

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

State of Ohio

Court of Appeals No. H-11-018

Appellee

Trial Court No. CRI-2010-0752

v.

Adrian Lamar Crutchfield

DECISION AND JUDGMENT

Appellant

Decided: February 22, 2013

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, and
Jennifer L. DeLand, Assistant Prosecuting Attorney, for appellee.

Nancy L. Jennings, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Adrian Crutchfield, appeals the judgment of the Huron County Court of Common Pleas in which he was sentenced to six months in prison for a felony theft offense. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} On October 11, 2009, Crutchfield and two other individuals, one male and one female, entered a Hy-Miler gas station located in Willard, Ohio. Upon entrance, the female began to engage Elise Villanueva, the assistant manager on duty at the time, in a conversation about the business' coffee and creamer selection. As the female distracted Villanueva, Crutchfield and the other male individual walked up and down the aisles in the back of the store, where they were out of Villanueva's sight. Video surveillance of the two men shows them sneaking into a backroom that was restricted to "employees only." As one man entered the backroom, the other kept watch to ensure Villanueva was not alerted. After a short time, the two men traded places. According to the video surveillance footage, Crutchfield was in the backroom for 27 seconds. After the men were finished, the female concluded her conversation with Villanueva. She purchased a coffee and a pack of gum, and exited the gas station along with the two men.

{¶ 3} After the group exited the gas station, Villanueva entered the backroom and immediately noticed that a "chunk" of cigarettes were missing. Pursuant to company policy, she counted the cigarette stock at the beginning of her shift, so the missing cigarettes were immediately apparent to her. After determining that a large number of cartons of cigarettes had been stolen from the backroom, Villanueva called her manager, Danielle Hall. Together, Hall and Villanueva counted the remaining cigarettes and compared that figure with the number of cigarettes on hand at the beginning of her shift. Based on the difference between the two numbers, Hall concluded that twelve cartons of

cigarettes had been stolen. Further, Hall identified the brand name of the stolen cigarettes. From that information, Hall was able to ascertain the retail value of the stolen cigarettes, which was \$612.96.

{¶ 4} Hall also examined the store's video surveillance system and determined that Crutchfield and his male counterpart were the only unauthorized individuals that entered the backroom during the time of the theft. Realizing a crime had been committed, Hall contacted the Willard Police Department.

{¶ 5} Detective Adam Strong arrived on the scene, and performed an independent review of the video surveillance. After viewing the videotapes, Strong contacted another local convenience store and determined that the same group of individuals had entered that store just prior to entering the Hy-Miler station. Strong reviewed the video surveillance at the neighboring convenience store and learned that two of the three individuals used the ATM while at the store. Strong examined a report from the ATM machine that contained the identities of the individuals. In addition, Strong learned that the group was driving a purple van with yellow striping. With that information, Strong was able to track down the group. Once located, Crutchfield was arrested.

{¶ 6} The Huron County Grand Jury indicted Crutchfield on one count of theft in violation of R.C. 2913.02(A)(1) and (2)(B)(2), a felony of the fifth degree. After pleading not guilty to the charged offense, Crutchfield was appointed counsel and a jury trial commenced.

{¶ 7} At trial, the state introduced the video surveillance from both stores into evidence. Additionally, the state introduced testimony from several individuals including Villanueva and Hall. Crutchfield did not testify, and did not call any witnesses on his behalf. At the conclusion of the trial, the jury found Crutchfield guilty of the indicted offense. Pursuant to the guilty verdict, the court sentenced Crutchfield to six months in prison. Crutchfield subsequently filed this timely appeal.

B. Assignments of Error

{¶ 8} Crutchfield assigns the following errors for our review:

I. APPELLANT’S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. APPELLANT’S CONVICTION [IS] AGAINST THE SUFFICIENCY OF THE EVIDENCE.

III. THE TRIAL COURT [ERRED] BY NOT GRANTING THE DEFENDANT/APPELLANT’S MOTION IN LIMINE AND THEN OVER OBJECTION ALLOWING HEARSAY INTO EVIDENCE IN VIOLATION OF EVIDENCE RULE 803.

II. Analysis

{¶ 9} For ease of discussion, we address Crutchfield’s assignments of error out of order.

