

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA0004-M

Appellee

v.

BENNETT D. BROWN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 12 CR 0725

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 23, 2015

WHITMORE, Judge.

{¶1} Defendant-Appellant, Bennett Brown, appeals from his conviction in the Medina County Court of Common Pleas. This Court affirms.

I

{¶2} On July 12, 2012, Darla Berthold returned home from work to find that her safe had been stolen. Berthold reported the theft to the police, who responded that same day. During their initial investigation, the police did not enter Berthold's basement. The following day, however, Berthold discovered that her basement window was broken and contacted the police again. The police ultimately took the broken window frame into evidence and had it tested for fingerprints. Two fingerprints were discovered on the window frame, and both were matched to Brown.

{¶3} The police soon discovered that Brown's mother lived on the same street as Berthold and that Brown often stayed there. On November 1, 2012, the police executed a search

warrant at Brown's mother's home. Although the police failed to find any of Berthold's belongings at the residence, they found a stolen 2007 Harley Davidson. The police later arrested Brown in connection with the burglary and the motorcycle they found when they executed their warrant.

{¶4} A grand jury indicted Brown on one count of burglary, in violation of R.C. 2911.12(A)(3), and one count of receiving stolen property, in violation of R.C. 2913.51(A). A jury trial took place, and the jury found Brown guilty on both counts. The trial court sentenced Brown to a total of 30 months in prison.

{¶5} Brown now appeals and raises two assignments of error for our review.

II

Assignment of Error Number One

THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO SUPPORT DEFENDANT'S CONVICTION ON THE BURGLARY CHARGE.

{¶6} In his first assignment of error, Brown argues that his burglary conviction is based on insufficient evidence. We disagree.

{¶7} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991).

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.

Id. at paragraph two of the syllabus; *see also State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

"In essence, sufficiency is a test of adequacy." *Thompkins* at 386.

{¶8} “No person, by force, stealth, or deception, shall * * * [t]respass in an occupied structure * * * with purpose to commit in the structure * * * any criminal offense.” R.C. 2911.12(A)(3). Whoever commits the foregoing offense is guilty of third-degree felony burglary. R.C. 2911.12(D).

{¶9} Darla Berthold testified that she resides on Vandemark Road in Medina. Before this incident occurred, Berthold kept a small safe in the closet of the first floor bedroom of her home. She testified that the safe was hidden beneath a towel and bolted to the floor. To bolt the safe to the floor, Berthold’s friend had entered the crawlspace in her basement and put the bolt through the ceiling underneath the safe. Berthold testified that she kept important documents in the safe along with approximately \$30,000 in cash.

{¶10} On July 12, 2012, Berthold returned from work and noticed a white, powdery substance lying along the walkway to her back door. She entered the house and also observed that her bathroom, bedroom, and basement doors were all wide open. Berthold testified that, when she left for work that morning, all three doors were closed and she did not see any white, powdery substance on the ground. Believing that her safe had been compromised, Berthold walked to the first floor bedroom closet and saw that her safe was gone. The towel that normally covered the safe had been cast aside and a white, powdery substance covered the area where the safe had sat. The substance trailed out of the closet and through the first floor bedroom. Berthold also later found traces of the white, powdery substance in her kitchen.

{¶11} Berthold contacted the police, and two officers responded that same day. The following day, Berthold noticed for the first time that her basement window had been broken. Consequently, she called the police again and more officers came to her house. Berthold testified that she had replaced her basement window approximately five to six years earlier.

{¶12} Deputy Keith Curtin responded to Berthold's call about her broken basement window. He inspected the window from the outside and saw upon close inspection that the glass was gone and only the screen remained. Inside the basement, Detective Curtin found the frame that had held the window leaning against the basement wall. Large shards of glass still clung to the window frame, and broken glass littered the floor nearest the window opening. Detective Curtin also observed that someone had removed the plywood covering the basement crawl space. He spotted footprints in the crawl space and identified the space as the area that had been used to gain access to the bolt securing Berthold's safe.

{¶13} Deputy Curtin tagged the window frame as evidence, and the frame was ultimately delivered to the Ohio Bureau of Criminal Identification and Investigation ("BCI"). Michelle Snyder, a forensic scientist for BCI, tested the frame for latent fingerprints. She was able to identify two prints on the frame: one on the outside, metal frame of the window, and one on the inside of a shard of glass that still clung to the window. Snyder explained that the window actually had two glass panes and, had the window still been intact, the second print she found would have been located inside the two panes of glass. According to Snyder, the only way a person could have left their fingerprint in that location without breaking the glass would be if that person was the one to have installed the window.

