

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	
-vs-	:	
	:	Case No. 14-CA-19
MATTHEW CRAIG	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Criminal appeal from the Licking County Court of Common Pleas, Case No. 2012CR00053
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	February 11, 2015
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APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
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JUSTIN RADIC  
20 South 2nd St., 4th Floor  
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ERIC BREHM  
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*Gwin, P.J.*

{¶1} Defendant-appellant Matthew Craig [“Craig”] appeals the March 17, 2014 decision of the Licking County Court of Common Pleas ordering Craig’s commitment to the civil unit (Kosar) of the Twin Valley Behavioral Healthcare Facility [“Twin Valley”] after a hearing pursuant to R.C. 2945.39(A)(2)(a).

*Facts and Procedural History*

{¶2} On January 27, 2012, a Licking County grand jury indicted Craig for six counts of arson.

{¶3} On April 11, 2012, trial counsel filed a motion to evaluate Craig’s competency to stand trial. On July 5, 2012, Craig was found mentally incompetent and remanded to a mental hospital for restoration. On January 2, 2013, the trial court authorized forced psychotropic medications. On June 28, 2013, the trial court found Craig could not be restored to competency.

{¶4} On September 5, 2013, the trial court conducted a hearing pursuant to R.C. 2945.39(A)(2)(a) to decide whether to retain jurisdiction. The state called eighteen witnesses and admitted fifteen exhibits. The trial court then requested both parties submit briefs.

{¶5} At the conclusion of the hearing, the trial court found by clear and convincing evidence that (1) Craig committed the offenses of aggravated arson, a felony of the second degree as set forth in Count IV of the Indictment and arson, a felony of the fourth degree as set forth in Count V of the Indictment, and (2) he was a mentally ill person subject to hospitalization by court order. See Judgment Entry, filed Feb. 18, 2014. As required by R.C. 2945.40, the court held a hearing on March 3, 2014 to

determine whether Craig was a mentally ill person subject to hospitalization. By Nunc Pro Tunc Judgment Entry filed March 17, 2014, the trial court retained jurisdiction and ordered Craig committed to a mental hospital for a term of eight years.

*Assignment of Error*

{¶6} Craig raises one assignment of error,

{¶7} “I. THE TRIAL COURT DID ERR BY FINDING APPELLANT COMMITTED AGGRAVATED ARSON WHEN THE STATE FAILED TO MEET THE BURDEN OF CLEAR AND CONVINCING EVIDENCE.”

*Analysis*

{¶8} In his sole assignment of error, Craig argues the trial court erred in finding the state had proved by clear and convincing evidence that Craig committed the acts contained in Counts IV and V of the indictment. Specifically, Craig argues that the state failed to prove that the structures in question were “occupied structure[s]” and further, the evidence failed to establish that Craig had set the fires.

**Standard of Review**

{¶9} Because R.C. 2945.39 is civil in nature, a person committed under the statute need not be afforded the constitutional rights afforded to a defendant in a criminal prosecution. *State v. Williams*, 126 Ohio St.3d 64, 2010-Ohio-2453, 930 N.E.2d 770, para. 2 of the syllabus. R.C. 2945.39(A)(2)’s specifically requires that a court must make a threshold finding by clear and convincing evidence that the defendant committed the crimes he is charged with before ordering the defendant’s commitment. *Williams*, at ¶47. The Ohio Supreme Court has defined “clear and convincing evidence” as “[t]he measure or degree of proof that will produce in the mind of the trier of fact a

firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.” *In re Estate of Haynes*, 25 Ohio St.3d 101, 103-104, 495 N.E.2d 23 (1986). “The clear-and-convincing-evidence standard of R.C. 2945.39(A)(2) for determining whether the defendant committed the crime charged does not violate the defendant’s due-process rights. Instead, a trial court’s finding under this evidentiary standard that the defendant has committed the offense charged is used only to determine the defendant’s degree of dangerousness.” *Williams*, at ¶60. The Supreme Court noted,

The type of offense charged is a reasonable indicator of the level of the offender’s dangerousness. The seriousness of the charged offense plays a permissible and highly relevant role in the trial court’s determination whether the offender’s commitment under R.C. 2945.39 is appropriate. See *Hendricks*, 521 U.S. at 362, 117 S.Ct. 2072, 138 L.Ed.2d 501 (a person’s prior conduct may permissibly be considered to support a finding of dangerousness).

