

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	
BRAD R. LADD	:	Case No. 2009CA00073
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2008CR2038

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 14, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, P.J.

{¶1} On December 23, 2008, the Stark County Grand Jury indicted appellant, Brad Ladd, on one count of burglary in violation of R.C. 2911.12(A)(3). Said charge arose from the breaking and entering of a home belonging to Sue Ann Chu.

{¶2} A jury trial commenced on February 18, 2009. The jury found appellant guilty as charged. By judgment entry filed February 26, 2009, the trial court sentenced appellant to five years in prison, plus an extra year for violating his post release control.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE APPELLANT WAS DENIED HIS RIGHTS TO DUE PROCESS AND OF ASSISTANCE OF COUNSEL BECAUSE HIS TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE."

II

{¶5} "THE APPELLANTS (SIC) CONVICTION OF BURGLARY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶6} Appellant claims he was denied the effective assistance of trial counsel. Specifically, appellant claims his trial counsel was deficient in not filing a motion in limine regarding the footprint comparability testimony of Lawrence Township Police Chief Mark Brink and the testimony of Lawrence Township Police Detective Paul Stanley as to appellant's tone of voice when talking to his girlfriend. We disagree.

{¶7} The standard this issue must be measured against is set out in *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraphs two and three of the syllabus, certiorari denied (1990), 497 U.S. 1011. Appellant must establish the following:

{¶8} "2. Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. (*State v. Lytle* [1976], 48 Ohio St.2d 391, 2 O.O.3d 495, 358 N.E.2d 623; *Strickland v. Washington* [1984], 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, followed.)

{¶9} "3. To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different."

{¶10} Chief Brink's testimony about the footprint was relative to the photograph taken at the scene (State's Exhibit 19):

{¶11} "A. This is one of Mr. Ladd's shoes that we took from him, and you can see the footprint there in the snow. It matched up with the, it's almost like a cross pattern in the shoe, and they were pretty deep, that part of the shoe print, and we were simply matching the two of those up." T. at 121.

{¶12} On cross-examination, Chief Brink admitted he was not trained in matching footprints, and matching the shoe and the footprint in the snow was merely his opinion, which he considered "a little better than a lay person's opinion." T. at 127-128. A crime lab analysis of the footprint was not done. T. at 129.

{¶13} We find the footprint evidence was clearly subjected to cross-examination. The comparison was not made with any scientific certainty. Further, the jury as the trier of fact had the photograph to review and could decide the issue for themselves.

{¶14} Detective Stanley's testimony as to appellant's harsh voice was from telephone calls that were made by appellant to his girlfriend, Leanne Keith. These calls were made from the jail and recorded:

{¶15} "Q. And the tone and the demeanor of these phone calls, Mr. Baca just pointed out that he [appellant] said they have got nothing on me, don't bother getting an attorney; does Mr. Ladd say these things in a casual, kind, just normal conversational way?

{¶16} "A. No. Depending on the phone call; like when he is talking about being sorry and that he really had messed up, he's crying; as a matter of fact, balling (sic). And then when he is talking to Leanne on several occasions, he's screaming at her in a very harsh voice telling her that she needs to do this stuff for him because it's very important.

{¶17} "Q. And when he talks about the police and how they ain't got nothing on him and don't bother getting him an attorney, and they are coming at him with a deal and all that; does he say that in a nice, helpful way or is he derisive in his tone?

{¶18} "A. No. He has a very harsh tone and also threatening.

{¶19} "Q. But it kind of depends on what kind of mood he's in that day. Some days it probably really, really sucks being in the jail and sorry he's in there and other days thinking maybe he's hoping it will all go away?

{¶20} "A. That's correct." T. at 159-160.

{¶21} Detective Stanley was a witness who was giving direct testimony of what he heard. His characterization of appellant's voice was within his knowledge and we find it would not have been subject to exclusion.

{¶22} Upon review, we do not find any deficiency of defense counsel on the complained of issues.

{¶23} Assignment of Error I is denied.

II

{¶24} Appellant claims his conviction was against the manifest weight of the evidence. We disagree.

{¶25} On review for manifest weight, a reviewing court is to examine 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 jury 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. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶26} Appellant was convicted of burglary in violation of R.C. 2911.12(A)(3) which states the following:

{¶27} "(A) No person, by force, stealth, or deception, shall do any of the following:

{¶28} "(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the

structure or separately secured or separately occupied portion of the structure any criminal offense."

{¶29} Appellant argues there was no evidence to connect him to the crime.

{¶30} The owner of the house in question, Sue Ann Chu, returned home at approximately 9:10 a.m. on a snowy day and observed a vehicle in her driveway and her garage door open. T. at 68. The home is located on Marshallville Street in Canal Fulton, Ohio. T. at 67. The door from the garage to the house was standing wide open. Id. Ms. Chu had not left the garage door open before leaving her home that morning. T. at 69.

{¶31} A man walked down the sidewalk next to the house and said "there is someone still in the house. He said his buddy is still in the house." T. at 70. The man got into the vehicle and drove away. Id. Ms. Chu got the license plate number and called the police. T. at 70-71.

{¶32} Upon entering the house, a pillowcase was found by the front door with items stacked inside. T. at 72. Items were taken from the office desk and the bedroom dresser. T. at 72-73. The basement sliding glass door was broken. T. at 73. In the basement, wires were pulled from the ceiling and a projector was tampered with. Id. Photographs were presented representing the disarray in the home. T. at 77-79.

{¶33} Chief Brink and Lawrence Township Police Patrolman Dan Lockwood responded to the call and observed "a man walking down the street coming up Marshallville Road." T. at 100. The man in question was appellant. T. at 115-116. Appellant was not "dressed appropriately for the weather, certainly to be out walking." T. at 116. Upon being stopped and questioned, appellant claimed he had been at his

grandmother's house and "was coming up to the Park and Ride on Marshallville Street and 21 to get his car." T. at 100-101. Appellant stated he was driving his girlfriend's vehicle. T. at 101. Further investigation revealed appellant's story was not truthful. T. at 101, 117-119.

{¶34} Upon investigation at the scene, Chief Brink found tracks in the snow from the back sliding glass door right up to where they had encountered appellant. T. at 119. Chief Brink opined the footprints matched the tread on appellant's shoes. T. at 121.

{¶35} Robert Goines, a co-defendant, testified that he, appellant, and James Falloway were looking for a place to rob. T. at 166. After arriving at Ms. Chu's home, appellant knocked on the front door to see if anyone was home, and there was no answer. Id. They then went to the back of the house and appellant threw a brick through the sliding glass door. T. at 167. Appellant went in, but stayed by the broken door. Id. Appellant then yelled that someone was coming. T. at 168. Mr. Goines exited through the front door, encountered Ms. Chu, and got in the vehicle and drove away, leaving appellant behind. Id.

{¶36} The taped conversations between appellant and his girlfriend also incriminated him in the burglary. T. at 147-151.

{¶37} Upon review, we find sufficient credible evidence to substantiate the verdict, and no manifest miscarriage of justice.

{¶38} Assignment of Error II is denied.

{¶39} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Edwards, J. concur.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Julie A. Edwards

JUDGES

SGF/sg 0824

