[Cite as *State v. Brown*, 2009-Ohio-5734.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 08CA87
vs.	:	T.C. CASE NO. 08CR251
SEAN BROWN	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 30th day of October, 2009.

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WOLFF, J. (BY ASSIGNMENT):

{¶ 1} Defendant, Sean Brown, appeals from his conviction and sentence for receiving stolen property.

{¶ 2} The evidence presented at trial demonstrates that on February 8, 2008, while working at Hallieq Library at Central State University in Greene County, Ohio, Nurjehan Henry

discovered that one of the library's computers was missing. The next day, February 9, 2008, when Jennifer Beachman came in to work at the library at 12:45 p.m., she discovered that four computers were missing from the computer lab. Three of the missing computers were white Apple IMACS, and one was an IBM compatible PC. The computer lab is located near a stairwell with direct access to the outside. The computers stolen were secured with a cable that had been cut. Beachman contacted the library director, Clyde Vaughn, and Central State police.

{¶ 3} On February 27, 2008, while making his rounds at the library, Clyde Vaughn discovered that four additional white Apple IMAC computers had been stolen from the computer lab. The four computers had been secured with a cable that had been cut. Vaughn was able to determine the serial numbers of all of the computers that had been stolen from the library.

{¶ 4} On February 29, 2008, John Sassen, an assistant professor in engineering at Central State, was working in his office in Jenkins Hall when a student came in and asked what he had done with the computers in the computer lab. Sassen immediately went to the computer lab in Jenkins Hall and discovered that four computers were missing and that the cable that secured the computers had been cut. Three of the missing computers were Gateway, and one was a Dell.

{¶ 5} On March 11, 2008, engineering students Alicia Burse and Anvar Alot were in the computer lab in Jenkins Hall when they observed two men, "Tobi" Oyedokun and a short black male, inside the computer lab with black bags. Burse observed the short black male attempting to cut the cable that secured the computers. When Burse confronted the two men, they fled. Burse contacted campus police and later identified Oloruntobi "Tobi" Oyedokun as one of the two men she observed inside the Jenkins Hall computer lab. "Tobi" Oyedokun identified Defendant as the person he was with when Burse spotted them in the computer lab, and he indicated that Defendant was the person cutting the cable with bolt cutters. "Tobi" acknowledged that in February 2008 he had taken Defendant to the Sunoco station on Salem Avenue in Dayton where he personally witnessed Defendant sell two white Apple IMAC computers he had stolen from Hallieq Library to a tall, dark skinned man that works at the station and drives a white Chevy Impala.

{¶ 6} In late January 2008, Defendant asked Jonathon Gardner, his friend, if he wanted to make some extra money. Defendant told Gardner that he had stolen some computers from the school library and sold them, and he asked Gardner if he wanted to help him. In early February 2008, Defendant called Gardner one morning and said if Gardner and his roommate, Rob

Williams, wanted to make some money, there were two computers at the bottom of the stairs at the school library. When Gardner and Williams arrived at the library, the back door was propped open and there were two white Apple IMAC computers at the bottom of the stairs. Gardner and Williams put the computers in bags they had brought with them. Defendant then came down the stairs carrying two black duffel bags.

{¶ 7} Defendant, Gardner and Williams talked a fourth man, Blair Miller, into driving them to the Sunoco station on Salem Avenue in Dayton. Defendant, Gardner and Williams all had large duffel bags with them. When Miller asked what was in the bags, the three men told him it was nothing illegal that would get him in trouble. Upon arriving at the Sunoco station, Defendant went inside and then came back out and said the person they were looking for would not be there until noon. Defendant asked Miller to take him to his home, just four blocks away, which Miller did. After dropping Defendant off at his home, Miller drove Gardner and Williams to a pawn shop, and then back to the Sunoco station where Gardner and Williams sold the stolen white Apple IMAC computers to an African man who is an employee of the Sunoco station and drives a white Chevy Impala. That man, Labisse Niang, had previously purchased two white Apple IMAC computers from Defendant. Miller watched Gardner and

Williams give their duffel bags to Niang, after which Gardner and Williams were able to give Miller gas money.

{¶ 8} The testimony of Beth Anderson, controller for Central State, established that with respect to the computers that were stolen, Central State had paid $1,683.00 for each Gateway computer, and $1,199.00 for each Apple IMAC computer. To replace the stolen computers, Central State paid $1,239.00 for each Apple IMAC computer and $1,300.00 for each IBM compatible PC.

{¶ 9} Defendant was indicted on one count of engaging in a pattern of corrupt activity, R.C. 2923.32(A)(1), one count of conspiracy to engage in a pattern of corrupt activity, R.C. 2923.01(A)(2), 2923.32(A)(1), one count of money laundering, R.C. 1315.55(C), four counts of theft, R.C. 2913.02(A)(1), eight counts of receiving stolen property, R.C. 2913.51(A), and one count of attempted theft, R.C. 2923.02(A), 2913.02(A)(1). Prior to trial, the State dismissed counts one, two, three, twelve, thirteen, fourteen and fifteen. Following a jury trial Defendant was found guilty of two counts of receiving stolen property wherein the value of the property was between five hundred and five thousand dollars. The trial court sentenced Defendant to concurrent twelve month prison terms on each charge.

{¶ 10} Defendant timely appealed to this court from his conviction and sentence.

FIRST ASSIGNMENT OF ERROR

{¶ 11} "THE CONVICTION SHOULD BE REVERSED BECAUSE THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 12} A weight of the evidence argument challenges the believability of the evidence; which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15563. The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶ 13} "The court, 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 lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Accord: *State v. Thompkins* (1997), 78 Ohio St.3d 380.

