

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

State of Ohio

Court of Appeals No. L-08-1409

Appellee

Trial Court No. CR0200802817

v.

Tommie Boone

DECISION AND JUDGMENT

Appellant

Decided: March 19, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

Eric Allen Marks, for appellant.

* * * * *

COSME, J.

{¶ 1} Appellant Tommie Boone was convicted following a jury trial in the Lucas County Common Pleas Court. He appeals his conviction. Appellant argues that the police detective was unqualified to compare his fingerprint with the single fingerprint found on the underside of a window at the home that was burglarized, and that the single

fingerprint itself was an insufficient basis upon which the jury could conclude that he committed the essential element of trespass. We disagree. We find that the expert testimony was admissible and the attendant circumstances were sufficient to justify the trier of fact to reach their conclusion. Accordingly, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} Late in the evening on July 24, 2008, the Boyd home in Toledo was burglarized. When Mrs. Boyd, an officer at the Toledo Correctional Facility, left for work that evening, everything was where it belonged.

{¶ 3} But when Mr. Boyd awoke the next morning, he discovered a window open downstairs, with a bicycle lying outside. The items stolen from the home included a television, a purse, and a cell phone. The Boyds' second car, which had been parked on the street, was also stolen.

{¶ 4} Detective Jerry Schriefer was assigned to investigate the burglary. He processed the area around the open window for prints, presuming it was where the perpetrator had entered the house. A single "identifiable" fingerprint was found on the underside of the window. The print was later determined to be appellant's after Detective Schriefer compared it to appellant's left thumb print. Appellant did not offer any reason why his print was on the window.

II. ADMISSIBILITY OF TESTIMONY

{¶ 5} In his second assignment of error, appellant contends that:

{¶ 6} II. "The scientific expert testimony regarding fingerprint identification and opinion failed to satisfy the requirements of Evid.R. 702."

{¶ 7} Appellant did not object to Detective Schriefer's testimony at trial.

Therefore, appellant has waived all but plain error. *State v. Long* (1978), 53 Ohio St.2d 91. Plain error occurs when, but for the error, the outcome of the trial clearly would have been different. *Id.* There are three prerequisites to enable a reviewing court to correct an error not objected to at trial: (1) there must be an error, i.e., a deviation from a legal rule, (2) the error must be plain, meaning that an obvious defect in the trial proceedings occurred, and (3) the error must have affected substantial rights, meaning that the trial court's error must have affected the outcome of the trial. *State v. Noling* (2002), 98 Ohio St.3d 44, 2002-Ohio-7044, ¶ 62. "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, *supra*, at paragraph three of the syllabus.

{¶ 8} Appellant asserts that Detective Schriefer was not qualified as an expert because his testimony failed to conform to the factors established by the Ohio Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469. A witness's testimony may be allowed under Evid.R. 702 where he has "specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony." An expert need not be the best witness on a particular

subject, but he or she must be capable of aiding the trier of fact in understanding the evidence or determining a fact in issue. *Lambert v. Shearer* (1992), 84 Ohio App.3d 266, 275. A trial court's determination to allow a witness to testify as an expert will not be reversed absent an abuse of discretion. *State v. Mack* (1995), 73 Ohio St.3d 502, 511. See *State v. Xie* (1992), 62 Ohio St.3d 521; *State v. Montgomery* (1991), 61 Ohio St.3d 410; *State v. Moreland* (1990), 50 Ohio St.3d 58.

{¶ 9} In the instant case, Detective Schriefer testified that he was a patrol officer for eleven years with the Toledo Police Department before being assigned to the Scientific Investigation Unit ("SIU") where he has been the last twelve years. As a member of SIU, Detective Schriefer has been responsible for the collection and identification of more than 1,000 fingerprints and has testified as an expert in 50 to 60 cases. We find that the trial court did not abuse its discretion in permitting Detective Schriefer to testify as an expert. Appellant's second assignment of error is not well-taken.

III. SUFFICIENCY OF THE EVIDENCE

{¶ 10} The first assignment of error is as follows:

{¶ 11} I. "Appellant's right to due process was violated due to a lack of sufficient evidence to support the burglary conviction."

{¶ 12} Appellant asserts that there was insufficient evidence to support the element of trespass.¹ The thrust of this argument is that the single thumbprint found on the

¹R.C. 2911.12(A)(1) prohibits a person from trespassing by force, stealth, or deception "in an occupied structure or in a separately secured or separately occupied

underside of the window is "not legally sufficient to meet the element of trespass," presumably because the fingerprint was not *inside* the house.

{¶ 13} Challenging a conviction based on insufficiency of the evidence presents a question of law 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. In reviewing a record for sufficiency, "[t]he 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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. An appellate court does not weigh credibility when reviewing the sufficiency of evidence to support a verdict. *State v. Jenks*, supra, at paragraph two of syllabus.

{¶ 14} In *State v. Miller* (1977), 49 Ohio St.2d 198, syllabus, the Ohio Supreme Court observed that "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." See *Avent v. Commonwealth* (1968), 209 Va. 474, 164 S.E.2d 655;

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."

McCargo v. State (1968), 3 Md.App. 646, 241 A.2d 161, certiorari denied (1969), 394 U.S. 1008, 89 S.Ct. 1610, 22 L.Ed.2d 787.

{¶ 15} Here, the fingerprint was located on the underside of an open window presumably used by the burglar to enter the home. Appellant did not offer any reason why his print was on the window. The trier of fact was justified in concluding that the owner of the fingerprint was the culprit.

{¶ 16} Applying the factors set forth in *Daubert* and *Miller v. Bike Athletic Co.* (1998), 80 Ohio St.3d 607, the Ohio Supreme Court in *State v. Miller*, has recognized the use of fingerprints for identification purposes in criminal cases, stating "fingerprints corresponding to those of the accused are sufficient proof of his 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." *State v. Miller*, supra, at syllabus. There is no dispute that the fingerprint in this case was found on the window at the Boyds' home, and the circumstances indicate that such prints could only have been impressed at the time of the commission of the crimes. This court and other appellate courts have similarly ruled on the sufficiency of fingerprint evidence.²

²{¶a} In *State v. Braswell*, 6th Dist. No. L-08-1405, 2009-Ohio-4060, this court upheld a conviction based solely on fingerprint evidence. In *Braswell*, there were no witnesses to the burglary, but appellant's fingerprints were found on the inside of the window glass at the bottom and side of the window. The victim had lived in the apartment for ten years and had never met the appellant. He had also never allowed appellant access to the apartment. It was presumed that the individual who left the fingerprints had also committed the burglary. The court observed, "The facts exclude any

{¶ 17} Appellant does not suggest that the jury did not consider alternative reasons why his fingerprint was on the underside of the Boyds' window. Here, we conclude that reasonable minds would not have reached a different conclusion regarding whether the prosecution proved by such circumstantial evidence and beyond a reasonable doubt, that appellant committed a trespass of the Boyd residence. Accordingly, appellant's first assignment of error is not well-taken.

III. CONCLUSION

{¶ 18} This court finds that the expert testimony was admissible and that there was sufficient evidence for the jury to conclude that appellant was the criminal agent responsible for the burglary of the Boyd home.

{¶ 19} Wherefore, based upon the foregoing, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County

innocent means through which appellant's fingerprints could have been placed on the window." *Id.* at ¶ 16.

{¶b} In *State v. Williams*, 10th Dist. No. 05AP-728, 2006-Ohio-1524, the Tenth Appellate Court 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 court held that the fingerprint evidence under the circumstances was sufficient to uphold a burglary conviction. *Id.*

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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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