*Williams*, at ¶32.

### **Background**

{¶10} The Court heard testimony from Robert Gordon, who in 2009 was the owner of the Sparta Bar and Grill located at 16 W. Main Street, Newark, Ohio. Mr. Gordon testified that Craig began coming into the Sparta in the late spring or early summer of 2009. Mr. Gordon testified that he often discussed local history and

architecture with several patrons, including Craig. During that time, he and Craig discussed an urban myth regarding a prior fire that the Newark Fire Department ["NFD"] let consume an unwanted building on Newark's town square, and how the individual who started the fire was celebrated. It was during these conversations that Craig began to describe his plans for the city of Newark to Mr. Gordon.

{¶11} Craig told Mr. Gordon that he had a plan to bring Newark back to its "grandeur," that he wanted to construct a "mini-empire state building" on the southeast corner of the town square, as well as a hotel called the "Riverside" along the river. During these conversations, Craig told Mr. Gordon that there were many buildings that needed to be "burned down."

{¶12} Mr. Gordon further testified Craig started to repeatedly ask the meaning of the "Red X" signs that were posted on the sides of numerous rundown buildings in Newark. During these conversations, Craig again stated to Mr. Gordon and the other patrons at the Sparta who happened to be present that these buildings needed to be "burned down." Mr. Gordon further testified Craig was extremely passionate about this subject, often times bothering the other customers at the Sparta. During these conversations, Craig further informed Mr. Gordon that he was a "pyro," and that he had burned down his parents' barn.

{¶13} The Court also heard testimony from one of the servers at the Sparta, Christine Black. Ms. Black testified that Craig would often frequent the Sparta during the summer of 2009, and would repeatedly engage in conversation with her about the buildings with the "Red X" signage. Craig informed Ms. Black that it was his understanding that when firefighters respond to buildings displaying a "Red X" sign they

are supposed to let that building burn down, and ensure that any other building nearby did not catch fire. Ms. Black further testified that on one occasion she and Craig both heard what they believed to be a fire engine's siren. She stated that Craig became very interested, went outside to see if he could see where the engine was heading, and came back inside shortly thereafter. At this point, Craig stated, in reference to the persons who started the fire, "they didn't do it right." Craig further stated, "If you start a fire you have to start it hot, and if you start it hot, there are only vapors in the beginning. By the time there's smoke, it's too late."

{¶14} The Court also heard from Keith Williams. Mr. Williams stated that in the fall of 2009 he had known Craig for about a year having met him at Mike Jewel's residence. Mr. Williams testified that he would see Craig at the Sparta on occasion, and that he would play with lighters frequently. Specifically, Mr. Williams recalled Craig stating to him at that time that, "there's too many empty buildings" in Newark. Additionally, Craig told Mr. Williams that he wanted to get the buildings "back to dust where they belong." Lastly, Mr. Williams testified that Craig told him that he "wanted to burn down Newark."

{¶15} Amanda Archer testified that prior to September 23, 2009, Craig appeared in her neighborhood one evening screaming as he walked down the street. On this occasion Craig appeared drunk, and he was screaming how was going to "blow up" people's houses, and that he was going to "hurt people." Ms. Archer stated she contacted the police department. While waiting for the police to arrive, Ms. Archer stated that Craig continued to use a lot of profanity, and was yelling that he was going to "burn everyone's houses down" and that he was "going to burn everything." Lastly, Ms. Archer

testified that when a neighbor, Ms. Tapealava, told Craig to stop yelling, Craig responded by telling her to go into her home or else he would "burn her and her house down."

**Count IV: 305 East Main Street, Newark, Ohio**

***A. Identity.***

{¶16} In Count IV of the indictment, Craig was charged with aggravated arson in violation of R.C. 2909.02(A)(2), a felony of the second degree, with regard to a residence at 305 E. Main St., Newark, Licking County, Ohio.

