

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: JALEN WALKER,
A MINOR CHILD

:
:
:
:
:
:
:
:
:
:

Case No. 10-0998

On Appeal from the Hamilton
County Court of Appeals
First Appellate District

C.A. Case No. C-090443

**MEMORANDUM IN SUPPORT OF JURISDICTION
FOR JALEN WALKER**

JOSEPH T. DETERS #0012084
Hamilton County Prosecutor

OFFICE OF THE OHIO PUBLIC DEFENDER

RACHIEL LIPMAN CURRAN #0078850
Assistant Prosecuting Attorney
(COUNSEL OF RECORD)

SHERYL A. TRZASKA #0079915
Assistant State Public Defender
(COUNSEL OF RECORD)

Hamilton County Prosecutor's Office
230 E. 9th Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3200
(513) 946-3107 – Fax

250 E. Broad St., 14th Floor
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
sheryl.trzaska@opd.ohio.gov

COUNSEL FOR STATE OF OHIO

COUNSEL FOR JALEN WALKER

FILED
JUN 07 2010
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Page No.

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC AND GREAT GENERAL INTEREST AND INVOLVES SEVERAL SUBSTANTIAL CONSTITUTIONAL QUESTIONS1

STATEMENT OF THE CASE AND FACTS.....3

ARGUMENT.....5

FIRST PROPOSITION OF LAW:

When a property owner’s lay opinion as to the value of his or her property is based entirely upon other sources, the owner-opinion rule does not apply, and that opinion is inadmissible under Ohio Rules of Evidence 602 and 701.....5

CONCLUSION12

CERTIFICATE OF SERVICE12

APPENDIX:

In re: J.W., Hamilton County Court of Appeals, Case No. C-090443, Judgment Entry (April 21, 2010)..... A-1

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents this Court with an issue that has arisen because of the increasing popularity of electronic commerce. Major retailers almost universally offer information and sell their goods over the internet. Additionally, and more importantly in this case, goods are bought and sold online between individuals, through websites such as Craigslist and eBay, where anyone can set any price for a product, whether the price is realistic or not. Jalen Walker's felony-level receiving stolen property adjudication was based on property owner Ralph Davis' opinion testimony of the property's replacement value. Mr. Davis had not purchased the property himself, and he based his opinion entirely on information from unnamed websites and inadmissible hearsay. The trial court found that his testimony alone was sufficient to establish the value of the property, and support Jalen's felony adjudication.

Ohio law is currently unsettled regarding whether a property owner's valuation testimony to establish replacement value may be based entirely on information that the owner obtained from outside sources. In this case, the property owner testified to his property's value, and his testimony was based entirely on inadmissible hearsay and unauthenticated internet websites, which have not been proven to be used and relied upon by the public for reliable pricing information. This Court has not addressed whether the requirements of Evid.R. 602 (that testimony be based on a witness' personal knowledge), or Evid.R. 701 (that a lay witness' opinion be rationally based on the perception of the witness), apply to a property owner's valuation testimony. This Court should accept jurisdiction and decide the issues presented here, to ensure that the law is clear and consistent throughout Ohio.

Moreover, appellate courts have expanded the owner-opinion rule beyond what this Court acknowledged the rule to be in *Bishop v. East Ohio Gas Co.* (1944), 143 Ohio St. 541, and

Tolkes & Son, Inc. v. Midwestern Indem. Co., (1992), 65 Ohio St.3d 621—that a property owner’s testimony is *some evidence* of actual value, *though not conclusive*. The First, Second, Third, Eighth, and Tenth District Courts of Appeals have simply held that the owner’s testimony is sufficient to establish the property’s value. *State v. Carrington* (March 16, 1977), 1st Dist. No. C-76064; 1977 Ohio App. LEXIS 8744; *State v. Gordon*, 2nd Dist. No. 22223, 2008-Ohio-3003; *State v. Green*, 3rd Dist. App. No. 14-2000-26, 2001-Ohio-2197; *State v. Lockhart* (1996), 8th Dist. App. No. 68582, 685 N.E.2d 564; *State v. Bartolomeo*, 10th Dist. App. No. 08AP-969, 2009-Ohio-3086. The current precedent affects criminal and civil cases alike, and quite dangerously allows inexact and unreliable information into evidence.

