

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-12-295
- vs -	:	<u>OPINION</u> 2/8/2010
JAMES O'HARA,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2007-11-1928

Robin N. Piper III, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Fred S. Miller, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, James O'Hara, appeals his conviction in the Butler County Court of Common Pleas for aggravated murder, aggravated robbery, aggravated burglary, burglary and grand theft of a motor vehicle. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} On July 22, 2007, the body of 39-year-old Stanley Lawson of Middletown was discovered inside his home in the Wilbraham Apartments complex. Lawson's body, with numerous stab wounds and a slashed throat, lay in a pool of blood near the

entrance to his home. In retracing Lawson's final steps, witnesses stated that Lawson was last seen around 2:30 a.m. after returning from a wedding reception in Middletown. After speaking with several witnesses close to Lawson, authorities suspected that Lawson's murder was carried out to support appellant's drug addiction.

{¶3} Appellant argued that he was not involved in the incident. However, witnesses testified that on the night Lawson was killed, appellant was smoking crack cocaine with a known drug dealer named Trevor Giles inside one of the apartments in Lawson's complex. Giles testified that while appellant was smoking crack around 1:00 a.m., he told Giles, "this shit's so good, I'd kill for this shit." Shortly thereafter, appellant exited the dealer's apartment and entered Lawson's apartment using Lawson's set of keys. At trial, witnesses testified that from the early morning hours of July 22, 2007 until the police arrived later, appellant was using Lawson's keys to drive Lawson's vehicle and to access his apartment. When appellant returned to the dealer's apartment around 4:00 a.m., witnesses testified that appellant appeared jittery, sweaty and had inexplicably changed his clothing. Additionally, after repeated trips to Lawson's apartment between the hours of 1:00 a.m. and 4:00 a.m., appellant returned with a plasma television, surround sound system and Lawson's Cadillac, attempting to trade the items for more drugs.

{¶4} After Lawson's friends discovered his body later that morning, police obtained a search warrant for appellant's apartment. Inside, police located several articles of blood-stained clothing, including a bloody shirt containing a mixture of DNA from both appellant and Lawson. In a trash can outside appellant's residence, police also discovered several evidentiary items, including a bent kitchen knife and a pair of Nike shoes containing the same mixture of both men's blood; during questioning at the Middletown Police Department, appellant admitted to wearing the shoes on the night of

the murder.

{¶15} In November 2007, a grand jury returned a five-count indictment against appellant. The charges included one count of aggravated murder, an unclassified felony, in violation of R.C. 2903.01(B) with specifications including aggravating circumstances under R.C. 2929.04(A)(7) (aggravated robbery and aggravated burglary); one count of aggravated robbery, in violation of R.C. 2911.01(A)(1); one count of aggravated burglary in violation of R.C. 2911.11(A)(2); one count of burglary in violation of R.C. 2911.12(A)(2); and one count of grand theft of a motor vehicle in violation of R.C. 2913.02(A)(1).

{¶16} Following a jury trial, appellant was found guilty on all charges and specifications. He was sentenced to life in prison without possibility of parole for the murder charge. In addition, the trial court imposed an aggregate 29½-year term for the remaining charges. Appellant timely appeals, raising one assignment of error:

{¶17} "THERE WAS INSUFFICIENT EVIDENCE TO CONVICT DEFENDANT-APPELLANT OF AGGRAVATED MURDER, AGGRAVATED ROBBERY, AGGRAVATED BURGLARY, BURGLARY, AND GRAND THEFT OF A MOTOR VEHICLE."

{¶18} Appellant argues that the state lacked direct evidence to justify his multiple convictions. Appellant asserts that because the evidence connecting him to the crimes is circumstantial and "tenuous" at best, the charges should have been dismissed. Our review of the record, however, indicates that the state presented circumstantial evidence which, if believed by the trier of fact, was sufficient to support a finding that the state proved the essential elements of each offense beyond a reasonable doubt.