A. Hearsay Evidence

{¶ 10} In Crutchfield’s third assignment, he argues that the trial court erroneously denied his motion in limine and allowed the state to introduce Hy-Miler’s inventory slips into evidence over his objection. However, since Crutchfield never filed a motion in limine in this action, any argument concerning a motion in limine is without merit. Nevertheless, Crutchfield argues that the trial court erred when it admitted an inventory slip prepared by Hall into evidence over his objection. Since Crutchfield properly objected to the admission of the evidence at trial, we will proceed to examine Crutchfield’s third assignment of error.

{¶ 11} The evidence at issue is an inventory slip created by Hall the day after the theft. While Villanueva was testifying, the state sought to introduce the slip into evidence, and Crutchfield objected, arguing that the slip was hearsay. The state argued, as it does here, that the slip was admissible under the business records exception. The trial court agreed with the state and overruled Crutchfield’s objection. Villanueva acknowledged that she did not prepare the document. Further, she stated that she was not present when Hall created it. Notably, the state was careful not to elicit any testimony from Villanueva concerning the contents of the inventory slip. Rather, the state simply asked Villanueva if the slip was similar in form to the inventory slips that she created on a daily basis for Hy-Miler. She responded in the affirmative.

{¶ 12} During Hall's testimony, the state presented her with the same inventory slip, over Crutchfield's hearsay objection. After allowing Hall to review the slip, the following dialogue took place:

Q. And, whose handwriting is on that document?

A. That is mine.

Q. How many pages is that document?

A. Two.

Q. Okay. And, you said it's your handwriting. You recognize it.

Can you describe for us what that is?

A. This is the daily paper that I do to find out if our cash is over and short each day.

Q. And, do you recall when you prepared that document?

A. I do it every morning. I arrive at the store between 5:30 to 6:00 and start my routine. Usually end in counting cigarettes and the reports [are] printed off like 6:20, sometimes before that.

Q. Okay. And, you say you didn't work on Sunday, which was October 11, 2009?

A. No.

Q. When would you have done October 11, 2009 paperwork?

A. The very next day, Monday.

Q. Do you recall if that was prepared on Monday?

A. Yes, it was.

Q. Okay. And, once again that was prepared by you?

A. Yes.

* * *

Q. Okay. But on this particular paperwork, do you know if you noted anywhere the missing cigarettes?

* * *

A. Yes, I did, under purchases, minus 120 packs.

Q. Okay.

A. I labeled theft.

* * *

Q. Okay. And, once again, are these the same papers that you fill out every [day]?

A. Every single day, even to this day.

Q. Can I ask you, would that paper have been filled out whether there was a theft or not?

A. Yes, it would.

At this point, the state moved for the admission of the document over Crutchfield's objection. The objection was once again overruled and the inventory slip was admitted.

{¶ 13} Crutchfield argues that the inventory slip should not have been admitted as it was inadmissible hearsay. Alternatively, Crutchfield argues that even if the document

qualifies under the business records exception, it should be excluded because it lacks reliability.

{¶ 14} In *State v. Richcreek*, 196 Ohio App.3d 505, 2011-Ohio-4686, 964 N.E.2d 442 (6th Dist.), we stated that “challenged hearsay is subject to de novo review under the applicable hearsay rule, rather than the more deferential review employed for discretionary rulings.” *Id.* at ¶ 32.

{¶ 15} Although generally inadmissible, hearsay evidence may be admitted if it qualifies under the exceptions contained in the Rules of Evidence. *State v. Sorrels*, 71 Ohio App.3d 162, 165, 593 N.E.2d 313 (1st Dist.1991). One such exception is made for business records under Evid.R. 803(6), which provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

{¶ 16} The Fifth Appellate District has stated that “[t]he rationale behind Evid.R. 803(6) is that if information is sufficiently trustworthy that a business is willing to rely on it in making business decisions, the courts should be willing to as well.” *John Soliday Fin. Group, L.L.C. v. Pittenger*, 190 Ohio App.3d 145, 150, 2010-Ohio-4861, 940 N.E.2d 1035, ¶ 30 (5th Dist.).

{¶ 17} Here, Crutchfield argues that the inventory slip should have been excluded because it is not a record that was recorded in a regularly conducted activity, and it was not created by one with personal knowledge. We disagree.