In this case, Mr. Davis testified about three televisions which were stolen from his home. Jalen Walker was adjudicated delinquent of receiving stolen property for possessing two of those televisions. Mr. Davis did not purchase those two televisions personally; his wife purchased them. After they were stolen, Mr. Davis tried to determine their value, and Mrs. Davis told him what she paid for them. Mr. Davis “went online” to unidentified websites to determine the televisions’ replacement values. (Trial T.p. 19). This case is likely an increasingly common scenario: a property owner accesses internet websites to determine the replacement value of his or her property, then testifies to that value. The First District Court of Appeals relied on this Court’s owner-opinion rule as set forth in *Tolkes & Son, Inc. v. Midwestern Indemnity Co.* (1992), 65 Ohio St.3d 621, and decided that Mr. Davis’ testimony that he “did his own research by comparing the [television’s] model numbers with replacement-value figures obtained from the Internet,” was sufficient basis for his opinion to establish the televisions’ prices. The Eleventh District Court of Appeals decided the opposite when considering the same issue in a divorce case. *Tippie v. Patnik*, 11th Dist. App. No. 2007-G-2787, 2008-Ohio-1653, ¶¶46-47, 49 (stating that wife’s reliance only on the internet and other third-party sources meant that she did

not have personal knowledge of the value of the property, and so could not establish that value). This Court should grant jurisdiction to settle this issue definitively.

STATEMENT OF THE CASE AND FACTS

An unknown person entered Mr. Ralph Davis' home in Cincinnati, Ohio, and took three televisions—one fifty-inch television, one forty-two inch television, and one twenty-one inch television. (Trial T.p. 17). A witness called the Cincinnati Police Department and said that he or she saw two men carrying items from Mr. Davis' house into a house across the street. (Trial T.p. 7). The day after the televisions were stolen, Cincinnati Police Officer Sellers went to the house across the street and spoke with several people who were staying there at the time, including sixteen year-old Jalen Walker. (Trial T.p. 7). Jalen was arrested later that day, and gave a statement to Officer Sellers that another individual from the house, Scott Groom, had come to him and asked if he wanted a couple of televisions. (Trial T.p. 12). Jalen said yes, took the televisions, and gave them to other people to sell. (Trial T.p. 12). Jalen did not receive any money for the televisions. (Trial T.p. 12). Jalen could not give the officer an actual measurement of how big the two televisions were, and he did not know what brands they were, but he held up his hands to show the officer about what their sizes were. Officer Sellers testified that Jalen showed him what was consistent with a twenty or twenty-one inch television. (Trial T.p. 14-16).

Jalen was charged with one count of receiving stolen property for receiving the two televisions, and his case proceeded to trial. Mr. Davis testified that three televisions were taken from his home; that he purchased the fifty-inch television, and his wife purchased the two smaller ones on her credit card:

Q: Do you recall getting a statement from the credit card company the payment for the other two that were purchased online?

A: They were on her credit card.

Q: Do you recall ever seeing that statement?

A: No, I did not see the statement.

Q: But you did have the—I don't know if you said invoices—you said there was documentation that you looked at on the TV's that had a price listed for them?

A: The model number. I took the model number and went online for the price of the TV.

Q: That's the value you placed on them?

A: Yes sir.

Q: Do you know that's how much was paid for those?

A: Yes sir. That's what my wife told me that she paid for them and within a few dollars, yes.

* * *

Q: Mr. Davis, when you looked that up to determine how much it would cost to replace those TV's—is that where you got the values of \$900 for one and \$400 for another?

A: Yes sir.

Trial T.p. 19-20.

