

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-11-110
- vs -	:	<u>OPINION</u>
	:	5/16/2011
RICK MILLER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 2010CR26638

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Wright & Vannoy, Jeremiah Denslow, 130 West Second Street, Suite 1600, Dayton, Ohio 45402, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Rick Miller, appeals from his conviction in the Warren County Court of Common Pleas for burglary. For the reasons outlined below, we affirm.

{¶2} On the evening of May 26, 2010, Deputy Paul Barger and Deputy Mark Purdy, both with the Warren County Sheriff's Office, were dispatched to 5524 Maple Street, Deerfield Township, Warren County, to investigate a call regarding a man "yelling and

screaming in different languages and howling at the moon." Upon arriving at the scene, the deputies located the man, later identified as appellant, standing in an alleyway "staring up at the sky." When deputies approached, however, appellant ran through the alleyway, across a neighboring yard, over a fence, and into a nearby house owned by Clarine Athy. At that time, Athy, who had been appellant's neighbor for many years, was sitting in her living room watching television. Appellant was later apprehended after he attempted to sneak out of the rear of the house.

{¶3} Appellant was subsequently charged with, among other things, burglary in violation of R.C. 2911.12(A)(4). Following a bench trial, appellant was found guilty and sentenced to serve three years of community control.

{¶4} Appellant now appeals from his conviction, raising one assignment of error for review.

{¶5} "THE TRIAL COURT'S BURGLARY CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN THAT THE STATE DID NOT PROVE THE UNDERLYING OFFENSE OF TRESPASS BEYOND A REASONABLE DOUBT."

{¶6} In his sole assignment of error, although couched in a manifest weight of the evidence claim, appellant actually argues that the state provided insufficient evidence to support his burglary conviction. In support of this claim, appellant argues that the state "did not establish the underlying act of trespass required for a burglary conviction." We disagree.

{¶7} Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Lazier*, Warren App. No. CA2009-02-015, 2009-Ohio-5928, ¶9; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing the sufficiency of the evidence, "[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. Diar*, 120 Ohio St.3d 460, 2008-

Ohio-6266, ¶113, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Carroll*, Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶8} Appellant was charged with burglary in violation of R.C. 2911.12(A)(4), a fourth-degree felony, which prohibits any person, "by force, stealth, or deception" from "[t]respas[ing] in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present." "The acts that constitute criminal trespass, a *sine qua non* of the offense of burglary, are delineated in R.C. 2911.21," which provides, in pertinent part, "[n]o person, without privilege to do so, shall * * * [k]nowingly enter or remain on the land or premises of another." (Emphasis sic.) *In re Waits* (Oct. 15, 2001), Warren App. No. CA2001-01-009, at 4. "Privilege," as defined by R.C. 2901.01(A)(12), "means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity."

{¶9} At trial, and as relevant here, Athy, the owner of the home in which appellant fled, testified that she did not expect appellant to visit her that evening, and that appellant did not have permission to enter her home that evening.

{¶10} Appellant, nonetheless, argues that although Athy did not give him "express permission to enter the home on the evening in question, he was given implied permission, based upon the parties' previous conduct and relationship." However, although Athy did testify that she associated with appellant "quite often" and had invited him into her home previously, when asked if appellant had permission to enter her home "any time he wanted," Athy testified that he did not. Athy then testified as follows:

{¶11} "[THE STATE]: Would you expect something from [appellant] before he came in?

{¶12} "[ATHY]: Well if [appellant] were coming to my house I think [he] would have knocked on the door and he would have yelled for me. If I didn't answer I think he would be a little bit hesitant to come on in[.]"

{¶13} Athy also testified that the only people who have "carte blanche access" to her house were those who she gave keys; namely, her two brothers and her nieces.

{¶14} After a thorough review of the record, we find this evidence sufficient to prove appellant was trespassing at the time he entered Athy's home as he fled from the deputies that evening. See *State v. Clelland* (1992), 83 Ohio St.3d 474, 489-491; see, also, *State v. Ray*, Lucas App. No. L-04-1273, 2005-Ohio-5886, ¶19-24. Appellant's burglary conviction, therefore, was proper. Accordingly, appellant's sole assignment of error is overruled.

{¶15} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.

[Cite as *State v. Miller*, 2011-Ohio-2345.]