{¶17} On September 5, 2013, the parties filed a set of stipulations. Relative to counts IV, the parties stipulated to the following: (1) that on September 29, 2009 Charles Brown III was the owner of the property located at 305 E. Main St., Newark, Licking County, Ohio; (2) prior to September 29, 2009 Charles Brown III never granted Craig permission, by means of fire or explosion, to cause or to create a substantial risk of physical harm to the property located at 305 E. Main St., Newark, Licking County, Ohio. Therefore, venue and jurisdiction for Count IV was not contested.

{¶18} R.C. 2909.02 defines sets forth the elements for aggravated arson,

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Create a substantial risk of serious physical harm to any person other than the offender;

(2) Cause physical harm to any occupied structure;

(3) Create, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

{¶19} Due to a series of fires on September 27, 2009, there was a heightened awareness concerning the presences of individuals loitering in and around the downtown Newark area. On September 29, 200, two fires were started in close proximate to one another.

{¶20} Investigator Timothy Smith testified that at approximately 2:15 a.m. on September 29, 2009, the NFD was dispatched to a fire located at 305 E. Main St., Newark, Licking County, Ohio.

{¶21} Initially firefighters took an offensive approach entering the structure. While attempting to break through some plywood an NFD firefighter became stuck momentarily. Near this time, NFD learned of another fire at 58 Bolen Court, Newark, Ohio. Investigator Smith stated that due to the risk of harm experienced by the firefighters once inside, and the fact that a second fire was found mere blocks away the decision was made to remove firefighters from the building.

{¶22} Denny McClain testified regarding the fires that occurred on September 29, 2009 and which form the basis of counts IV and V. Mr. McClain, the owner of one of the properties that had been set on fire on September 27, 2009, noticed a suspicious person walking away from the general direction of the fires. Specifically, Mr. McClain stated that he was driving eastbound on National Drive at approximately 2:43 a.m. when he passed Craig as Craig was walking westbound. Mr. McClain stated Craig appeared to have an odd expression on his face appearing to be extremely focused. Mr. McClain



testified that Craig was wearing a dark blue jacket. Mr. McClain testified that after he reached South Webb Street, he could smell the fires burning at 305 E. Main Street and 58 Bolen Court, and he decided to head back to the area where he observed Craig. Ultimately, Mr. McClain was unable to locate Craig, so he stopped in the Circle K convenient store located on National Drive between Conley Avenue and 5th Street. There he spoke with the clerk, Rachael Muniaw, advising her of what he saw and that she should call the police if an individual matching Craig's description should enter.

{¶23} Ms. Muniaw subsequently noticed a person matching the description given by Mr. McClain and called the police. Pictures from the store's surveillance camera verified that Craig had entered the store at 2:55 a.m. and left at 2:57 a.m.

{¶24} Detective Clint Eskins testified that he received a call from dispatch regarding Craig, and located him in the area of Pershing Avenue and 5th Street. Detective Eskins stated that although he was wearing a short sleeve uniform that day, Craig had on a jacket and had two black stocking caps with him. Craig informed Detective Eskins that he was heading home. Detective Eskins testified that while he spoke with Craig, Craig appeared extremely nervous, and smelled heavily of burnt things and smoke. Detective Eskins asked Craig if he had been burning anything that day. Initially Craig stated "no," but then changed his story claiming to have been at his parents' home earlier burning brush. Craig agreed to Detective Eskins request to search his person.(1T. at 234-235). While searching Craig, Detective Eskins noted the Craig's legs were physically shaking. Detective Eskins testified that based upon his training and experience he only experiences that level of nervousness in individuals after he locates them in the midst of committing a crime.

{¶25} Investigator Timothy Smith testified that he responded to Craig's location and spoke with him while Craig walked towards his home. Investigator Smith testified Craig told him that he had been at his parents early that day burning brush. Additionally Craig told Investigator Smith that he had been out drinking that night having visited the Sparta bar, the Center bar, and Nick's Saloon. Craig also told Investigator Smith that the dilapidated buildings in Newark needed to be "dozed," that people from Columbus would be visiting Newark as a result of the then recently constructed highway, and that those people would need a place to stay and water parks to visit.