The juvenile court found that Mr. Davis' testimony was sufficient to establish the replacement value of the televisions, and support Jalen's adjudication for a felony-level receiving stolen property charge. Jalen filed objections to the magistrate's decision, and the juvenile court overruled the objections and upheld the magistrate's decision. Jalen timely appealed his adjudication, and the Hamilton County Court of Appeals, First Appellate District affirmed his adjudication on April 21, 2010. *In re: Jalen Walker*, 1st Dist. No. C-090443.

ARGUMENT

PROPOSITION OF LAW

When a property owner's lay opinion as to the value of his or her property is based entirely upon other sources, the owner-opinion rule does not apply, and that opinion is inadmissible under Ohio Rules of Evidence 602 and 701.

Jalen was adjudicated delinquent of receiving stolen property after his friend Scott Groom gave him two televisions. Jalen gave the televisions to a couple who planned to sell them, but he never received any money. At Jalen's trial, the televisions' owner, Ralph Davis, testified to his opinion of their replacement value, and that testimony established that the receiving stolen property offense was a felony. Mr. Davis did not purchase the televisions, nor was he involved in the purchase of the televisions. His wife purchased them on her credit card, and he did not see the credit card statement that listed their actual purchase price. (Trial T.p. 18-19). Mr. Davis took the model numbers from the televisions, and "went online" to an unidentified, unnamed website, and then testified to the value of the televisions. (Trial T.p. 19). He based his opinion entirely on unauthenticated internet websites, and what his wife told him about the televisions' purchase prices.

As this Court has noted, it is a general rule that one must be qualified as an expert to testify as to value. *State Auto Mut. Ins. Co. v. Chrysler Corp.* (1973), 36 Ohio St.2d 151, 159-160. But, this Court has long held that there is an exception to that rule, often referred to as the owner-opinion rule, which allows owners to testify about the value of their property. The basis for that exception is that owners are presumed to be familiar with their property and its value. *Bishop v. East Ohio Gas Co.* (1944), 143 Ohio St. 541; *Tolkes & Son, Inc. v. Midwestern Indem. Co.*, (1992), 65 Ohio St.3d 621, 633. That presumption should be overcome, and the owner's opinion should not be permitted, when the owner has no personal knowledge to support his or

her opinion. This Court should revisit and limit the owner-opinion rule to ensure that evidence purporting to establish a property's value is reliable and accurate, and ensure that all testimony comports with the Ohio Rules of Evidence.

In *State v. Heap*, 1st Dist. App. No. C-040007, 2004-Ohio-5850, the First District Court of Appeals reasoned that the owner-opinion rule does not magically confer expert status on the owner, but merely presumes that the owner is competent to testify about value as a non-expert, based on his or her familiarity with the property. At ¶20. Yet, in the instant case, the First District held that Mr. Davis' testimony was sufficient to establish its value and support Jalen's felony adjudication, even though he personally did not have knowledge of the televisions' values. The court ultimately conferred expert status on Mr. Davis for going "online" and doing his own research.

Mr. Davis did not state which websites he visited—whether they were legitimate retail websites, or an auction website such as eBay.com, or a classified advertisement website such as Craigslist.org. List prices of goods vary widely depending on who is offering the sale, and depending on whether the seller expects to negotiate a price. The website or websites Mr. Davis relied upon to determine the televisions' replacement value were not authenticated, or even named. It is impossible to tell whether the pricing information was reliable. During his direct examination, Mr. Davis testified:

Q: What did you pay for [the televisions]?

A: The Samsung I bought from Circuit City. It was 1300 and some change¹. The other two my wife purchased online. It was \$900 for the 42 inch and \$400 for the 21.

Q: Objection. Hearsay.

¹ This television, the Samsung, was not one of the two that Jalen was adjudicated delinquent for possessing. (Trial T.p. 23).

THE COURT: You want to ask some follow up questions on how he knows that?

