

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1405

Appellee

Trial Court No. CR0200802760

v.

Mydrell Braswell aka Homer Smith

**DECISION AND JUDGMENT**

Appellant

Decided: August 14, 2009

\* \* \* \* \*

Nicole I. Khoury, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Appellant, Mydrell Braswell (also known as Homer Smith), appeals a judgment of the Lucas County Court of Common Pleas convicting him of the offense of burglary, a violation of R.C. 2911.12 (A)(2) and (C) and a second degree felony, and sentencing him to serve a term of imprisonment of three years for the offense. The trial court rendered the judgment pursuant to a guilty verdict in a jury trial.

{¶ 2} Appellant's counsel filed an appellant's brief on his behalf but has also requested leave of court to withdraw as counsel in this appeal, pursuant to the procedure

set forth in *Anders v. California* (1967), 386 U.S. 738. In *Anders*, the Supreme Court of the United States established the procedure to be followed where appointed counsel concludes that there is no merit to an appeal and seeks to withdraw as counsel for appellant in an appeal. Under the procedure, counsel must undertake a "conscientious examination" of the case and, if he determines an appeal would be "wholly frivolous" must advise the court and seek permission to withdraw. *Id.* at 744. The request to withdraw must be accompanied with a brief "referring to anything in the record that might arguably support the appeal." *Id.* A copy of the brief is to be furnished to the appellant. *Id.* The appellant is permitted additional time to raise any points he chooses in his own brief. *Id.*

{¶ 3} Where these requirements are met, an appellate court must conduct a full examination of the proceedings to determine whether the appeal is wholly frivolous. *Id.* Where the court concludes that the appeal is wholly frivolous, it may grant the motion to withdraw and dismiss the appeal. *Id.*

{¶ 4} Counsel for appellant has presented two potential grounds for appeal: that the evidence at trial was insufficient to support a guilty verdict and that the verdict was against the manifest weight of the evidence. We consider the issue of the sufficiency of the evidence to support a conviction first.

{¶ 5} A challenge to a conviction based upon a claim of insufficiency of the evidence presents a question of law on whether the evidence at trial is legally adequate to support a jury verdict on all elements of a crime. *State v. Thompkins* (1997), 78 Ohio

St.3d 380, 386. An appellate court does not weigh credibility when reviewing the sufficiency of evidence to support a verdict. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of syllabus. A reviewing court considers whether the evidence at trial "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.*

{¶ 6} Appellant's conviction is based upon a burglary at the apartment of Raymond Hordak, Jr. on or about November 12, 2007. Hordak testified at trial that he left his apartment in the afternoon of November 11, 2007, and returned the next day. He testified that when he returned he found the apartment in a "shambles." When he entered the apartment, "everything was on the floor." His television and stereo were missing. A coin collection and money were gone.

{¶ 7} He found that, in his absence, an exterior screen to a bedroom window had been cut from top to bottom -- about one and one-half feet in length. A police investigation led to the discovery of latent fingerprints on the inside of the window glass at the bottom and side of the window. Detective Scott Smith of the Toledo Police Department testified that the prints matched fingerprints taken from the middle and ring fingers of appellant's left hand.

{¶ 8} Hordak testified that he did not know the appellant and that he kept the window and apartment locked. Hordak had allowed few, other than his sister, to enter his

apartment and had not allowed appellant to enter it. Hordak had lived in the apartment for ten years before the incident.

{¶ 9} There were no witnesses to the burglary. Counsel for appellant identified the issue of sufficiency of the evidence as a potential issue for appeal due to the state's reliance on fingerprint evidence to prove appellant's guilt at trial.

{¶ 10} The Supreme Court of Ohio considered challenges to the sufficiency of the evidence to support convictions based largely or exclusively on fingerprint evidence in *State v. Miller* (1977), 49 Ohio St.2d 198. The court outlined the analysis required:

{¶ 11} "In determining the sufficiency of the fingerprint evidence, a reviewing court must examine this evidence on a case-by-case basis. The crucial issue is whether attendant circumstances, such as the location of the accused's alleged fingerprint, the character of the premises where the print was found, and the accessibility of the general public to the object on which the print was impressed are sufficient to justify the trier of fact to conclude not only that the accused was at the scene of the crime when it was committed, but also that the accused was the criminal agent." *Id.* at 202-03.

{¶ 12} The standard for the sufficiency of such evidence to support a conviction is set forth in the syllabus to the opinion:

{¶ 13} "Fingerprints corresponding to those of the accused are sufficient proof of this identity to sustain his conviction, where the circumstances show that such prints, found at the scene of the crime, could only have been impressed at the time of the commission of the crime." *Id.* at syllabus.

{¶ 14} In *State v. Williams*, 10th Dist. No. 05AP-728, 2006-Ohio-1524, the Tenth District Court of Appeals applied the *State v. Miller* analysis in a challenge to a burglary conviction based upon sufficiency of the evidence. There were no witnesses to the burglary in the case. The evidence at trial demonstrated that a telephone box had been moved during a burglary. The defendant's fingerprint was found on that box. The evidence also established that the box had not been taken outside the apartment after purchase of the device and that the defendant did not have any access to the residence or box before the burglary. The Tenth District held that the fingerprint evidence under the circumstances was sufficient to uphold a burglary conviction. *Id.* at ¶ 18.

{¶ 15} The circumstances presented here also involve a residential apartment with restricted access to the public. Raymond Hordak had resided in the apartment ten years before the burglary and had never met the appellant. Hordak never allowed appellant access to the apartment.

{¶ 16} Construing the evidence most favorably to the state, a trier of fact could reasonably conclude that access to the apartment for the burglary was gained through a bedroom window to the apartment. Hordak testified that he left the apartment locked before the burglary. The exterior screen to the bedroom window was found after the burglary to have been cut one and one-half feet in length. Appellant's fingerprints were found on the interior surface of the window glass to that window.

{¶ 17} Under such an analysis, a rational factfinder could conclude that the fingerprints were located on a fixed object directly related to the crime – the window

used by the individual who committed the burglary to gain entry to the apartment and placed there while breaking into the apartment. Appellant's fingerprints were located on the interior surface of the window. The facts exclude any innocent means through which appellant's fingerprints could have been placed on the window. Accordingly, we conclude that the claim that the evidence at trial was insufficient to support appellant's conviction for burglary is without merit.

{¶ 18} Where it is claimed that a verdict is against the manifest weight of the evidence, an appellate court acts as a "thirteenth juror," reweighs the evidence, and may disagree with a factfinder's conclusions on conflicting testimony. *State v. Thompkins* at 387; *State v. Lee*, 6th Dist. No. L-06-1384, 2008-Ohio-253, ¶ 12. "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and new trial ordered." *Thompkins* at 387, quoting with approval, *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversals on this ground are granted "only in the exceptional case in which the evidence weighs heavily against conviction." *Id.*

{¶ 19} We have reviewed the record and find no manifest miscarriage of justice in appellant's conviction for burglary.

{¶ 20} We conclude that no meritorious issue for appeal is presented in the potential issues raised by appellant's counsel in his *Anders* brief. We have conducted our

own independent review of the record and proceedings in the trial court and conclude that appellant's appeal is entirely without merit. Counsel for appellant has met his responsibilities under *Anders v. California*. We, therefore, grant his motion to withdraw.

{¶ 21} On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Richard W. Knepper, J.  
CONCUR.

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JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.