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

STATE OF OHIO,	:	APPEAL NOS. C-170499 C-170500
Plaintiff-Appellee,	:	TRIAL NOS. B-1700143A B-1700688A
vs.	:	
		JUDGMENT ENTRY.
WILLIAM RHODEN,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist.Loc.R. 11.1.1.

Following a bench trial, defendant-appellant William Rhoden was convicted of one count of burglary under R.C. 2911.12(A)(2) and three counts of receiving stolen property under R.C. 2913.51(A). He now appeals those convictions, raising six assignments of error. We find no merit in his arguments, and we affirm his convictions.

In his first assignment of error, Rhoden contends that the evidence was insufficient to show that he had committed the three counts of receiving stolen property. He argues that the evidence failed to show that he had possessed the stolen property or that he knew that it was stolen. This assignment of error is not well taken.

Possession of stolen property for purposes of the receiving-stolen-property statute may be constructive as well as actual. *State v. Hankerson*, 70 Ohio St.2d 87,

434 N.E.2d 1362 (1982), syllabus; *State v. Finnell*, 1st Dist. Hamilton Nos. C-140547 and C-140548, 2015-Ohio-4842, ¶ 41. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *Finnell* at ¶ 42, quoting *Hankerson* at syllabus. Both dominion and control and consciousness of the presence of the object may be proved by circumstantial evidence. *Finnell* at ¶ 42; *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267, 968 N.E.2d 27, ¶ 15 (1st Dist.). Possession of recently stolen property is ordinarily a circumstance from which the trier of fact may reasonably draw the inference and find, in light of the surrounding circumstances, that the person in possession knew that the property had been stolen. *State v. Arthur*, 42 Ohio St.2d 67, 68, 325 N.E.2d 888 (1975).

The state presented evidence from which the trier of fact could have reasonably inferred that Rhoden had knowingly exercised dominion and control over the stolen property. Our review of the record shows that a rational trier of fact, after viewing the evidence most favorable to the prosecution, could have found all of the elements of the three counts of receiving stolen property under R.C. 2913.51(A). Therefore the evidence was sufficient to support the convictions. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Williams* at ¶ 25. Though the evidence was circumstantial, circumstantial and direct evidence have the same probative value. *Jenks* at paragraph one of the syllabus; *State v. Williams*, 1st Dist. Hamilton No. C-081148, 2010-Ohio-1879, ¶ 14. Consequently, we overrule Rhoden's first assignment of error.

In his second assignment of error, Rhoden contends that the evidence was insufficient to support the burglary conviction. Our review of the record shows that a rational trier of fact, after reviewing the evidence in a light most favorable to the

prosecution, could have found that the state proved beyond a reasonable doubt all of the elements of burglary under R.C. 2911.12(A)(2). Therefore the evidence was sufficient to support the convictions. *See Jenks* at paragraph two of the syllabus; *State v. Hackney*, 1st Dist. Hamilton No. C-150375, 2016-Ohio-4609, ¶ 29. We overrule Rhoden's second assignment of error.

In his third assignment of error, Rhoden contends that his convictions for receiving stolen property were against the manifest weight of the evidence. In his fourth assignment of error, he contends that his conviction for burglary was against the manifest weight of the evidence. After reviewing the evidence, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse the convictions and order a new trial. Therefore the convictions are not against the manifest weight of the evidence. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1991); *State v. Cedeno*, 192 Ohio App.3d 738, 2011-Ohio-674, 950 N.E.2d 582, ¶ 25 (1st Dist.). We overrule Rhoden's third and fourth assignments of error.

In his fifth assignment of error, Rhoden contends that the trial court erred in admitting improper testimony. First, he contends that it should not have allowed a police officer to testify regarding his comparison of the soles of the shoes next to the air mattress in the apartment to the footprints in the snow. He argues that it was improper expert testimony and that it was not relevant.

The trial court admitted the testimony as expert testimony. But we need not decide if it was proper expert testimony. In *State v. Jells,* 53 Ohio St.3d 22, 559 N.E.2d 464 (1990), the Ohio Supreme Court held that a trial court may permit a lay witness to express his or her opinion as to the similarity of footprints if his or her conclusions are based on measurements or peculiarities in the prints that are readily

recognizable and within the capabilities of a lay witness to observe. *Id.* at paragraph two of the syllabus; *In re A.W.*, 8th Dist. Cuyahoga No. 103269, 2016-Ohio-7297, ¶ 15-22.

Further, the evidence was relevant because it connected Rhoden to the burglary and the stolen property. It tended to make it more probable that Rhoden was one of the perpetrators of the offenses. *See* Evid.R. 401; *State v. Whitaker*, 3d Dist. Allen No. 1-99-52, 2000 WL 196644, *5 (Feb. 22, 2000); *State v. Prince*, 12th Dist. Butler No. CA87-04-060, 1987 WL 27197, *1 (Dec. 7, 1987). Therefore, the trial court did not abuse its discretion in admitting the testimony. *See State v. Issa*, 93 Ohio St.3d 49, 64, 752 N.E.2d 904 (2001).

Next, Rhoden argues that the trial court erred in allowing a police officer to testify about stolen property recovered from a pawn shop in Kentucky. The officer stated that he had driven to the pawn shop, observed the property in question and had viewed a video that showed Rhoden pawning those items. Rhoden was not charged with any crime related to that specific property.

Any error in admitting the evidence was harmless beyond a reasonable doubt because no reasonable probability existed that the evidence contributed to Rhoden's convictions, particularly given that the trial court said that it was giving the testimony minimal weight. *See State v Bayless*, 48 Ohio St.2d 73, 357 N.E.2d 1035 (1976), paragraph seven of the syllabus; *State v. Brundage*, 1st Dist. Hamilton No. C-030632, 2004-Ohio-6436, ¶ 33. Therefore, we overrule Rhoden's fifth assignment of error.

In his sixth assignment of error, Rhoden contends that he was denied the effective assistance of counsel. He argues that counsel was ineffective for failing to properly object to the police officer's alleged improper expert testimony regarding

the footprints and failing to object on alternative grounds. Counsel's failure to make objections is not, by itself, enough to sustain a claim for ineffective assistance of counsel. *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 168; *Hackney*, 1st Dist. Hamilton No. C-150375, 2016-Ohio-4609, at ¶ 39.

Rhoden has not demonstrated that his counsel's representation fell below an objective standard of reasonableness or that, but for counsel's unprofessional errors, the results of the proceeding would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, ¶ 50-52. Therefore, we overrule his sixth assignment of error and affirm the trial court's judgments.

But we note that the judgment entry in the case numbered B-1700143A incorrectly states that Rhoden had pleaded guilty to burglary when he had actually been convicted following a trial to the court. Therefore, we remand the cause to the trial court to correct that error with a nunc pro tunc entry.

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

MOCK, P.J., MILLER and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on _____
per order of the court _____.
Presiding Judge