

[Cite as *State v. Taylor*, 2011-Ohio-1365.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95156

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CLARENCE V. TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART; REVERSED
IN PART; AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-524305

BEFORE: Sweeney, J., Kilbane, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 24, 2011

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JAMES J. SWEENEY, J.:

{¶ 1} Appellant, Clarence Taylor, appeals his convictions for burglary and disrupting public services. After a thorough review of the record and law, we affirm in part and reverse in part.

{¶ 2} Appellant was indicted on May 19, 2009 on one count of theft, one count of disrupting public services, and one count of burglary. Trial commenced on April 6, 2010, where Matthew Gile, General Manager of Motorcars Toyota (“Motorcars”), testified that appellant was a vendor under contract with Motorcars in Cleveland Heights, Ohio. Appellant was paid to clean service bays and other areas during the evening while the business was

closed. On surveillance camera footage taken on December 17, 2008, appellant was seen climbing up a ladder and doing something to a video camera in a storage room shortly before the footage ceased. On March 11, 2009, employees of Motorcars realized the camera was missing. Gile confronted appellant with the footage and accused him of stealing the camera.

Appellant initially denied taking it, but later admitted to the theft and accepted an offer from Gile to return the camera or be charged \$600 to replace it. Appellant was also asked to draft a letter of resignation, which he did. \$89 was deducted from appellant's last check to cover the cost of a service call from a security company to reinstall the camera. Gile testified that they decided not to involve the police once the camera was returned.

{¶ 3} Appellant testified that he returned to Motorcars on March 20, 2009 to pick up his last pay check. Security camera footage clearly shows appellant sneaking around the building. Appellant entered the dealership after operating hours through a rear employee entrance and proceeded to the service area of the building. He can be seen on the security footage turning off the lights to the service area. He can also be seen in the "advisor" area where several desks are located. Gile testified that one desk in this area is the cashier's desk, which is one of only three places in the building where money would be located. Appellant approached the cashier's desk and

remained behind it for a few seconds, apparently attempting to open the drawers.

{¶ 4} Ira Taylor, the night maintenance person at Motorcars, testified that he saw appellant in the building and asked him if Motorcars had hired him back. He testified that appellant did not respond, but walked away. He also stated that appellant was wearing a ski mask that covered his face. Video footage shows appellant running from the building shortly after this encounter.

{¶ 5} Appellant was found guilty of disrupting public services and burglary, but not guilty of theft. He was sentenced to one year of community control.

Law and Analysis

{¶ 6} Appellant filed the instant appeal raising three assignments of error.

{¶ 7} “I. “The State failed to present sufficient evidence to sustain a conviction against Appellant.”

{¶ 8} “II. “Appellant’s convictions are against the manifest weight of the evidence.”

{¶ 9} “III. “The verdict finding Appellant guilty of Burglary was contrary to law because it was inconsistent with the jury’s finding that Appellant was not guilty of Theft.”

{¶ 10} Because the first two assignments of error are interrelated, they will be addressed together.

Sufficiency and Manifest Weight

{¶ 11} Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson* (1955), 162 Ohio St. 486, 124 N.E.2d 148. A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 72 L.Ed.2d 652, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 12} Where there is substantial evidence upon which the trier of fact has based its verdict, a reviewing court abuses its discretion in substituting its judgment for that of the trier of fact as to the weight and sufficiency of the evidence. *State v. Nicely* (1988), 39 Ohio St.3d 147, 156, 529 N.E.2d 1236.

{¶ 13} The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. On review, the appellate court must determine, after viewing the evidence in a light most favorable to the prosecution, whether 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, 273, 574 N.E.2d 492; *Jackson v. Virginia*, *supra*.

{¶ 14} Sufficiency of the evidence is subjected to a different standard than is manifest weight of the evidence. Article IV, Section 3(B)(3) of the Ohio Constitution authorizes appellate courts to assess the weight of the evidence independently of the factfinder. Thus, when a claim is assigned concerning the manifest weight of the evidence, an appellate court “has the authority and duty to weigh the evidence and to determine whether the findings of * * * the trier of facts were so against the weight of the evidence as to require a reversal and a remanding of the case for retrial.” *State ex rel. Squire v. Cleveland* (1948), 150 Ohio St. 303, 345, 82 N.E.2d 709.

{¶ 15} The United States Supreme Court recognized the distinction in considering a claim based on the manifest weight of the evidence as opposed to sufficiency of that evidence. The court held in *Tibbs*, supra, that, unlike a reversal based upon the insufficiency of the evidence, an appellate court’s disagreement with the jurors’ weighing of the evidence does not require special deference accorded verdicts of acquittal, i.e., invocation of the double jeopardy clause as a bar to relitigation. *Id.* at 43.

