

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150384
Plaintiff-Appellee,	:	TRIAL NO. B-1401393
vs.	:	
JAMES WILLIAMS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On December 22, 2013, three individuals stole several air conditioning units from an apartment complex on Gholson Avenue owned by Lem Jenkins.

Defendant-appellant James Williams was identified through a photo lineup two months after the incident by a witness who lived in that complex, Tara Chapin. He was subsequently indicted for the theft. He pleaded not guilty and the case proceeded to a bench trial.

At trial, the state called two witnesses, Chapin and Jenkins. Chapin testified that around 12:00 p.m., she had witnessed, through her second floor apartment window, three individuals load air conditioning units from outside her apartment complex into a black pickup truck. Chapin testified that she had called Jenkins to inform him of the incident, and had called the police. Chapin testified that the police had arrived a few hours after she had made the phone call.

Chapin recognized Simeon Coleman as one of the three individuals involved in the theft, as he lived in the neighboring apartment building. Chapin recognized the other two men as individuals she had met through Coleman, and she believed that they lived with him. Detective Kenneth Brickler arrested Coleman for participating in the theft of the air conditioning units, and he pleaded guilty in a separate case.

Williams was at Coleman's apartment at the time of Coleman's arrest. Because Detective Brickler knew that two other men were involved and were thought to have been staying with Coleman, he ran Williams's name through the computer system and created a photo lineup in which Williams was included. Chapin identified Williams from the lineup on February 12, 2014.

Chapin learned during the photo lineup that the man she believed to be "Jim Morrison" was actually Williams, and that "Jim Morrison" was his street name. She testified that she had a "hi and bye relationship" with Williams, as he was often outside, standing near the front of her apartment building. Despite Chapin telling defense counsel and the prosecutor a few months prior to trial that she was not sure if she saw Williams commit the crime, at trial she testified that she was 99 percent sure that Williams was one of the perpetrators.

Jenkins testified at trial as to his communications with Chapin on the day of the incident, as well as his observations when he and a police officer went next door to Coleman's apartment. Jenkins testified that nine air conditioning units had been removed from the Gholson Avenue apartment complex without his permission that day, and that it had cost him \$17,300 to replace them.

Defense counsel presented two witnesses, Detective Brickler and Coleman. Detective Brickler's recollection and records provide a different timeline of events

from that given by Chapin. Detective Brickler also testified that the only suspect listed on the report as of December 22, 2013, was Coleman, and that the other two individuals were unknown as of February 4, 2014.

Coleman, who had pleaded guilty to the theft, testified on Williams's behalf. Coleman was adamant that Williams, his "big cousin," was not involved and did not live with him. Coleman admitted that he had assisted "Scotty" and an unknown individual in loading the air conditioning units onto a navy pickup truck in exchange for \$150.

After hearing the witnesses' testimony, the trial court found Williams guilty of theft. The trial court sentenced Williams to two years' community control with intensive supervision, and ordered him to pay court costs and \$2,000 in restitution. Williams timely appealed.

In his sole assignment of error, Williams contends that his conviction is based on insufficient evidence and is against the manifest weight of the evidence.

Williams was charged with theft under R.C. 2913.02(A)(1), which provides: "No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over * * * the property * * * [w]ithout the consent of the owner or person authorized to give consent[.]" If the value of the property stolen is \$7,500 or more and is less than \$150,000, a violation of R.C. 2913.02 is grand theft, a felony of the fourth degree. R.C. 2913.02(B)(2).

Here, Chapin testified that she witnessed Williams—sometimes known as "Jim Morrison"—and two others steal the air conditioning units from the apartment complex. Jenkins testified that he had not given these men permission to remove the air conditioning units, and that it had cost him \$17,300 to replace the units. Therefore, after viewing the evidence in a light most favorable to the prosecution, we

find that a rational trier of fact could have found the essential elements of theft proven beyond a reasonable doubt, and therefore, Williams's sufficiency argument fails. *See State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991).

Turning to the question of manifest weight, the trial court heard several witnesses testify, including an individual who admitted involvement in the theft, and saw several photos of the crime scene. Reviewing the record, we note the discrepancies and conflicts among the witnesses presented by the prosecution and defense. However, "[t]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the fact[.]" *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116, quoting *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of the witnesses, we cannot conclude that the trial court clearly lost its way and created such a manifest miscarriage of justice that Williams's conviction must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983).

Therefore, we overrule Williams's sole assignment of error. We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on July 15, 2016
per order of the court _____.

Presiding Judge