[Cite as *State v. Williams*, 2009-Ohio-3635.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22858
v.	:	T.C. NO. 2008 CR 0097
LUQMAN A. WILLIAMS	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 24th day of July, 2009.

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FROELICH, J.

{¶ 1} Luqman Williams was convicted by a jury in the Montgomery County Court of Common Pleas of aggravated burglary, a first degree felony. The trial court sentenced him to eight years in prison. Williams appeals from his conviction, claiming that the trial court erred in denying his Crim.R. 29 motion for a judgment of acquittal. For the following

reasons, the judgment will be affirmed.

I

{¶ 2} The State's evidence at trial established the following facts.

{¶ 3} During the evening of January 4, 2008, Tiffany Neu hosted an informal social gathering at her townhouse apartment at 5058 Northcrest Drive in Dayton, Ohio. The group, which included DeAngelo Turner, Megan Knoth, and three other individuals, played cards, socialized, listened to music, and drank. At approximately 9:00 p.m., Neu left the apartment and went to the nearby residence of a female friend, who was also having a social gathering. While there, Neu saw two additional friends, Billy McCarroll and Chad Metcalf, and she invited them to come to her home. McCarroll and Metcalf followed Neu back to her apartment.

{¶ 4} Shortly before 1:00 a.m. on January 5, 2008, Turner and three other individuals left to purchase more alcoholic beverages from a Sunoco gas station, leaving Neu, Knoth, Metcalf, and McCarroll in the apartment. Soon after Turner and the others left, the four heard someone knocking loudly on the front door. Neu testified that she looked through the peep hole and saw that Williams, her former boyfriend and the father of her young son, was at the door. Neu did not want to talk with Williams and did not open the door.

{¶ 5} Williams began kicking at the door, causing the door to bow and leaving dents and mud on the lower half of the door. Neu called the police for assistance. Williams stopped kicking and went to the rear of the apartment, where there was a sliding glass door. The group heard a loud bang, and the glass from the sliding door (along with several Venetian blinds that

hung in front of the door) fell into Neu's living room. Williams came through the Venetian blinds. He appeared angry and began yelling at Neu about their child.

{¶ 6} Upon entering the apartment, Williams ran toward Metcalf with his fists raised. The two men began "throwing punches back and forth." As Metcalf began to get "beaten up," McCarroll hit Williams over the head with a liquor bottle. Williams stopped fighting with Metcalf and began fighting with McCarroll. Metcalf started toward the front door to leave, and McCarroll stopped fighting and headed toward the door with him.

{¶ 7} When McCarroll stopped fighting, Williams approached Neu, grabbed her shoulders, pushed her, and accused her of trying to sell their baby. Neu hit Williams, and Williams responded by punching her in the face. Knoth attempted to intervene, but Williams pushed Knoth onto the couch. Knoth got back up, "got back in [Williams'] face," and hit him in the face. Williams punched Knoth on her nose with his fist . Seeing Williams hit the women, McCarroll began to fight with Williams again.

{¶ 8} At this juncture, Turner returned (alone) from the gas station and found Williams and McCarroll fighting in the kitchen. When Williams got on top of McCarroll during the fight, Knoth and Neu picked up a wooden chair and hit Williams over his back with it. Williams turned around and pushed Neu, causing her to fall against the chair and briefly lose consciousness. Turner told everyone to stop fighting. He grabbed McCarroll's shirt and "slung" him out of the apartment door and yelled at Williams to leave. Williams left when he heard police sirens approaching.

{¶ 9} Williams was indicted with aggravated burglary, in violation of R.C. 2911.11(A)(1). The indictment alleged that Williams had trespassed in an occupied structure,

5058 Northcrest Drive, with the purpose to commit assault. The indictment named Neu and Knoth as the victims of assault; prior to opening statements at trial, the court permitted the State to amend the indictment to include Metcalf and McCarroll as additional victims.

{¶ 10} A jury trial was held between June 23 and 25, 2008. At the conclusion of the State's case, Williams made a motion for a judgment of acquittal pursuant to Crim.R. 29. The trial court overruled his motion.