{¶ 18} The fact that the entity’s employees assembled the data near the time of the theft is beyond dispute. Further, Hall testified that she personally created the inventory slip based on her observation of the number of cigarettes on hand at the beginning of her shift on Monday morning. In addition, Hall testified that she prepares these slips each and every day and sends them to the district office as a matter of routine. Finally, the circumstances surrounding the creation of the inventory slip do not call its reliability into question, despite Crutchfield’s arguments to the contrary. Thus, the requirements of Evid.R. 803(6) have been met, and the inventory slip was properly admitted as a business record.

{¶ 19} In light of the foregoing, we conclude that the trial court did not err when it overruled Crutchfield’s objection and admitted the inventory slip into evidence. Accordingly, Crutchfield’s third assignment of error is not well-taken.

B. Sufficiency of the Evidence

{¶ 20} In his second assignment of error, Crutchfield argues that the evidence at trial was insufficient to support his conviction. He argues that the state failed to present sufficient evidence to conclude that he stole \$500 or more as required under R.C. 2913.02(B)(2).¹

{¶ 21} “In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). “The 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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 22} Crutchfield contends that the evidence is insufficient to support a conviction for theft. In addition, he challenges the sufficiency of the evidence with respect to the classification of the offense as a felony of the fifth degree.

{¶ 23} The elements of theft are provided by R.C. 2913.02, which states in relevant part:

¹ In 2011, R.C. 2913.02(B)(2) was amended to require the state to demonstrate that the defendant stole \$1,000 or more in order to classify the offense as a felony of the fifth degree. Since the conviction in this case took place prior to the amendment, we apply the prior version.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

Without the consent of the owner or person authorized to give consent[.]

In addition, the theft offense was classified as a felony of the fifth degree. Under R.C. 2913.02(B)(2), a theft offense is a felony of the fifth degree if the value of the stolen merchandise is \$500 or more.

{¶ 24} Here, Crutchfield's conviction is supported by sufficient evidence. First, the prosecution submitted videotape evidence of Crutchfield entering into the backroom where the cigarettes were stored. Further, both Villanueva and Hall testified that twelve cartons of cigarettes worth over \$600 were stolen. Finally, Villanueva and Hall testified that Crutchfield was not given permission to enter the backroom, nor was he given consent to obtain the cigarettes. Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution offered sufficient evidence for a rational trier of fact to find the essential elements of the crime of theft proven beyond a reasonable doubt. Accordingly, Crutchfield's second assignment of error is not well-taken.

C. Manifest Weight of the Evidence

{¶ 25} In his first assignment of error, Crutchfield argues that his conviction was against the manifest weight of the evidence. Crutchfield acknowledges that the evidence

clearly demonstrates that he was at the Hy-Miler gas station on the date the theft occurred. Further, Crutchfield concedes that his behavior was suspicious. However, he argues that his conviction should be reversed due to the lack of direct evidence regarding his possession of the cigarettes. Specifically, Crutchfield contends that his conviction must be reversed because Villanueva “never actually saw [him] take the cigarettes.” He supports his argument by referencing Villanueva’s testimony, in which she acknowledges that Crutchfield left the gas station with his coat unzipped and she did not notice any bulges in his clothing indicating concealed merchandise.

{¶ 26} When reviewing a manifest weight claim,

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220.

{¶ 27} We do not view this as the exceptional case warranting a new trial.

Essentially, Crutchfield asks this court to reverse his conviction because it is supported in large part by circumstantial evidence. While direct evidence of Crutchfield’s possession of the cigarettes would have aided the trier of fact in determining Crutchfield’s guilt, the

absence of such direct evidence does not demand a reversal. Indeed, we have stated that “direct evidence is not required to support a conviction; a fact may be proved by circumstantial evidence as well as by direct evidence.” *State v. Simon*, 6th Dist. No. H-04-026, 2005-Ohio-3208, ¶ 13.

{¶ 28} The evidence produced at trial includes the surveillance video, the documentary evidence concerning the number of missing cigarettes, and the testimony that Crutchfield and his partner were the only unauthorized individuals that entered the backroom at the time the theft occurred. Taken together, this evidence leads us to conclude that the jury did not create a manifest miscarriage of justice warranting a reversal of Crutchfield’s conviction. Accordingly, Crutchfield’s first assignment of error is not well-taken.

III. Conclusion

{¶ 29} Based on the foregoing, the judgment of the Huron County Court of Common Pleas is affirmed. Costs are hereby assessed to Crutchfield in accordance with 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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