ASSISTANT PROSECUTOR: Your Honor, was [defense counsel] Mr. Cooper objecting just for the record then?

MR. COOPER: The witness described buys by his wife. The only way he's going to know that is by talking to his wife and his wife telling him the purchase price.

THE COURT: That's not necessarily true, which is why we need some follow up questions at this point to determine how he would know that. The objection is sustained right now.

Q: How do you know the value of those TV's?

A: I have the model numbers of the TV's and I still have the manuals at the house. That's how I ascertained the price of the televisions.

Q: Were you involved in any way with paying for the TV's?

A: I paid totally for the Samsung, but we're married. Now our household—everything is together.

Q: So was your household money used to purchase the two TV's?

A: Yes.

Q: Do you have direct knowledge that you as a household paid \$400 and \$900 for those two TV's?

A: Yes. I can give you model numbers.

Q: Do you recall how they were paid for—with a credit card—or

A: The other two were paid online with a credit card. We paid cash for the Samsung.

Q: Do you recall getting a statement from the credit card company on the payment for the other two that were purchased online?

A: **They were on her credit card.**

Q: **Do you recall seeing the statement?**

A: **No, I did not see the statement.**

Q: **But you did have the—I don't know if you said invoices—you said there was documentation that you looked at on the TV's that had a price listed for them?**

A: **The model number. I took the model number and went online for the price of the TV.**

Q: That's the value that you placed on them?

A: Yes sir.

Q: **Do you know that's how much was paid for those?**

A: **Yes sir. That's what my wife told me that she paid for them and within a few dollars, yes.**

Trial T.p. 18-19.

According to Mr. Davis, the prices he saw online were comparable to the purchase prices of the televisions, because his wife told him what she had paid for them. Her hearsay statements and the unauthenticated website information were the entire basis of Mr. Davis' opinion. Since Mr. Davis had no personal knowledge of the value, the trial court *did* confer expert status on him, and his testimony violated Evid.R. 602 and Evid.R. 701. Ohio Rule of Evidence 602 states that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness had personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." And, Evid.R. 701 requires that a lay witness' opinion be "limited to those opinions or inferences which are rationally based on the perception of the witness..." The owner-opinion rule is an exception to the rule that one must be qualified as an expert to give an opinion about the value of property. *Tolkes & Son, Inc. v. Midwestern Indem. Co.*, (1992), 65 Ohio St.3d 621, 625. It is not an exception to every other rule of evidence as well.

In *Tippie v. Patnik*, 11th Dist. App. No. 2007-G-2787, 2008-Ohio-1653, the Eleventh District Court of Appeals rejected the valuation testimony of an owner who based her opinion of

her property's value entirely on outside sources. In *Tippie*, a divorce case, the property at issue was silverware that belonged to the wife. The husband denied that he had the silverware, so the trial court ordered he pay her the amount the silverware was worth. The court conducted a valuation hearing, where the wife testified that the silverware was worth \$55,000.00. The trial court denied the wife's motion to show cause as to the husband's failure to pay her for the silverware, and found that she failed to meet her burden of establishing its value. The Eleventh District affirmed, stating that it did not argue with the viability of the owner-opinion rule, but that the basis of the owner's opinion must come from personal knowledge, as required by the Ohio Rules of Evidence. *Id.* at ¶ 40-42, 46.

In *Tippie*, the wife formed her opinion of the silverware's value by requesting information from two companies that deal in that type of silverware, as well as accessing the "Unica Home" website. *Id.* at ¶20. At the valuation hearing, the wife introduced a spreadsheet with information she received from the two companies, as well as copies of three web pages from the Unica Home website that listed the prices of her silverware. The court stated that, "Even under the *Bishop* standard, we consider...[wife's]...admitted lack of personal knowledge a fatal flaw, since the basis of her opinion as to value of the silverware relied 'solely on hearsay, which is inadmissible evidence.'" *Id.* at ¶47, citing *Streifithau v. Streifithau* (May 20, 1985), 12th Dist. No. CA84-08-087, 1985 Ohio App. LEXIS 7722, at *11 (emphasis in original; citation omitted); accord, Annotation (1954), 37 A.L.R. 2d 967, 985. ("[W]here it plainly appears in any case that the owner has *no knowledge of the value he expresses an opinion about*, the presumption arising from ownership is overcome and his opinion is inadmissible."). (Emphasis added in *Tippie*).

