

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-391
Troy Mason,	:	(C.P.C. No. 11CR-3393)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on January 24, 2013

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Christopher M. Cooper Co., LPA, and *Stephen T. Wolfe*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Troy Mason is appealing from his conviction on a charge of burglary. He assigns three errors for our consideration:

[I.] APPELLANT WAS PREJUDICED BY THE STATE'S FAILURE TO COMPLY WITH THE DEFENDANT'S DEMAND FOR DISCOVERY.

[II.] APPELLANT WAS PREJUDICED BY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

[III.] THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTIONS FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29.

{¶ 2} On April 25, 2011, a residence at 118 King Avenue was entered by someone who took a television, a bicycle, and a bottle of whiskey. One of the Ohio State University students who lived at 118 King Avenue saw someone wearing a backpack riding away on the bicycle and carrying the television. The student flagged down a Columbus police officer who aired the crime and its details to officers in the area. Soon afterwards, Troy Mason was found sitting on the bicycle. The television was nearby at a dumpster. Mason had a backpack with a bottle of whiskey like the bottle stolen.

{¶ 3} Mason was indicted on a charge of burglary as a result. A jury found him guilty.

{¶ 4} The evidence was more than sufficient to support a charge of burglary. R.C. 2911.12 defines burglary as follows:

(A) No person, by force, stealth, or deception, shall do any of the following:

(1) 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;

(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is 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, with purpose to commit in the habitation any criminal offense;

(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense.

(B) No person, by force, stealth, or deception, shall trespass 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.

(C) As used in this section, "occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(D) Whoever violates division (A) of this section is guilty of burglary. A violation of division (A)(1) or (2) of this section is a felony of the second degree. A violation of division (A)(3) of this section is a felony of the third degree.

(E) Whoever violates division (B) of this section is guilty of trespass in a habitation when a person is present or likely to be present, a felony of the fourth degree.

{¶ 5} Each of the elements of the statute was proven. As a result, the trial court properly overruled the defense's Crim.R. 29 motion seeking a judgment of acquittal.

{¶ 6} The third assignment of error is overruled.

{¶ 7} Given the strength of the evidence, the delay in providing discovery on behalf of the State of Ohio was of no consequence. The State provided most of the discovery less than three weeks after the defense requested discovery. The jury trial did not begin until over seven months later. The defense had more than adequate time to prepare for the trial, especially by interviewing the Ohio State student whose bicycle was stolen. No prejudicial error has been demonstrated with respect to the State's handling of discovery as to timeliness.

{¶ 8} Appellate counsel for Mason argues that the State withheld exculpatory evidence by failing to reveal that Mason's fingerprints were not on some or all of the items stolen. In the context of this case, the presence or absence of fingerprints is not important. Mason was seen riding away from the burglary on the stolen bicycle carrying the stolen television. He was found on the stolen bicycle minutes later. The television was nearby. The whiskey like that stolen from the residence was in a backpack in Mason's possession. Stronger evidence was not required to prove Mason was the burglar. The lack of fingerprints did not prove that Mason was not the burglar.

{¶ 9} The first assignment of error is overruled.

{¶ 10} The criteria for deciding if a criminal defendant has received ineffective assistance of counsel are set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). One

of the criteria is if the outcome of the trial could have conceivably been different. Given the strength of the evidence against Mason, no verdict other than guilty was reasonably foreseeable.

{¶ 11} The second assignment of error is overruled.

{¶ 12} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