{¶26} Robert Gordon testified concerning these fires as well. Specifically, Mr. Gordon testified that prior to the fires Craig had been in the Sparta repeating many of the aforementioned statements regarding Newark, the buildings with "Red X's" on them, and how they needed to be burned down. Mr. Gordon further testified that Craig then went outside, stood near the Statue of Liberty in front of the Sparta, attempted to light his lighter as if to imitate the statue, was unable to do so, and subsequently professed that his lighter was empty because he had been "starting all of these fires." Craig then proceeded to scream, "Newark is Mine" leaving the Sparta abruptly.

{¶27} Officer Kevin Wells also testified that he arrived and met Craig and Detective Eskins on September 29, 2009. Officer Wells stated that he was unable to associate the smell of smoke to Craig because he had responded from the fire, and was not sure if the smell was coming from Craig or himself. Officer Wells stated that Craig appeared nervous to him as well.

{¶28} When interviewing Craig, Officer Wells testified that he began by describing for Craig all of the evidence he believed linked Craig to the fires that form the

basis of Counts I through VI of the Indictment. During this time, although Craig never admitted his involvement to the Officer Wells, Officer Wells stated that Craig was shaking his head up and down and appeared to be acknowledging what Officer Wells was stating as true. When asked specifically where he had been on the night of September 29, 2009, Craig told Officer Wells that he had been at a friend's house. Craig could only identify this friend as "Nichols." This statement by Craig appears to directly contradict one he gave earlier to Investigator Smith.

{¶29} Orville Nichols' residence is located at 55 W. National Drive Newark, Ohio. Mr. Nichols testifying that he had been at a dart league on September 29, 2009 with his girlfriend and did not see Craig that evening. Mr. Nichols further testified that no one had visited his home that evening. Mr. Nichols testified that he had found Craig walking around in Nichols' backyard on a previous occasion.

{¶30} Subsequently, a search warrant was executed on Craig's residence, but all of the items seized tested negative for ignitable liquids. In addition to the items that tested negative for ignitable liquids, Officer Wells recovered two articles about fire and a handwritten poem about fire. Officer Wells did not find any ignitable liquids or "Molotov cocktails" during the search of Craig's residence. During a separate search of Craig's parent's home, a trained canine could not detect ignitable liquids on or about Craig's jacket.

{¶31} Additional testimony was received from Investigator Smith regarding his fire investigation of 305 E. Main St, Newark, Licking County, Ohio. Investigator Smith observed six total points of origin inside the structure, three on the first floor, and three on the second floor. Investigator Smith testified that a canine unit was used to detect the

presence of any ignitable liquids at the scene. Although the canine repeatedly alerted to the presence of ignitable liquids at several locations, ultimately chemical testing of the samples taken did not yield any positive results. Investigator Smith explained that it is possible during fire suppression efforts that the amount of water used to combat a fire will dilute the ignitable liquid that was used to the point that it is no longer detectable, or that perhaps only a small amount of accelerant was used and subsequently consumed during the fire itself.

{¶32} Investigator Smith testified that based upon his training and experience, his observations at the scene, and the evidence collected, including the multiple pour patterns that were located, it was his professional expert opinion that the cause of the fire on September 29, 2009 located at 305 E. Main St., Newark, Licking County, Ohio was an intentional human act.

{¶33} Viewing the evidence, we conclude that a reasonable person could have formed a firm belief or conviction as to the Craig's identity so as to establish by clear and convincing evidence that Craig committed the crime of aggravated arson as set forth in Count IV of the Indictment. We hold, therefore, that the state met its burden of production by clear and convincing evidence regarding each element of the crime of aggravated arson and, accordingly, there was sufficient credible evidence to support the trial court's finding.

***B. Occupied Structure.***

{¶34} R.C. 2909.01 defines an "occupied structure" as,

(C) "Occupied structure," means any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure,

vehicle, or shelter, or any portion thereof, to which any of the following applies:

(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.

(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present.