{¶ 11} In his defense, Williams testified that he had gone to Neu's apartment at approximately 12:35 p.m. on January 5, 2008. According to Williams, Neu had answered the door and had tried to close it, but he "slid in." Williams acknowledged that Neu told him to leave, but he stated that she did not tell him "frequently." Williams sat and drank with the group for approximately ten minutes, at which time Turner left to buy more alcohol.

{¶ 12} After Turner left, Metcalf made "angry comments like he didn't want me there either." When Williams stood up, Metcalf grabbed him, and the two men started to tussle. Williams testified that McCarroll also grabbed him while Metcalf hit him with brass knuckles. Neu and Knoth also attempted to hold Williams. However, Williams was able to get both men onto the floor. Metcalf left when he was able to escape from Williams' grasp. When Turner returned, he yelled at Williams and McCarroll to stop.

{¶ 13} After deliberations, the jury found Williams guilty of aggravated burglary. He was sentenced accordingly.

II

{¶ 14} Williams' sole assignment of error states:

{¶ 15} "THE TRIAL COURT ERRED BY OVERRULING APPELLANT'S MOTION

FOR ACQUITTAL SINCE THE STATE FAILED TO SUPPLY SUFFICIENT EVIDENCE AS TO ALL THE ELEMENTS NECESSARY TO SUPPORT THE CHARGE AGAINST THE DEFENDANT."

{¶ 16} In his assignment of error, Williams argues that the trial court should have granted his Crim. R 29(A) motion for a judgment of acquittal, because the State failed to produce sufficient evidence that he had "the purpose to commit the offense of assault at the moment he entered the residence."

{¶ 17} When reviewing the denial of a Crim.R. 29(A) motion, an appellate court applies the same standard as is used to review a sufficiency of the evidence claim. *State v. Thaler*, Montgomery App. No. 22578, 2008-Ohio-5525, at ¶14, citation omitted. "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*, Montgomery App. No. 22581, 2009-Ohio-525, at ¶10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after 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. *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d. 560. A guilty verdict will not be disturbed on appeal unless "reasonable minds could not reach the conclusion reached by the trier-of-fact." Id.

{¶ 18} We emphasize that, in reviewing the trial court's denial of a Crim.R. 29(A) motion at the close of the State's case, we consider only the evidence then available to the trial

court. See *Miamisburg v. Turner* (Feb. 11, 2000), Montgomery App. No. 17928. Because the testimony of Williams' witnesses had not yet been presented when he made his Crim.R. 29 motion, we cannot consider that evidence for purposes of reviewing the trial court's denial of his motion.

{¶ 19} R.C. 2911.11(A)(1) provides:

{¶ 20} "No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:

{¶ 21} "(1) The offender inflicts, or attempts or threatens to inflict physical harm on another[.]"

{¶ 22} Citing *State v. Waszily* (1995), 105 Ohio App.3d 510, Williams asserts that a defendant must have the purpose to commit the offense at the moment he enters the premises. However, since *Waszily*, the Supreme Court of Ohio has held that, "[f]or purposes of defining the offense of aggravated burglary pursuant to R.C. 2911.11, a defendant may form the purpose to commit a criminal offense at any point during the course of a trespass." *State v. Fontes*, 87 Ohio St.3d 527, 2000-Ohio-472, at syllabus.

{¶ 23} Upon review of the State's evidence, we find ample evidence to support Williams' conviction for aggravated burglary and, in particular, that he had the purpose to commit the offense of assault during the course of a trespass. Neu testified that she had not invited Williams to her apartment on the night of January 5, 2008, and that he did not live with

her in the apartment. Neu, Knoth, Metcalf, and McCarroll all testified that Williams appeared angry when he came to Neu's residence. Their testimony further established that, after kicking at her front door, Williams forced his way into her apartment by causing the glass portion of the rear sliding door to fall into the apartment. The four testified that Williams immediately "ran straight for" Metcalf with his fists raised. Once Williams had stopped fighting with Metcalf and McCarroll (the first time), he approached Neu and assaulted her and Knoth. Viewing the evidence in the light most favorable to the State, the jury reasonably could have concluded, beyond a reasonable doubt, that Williams had the purpose to commit an assault during the course of his trespass in Neu's apartment.

{¶ 24} The assignment of error is overruled.

III

{¶ 25} The judgment of the trial court will be affirmed.

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FAIN, J. and HARSHA, J., concur.

(Hon. William H. Harsha, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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