[Cite as *State v. Carter*, 2011-Ohio-2375.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	Nos. 10AP-1088 (C.P.C. No. 09CR-10-6244)
	:	and 10AP-1089
Edward Thomas Carter,		(C.P.C. No. 09CR-12-7861)
	:	
Defendant-Appellant.		(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on May 17, 2011

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEALS from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Edward Thomas Carter is appealing from his convictions on charges of burglary, theft and possession of criminal tools. He assigns a single error for our consideration:

> Appellant's convictions were not supported by sufficient evidence.

{¶2} On Christmas Eve in 2009, Carter was discovered in a restricted area of Grant Hospital in downtown Columbus. A security guard for Grant Hospital had been advised to keep an eye out for Carter because Carter was suspected of stealing hospital equipment, including medical equipment and laptop computers. The security guard, Steve Pickett, had seen a surveillance photograph and recognized Carter from the photo.

{¶3} Carter told Pickett that he was looking for a restroom. Carter was pulling a pink wheeled suitcase, which was found to contain three laptop computers and a pair of bolt cutters. Cables which had formerly secured the laptops had been cut.

{¶4} Carter claimed a man named "Red Dog" had asked him to pick up the laptops and bolt cutters at the hospital and Carter had done so. Carter denied having cut the cables or otherwise to have participated in a theft. The trial judge, sitting as the trier of fact, did not believe Carter's version of what happened.

{¶5} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. Id. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781. The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a

matter of law, a judgment of acquittal must be entered for the defendant. See *Thompkins* at 387.

{¶6} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* at 387. In so doing, the court of appeals, sits as a " 'thirteenth juror' " and, after " 'reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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 and a new trial ordered.' " Id. (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175); see, also, *Columbus v. Henry* (1995), 105 Ohio App.3d 545, 547-48. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387.

{¶7} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [(1967), 10 Ohio St.2d 230], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. It was within the province of the jury to make the credibility decisions in this case. See *State v. Lakes* (1964), 120 Ohio App. 213, 217 ("It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.")

{¶8} See *State v. Harris* (1991), 73 Ohio App.3d 57, 63 (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶9} Burglary is defined in R.C. 2911.12. It reads:

> (A) No person, by force, stealth, or deception, shall do any of the following:
>
> (1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense[.]

{¶10} Theft is defined in R.C. 2913.02:

> (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
>
> (1) Without the consent of the owner or person authorized to give consent[.]

{¶11} Possession of criminal tools is set forth in R.C. 2923.24 as follows:

> (A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

{¶12} The trial judge had more than sufficient evidence before him to sustain the convictions. The trial judge could reasonably infer that Carter was trespassing in a restricted area of the hospital, cutting the cables which secured the laptop computers and placing the computers in his pink suitcase in hopes of leaving the hospital with them.

{¶13} All the elements of all three charges were met.

{¶14} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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