(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present.

(4) At the time, any person is present or likely to be present in it.

{¶35} Investigator Smith testified that 305 East Main Street, Newark, Ohio was a two-story residence. He further testified that firefighters did not know whether the building was occupied at the time of the fire. Officer Wells testified that this structure was not a “Red X” building. He further testified that the structure was in the process of being renovated at the time of the fire. (1T. at 100). The trial court further noted that curtains appear in the home’s window in the pictures taken after the fire.

{¶36} As previously noted, the proceedings under R.C. 2945.39 are civil in nature. Proof beyond a reasonable doubt is not required.

{¶37} Viewing the evidence, we conclude that a reasonable person could have formed a firm belief or conviction that 305 E. Main Street was maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied. We hold, therefore, that the state met its burden of production by clear and convincing evidence

regarding each element of the crime of aggravated arson and, accordingly, there was sufficient credible evidence to support the trial court's finding.

**Count V: 58 Bolen Court, Newark, Ohio.**

{¶38} In Count V of the indictment, Craig is charged with arson in violation of R.C. 2909.03(A)(1), a felony of the fourth degree. Specifically, it was alleged that Craig on September 29, 2009, by means of fire or explosion did knowingly cause, or create a substantial risk of physical harm to any property of another without the other person's consent, to wit: 58 Bolen Court, Newark, Ohio, the value of which or the amount of the physical harm involved was \$1,000.00 or more, in violation of R.C. 2909.03(A)(1).

{¶39} The investigation into the fire at 58 Bolen Court was contemporaneous with the investigation of the fire set at 305 East Main Street because the fires were set on the same night a short distance away from one another. Evidence concerning Craig's identity was discussed in relation to our discussion of the residence at 305 East Main Street.

{¶40} Viewing the evidence, we conclude that a reasonable person could have formed a firm belief or conviction as to the Craig's identity so as to establish by clear and convincing evidence that Craig committed the crime of arson as set forth in Count V of the Indictment. We hold, therefore, that the state met its burden of production by clear and convincing evidence regarding each element of the crime of arson and, accordingly, there was sufficient credible evidence to support the trial court's finding.

{¶41} Additional testimony was received from Investigator Smith regarding his fire investigation of 58 Bolen Court, Newark, Licking County, Ohio. Investigator Smith testified that heavy fire was observed on the first and second floors, that mutual aid was

requested to fight that fire. Investigator Smith further testified that before the fire, this address was a “Red X” building.

{¶42} Investigator Smith further testified that there was extensive damage to the living room on the first floor. Again, Investigator Smith processed the scene collecting samples from the first and second floors. Investigator Smith noted multiple areas where pour patterns were observed. Investigator Smith further testified that samples were taken, submitted for testing, and one sample collected from the first floor living room came back positive for a medium petroleum distillate, a form of ignitable liquid. Investigator Smith testified that as a result of the damage done by the fire, the building located at 58 Bolen Court, Newark, Licking County, Ohio had to be razed.

{¶43} Ultimately, Investigator Smith testified that based upon his training and experience, his observations at the scene, and the evidence collected, including the multiple pour patterns that were located and the presence of an ignitable liquid, it was his professional expert opinion that the cause of the fire on September 29, 2009 located at 58 Bolen Court, Newark, Licking County, Ohio was an intentional human act.

{¶44} The Court also received testimony from Doug Hines from the Licking County Auditor's Office regarding that value of the structure located at 58 Bolen Court, Newark, Licking County, Ohio. Mr. Hines testified that for the tax year 2009 the structure was valued at \$32,100.00. Subsequently, for the tax year 2011 the total improvements to the land were valued at \$0.0.0. Mr. Hines further testified that the auditor's office had not been made aware that the building had been razed prior to 2011. Mr. Hines stated that this is why the Auditor's Office still assigned a value to the structure after it was razed during the 2010 tax years.

{¶45} Viewing the evidence, we conclude that a reasonable person could have formed a firm belief or conviction that 58 Bolen Court, Newark, Licking County, Ohio suffered physical harm in excess of \$1,000.00. We hold, therefore, that the state met its burden of production by clear and convincing evidence regarding each element of the crime of arson as set forth in Count V of the Indictment and, accordingly, there was sufficient credible evidence to support the trial court's finding.

