

[Cite as *State v. Coleman*, 2015-Ohio-1396.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
<i>Plaintiff-Appellee</i>	:	Appellate Case No. 26282
	:	
v.	:	Trial Court Case No. 2014-CR-1198
	:	
TERRANCE COLEMAN	:	(Criminal Appeal from
	:	Common Pleas Court)
<i>Defendant-Appellant</i>	:	
	:	

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OPINION

Rendered on the 10th day of April, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Terrance Coleman, appeals from his conviction in the Montgomery County Court of Common pleas after a jury found him guilty of burglary. Coleman contends his conviction was not supported by sufficient evidence and was also against the manifest weight of the evidence. For the reasons outlined below, Coleman's conviction will be affirmed.

{¶ 2} On April 29, 2014, Coleman was indicted for one count of burglary in violation of R.C. 2911.12(A)(2), a felony of the second degree. The charge stemmed from allegations that on March 2, 2013, Coleman entered a secure apartment complex named "The Rockwood" at 515 West Grand Avenue in the city of Dayton, Montgomery County, Ohio, and stole items from a tenant's vehicle parked in the complex's garage. Coleman pled not guilty to the charge and the matter proceeded to a two-day jury trial commencing on June 2, 2014.

{¶ 3} At trial, the State presented testimony from Raquel Spears, a tenant of The Rockwood who is also employed as the apartment complex's leasing agent. Spears testified that around 1:00 a.m. on March 2, 2013, she left a party and returned home to The Rockwood with her vehicle full of party supplies, including a six-pack of beer, liquor, glasses, silverware, plates, napkins, chips, and a chicken dinner contained in a Styrofoam container. Spears explained that The Rockwood is a secure building where people can only enter if they have a key or if they are buzzed in by a tenant. Spears further testified that the building has a parking garage with 12 garage doors from which tenants can enter and exit. Each tenant is assigned a specific set of garage doors and has a remote control that allows them to access their assigned set of doors.

{¶ 4} Spears testified that when returning home that morning, she entered through her assigned set of garage doors located at the rear of the building. Spears also testified that she parked her vehicle in her assigned space inside the garage and then left the garage to find a cart so that she could carry her party supplies up to her apartment. When Spears left, her vehicle was unlocked with her party supplies, chicken dinner and cell phone still inside. The party supplies were contained in black, nylon reusable grocery bags.

{¶ 5} When Spears eventually found a cart inside the building, she made her way back through the lobby to the garage, which she noted was well lit. Spears testified that when she reached the door that led from the lobby to the garage, she saw, through a window on the door, a “rough” looking man standing on the other side walking up as if he were going to open the door. Spears testified that she saw the man’s face clearly and that he was approximately her height—five foot two inches tall—and weighed approximately 170 to 200 pounds. She also testified that the man was wearing a large coat with his hair pulled back in a short ponytail and that he was carrying a black bag containing beer.

{¶ 6} Continuing, Spears testified that she did not recognize the man, so she asked for his name. The man responded “Shawn Johnson.” Trans. Vol. I (June 2, 2014), p. 183. As The Rockwood’s leasing agent, Spears testified that she was not aware of any tenant that went by that name. The man then indicated that he was visiting Gill Guyton, who Spears knew was a tenant of the building. However, the man did not respond when Spears asked where Gill was. Since the door was locked and entry from the garage to the lobby was prohibited without a key, Spears asked the man if he had a

key. In response, Spears testified that the man slowly began to back away. As a result, Spears told the man she was going to call the police. Spears then went to a nearby call box and alerted the 24-hour doorman of the situation and asked him to call the police. The doorman was in charge of multiple properties and was not physically at The Rockwood building; however, he called the police per Spears's request.

{¶ 7} While on the phone with the doorman, Spears testified that she heard glass breaking from the back of the building. Upon hearing this, Spears testified that she ran outside to the rear of the building where she saw the same man with the short ponytail climbing out of a window located on one of the garage doors. Spears testified that she said: "What are you doing?" and the man responded: "I'm not waiting for the police to get here." *Id.* at 190. The man then jumped out of the window and ran away. Spears testified that the man had a black bag around his neck when he jumped out of the window.

{¶ 8} The police arrived at The Rockwood shortly after the man fled. Spears described what happened and what the man looked like to the responding officers. One of the responding officers, Officer Gary Roesser of the Dayton Police Department, testified that when he arrived on the scene, he observed a broken window in one of the rear garage doors and broken glass laying outside on the ground. Roesser also testified that he located a remote control lying on the ground near the broken garage window. Spears testified that the remote control found by Roesser was the garage-door remote control that she kept in her vehicle.

