

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009568

Appellee

v.

ADAM T. PARK

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 07CR074637

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 23, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} While Mary Waite was at a Fourth of July party, someone broke into her house and took approximately \$100 from her purse. Her daughter suspected that it was Adam Park, Mrs. Waite’s grandson, who had left the party for a period of time, saying he needed to buy cigarettes. After Mr. Park’s girlfriend told the police that Mr. Park had confessed to her that he was the one who broke into Mrs. Waite’s house, the Grand Jury indicted him for burglary and theft. Mr. Park waived his right to a jury trial, and, following a trial to the bench, the trial judge found him guilty of the offenses. It sentenced him to one year in prison. This Court affirms because his convictions are not against the manifest weight of the evidence.

BACKGROUND

{¶2} Jennifer Keffer testified that, on July 4, 2007, she and Mr. Park drove together to a party at his mother’s house. On the way to the party, he told her that he was going to get some

money from his grandmother so that they could buy heroin. She testified that, during the party, Mr. Park left to get cigarettes. She could not remember how long he was gone, but thought it was probably 15 to 20 minutes. After he got back, they stayed at the party for another hour and then left to go to another party. On the way to the second party, Mr. Park told her that he had gotten money from his grandmother's house by going in through a window. She testified that it would have been about a ten minute walk from the party to Mrs. Waite's house. She did not ask Mr. Park for any more details about how he obtained the money because she was only concerned about using it to buy heroin. Following the second party, they drove to Cleveland where they purchased heroin, which she testified sells for \$10 to \$15 a bag. They used the heroin in the car and then drove to her apartment.

{¶3} Arlene Waite testified that she is Mr. Park's aunt. She lives with her mother, Mary Waite. She testified that, on July 4, 2007, her mother and she attended a picnic at her sister's house. Mr. Park was at the picnic, but left for an hour or so to buy cigarettes. When her mother and she arrived home, she discovered that the front door, which had been locked, was open about an inch. Upon further inspection, she discovered that someone had broken the basement door window. In the garage, she noticed a pickaxe that was out of place. She testified that the only thing taken from the house was approximately \$100 from her mother's purse. She further testified that, in August 2008, Mr. Park admitted to her that he had taken money from her mother sometime in the past and promised that he would pay it back.

{¶4} Mary Waite testified that she went to the party at her daughter's house and that she remembered Mr. Park leaving for a while and then coming back. She could not remember how long he was gone, but thought it was about an hour. She testified that, when she returned home and saw that the door was open and that the basement door window had been smashed, she

thought she should check her purse because money had been taken from it in the past. She discovered that there was about \$100 missing from it.

{¶5} Deputy Eric Bors testified that he was dispatched to Mary Waite's home on July 4, 2007, and saw the smashed window. He testified that he interviewed Mr. Park later that day about where he had gone during the party. Mr. Park told him that he had purchased a couple packs of Kool cigarettes from Geyer's Supermarket. According to the deputy, he went to the supermarket, showed the employees who were on duty Mr. Park's picture, and asked whether anyone matching his description had purchased Kool cigarettes. He learned that, not only had no one matching Mr. Park's description been at the supermarket, but also that it had not sold any Kool cigarettes that day.

{¶6} The Grand Jury indicted Mr. Park for burglary and theft. Mr. Park waived his right to a jury trial, and, following a trial to the court, the trial judge found him guilty of the offenses. It sentenced him to one year in prison.

MANIFEST WEIGHT

{¶7} Mr. Park's assignment of error is that his convictions are against the manifest weight of the evidence. If a defendant argues that his convictions are against the manifest weight of the evidence, this 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[s] must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶8} Mr. Park was convicted of burglary, under Section 2911.12(A)(3) of the Ohio Revised Code, and theft, under Section 2913.02(A)(1). Under Section 2911.12(A)(3), "[n]o

person, by force, stealth, or deception, shall . . . [t]respass in an occupied structure . . . with purpose to commit in the structure . . . any criminal offense.” Under Section 2913.02(A)(1), “[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”

{¶9} Mr. Park has argued that Ms. Keffer was not credible. He has noted that she did not go with him when he left the party and that her testimony was based only on what he allegedly told her. He has noted that she admitted that she was high on heroin the day of the party and that she lied to the police several times during their investigation. He has also noted that she was inconsistent about how much money she thought he took. According to Mr. Park, Ms. Keffer was angry at him because she blamed him for her having to go into a drug treatment program. He has further noted that she admitted that the reason she originally told the police that he had committed the offenses was because she thought it would keep her out of jail.

{¶10} Regarding his aunt’s testimony, Mr. Park has argued that her statement about how long he was gone from the party was unreliable because she admitted she did not see him after he returned. Regarding his grandmother’s testimony, he has noted that she could not remember where she found her purse when she came home after the party or how much money had been taken from it. He has also argued that, even if his aunt’s and grandmother’s testimony is believed, it does not establish that he was the one who broke into the house.

{¶11} Regarding Deputy Bors’s testimony, Mr. Park has argued that the deputy’s statements about whether the supermarket employees had seen him or sold any Kool cigarettes was uncorroborated. Although the deputy said that he showed the employees a photograph that was on file with the Ohio Bureau of Motor Vehicles, he could have looked different in that

picture. Mr. Park has also argued that, because the photograph was not produced at trial, its accuracy and quality could not be tested by the court.

{¶12} The trial court found that “what we have is a burglary taking place within minutes, driving distance, from the scene of the [party]. Mr. Park left during that period of time, came back during that period of time, and when [his aunt and grandmother] got home, [his grandmother’s] home had been broken into. It wasn’t ransacked, drawers had not been opened, turned over, so it appears that the burglary was committed by someone who knew what he was looking for.” It found that, even though “Ms. Keffer has given multiple stories that did not comport with actual fact . . . in describing the basic facts of the case, [she] told the truth, and I believe that she told the truth because the testimony that she gave is certainly corroborated by other circumstantial evidence.”

{¶13} This Court has reviewed the entire record and concludes that the trial court did not lose its way. Although Ms. Keffer admitted she had been angry at Mr. Park, she said “that’s in the past.” She denied being out to get Mr. Park, explaining that she “just want[ed] to do what I have to do and go home.” Regarding Mr. Park’s aunt’s testimony about how long Mr. Park was absent from the party, it was corroborated by his grandmother, who also estimated that Mr. Park was gone about an hour. The trial court was entitled to believe that Ms. Keffer was telling the truth during the trial even though she admitted lying to the police in the past. It was also entitled to believe the deputy’s testimony about whether the supermarket employees recognized Mr. Park or whether the supermarket sold any Kool cigarettes the day of the break-in. Mr. Park’s assignment of error is overruled.

CONCLUSION

{¶14} Mr. Park's convictions for burglary and theft are not against the manifest weight of the evidence. The judgment of the Lorain County Common Pleas Court 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 Lorain, 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(E). 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.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

KENNETH N. ORTNER, attorney at law, for appellant.

DENNIS P. WILL, prosecuting attorney, and AMY IOANNIDIS BARNES, assistant prosecuting attorney, for appellee.