

State of Ohio v. Bertram

(Slip Opinion No.2023-Ohio-1456)

Court That Heard The Case

Supreme Court of Ohio

Facts of the Case

On September 18, 2020, Huff, landscaping at his home, when he heard a “loud muffler” sound from a car. He altered and he quickly went inside his home to acquire his cell phone. When Huff came back outside, he made eye contact with Bertram, the driver of the car. Huff kept on watching Bertram as he drove past his house to a monastery up the road. When Bertram reached the monastery, he turned around, drove back down the road, and then parked the car on the road, near the end of Huff’s driveway. Bertram got out of his car and started walking to the open garage. While Bertram was walking to the garage, Huff observes that Bertram behavior was strange. Bertram acted “very cavalier” and had “no sense of urgency at all.” Huff still observing Bertram as he strolls into the garage with a smile on his face.” Huff did not initially believe that Bertram was intending to steal from him. To Huff’s amazement, Bertram picked up a leaf blower, worth around \$500 and walked back to his car. Huff then told Bertram to “Put it down.” Bertram kept walking to his car and placed it on the passenger side and proceeded to enter the car. The car did not start instantly. At that moment, Huff then went quickly to take several close-up pictures on his phone. As soon as Bertram was able to start his car, he drove off.

Procedural History

The trial court of Ohio charged Bertram with Burglary in violation of R.C. 2911.12(A)(2). Bertram moved for acquittal under Crim.R. 29(A), but the trial court denied the motion. The jury convicted Bertram of burglary in violation of R.C. 2911.12(A)(2), a second-degree felony. At sentencing, the court terminated Bertram’s previously imposed post release control and imposed a 491-day judicial-sanction prison sentence for the post release-control violation. The court sentenced him to an independent prison term of 8 to 12 years for burglary offence, and it ordered the prison sentence to be served consecutively.

On direct appeal to the Fourth District Court of Appeals, Bertram debated that there was lacking evidence to support his burglary conviction because the state had failed to prove that he used force, sneakiness, or trickery as required by R.C. 2911.12(A) to enter Huff’s garage that was open. 2022-Ohio-2488, paragraph 19. The court of appeals rejected Bertram’s argument, reasoning with Huff’s testimony showed that Bertram’s attitude and demeanor had deceived Huff into believing that Bertram was not intending to trespass into the garage to steal the leaf blower. Additionally, the court opined that Bertram’s conduct could be made as sly behavior to avoid the impression that he intended to steal the leaf blower. Thus, the court of appeals held the state had presented sufficient evidence to establish that Bertram trespassed by sneakiness or trickery.

Issue

To prove trespass by stealth or deception in a burglary case, does the state must show that the trespasser actively avoided discovery or used deceptive conduct to gain entrance to the structure?

Conclusion

At trial, the jury convicted Bertram of burglary in violation of R.C. 2911.12(A)(2), a second-degree felony. The court of appeals held that the state had presented evidence to establish that Bertram did trespass by sneakiness or trickery.

The Supreme Court of Ohio is the court that decided this matter. Information about lower court decisions needs to be placed in the proper section. The Supreme Court of Ohio engaged in a variety of significant actions that need to be noted.

The court vacate Bertram's burglary conviction and judicial sanction and remand the case to the trial court for it to enter a judgment of conviction against Bertram for criminal trespass under R.C. 2911.21(A)(1) and sentence him accordingly.

Rules Utilized

R.C. 2911.12 (A)(2)

Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)

State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991)

State v. Dent, 163 Ohio St.3d 390, 2020-Ohio6670

Reasoning

Under a sufficiency-of-the-evidence analysis, the key inquiry 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 sic.) Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); see also State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, superseded by constitutional amendment on other grounds as stated in State v. Smith, 80 Ohio St.3d 89, 102, 684 N.E.2d 668 (1997), fn. 4. A challenge to the sufficiency of the evidence is reviewed de novo. See State v. Dent, 163 Ohio St.3d 390, 2020-Ohio6670, 170 N.E.3d 816, paragraph 15.

The state charged Bertram with burglary in violation of R.C. 2911.12(A)(2). That statute provides: No person, by force, stealth, or deception shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is permanent habitation of any person when any person is present or likely to be present, with the purpose to commit in the habitation ant criminal offence.” Thus, the elements that the state was required to prove to convict Bertram or burglary were (1) a trespass by force, stealth, or deception (2) into an occupied structure (3) when another was present or likely to be present (4) with the purpose to commit a criminal offence in the structure.

“Stealth” is not defined in the Revised Code, so we consider its plain and ordinary meaning. In determining the plain and ordinary meaning of a word, courts may look to dictionary definitions of the word as well as the “meaning that the word has acquired when used in case law.” Rancho Cincinnati Rivers, L.L.C. v. Warren Cty. Bd. of Revision, 165 Ohio St.3d 227, 2021-Ohio-2798, 177 N.E.3d 256,

Merriam-Webster defines “stealth” as “intended not to attract attention.” Merriam-Webster’s Collegiate Dictionary 1221 (11th Ed.2003). And “stealth” has been defined in caselaw as “ ‘any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within a residence of another without permission.’ ” State v. Ward, 85 Ohio App.3d 537, 540, 620 N.E.2d 168 (3d Dist.1993), quoting State v. Lane, 50 Ohio App.2d 41, 47, 361 N.E.2d 535, 540 (10th Dist.1976). The court of appeals used this caselaw definition, 2022-Ohio2488.

The state asserts that Bertram’s “cavalier attitude” and “sly behavior” were deceptive conduct intended to mask his intention to steal the leaf blower from Huff’s garage and that the evidence satisfied the element of “stealth” or “deception.” But the state’s interpretation of these words is contrary to the statutory definition and the plain meanings of the words.

Bertram did not commit burglary under Ohio law, because he did not gain access to Huff’s garage by force, stealth, or deception. R.C. 2911.12(A). The evidence utterly failed to establish that during his trespass, Bertram engaged in any secret, sly, or clandestine conduct. Bertram did not act to avoid his discovery or to reduce the chance of his being noticed. Nor did Bertram deceive, mislead, lie to, or trick Huff into granting him entry into the garage. The state did not present sufficient evidence to prove all the elements necessary to convict Bertram of burglary. We therefore vacate his burglary conviction and judicial sanction imposed under R.C. 2929.141, the latter of which cannot be imposed unless the offender is convicted of a felony while on post release control. Here, we are vacating Bertram’s felony conviction, so the judicial sanction associated with it cannot stand.

However, this does not mean that Bertram is not guilty of a crime in this case. Bertram conceded that the evidence of his conduct sufficiently proved the offenses of criminal trespass and misdemeanor theft. Insufficient evidence to sustain a conviction for one crime, but sufficient evidence to sustain a lesser included offense of that crime,” it is appropriate to modify the verdict accordingly, without ordering a new trial.

The court could not prove that Bertram trespassed by sneakiness or trickery in a burglary case, the state must prove that Bertram actively avoided discovery or used deceptive conduct to gain entry to the building. The evidence did not show the defendant made any effort to actively prevent his discovery or use fraudulent interaction to gain entry to the open garage. The evidence was inadequate to sentence him to burglary. When the defendant went inside the open garage without privilege to do so, he committed the lesser included offense of trespassing.

Rule Created/Holding

The State to prove that a defendant trespassed by stealth or deception in a burglary case, the state must prove that the defendant actively avoided discovery or used deceptive conduct to gain entry to the structure.