{¶14} Snyder searched the State of Ohio's fingerprint database to see if she could find a match for the two latent prints she discovered on the window frame. She testified that she ultimately found a match for both prints. Specifically, both prints matched the left thumbprint of Brown. Snyder testified that fingerprints are unique identifiers and that no two individuals have the same fingerprints.

{¶15} Once Snyder identified Brown's fingerprints on Berthold's window frame, Detective Samo Mernik began to investigate Brown. Detective Mernik discovered that Brown's mother lived on the same street as Berthold and that Brown often stayed there. He, therefore, secured a search warrant for the home and executed the warrant on November 1, 2012, some three and a half months after the burglary. The police did not find any of Berthold's belongings during their search, but they did find a stolen 2007 Harley Davidson in the garage.

{¶16} Brown was not present when the police searched his mother's home, but Detective Mernik was able to speak with him on the phone while the police were executing their warrant. During their phone conversation, Detective Mernik asked Brown whether there were any items on the property that did not belong to Brown and that he had taken. Brown denied that there were any stolen items on the property. Detective Mernik testified that the two agreed to speak the following day, but that Brown never called or came to the police station to speak with him. Detective Mernik was not able to speak to Brown in person until mid-December.

{¶17} When Detective Mernik eventually met with Brown, Brown relayed that his only source of recent income had been a job at Safeway. Detective Mernik testified that Brown started his job at Safeway in April 2012 and stopped working there on July 11, 2012, the day before the burglary. Brown's net pay during that entire time period amounted to approximately \$2,300. Nevertheless, Brown admitted that he paid \$2,000 in cash for the 2007 Harley Davidson. Brown claimed that he bought the motorcycle in June or early July 2012. He further claimed that he was able to pay for the motorcycle because he had saved money from a previous job.

{¶18} Detective Mernik testified that Brown "adamantly denied" having burglarized Berthold's house. Brown stated: "If I did [Berthold's] house, I would have money." Even after

Detective Mernik informed Brown that his fingerprints had been found inside the house, Brown denied having entered it. He stated that he might have gone inside the house many years ago when Berthold gave him permission to hunt on her property. Yet, he gave no indication that he ever would have had a reason to be in the basement.

{¶19} Brown argues that his burglary conviction is based on insufficient evidence because Berthold could not say exactly when her basement window had been broken, there was no evidence that he knew about her safe, and the police never found any of her belongings in his possession. According to Brown, “[t]he State only proved at best that [he] touched a broken window at the victim’s house at some time.”

{¶20} Because Brown’s assignment of error only presents us with a sufficiency challenge, the persuasiveness of the State’s evidence is not at issue. *See State v. Brooks*, 9th Dist. Summit No. 23237, 2007-Ohio-1424, ¶ 7 (“[S]ufficiency tests the burden of production while manifest weight tests the burden of persuasion.”). We need only decide whether, viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the State proved the elements of burglary beyond a reasonable doubt. *See Jenks*, 61 Ohio St.3d 259, at paragraph two of the syllabus. “In this analysis, ‘[c]ircumstantial evidence and direct evidence inherently possess the same probative value.’” *State v. Good*, 9th Dist. Wayne No. 13CA0044, 2014-Ohio-3536, ¶ 4, quoting *Jenks* at paragraph one of the syllabus.

{¶21} Although Berthold could not say exactly when her basement window had been broken, she testified that she had replaced the window five to six years before the burglary and that she occasionally went down to her basement to clean up. Moreover, the police determined that whoever burglarized Berthold’s home had gained access to the crawl space in her basement in order to pry loose the bolt holding down the safe. Berthold’s window was broken from the

outside and whoever broke the window left the window frame propped up against the wall in Berthold's basement. Combined with Berthold's testimony that the burglary occurred on July 12, 2012, a rational trier of fact could have determined that the individual who burglarized Berthold's home broke her basement window in order to gain entry to the home.

{¶22} There was testimony that two fingerprints were found on the window frame from Berthold's basement window. Based on the location of one of those prints, BCI was able to conclude that the print had been left by either the person who broke the window or the person who installed it. Both of the fingerprints found on the window matched Brown's left thumb, and there was no evidence that Brown had installed Berthold's window. Accordingly, a rational trier of fact could have concluded that Brown broke Berthold's basement window and did so to gain entry to her home.