{¶ 9} Spears testified that upon the officer finding her remote control, she decided to check her vehicle to see if anything was missing. Spears testified that she could tell someone had been inside her vehicle because items were misplaced and her cell phone,

chicken dinner, beer, and some bags of party supplies were missing. After learning of the missing items, Roesser and Spears attempted to contact Gill Guyton by knocking on his apartment door. Guyton, however, did not answer, and none of the missing items from Spears's vehicle were recovered.

{¶ 10} Spears testified that a couple of weeks later she saw the same man with the short ponytail, "Shawn Johnson," walking on West Grand Avenue about 100 feet from The Rockwood. She testified that she attempted to contact him by yelling: "Hey, Shawn." Trans. Vol. I (June 2, 2014), p. 196. However, the man did not turn around and respond. Spears then followed him, honked her horn, and shouted: "Hey, Shawn. Let me talk to you for a minute." *Id.* at 197. In response, Spears testified that the man turned around, put his finger up as if to say he would be right back and then walked into a nearby apartment complex on West Grand Avenue. The day after this encounter, Spears was contacted by Detective Michael Baker of the Dayton Police Department regarding the burglary. During their conversation, Spears advised Baker that she had recently seen the same man that she encountered in the parking garage walking on West Grand Avenue.

{¶ 11} Detective Baker testified that on March 21, 2014, he had sent an e-mail to Dayton Police Officers containing Spears's description of the burglary suspect. Officer Gary Lowe of the Dayton Police Department testified that on March 22, 2014, at 1:28 a.m., he was driving a marked police cruiser in the area of West Grand Avenue when he and his partner, Officer Travis Eaton, saw a man matching the description of the suspect in Baker's e-mail walking two blocks from The Rockwood. Lowe testified that he and Eaton made contact with the man and asked for his identification. According to Lowe,

the man did not have any identification with him, but said his name was “Eric Coleman” and provided a matching Social Security Number. Trans. Vol. II (June 3, 2014), p. 307. Lowe testified that the man said he was homeless and residing with a woman at a nearby apartment complex on West Grand Avenue. Lowe and Eaton then offered the man a ride to the apartment complex where he was allegedly staying and the man accepted.

{¶ 12} Lowe testified that when they reached the apartment complex, Eaton made contact with a female named Tarnisha Graham and another male who also identified himself as Eric Coleman. Lowe testified that the man they had given a ride thereafter advised them that his name was actually “Terrance Coleman” and gave them a matching Social Security Number. *Id.* at 309-310. Following that encounter, an image of Terrance Coleman was used in a six-image photo spread administered to Raquel Spears.

{¶ 13} Detective Baker testified that he arranged for Spears to view the photo spread on March 24, 2014. Baker testified that he prepared the photo spread, but did not administer it. Rather, Detective Robert Simison, who knew nothing about the case at the time, blindly administered the photo spread to Spears. Simison testified that Spears immediately picked out an image of the offender without hesitation. According to Baker, the photo Spears chose was that of the appellant herein, Terrance Coleman.

{¶ 14} In addition to Raquel Spears, Officer Roesser, Detective Baker, Detective Simison, and Officer Lowe, the State also called Gillum Guyton as a trial witness. Guyton testified that he has been a tenant of The Rockwood for the past two years. He also testified that he has known Terrance Coleman for a long time, but does not know where Coleman lives. While he often sees Coleman in the area of The Rockwood, Guyton testified that he has never invited Coleman over to his apartment and has never

given him a set of keys to The Rockwood. Guyton further testified that he was not at home on the morning of the burglary because he was spending the night at a friend's house.

{¶ 15} After hearing the foregoing testimony, the jury deliberated and found Coleman guilty of burglary as charged. The trial court then sentenced Coleman to a prison term of two years. Coleman now appeals from his conviction, raising two assignments of error for review. For purposes of convenience, we will address Coleman's assignments of error together. They are as follows:

- I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ENTERING A VERDICT WHICH WAS CONTRARY TO LAW.
- II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ENTERING A VERDICT WHICH WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 16} Under the foregoing assignments of error, Coleman challenges the legal sufficiency and manifest weight of the evidence. Specifically, Coleman contends that the State failed to present evidence establishing that he committed the trespass element of burglary. Coleman also contends that the weight of the evidence does not establish that he entered The Rockwood with the purpose to commit a criminal offense.

{¶ 17} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "When reviewing a claim as to sufficiency of evidence, the relevant

inquiry is whether any rational factfinder viewing the evidence in a light most favorable to the state could have found the essential elements of the crime proven beyond a reasonable doubt.” (Citations omitted.) *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997). “The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact.” (Citations omitted.) *Id.*

{¶ 18} In contrast, “[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive.” (Citation omitted.) *Wilson* at ¶ 12. When evaluating whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). “The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence.” *State v. Adams*, 2d Dist. Greene Nos. 2013 CA 61, 2013 CA 62, 2014-Ohio-3432, ¶ 24, citing *Wilson* at ¶ 14.