Ohio law is unsettled regarding whether an owner's opinion may establish a property's value when that opinion is not based on the owner's personal knowledge. The *Tippie* court noted

that, “*Bishop*, and the line of cases allowing owners’ opinions as to value have never inquired into the source of the owner’s opinion. *** It was only that the owners’ opinion was given validity.” *Id.* at ¶39, citing *Payton v. Auto Depot, Inc.* (June 29, 1990), 11th Dist. No. 88-L-13-217, 1990 Ohio App. LEXIS 2707, at *5-6, citing *Miller v. Banks* (1954), 10th Dist. No. 4999, 97 Ohio App. 557, 127 N.E.2d 773, and *Kohnle v. Carey* (1946), 2nd Dist. App. No. 1888, 80 Ohio App. 23, 67 N.E.2d 98. The Second District Court of Appeals stated in *Baber v. Dennis* (1979), 66 Ohio App.2d 1, 8, 419 N.E.2d 16, that it knew of “no rule that [an] owner is disqualified from testifying to the value of her own property merely because of a reliance upon information from another,” to support her proposition. *Tippie* at ¶39. And the First, Second, Third, Eighth, and Tenth District Courts of Appeals have found owner testimony sufficient to establish property value without inquiring as to the source of their knowledge. *State v. Carrington* (March 16, 1977), 1st Dist. No. C-76064; 1977 Ohio App. LEXIS 8744; *State v. Gordon*, 2nd Dist. No. 22223, 2008-Ohio-3003; *State v. Green*, 3rd Dist. App. No. 14-2000-26, 2001-Ohio-2197; *State v. Lockhart* (1996), 8th Dist. App. No. 68582, 685 N.E.2d 564; *State v. Bartolomeo*, 10th Dist. App. No. 08AP-969, 2009-Ohio-3086.

In the instant case, the First District Court of Appeals found Mr. Davis’ testimony sufficient to establish the value of his property, even though he did not have personal knowledge of the value of the televisions about which he testified. The court found it proper that Davis “...did his own research by comparing the model numbers with replacement-value figures obtained from the Internet.” *In re Walker*, at p. 4. Neither the trial court nor the court of appeals took issue with the fact that Mr. Davis did not even provide names of the websites from which he obtained his information. Compare *Tippie*, where the wife produced spreadsheets with specific prices, a printout of the website itself, those sources were authenticated, and yet the common

pleas court and the court of appeals held that her opinion testimony could not establish the value of the property.

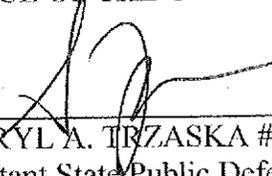
In her dissenting opinion in *Tippie*, Judge O'Toole notes that the husband's argument "indicates the quagmire that courts and litigants discover in the wealth of information available in cyber space...Computer technology is forcing us to look beyond traditional evidentiary submissions to the 'public' domain of the Internet for a variety of evidence" ¶54. The dissenting opinion reasons that the information that the wife obtained online was "no different than walking through a store or looking at a catalog in order to research the value of one's possessions. The proposition remains that an owner of property can testify as to the value of one's possessions. Individuals gather that information not in a vacuum or by simply guessing, but by doing research to discover an approximate value." ¶52. But, as the *Tippie* majority recognized, the owner-opinion rule exists for owners who have a particular familiarity with their property. Otherwise, one must be qualified as an expert to testify to the value of property. *State Auto Mut. Ins. Co. v. Chrysler Corp.* (1973), 36 Ohio St.2d 151, 159-160; *Tolkes & Son, Inc. v. Midwestern Indem. Co.*, (1992), 65 Ohio St.3d 621, 625. If an owner must rely entirely on other sources to determine the value of his or her property, the owner's opinion violates the Ohio Rules of Evidence. Therefore, when an owner's opinion testimony about the value of his or her property is based only on information obtained from other sources, the owner should not be permitted to give that opinion as a lay witness.

