue if Mr. Evett's counsel would still agree to that option. Mr. Evett's counsel made no objection and expressly agreed to

striking Mr. Halenar's testimony. Mr. Evett's counsel did not at this time assert that the indictment should be dismissed.

{¶32} In light of the foregoing, including Mr. Evett's limited argument on appeal that fails to cite to, or examine, any legal authorities, *see* App.R. 16(A)(7), we cannot say that Mr. Evett has demonstrated that the trial court abused its discretion in denying his motion to dismiss. Mr. Evett has not demonstrated that the trial court acted unreasonably in response to the State's discovery violation.

{¶33} Mr. Evett's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT ERRED BY SENTENCING [MR.] EVETT ON BOTH COUNTS, BURGLARY AND THEFT, WHEN THESE COUNTS SHOULD HAVE BEEN MERGED AS ALLIED OFFENSES OF SIMILAR IMPORT.

{¶34} Mr. Evett argues in his third assignment of error that the trial court erred in failing to conclude that the burglary and theft offenses were allied and subject to merger.[2] We do not agree.

{¶35} We "apply a de novo standard of review in reviewing a trial court's R.C. 2941.25 merger determination." *State v. Williams,* 134 Ohio St.3d 482, 2012-Ohio-5699, ¶ 28. R.C. 2941.25 provides that

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or

[2] We note that while Mr. Evett did not specifically and expressly object to the trial court's failure to merge these offenses, he did argue at his sentencing that the offenses should have merged. Thus, we conclude he has preserved this argument for appellate review. *See State v. Rogers,* Slip Opinion No. 2015-Ohio-2459, ¶ 28 (noting that the failure "to raise the allied offense issue at the time of sentencing forfeits all but plain error[]").

> similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶36} Recently, in *State v. Ruff,* Slip Opinion No. 2015-Ohio-995, the Supreme Court of Ohio has clarified how courts are to determine whether offenses are allied within the meaning of the statute. "At its heart, the allied-offense analysis is dependent upon the facts of a case because R.C. 2941.25 focuses on the defendant's conduct. [Thus, t]he evidence at trial or during a plea or sentencing hearing will reveal whether the offenses have similar import." *Id.* at ¶ 26. "[C]ourts must ask three questions when [a] defendant's conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions." *Id.* at ¶ 31. "[T]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at ¶ 26.

{¶37} Mr. Evett was convicted of burglary in violation of R.C. 2911.12(A)(1). That statute provides that

> [n]o person, by force, stealth, or deception, shall * * * [t]respass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense[.]

R.C. 2911.12(A)(1). Additionally, he was convicted of theft in violation of R.C. 2913.02(A)(1) which states that "[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services * * * [w]ithout the consent of the owner or person authorized to give consent[.]"

{¶38} After examining Mr. Evett's conduct, and the evidence supporting it, we conclude that the harm that resulted from the burglary was separate and identifiable from the harm Mr. Evett caused by subsequently stealing Ms. Schwabe's purse. Ms. Schwabe faced a different injury from Mr. Evett's act of entering her home with the intent to steal from her knowing that he was not welcome there that day than she did after Mr. Evett actually stole the purse containing her house and car keys and the approximately $1700 to $1800 cash that she used to pay bills. Accordingly, the offenses are of dissimilar import and there was no bar to the trial court sentencing him for both offenses. *See Ruff* at ¶ 26.

{¶39} Moreover, we conclude that the offenses were separately committed. At the point in time when Mr. Evett entered the apartment without permission with the intent to commit a criminal offense, Mr. Evett had committed the crime of burglary. It was only later when Mr. Evett took Ms. Schwabe's purse that he committed the crime of theft. *See State v. Santamaria*, 9th Dist. Summit No. 26963, 2014-Ohio-4787, ¶ 28 ("[T]he crime of aggravated burglary occurred when Mr. Santamaria, Jr. broke into Mr. Nemeth's home, with a deadly weapon on his person, intending to commit burglary in the premises. Additionally, the crime of aggravated robbery occurred later in time when, as Mr. Santamaria, Jr. was committing the burglary, Mr. Nemeth came out of hiding and was attacked.").