{¶ 19} “The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve.” *State v. Hammad*, 2d Dist. Montgomery No. 26057, 2014-Ohio-3638, ¶ 13, citing *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder’s decisions whether, and to what extent, to credit

the testimony of particular witnesses. *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997). “This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the factfinder lost its way.” (Citation omitted.) *State v. Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510, *4 (Oct. 24, 1997).

{¶ 20} “Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency.” (Citation omitted.) *State v. McCrary*, 10th Dist. Franklin No. 10AP-881, 2011-Ohio-3161, ¶ 11. As a result, “a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.” (Citations omitted.) *State v. Braxton*, 10th Dist. Franklin No. 04AP-725, 2005-Ohio-2198, ¶ 15.

{¶ 21} As noted above, Coleman was convicted of burglary in violation of R.C. 2911.12(A)(2), which states that:

No 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 that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense[.]

“Trespass” is defined under R.C. 2911.21(A). Pursuant to that statute: “No person, without privilege to do so, shall * * * [k]nowingly enter or remain on the land or premises of

another.” R.C. 2911.21(A)(1).

{¶ 22} Contrary to Coleman’s claim otherwise, the testimonial evidence presented by the State sufficiently established that Coleman was trespassing at The Rockwood on the morning in question. The evidence established that The Rockwood is a secure apartment building in which one can enter in only a few ways: (1) with a tenant’s key; (2) by being buzzed in by a tenant; or (3) following others inside the building who either have a key or are buzzed in. One can also enter the garage of the building by going through the garage doors using an assigned remote control, but once inside the garage, a key is needed to access the building.

{¶ 23} Raquel Spears, who is not only a tenant, but also the leasing agent for The Rockwood, testified that Coleman was not a tenant of the building and yet was in the building’s locked garage. The tenant Coleman claimed he was there to see, Gillum Guyton, testified that he was not at his apartment that morning, had never invited Coleman to his apartment before, and had never given Coleman access to the building. Furthermore, Coleman gave the false name “Shawn Johnson” to Spears, and when Spears asked if he had a key, Coleman said nothing and just backed away.

{¶ 24} Also, the fact that Coleman’s response to Spears calling the police was exiting the garage by breaking and climbing through a window of one of the garage doors and saying “I’m not waiting for the police to get here” further indicates that Coleman should not have been on the property. Accordingly, we find there was sufficient direct and circumstantial evidence for reasonable minds to conclude that Coleman trespassed by knowingly entering and remaining on the premises of The Rockwood apartments without privilege to be there.

{¶ 25} The record also indicates that the jury did not clearly lose its way in finding that Coleman had the intent to commit a criminal offense while inside The Rockwood parking garage. Spears testified that that she initially saw Coleman carrying a black bag with beer in it and that she later saw Coleman with a black bag around his neck as he was jumping out of the garage window. When Spears returned to her vehicle, some of the black nylon bags containing her party supplies were missing. Spears also testified that her beer, chicken dinner, and cell phone were gone. She further testified that she observed physical signs that her vehicle had been ransacked because certain items were out of place. Moreover, the police located her garage-door remote control on the ground near where Coleman had jumped out of the window.

{¶ 26} Although the missing items from Spears's vehicle were never found and no one directly witnessed Coleman steal the items, the foregoing is sufficient, credible circumstantial evidence that Coleman took the items from Spears's vehicle without her permission. We note that evidence does not have less weight merely because it is circumstantial, rather than direct, as it is primarily for the finder of fact to determine what weight to assign to any evidence. *State v. Jones*, 2d Dist. Miami No. 2014-CA-11, 2015-Ohio-196, ¶ 29, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph one of the syllabus.

{¶ 27} Coleman also attempts to attack Spears's credibility by pointing out the fact that she had consumed alcohol on the night of the burglary. Spears testified that she had consumed two beers sometime around 9:00 p.m. or 10:00 p.m. and that she was not intoxicated. In addition, Officer Gary Roesser testified that Spears was not intoxicated when he arrived at The Rockwood on the night of the burglary. Regardless, we defer to

the jury's decision on the issue of witness credibility and the record indicates that the jury found Spears's testimony credible. See *Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 at *4. Since it is not patently apparent that the jury lost its way, we will not disturb that finding. See *Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510 at *4.

{¶ 28} For the foregoing reasons, we conclude that Coleman's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Accordingly, Coleman's First and Second Assignments of Error are overruled and his conviction for burglary is affirmed.

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DONOVAN, J. and HALL, J., concur.

Copies mailed to:

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