CONCLUSION

This case involves substantial constitutional questions, as well as questions of public and great general interest. This Court should grant jurisdiction and decide the case on its merits, so that those questions may be answered definitively.

Respectfully Submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



SHERYL A. TRZASKA #0079915
Assistant State Public Defender
(COUNSEL OF RECORD)

250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 -- Fax
sheryl.trzaska@opd.ohio.gov

COUNSEL FOR JALEN WALKER

CERTIFICATE OF SERVICE

I certify a copy of the foregoing Memorandum in Support of Jurisdiction for Jalen Walker has been sent by regular U.S. mail to Joseph T. Deters , Hamilton County Prosecutor, Hamilton County Prosecutor's Office, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202, on this 7th day of June, 2010.



SHERYL A. TRZASKA #0079915
Assistant State Public Defender

COUNSEL FOR JALEN WALKER

IN THE SUPREME COURT OF OHIO

IN RE: JALEN WALKER,
A MINOR CHILD

:
:
:
:
:
:
:
:
:
:
:

Case No.

On Appeal from the Hamilton
County Court of Appeals
First Appellate District

C.A. Case No. C-090443

**APPENDIX TO
MEMORANDUM IN SUPPORT OF JURISDICTION FOR JALEN WALKER**

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

ENTERED
APR 21 2010

IN RE: JALEN WALKER

APPEAL NO. C-090443
TRIAL NO. 09-3476-X

JUDGMENT ENTRY.



D87934070

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Jalen Walker, a minor, was charged with receiving stolen property in violation of R.C. 2913.51. Following a trial before a magistrate, Walker was adjudicated delinquent. Walker filed objections to the magistrate's decision, which were overruled by the trial court. Walker was placed on probation and ordered to complete the residential program at Hillcrest. For the following reasons, we affirm.

On February 7, 2009, Ralph Davis's home was burglarized. He came home to find that his basement window had been shattered, his backdoor had been left open, and three televisions were missing: a 50-inch Samsung, a 42-inch JVC, and a 21-inch Toshiba. Davis testified that he had paid \$1300 for the Samsung. Although Davis's wife had purchased the JVC and Toshiba on the Internet with her credit card, Davis had the owner manuals for those television sets and searched on the Internet, using the model numbers to ascertain the current value of those specific models. Based on that research, he valued the JVC at \$900 and the Toshiba at \$400.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

OHIO FIRST DISTRICT COURT OF APPEALS

Police Officer Darren Sellers investigated the burglary. He received a tip from an eyewitness who said that two men had carried "merchandise" from Davis's home to the house across the street. Sellers went to that house across the street and met Walker, who had been residing there. Walker's friend Scott Groom lived at the house also, as well as a few other people. Sellers explained to everyone at the house why he was there and determined everyone's identity. Sellers testified that initially Walker had been uncooperative and refused to talk to him but that he eventually talked and stated his name. Sellers then checked for Walker's name on the police database and determined that there was an outstanding warrant for Walker's arrest. Walker was then arrested on the outstanding warrant, and after being read his rights, Walker agreed to talk with Officer Sellers about the stolen television sets.

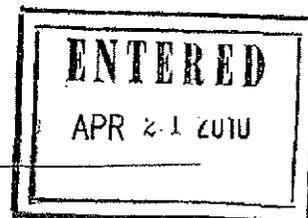
Walker told Officer Sellers that he had been at Groom's house on the day that Davis's house had been burglarized. On that day, Groom had come home and asked Walker if he wanted any television sets. Walker said he had taken two television sets and given them to a "white couple" to sell for him. Walker did not know the types or sizes of the televisions he received. He did estimate the sizes to Officer Sellers by using his hands, and Officer Sellers determined that he had received a 21-inch television set and another slightly larger one.