{¶23} Although the police never found Berthold's safe or any of its contents, they were not able to search Brown's mother's house until several months after the burglary. When they did so, they found a stolen 2007 Harley Davidson motorcycle at the house. Brown claimed that he used his savings to pay \$2,000 in cash for the motorcycle, but there was evidence that he only earned \$2,300 at the only job he held from April 2012 to July 2012. Also in evidence was the fact that Brown had stopped working the day before Berthold's house was burglarized.

{¶24} Having reviewed the record, we cannot conclude that Brown's burglary conviction is based on insufficient evidence. Although the evidence against Brown was circumstantial in nature, circumstantial and direct evidence possess the same probative value. *See Good*, 2014-Ohio-3536, at ¶ 4, quoting *Jenks*, 61 Ohio St.3d 259, at paragraph one of the syllabus. Viewing all the circumstantial evidence in a light most favorable to the State, a rational trier of fact could have concluded that the State proved beyond a reasonable doubt that Brown

broke Berthold's window and entered her home for the purpose of taking her safe. As such, Brown's first assignment of error is overruled.

Assignment of Error Number Two

THE COURT ERRED BY ALLOWING THE ADMISSION OF IRRELEVANT,
PREJUDICIAL EVIDENCE CONCERNING DEFENDANT'S DRUG USAGE.

{¶25} In his second assignment of error, Brown argues that the court abused its discretion when it admitted evidence related to his drug use. He argues that the court should not have admitted the evidence because it was irrelevant and highly prejudicial.

{¶26} "The decision to admit or exclude evidence lies in the sound discretion of the trial court." *State v. Wright*, 9th Dist. Lorain No. 05CA008675, 2006-Ohio-926, ¶ 5. Accordingly, "the court's decision will not be reversed absent a showing of an abuse of discretion." *State v. Stover*, 9th Dist. Wayne No. 13CA0035, 2014-Ohio-2572, ¶ 7. An abuse of discretion indicates that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶27} During the trial, the court allowed the State to introduce evidence that Brown had a history of drug use. Detective Mernik acknowledged that he and Brown had discussed Brown's drug use when they spoke in December 2012 and that Brown had "said that his drug of choice was opiates." The State also played the portion of Detective Mernik's recorded conversation with Brown in which Brown admitted to having used heroin, but expressed a preference for opiates. In closing argument, the State cast Brown's drug use as a motive for his having stolen Berthold's money.

{¶28} Brown argues that the court abused its discretion by admitting evidence of his drug use because the evidence was irrelevant and substantially more prejudicial than probative. He further argues that the evidence constituted improper other acts evidence. It is questionable

whether Brown preserved an objection on all of the grounds he now seeks to raise on appeal. Even assuming he did, however, Brown has failed to establish that any error the court might have made in admitting the evidence of his drug use actually prejudiced him in light of all the other evidence produced at trial. *See* Crim.R. 52(A). *See also State v. Hayes*, 9th Dist. Summit No. 26388, 2013-Ohio-2429, ¶ 29.

{¶29} “Even where the admission of evidence constitutes constitutional error, the error is harmless ‘if the remaining evidence, standing alone, constitutes overwhelming proof of defendant’s guilt.’” *State v. Gates*, 9th Dist. Summit No. 25435, 2011-Ohio-5631, ¶ 25, quoting *State v. Williams*, 6 Ohio St.3d 281 (1983), paragraph six of the syllabus. Two of Brown’s fingerprints were found on Berthold’s broken window, which was propped up against her basement wall. The State set forth evidence that the location of one of the fingerprints on the window was such that it only could have been left by one of two people: the person who broke the window or the person who installed it. Brown never claimed to have installed Berthold’s window. Indeed, even when confronted with the evidence of his fingerprint, Brown denied having gone anywhere near Berthold’s house. The State also presented evidence that Brown frequently stayed on the same street as Berthold and paid a significant sum of cash for a stolen motorcycle around the same time that (1) the burglary occurred, and that (2) he did not have any significant source of income. Thus, we must conclude that the State produced overwhelming circumstantial evidence of Brown’s guilt. “Although we question the propriety of admitting the evidence [of Brown’s drug use], we nonetheless conclude that its admission did not prejudice [him] and any error was harmless.” *State v. Schmidt*, 9th Dist. Medina No. 10CA0071-M, 2012-Ohio-537, ¶ 22. Accordingly, Brown’s second assignment of error is overruled.

III

{¶30} Brown'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.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

MICHAEL WESTERHAUS, Attorney at Law, for Appellant.

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