### *Conclusion*

{¶46} Ultimately, "the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact 'unless it is patently apparent that the fact finder lost its way.'" *State v. Pallai*, 7th Dist. Mahoning No. 07 MA 198, 2008-Ohio-6635, ¶31, *quoting State v. Woullard*, 158 Ohio App.3d 31, 2004-Ohio-3395, 813 N.E.2d 964 (2nd Dist. 2004), ¶ 81. In other words, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. Mahoning No. 99 CA 149, 2002-Ohio-1152, at ¶ 13, *citing State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125(7th Dist. 1999).

{¶47} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212(1967), paragraph one of the syllabus; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶118. *Accord, Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942); *Marshall v. Lonberger*, 459 U.S. 422, 434, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983).



{¶48} The trial judge as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the [trier of fact] may take note of the inconsistencies and resolve or discount them accordingly such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Craig*, 10th Dist. Franklin No. 99AP-739, 1999 WL 29752 (Mar 23, 2000) *citing State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 WL 284714 (May 28, 1996). Indeed, the [trier of fact] need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶21, *citing State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964); *State v. Burke*, 10th Dist. Franklin No. 02AP-1238, 2003-Ohio-2889, *citing State v. Caldwell*, 79 Ohio App.3d 667, 607 N.E.2d 1096 (4th Dist. 1992). Although the evidence may have been circumstantial, we note that circumstantial evidence has the same probative value as direct evidence. *State v. Jenks*, *supra*.

"[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts.

\* \* \*

"If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment."

*Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting* 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191-192 (1978).

{¶49} In *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E. 2d 118 (1954), the Supreme Court further cautioned,

The mere number of witnesses, who may support a claim of one or the other of the parties to an action, is not to be taken as a basis for resolving disputed facts. The degree of proof required is determined by the impression which the testimony of the witnesses makes upon the trier of facts, and the character of the testimony itself. Credibility, intelligence, freedom from bias or prejudice, opportunity to be informed, the disposition to tell the truth or otherwise, and the probability or improbability of the statements made, are all tests of testimonial value. *Where the evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false. See Rice v. City of Cleveland*, 114 Ohio St. 299, 58 N.E.2d 768.

161 Ohio St. at 477-478. (Emphasis added).

A fundamental premise of our criminal trial system is that “the [trier of fact] is the lie detector.” *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973) (emphasis added), cert. denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). Determining the weight and credibility of witness testimony, therefore, has long been held to be the “part of every case [that] belongs to the [trier of fact], who [is] presumed to be fitted for it by [his] natural intelligence and their practical knowledge of men and the

ways of men.” *Aetna Life Ins. Co. v. Ward*, 140 U.S. 76, 88, 11 S.Ct. 720, 724-725, 35 L.Ed. 371 (1891).

*United States v. Scheffer* (1997), 523 U.S. 303, 313, 118 S.Ct. 1261, 1266-1267(1997).

{¶50} We find that this is not an “exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. The judge neither lost his way nor created a miscarriage of justice in finding by clear and convincing evidence that Craig committed the crimes set forth in Count IV and Count V of the Indictment.

{¶51} Based upon the foregoing and the entire record in this matter, we find the judge appears to have fairly and impartially decided the matters before him. The judge as a trier of fact can reach different conclusions concerning the credibility of the testimony of the witnesses. This court will not disturb the trier of facts finding so long as competent evidence was present to support it. *State v. Walker*, 55 Ohio St.2d 208, 378 N.E.2d 1049 (1978). The judge heard the witnesses, evaluated the evidence, and was convinced of Craig’s guilt.

{¶52} Finally, upon careful consideration of the record in its entirety, we find that there is substantial evidence presented which if believed, proves all the elements of each crime by clear and convincing evidence.

{¶53} Craig’s sole assignment of error is overruled.

{¶54} The judgment of the Court of Common Pleas, Licking County, Ohio is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Farmer, J., concur