{¶ 16} Upon application of the standards enunciated in *Tibbs*, the court in *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, has set forth the proper test to be utilized when addressing the issue of manifest weight of the evidence. The *Martin* court stated: “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 clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” Id. at 720.

{¶ 17} Here, appellant was convicted of disrupting public services and burglary. Burglary, as set forth in R.C. 2911.12(A)(1), prohibits a “[t]respass in an occupied structure * * * when another person other than an accomplice of the offender is present, with purpose to commit in the structure * * * any criminal offense” using “force, stealth, or deception[.]”

{¶ 18} Appellant argues there is no evidence that he entered Motorcars with an intent to commit a criminal offense. He alleges that he was merely trying to find Giles or Kevin Hudak, the Service Manager, to get his last pay check. The video footage shows a person sneaking around the building, sidling up to and peering around corners, and turning off lights in one area. He can be seen attempting to access one of only three areas in the building where money could be located. What he is not seen doing is going to Hudak’s office, where several times in the past his pay checks were left for him. Further, appellant entered Motorcars after the business was closed and when only two people were inside.

{¶ 19} The state, using testimony and video evidence, demonstrated that appellant, using stealth, entered Motorcars in an attempt to commit a theft

offense. Simply because appellant was unsuccessful in stealing anything does not negate this evidence.

{¶ 20} Likewise, appellant's conviction for burglary is not against the manifest weight of the evidence. His explanation for his presence inside Motorcars after he had been fired was not credible. He claims he was there looking for his last pay check. He did not go to Motorcars when it was open, nor did he call first to ensure that Gile or Hudak would be there. Appellant testified that, in the past, his check had sometimes been left in Hudak's desk or in the desk of a few service representatives near the cashier's desk. Appellant cannot be seen approaching any of these desks in the security camera footage, but can be seen approaching the cashier's desk, even though the desks are only feet apart. Further, appellant can be seen switching off the lights in the garage service area. He testified he did so because it had been part of his job while working at Motorcars and he hoped to be rehired.

{¶ 21} None of appellant's explanations are sufficient to justify his actions on March 20, 2009. He has failed to show that a manifest miscarriage of justice occurred regarding his burglary conviction.

{¶ 22} Appellant was also convicted of disrupting public services in violation of R.C. 2909.04(A)(1). This section states, "[n]o person, purposely by any means or knowingly by damaging or tampering with any property, shall [i]nterrupt or impair television, radio, telephone, telegraph, or other

mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications[.]”

{¶ 23} The evidence presented by the state to support its case was that, in an attempt to mask his identity, appellant turned off the lights in the garage service area using the circuit breaker panel. The state argues that the disruption of electricity to this area is sufficient evidence to convict appellant of disruption of public services. We disagree.

{¶ 24} First, R.C. 2909.04(A)(1) requires one to purposely, or knowingly by damaging or tampering, interrupt mass communications or communications of emergency personnel. There is no evidence that appellant disrupted any form of communication, emergency or otherwise. Appellant admitted to flipping the breakers in the garage service area, which turned off the lights and various compressors used in the service area and car wash. This in no way hampered any form of communication as outlined in the statute. Further, appellant merely turned off the lights in the normal manner they were turned off every night. He did not damage or tamper with the breaker switches.

{¶ 25} While R.C. 2909.04(A)(2) does criminalize the interruption or impairment of “public transportation, * * * or water supply, gas, power, or other utility service to the public[,]” appellant was not found guilty of violating this subsection.¹

{¶ 26} Appellant’s conviction for disrupting public services is not supported by sufficient evidence and must be overturned.

Inconsistent Verdicts

{¶ 27} Appellant finally argues that his conviction for burglary cannot stand when the jury found him not guilty of theft. We note that the theft charge was in relation to the video camera appellant had taken in December, but subsequently returned. The jury’s finding of guilt for a burglary alleged to have occurred on March 20, 2009 and its finding of not guilty of theft of a surveillance camera alleged to have occurred on December 17, 2008 are not inconsistent. These two charges are unrelated for the purposes of consistency. Therefore, appellant’s assignment of error is not well taken.

Conclusion

{¶ 28} Appellant’s conviction for disrupting public services is not supported by the record in this case. He did not disrupt any communication services. He merely turned off the lights in an unoccupied area of a closed

¹ It is doubtful whether appellant’s acts would constitute a violation of this subsection where he merely turned off the lights in an unoccupied area of a business not open to the public because it was closed at the time.

business. Appellant's burglary conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Further, the verdicts in this case are not inconsistent.

{¶ 29} This cause is affirmed in part, reversed in part, and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, A.J., and
SEAN C. GALLAGHER, J., CONCUR