

[Cite as *State v. Fegley*, 2010-Ohio-1909.]

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID E. FEGLEY

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 2009-CA-0084

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of  
Common Pleas, Case No. 2009-CR-0108D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

April 26, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JAMES J. MAYER, JR.  
PROSECUTING ATTORNEY  
RICHLAND COUNTY, OHIO

RANDALL E. FRY  
10 West Newlon Place  
Mansfield, Ohio 44902

By: KIRSTEN L. PSCHOLKA-GARTNER  
Assistant Richland County Prosecutor  
38 South Park Street  
Mansfield, Ohio 44902

*Hoffman, J.*

{¶1} Defendant-appellant David E. Fegley appeals his conviction entered by the Richland County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} During the time period of August 18, 2007, to February 5, 2008, the Richland County Sheriff's Department received reports of numerous breaking and entering incidents and thefts from barns and construction sites throughout Richland County. As part of the investigation, the Sheriff's Department placed a decoy Polaris ATV [all terrain vehicle] in various areas around Richland County, and conducted surveillance in an attempt to catch the perpetrator.

{¶3} On February 13, 2008, at approximately 11:58 p.m., Sergeant Donald Zehner observed two white males load a decoy ATV which had been placed at State Route 39 and Meyers Road into the back of a pickup truck. Sergeant Zehner activated his lights and sirens in an attempt to stop the vehicle. Appellant was later determined to be the driver of the vehicle. Ronald Morrison was a passenger in the vehicle.

{¶4} During the investigation, Appellant demonstrated knowledge as to the whereabouts of another stolen ATV. Further investigation lead to the discovery of other stolen ATV's alleged to have been sold by Appellant and Morrison.

{¶5} On February 18, 2008, Morrison, in an attempt to cooperate in return for a favorable plea negotiation, identified several properties he and Appellant had broken into describing the items stolen. Morrison provided the officers with a detailed statement as to each offense, indicating who was with him, how he gained entry and a description to the property stolen.

{¶6} Appellant was indicted on nineteen counts of aiding and abetting breaking and entering, twenty-two counts of aiding and abetting theft, three counts of aiding and abetting possession of criminal tools, one count of aiding and abetting attempted breaking and entering and one count of engaging in a pattern of corrupt activity.

{¶7} Following a jury trial, Appellant was convicted of fourteen counts of aiding and abetting breaking and entering, twenty one counts of aiding and abetting theft, three counts of aiding and abetting possession of criminal tools, and one count of engaging in a pattern of corrupt activity. Appellant now appeals, assigning as error:

{¶8} "I. THE JURY'S VERDICT IN FINDING THE DEFENDANT-APPELLANT GUILTY OF THE FORTY COUNTS, SAID COUNTS EMUNERATED [SIC] AND EXPLAINED IN THE SENTENCING ENTRY FILED ON MAY 28, 2009, WAS CONTRARY TO THE MANIFEST WEIGHT OF EVIDENCE, THUS THE CONVICTION WAS IN VIOLATION OF ARTICLE 1, 10 OF THE OHIO CONSTITUTION AND THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION."

{¶9} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine "whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Thompkins*, supra. at 387, 678 N.E.2d 541, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. Because the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility, the weight of the evidence

and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, syllabus 1.

{¶10} Based upon our review of the record and the facts as set forth above and as identified in the State's thorough presentation of the record evidence supporting Appellant's convictions in its brief, we find Appellant's convictions were not against the manifest weight of the evidence and the jury did not lose its way in finding Appellant guilty of the charges. Appellant's codefendant lead the investigating officers to various properties providing a detailed description of Appellant's acts and property stolen. Again, the weight of the evidence and the credibility of the witnesses is left to the trier of fact.

{¶11} The sole assignment of error is overruled, and Appellant's convictions in the Richland County Court of Common Pleas are affirmed.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ John W. Wise  
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DAVID E. FEGLEY	:	
	:	
Defendant-Appellant	:	Case No. 2009-CA-0084

For the reasons stated in our accompanying Opinion, Appellant’s convictions in the Richland County Court of Common Pleas are affirmed. Costs to Appellant.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

s/ John W. Wise  
HON. JOHN W. WISE