[Cite as *State v. Gibson*, 2004-Ohio-2599.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2002-A-0068**
- vs -	:	
DALE B. GIBSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 01 CR 143.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Erik M. Jones, One Cascade Plaza, 20th Floor, Akron, OH 44308 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Dale B. Gibson, appeals from the trial court's entry of judgment on a jury verdict convicting him of one count of vandalism and one count of theft. Appellant also appeals from the trial court's sentencing judgment. We affirm.

{¶2} Appellant was employed by ARC Rubber ("ARC") in Geneva, Ohio. He was fired after walking off the job in late December, 1999.

{¶3} On May 4, 2000, employees of ARC arrived at work to find that the business had been vandalized. Robert Johnson, Jr., ("Johnson") vice president and plant manager, led Officer Yopp of the Geneva Police Department through the plant pointing out the damage. Near the LCM line were a set of greasy footprints that had not been there the night before and industrial power cords that had been severed; water valves on the LCM line that were only opened half way during operation were fully opened. A sanding belt had an obscenity written on it. Notes containing the same obscenity were found at various places in the plant. The time card of Rebecca Alderton ("Alderton") was destroyed. It was also discovered that several pieces of equipment had been taken. The removal of this equipment caused the plant to cease operation for one and one-half weeks; several employees were laid off for as long as four weeks.

{¶4} Based on the specific nature of the damage, Johnson provided Officer Yopp with information on three former employees whom he suspected might have committed the crime. Appellant was one of these employees.

{¶5} Officer Yopp conducted his investigation. He learned that appellant and Alderton had a running feud based on Alderton's refusal of appellant's sexual advances. Officer Yopp also learned that appellant was fond of using the specific obscenity found on the belt sander and at other places in the plant.

{¶6} Officer Yopp also interviewed Deborah Butz ("Butz"), who had been tending bar at Charlie's Place on the night of the incident. This establishment was located only 200 feet from ARC. Butz testified that appellant was at the bar the night of the incident and that he was intoxicated and hassling other patrons to buy him drinks. Butz asked appellant to leave the premises, which he finally did around 11:00 p.m.

{¶7} Officer Yopp also received copies of appellant's job application for handwriting analysis. Andrew Szymanski of the Lake County Regional Forensic Laboratory testified that the writing found at the crime scene matched the known samples of appellant's writing.

{¶8} Following the investigation, appellant was indicted on one count of vandalism in violation of R.C. 2909.05(B)(1)(a) and (b), a fourth degree felony; and one count of theft in violation of R.C. 2913.02(A)(1), a fourth degree felony. Appellant pleaded not guilty and the matter proceeded to a jury trial where appellant was convicted of both counts. Following a hearing, the trial court sentenced appellant to the maximum term of eighteen months on each count with the sentences to be served concurrently. Appellant appeals raising two assignments of error:

{¶9} "[1.] The trial court erred, by clear and convincing evidence, by imposing maximum sentences upon appellant.

{¶10} "[2.] The appellant's convictions are against the manifest weight of the evidence."

{¶11} We review a felony sentence de novo. *State v. Bradford* (June 2, 2001), 11th Dist. No. 2000-L-103, 2001 WL 589271, 1. We will not disturb a sentence unless we find, by clear and convincing evidence, that the record does not support the sentence or that the sentence is contrary to law. Id. "Clear and convincing evidence is that evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." Id.

{¶12} R.C. 2929.14(C) provides:

{¶13} "Except as provided in division (G) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section[.]"

{¶14} R.C. 2929.19(B)(2) provides:

{¶15} "The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

{¶16} "(a) ***

{¶17} "(b) ***

{¶18} "(c) ***

{¶19} "(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense ***, its reasons for imposing the maximum prison term[.]"

{¶20} A trial court is required to make its findings in support of its maximum sentence on the record, at the sentencing hearing. See, generally, *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. In the instant case, appellant argues that the trial court is also required to state its reasoning in the judgment entry of sentence. We read *Comer* to require only that the findings and reasons be stated on the record at the sentencing hearing. Id. at ¶20. While the better practice would be for the court to state its findings and reasoning at both the hearing and in the sentencing entry, only the

former is required. Here, the trial court stated its findings on the record at the sentencing hearing.

{¶21} Appellant also argues that the trial court failed to make any finding supporting the imposition of the maximum sentence for the theft offense and provided insufficient reasons for concluding that the vandalism constituted the worst form of the offense. We disagree.

{¶22} In support of the sentence on the theft offense the court noted the significant economic harm to both the company and its employees from the theft of materials necessary to the operation of the plant. This caused ARC to lay off employees for as long as four weeks and a loss of one and one-half weeks in production.

{¶23} The trial court also specifically found that the vandalism was the worst form of the offense and then detailed the result of this vandalism. These findings are sufficient to support the imposition of the maximum sentence. Appellant's first assignment of error is without merit.

{¶24} In his second assignment of error, appellant contends that his convictions are against the manifest weight of the evidence. We disagree.

{¶25} We may find that a verdict is against the manifest weight of the evidence even though legally sufficient evidence supports it. *State v. Group*, 2002-Ohio-7247, at ¶ 76, 98 Ohio St.3d 248. When we consider a manifest weight argument, we review the entire record, weigh the evidence and reasonable inferences, and consider the credibility of witnesses. Id. at ¶ 77. We then determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest

miscarriage of justice that we must reverse the conviction and order a new trial. Id. We should only exercise this discretionary power in those exceptional cases where the evidence weighs heavily against conviction. Id. See, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387.

{¶26} In support of this assignment of error, appellant contends that the evidence relied upon by the jury could have implicated others or was unreliable. We disagree. We have reviewed the record, weighed the evidence and reasonable inferences, and considered the credibility of the witnesses. After doing so, we cannot say that the jury's verdicts are against the manifest weight of the evidence. Appellant's second assignment of error is without merit.

{¶27} For the foregoing reasons the judgment of the Ashtabula County Court of Common Pleas is affirmed.

Judgment affirmed.

DONALD R. FORD, P.J., and DIANE V. GRENDELL, J., concur.