{¶19} When an appellate court reviews a claim that a conviction is not supported by sufficient evidence, its inquiry focuses primarily upon whether, as a matter of law, the

evidence presented at trial is legally sufficient to sustain a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing the record for sufficiency, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis omitted.) *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶34, quoting *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781. This inquiry does not involve how the appellate court might interpret the evidence. *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046. Rather, the court must determine whether the evidence admitted at trial, if believed, "would convince the average mind of the defendant's guilt beyond a reasonable doubt." *Id.* at ¶75, quoting *State v. Heinish* (1990), 50 Ohio St.3d 231, 238.

{¶10} Although this case is based primarily on circumstantial evidence, the Supreme Court of Ohio has held that "[a] conviction can be sustained based on circumstantial evidence alone." *State v. Bice*, Clermont App. No. CA2008-10-098, 2009-Ohio-4672, ¶29, quoting *State v. Franklin* (1991), 62 Ohio St.3d 118, 124. In some cases, circumstantial evidence may "be more certain, satisfying and persuasive than direct evidence." *State v. Lott* (1990), 51 Ohio St.3d 160, 167, quoting *Michalic v. Cleveland Tankers, Inc.* (1960), 364 U.S. 325, 330, 81 S.Ct. 6. Further, "certain facts can *only* be established by circumstantial evidence," and a conviction based thereon is "no less sound than one based on direct evidence." (Emphasis added.) *State v. Smith*, Butler App. No. CA2008-03-064, 2009-Ohio-5517, ¶80.

{¶11} At trial, appellant maintained his innocence, but the jury clearly rejected appellant's version of the events after examining the evidence. During the state's case in chief, the jury heard testimony from four medical personnel, including forensic scientists and coroners, who testified that the blood spatter patterns at the crime scene

indicated a struggle had ensued between Lawson and his attacker. These individuals also testified that the dirty, bent kitchen knife found outside appellant's apartment was consistent with Lawson's stab wounds. Significantly, the jury heard testimony from a forensic scientist who analyzed a shoeprint from the crime scene and found that the shoe's design matched only one out of 18,000 pairs of shoes: Nike Air Jordans – the same make and model appellant admitted to wearing on the night of Lawson's murder.

{¶12} The jury also heard testimony from four police officers who responded to the scene and a myriad of neighbors and friends who placed appellant near Lawson's apartment from the time Lawson was last seen alive until his death later that day. These witnesses also documented appellant's strange behavior throughout the evening, including his untimely change of clothing and his possession of Lawson's keys, television, stereo equipment and vehicle. Additionally, appellant's drug dealer testified that when he asked appellant his reasons for selling Lawson's belongings, appellant replied that "some people stay, [and] some people got to go," and that the next day he was going to prison for a long time. Another witness, appellant's cellmate, testified that when asked about his incarceration, appellant replied, "it's a murder case, but it was my neighbor and they can't prove it."

{¶13} Appellant attacks the credibility of several witnesses who testified against him, claiming that some were "high on drugs" during their contact with appellant on the night of Lawson's murder. While the credibility of some witnesses may be questionable, it is not our duty to determine the weight to be given to the evidence and witness credibility; such tasks are "primarily for the trier of facts." *State v. Smith*, Fayette App. No. CA2006-08-030, 2009-Ohio-197, ¶79, quoting *State v. Pringle*, Butler App. Nos. CA2007-08-193, CA2007-09-238, 2008-Ohio-5421, ¶28. As a result, we defer to the jury's determination of each witness' credibility, because the jury is in the best position to

"view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Id.*

{¶14} After reviewing the evidence under the applicable law, we find there is sufficient evidence to justify appellant's convictions. We have "long held that circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt." *McKnight*, 2005-Ohio-6046 at ¶75. Here, forensic testimony, including testimony regarding DNA evidence found at the crime scene, physical evidence and the combined statements of witnesses describing appellant's suspicious behavior provides sufficient evidence to establish appellant's guilt beyond a reasonable doubt. Appellant's single assignment of error is overruled.

{¶15} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.