Following the trial, the magistrate adjudicated Walker delinquent. The trial court adopted the magistrate's decision as its own. This appeal followed.

In his first and second assignments of error, Walker contests the sufficiency and weight of the evidence underlying his adjudication. We are unpersuaded.

For a sufficiency claim, this court's 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."² On the other hand, when reviewing a manifest-weight challenge, a reviewing court

² *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

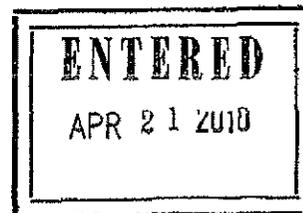


OHIO FIRST DISTRICT COURT OF APPEALS

must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

Under these assignments of error, Walker first argues that the state did not prove that he had actually possessed two of the televisions that had been stolen from Davis's home, and that it did not prove their value. We disagree. Here, an eyewitness told police that "merchandise" taken from Davis's home had been carried into the home where Walker was residing. Walker admitted to being at Groom's home the day of the burglary and admitted, on that same day, that he had taken two televisions from Groom and then given them to someone else to sell for him. Although Walker did not know the model of the televisions he had received, he described, with a show of his hands, that he had received a 21-inch television and a slightly larger one. Accordingly, there was sufficient circumstantial evidence presented to show that Walker had possessed the stolen televisions. And there was sufficient evidence to demonstrate the value of the televisions. "An owner is permitted to testify concerning the value of his property without being qualified as an expert, because he is presumed to be familiar with it from having purchased or dealt with it."⁴ Davis testified that the value of the JVC television was \$900 and the value of the Toshiba television was \$400.

Briefly we note that, in determining the value of the television sets, the trial court properly used the replacement values versus the fair market values.⁵



³ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁴ *State v. Gordon*, 2nd Dist. No. CA-22223, 2008-Ohio-3003, citing *Tokles & Son, Inc. v. Midwestern Indemnity Co.* (1992), 65 Ohio St.3d 621, 605 N.E.2d 936.

⁵ See R.C. 2913.61(D)(2); see also, *State v. Cook* (Sept. 8, 1987), 12th Dist. No. CA87-04-009; *Gordon*, supra.

OHIO FIRST DISTRICT COURT OF APPEALS

Finally, after reviewing the entire record and weighing the evidence, we cannot say that the trial court lost its way and created a manifest miscarriage of justice in adjudicating Walker delinquent.

The first and second assignments of error are overruled.

In his third assignment of error, Walker contends that the trial court erred by admitting Davis's testimony concerning the purchase price of the televisions sets, arguing that the testimony was unauthenticated and hearsay. But upon review of the record, we cannot say that the trial court abused its discretion in admitting Davis's testimony.⁶ First as we have already noted, an owner is permitted to testify about the value of his property. Second, Davis gave a lay opinion as to the replacement value of the televisions sets. He was familiar with the televisions sets and had their model numbers, which he used to determine their value. Finally, Davis's testimony was not hearsay. Although he stated in his testimony that his wife had told him the purchase price of the two televisions, he did not use those prices to establish their value. Instead, he did his own research by comparing the model numbers with replacement-value figures obtained from the Internet.

The third assignment of error is overruled, and the judgment of the trial court is affirmed.

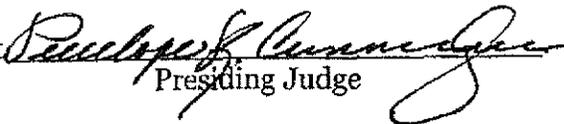
A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 21, 2010

per order of the Court


Presiding Judge



⁶ *State v. Brown* (1996), 112 Ohio App.3d 583, 601, 679 N.E.2d 361.