{¶40} Mr. Evett's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> THE TRIAL COURT ERRED IN CONSIDERING AT SENTENCING THAT [MR. EVETT] PRESENTED IN HIS DEFENSE AT TRIAL WITNESS TESTIMONY THAT LATER TURNED OUT TO NOT BE CREDIBLE, WHILE THE STATE'S FAILURE TO DISCLOSE DISCOVERY MATERIALS TIMELY AND PRIOR TO THE COMMENCEMENT OF TRIAL PREVENTED DEFENSE COUNSEL FROM ANY ADVANCE KNOWLEDGE OF THE NOT CREDIBLE TESTIMONY.

{¶41} Mr. Evett asserts in his fourth assignment of error that the trial court erred in relying on information stricken from the record in sentencing him. Based on Mr. Evett's limited argument and the limited record before us, we do not agree.

{¶42} "A plurality of the Supreme Court of Ohio held that appellate courts should implement a two-step process when reviewing a felony sentence." *Bulls*, 2015-Ohio-276, at ¶ 26, quoting *State v. Clayton*, 9th Dist. Summit No. 26910, 2014-Ohio-2165, ¶ 43, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 26. "The first step, reviewed de novo, is to ensure that the trial court complied with applicable rules and statutes in imposing the sentence." *Bulls* at ¶ 26, quoting *Clayton* at ¶ 43. "If the first step is satisfied, the second [step] is to review the term of imprisonment for an abuse of discretion." *Bulls* at ¶ 26, quoting *Clayton* at ¶ 43.

{¶43} Mr. Evett has not argued that the trial court failed to comply with any applicable rules or statutes in sentencing him. Instead, he appears to assert that the trial court abused its discretion in allegedly basing his prison sentence on information not in the record. Mr. Evett argues it was inappropriate for the State to reference that Mr. Evett was going to have Mr. Halenar come in lie for him and, and for the trial court to state that Mr. Halenar "was about to tell us how this all didn't happen until you guys agreed to withdraw that[]" when Mr. Halenar's testimony was stricken from the record.

{¶44} Again, we note that Mr. Evett has failed to cite any legal authority in making his argument. *See* App.R. 16(A)(7). Additionally, Mr. Evett has failed to include a copy of the presentence investigation report ("PSI"), which the trial court referenced extensively at the sentencing hearing. *See State v. McGowan*, 9th Dist. Summit No. 27092, 2014-Ohio-2630, ¶ 6, quoting *State v. Taylor*, 9th Dist. Lorain Nos. 13CA010366, 13CA010367, 13CA010368, 13CA010369, 2014-Ohio-2001, ¶ 6. ("When an appellant does not provide a complete record to

facilitate our review, we must presume regularity in the trial court's proceedings and affirm."). Given Mr. Evett's unsupported argument and the absence of the PSI report from the record, we are unable to fully review whether the trial court abused its discretion in sentencing him. *See* App.R. 16(A)(7) and *McGowan* at ¶ 6.

{¶45} Nonetheless, we note that the trial court's reference to the fact that Mr. Halenar's testimony was withdrawn is extremely limited. Instead, the trial court's focus was largely on numerous items from the PSI, including prior convictions, prior probation violations, support arrearages, and Mr. Evett's mental health issues. Additionally, we point out that, while Mr. Halenar's testimony was stricken, the discussion about what to do about Mr. Halenar's testimony, Mr. Evett's counsel's motion to dismiss, and the hearing on the motion to quash the subpoena concerning Mr. Halenar were not stricken and are part of the record. Given all of the foregoing, Mr. Evett has not demonstrated that the trial court abused its discretion in sentencing him.

{¶46} Mr. Evett's fourth assignment of error is overruled.

III.

{¶47} Mr. Evett's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

MICHAEL J. CALLOW, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MATTHEW A. KERN, Assistant Prosecuting Attorney, for Appellee.