{¶ 14} Defendant argues that his conviction is against the manifest weight of the evidence and the jury lost its way, resulting in a miscarriage of justice, because the evidence presented was not sufficient to sustain his convictions. In that regard, Defendant claims that nobody saw him take any

computers, have any stolen computers in his possession, or have bolt cutters. In short, Defendant claims that the evidence was insufficient to demonstrate his involvement in the thefts of computers from Central State University. We disagree.

{¶ 15} Defendant was found guilty of violating R.C. 2913.51(A), which provides:

{¶ 16} "No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense."

{¶ 17} The testimony of Nurjehan Henry, Jennifer Beachman, Clyde Vaughn, John Sassen and Alicia Burse clearly demonstrates that computers were stolen from Hallieq Library and Jenkins Hall at Central State University during February and early March 2008. While in the computer lab in Jenkins Hall, Burse observed that two men, Oloruntobi "Tobi" Oyedokun and an unknown shorter black male, had duffel bags and the shorter black male was using bolt cutters in an attempt to cut the cables securing the computers. "Tobi" Oyedokun identified Defendant as that shorter black male that was with him in the computer lab and cut the cables securing the computers. "Tobi" testified that he was with Defendant previously when Defendant sold two white Apple IMAC computers that he admitted he had stolen from Hallieq

Library to a tall, dark skinned man who works at the Sunoco station on Salem Avenue in Dayton and drives a white Chevy Impala. That man, Labisse Niang, confirmed that he had purchased two white Apple IMAC computers from Defendant.

{¶ 18} Jonathon Gardner's testimony, like "Tobi" Oyedokun's testimony, clearly connects Defendant to the computers stolen from Central State. According to Gardner, in January 2008 Defendant asked him if he wanted to make some extra money. Defendant told Gardner that he had stolen computers from the school library and sold them. In late January or early February 2008, Defendant called Gardner one morning and said if Gardner and his roommate, Rob Williams, wanted to make some money, there were two computers at the bottom of the stairs at the back door of the library. When Gardner and Williams arrived, they found two white Apple IMAC computers which they put in bags they had brought with them. Defendant then came down the stairs carrying two large black duffel bags. Defendant, Gardner, and Williams got a fourth man, Blair Miller, to drive them to the Sunoco station on Salem Avenue in Dayton where Gardner and Williams sold the two white Apple IMAC computers to an employee of the station that drives a white Chevy Impala. Blair Miller's testimony corroborates Gardner regarding the sale of the two white Apple IMAC computers taken from the school library.

{¶ 19} Circumstantial evidence and direct evidence possess the same probative value, *State v. Jenks* (1991), 61 Ohio St.3d 259, and from the combination of significant circumstantial and direct evidence in this case, the trier of facts (jury) could reasonably conclude that Defendant committed the offenses charged. The jury did not lose its way simply because it chose to believe the State's version of these events, which it had a right to do, rather than believe Defendant's self-serving version. *State v. DeHass* (1967), 10 Ohio St.2d 230.

{¶ 20} Reviewing this record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the jury lost its way in choosing to believe the State's witnesses, or that a manifest miscarriage of justice occurred. Defendant's conviction for receiving stolen property, i.e. computers stolen from Central State University, is not against the manifest weight of the evidence.

{¶ 21} Defendant's first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 22} "THE TRIAL COURT ERRED BY ALLOWING PREJUDICIAL, NONPROBATIVE EVIDENCE INTO TRIAL."

{¶ 23} Defendant argues that the State failed to present sufficient evidence that established the proper value of the stolen property, i.e. the cost of replacing the stolen computers

with new property of like kind and quality, R.C. 2913.61(D)(2), and that the probative value of the evidence that was introduced relating to the value of the stolen computers was substantially outweighed by the danger of unfair prejudice. Evid.R. 403(A). We disagree.

{¶ 24} Defendant was convicted of receiving stolen property in violation of R.C. 2913.51(A), which is ordinarily a misdemeanor of the first degree. R.C. 2913.51(C). However, if the value of the property involved is between five hundred and five thousand dollars, receiving stolen property is a felony of the fifth degree. R.C. 2913.51(C).

{¶ 25} R.C. 2913.61(D)(1)-(3) establishes alternative criteria to be used in determining the value of property involved in a theft offense. That section provides in relevant part:

{¶ 26} "(2) The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under division (D)(1) of this section and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality."

{¶ 27} The parties in this case both agree that the

appropriate value for the computers stolen from Central State University is the cost of replacing that property with new property of like kind and quality. Defendant claims, however, that the State failed to present evidence that clearly established the appropriate value of the stolen computers. We disagree.

{¶ 28} It is clear from the evidence presented at trial, particularly the testimony by Oloruntobi "Tobi" Oyedokun, Jonathon Gardner and Labisse Niang, that Defendant was found guilty of receiving, retaining or disposing of property, i.e. two white Apple IMAC computers, knowing or having reasonable cause to believe that property had been obtained through commission of a theft offense, i.e. the computers had been stolen from Central State University. Per the testimony of Beth Anderson, Central State University's controller, for each of the Apple IMAC computers that were stolen, Central State paid $1,199.00 in December of 2004. In August 2008, Central State paid $1,239.00 for each Apple IMAC 20 computer. Although these are not identical to the previous Apple IMAC models that were stolen, Anderson explained that because the technology and models change so frequently, Central State was unable to purchase new computers in 2008 that were the exact same model it had previously purchased back in 2004.

{¶ 29} The State introduced in this case competent, credible evidence that is probative of the pertinent value of the stolen property, i.e. the cost of replacing the stolen property with new property of like kind and quality. The probative value of that evidence is not substantially outweighed by the danger of unfair prejudice.

{¶ 30} Defendant's second assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J., And FROELICH, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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