

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 112003  
 v. :  
 :  
 RAY A. TALLEY, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 7, 2023**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-21-657615-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mason McCarthy, Assistant Prosecuting Attorney, *for appellee*.

Valore & Gordillo LLP and Dean M. Valore, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, Ray A. Talley (“Talley”), appeals his jury trial convictions and the denial of his Crim.R. 29 motion for acquittal. Talley was convicted of breaking and entering, vandalism, theft, and possession of criminal tools. For the reasons that follow we affirm.

## **FACTS AND PROCEDURAL HISTORY**

{¶ 2} Talley was indicted for breaking and entering, a felony of the fifth degree in violation of R.C. 2911.13(B); vandalism, a felony of the fifth degree in violation of R.C. 2909.05(B)(1)(a); petty theft, a misdemeanor of the first degree in violation of R.C. 2913.02(A)(1); and possession of criminal tools, a felony of the fifth degree, in violation of R.C. 2923.24. The matter proceeded to a jury trial on September 1, 2022. At trial, the jury heard testimony from two officers, one detective, two technicians, and a Verizon investigator. The evidence at trial established the following facts.

{¶ 3} Officer Kevin Grayson (“Officer Grayson”), a Cuyahoga County Community College police officer, testified that he noticed an out-of-place bicycle at a nearby bus stop on February 22, 2021, at around 10:00 a.m. Officer Grayson described the weather as snowy, which made the bicycle’s placement stand out during his patrol around the college’s B-1 parking lot. At approximately 11:50 a.m., a Verizon employee alerted him to an alarm from a neighboring cell tower. As Officer Grayson guided the employee to the tower site near the bus stop, he spotted fresh footprints in the snow. Officer Grayson believed they were not the employee’s prints since the employee did not know the tower’s location. He instructed the employee to leave the footprints undisturbed. Officer Grayson gave the same instructions to another employee who arrived.

{¶ 4} While engaged with the second worker, Officer Grayson saw Talley approaching from a wooded area next to the cell tower site, walking towards the

bike. When Talley began unlocking the bike, Officer Grayson approached Talley and questioned where he was coming from. Talley claimed he was just returning from a “nature call” in the woods. When Officer Grayson questioned Talley about the bike being locked up for hours at the bus stop, Talley offered no response.

{¶ 5} Talley gave Officer Grayson his name and identifying information. During a precautionary pat-down, Officer Grayson found what seemed to be a large knife, later identified as a Fiskars Machete, attached to Talley’s backpack. The dispatch notified Officer Grayson of an outstanding warrant in Garfield Heights against Talley.

{¶ 6} Officer Grayson testified that Talley’s winter boots, with their distinctive ridges, were a match for the footprints in the snow around the Verizon tower. Additionally, the officer found Talley in possession of unusual plastic panels. On questioning, Talley claimed he intended to use them for building a bicycle cart.

{¶ 7} Detective Manjas, of the Highland Hills Police Department, arrived at the site around 12:30 p.m., after being dispatched following the cell tower going offline at 11:12 a.m. Upon his arrival, he observed signs of vandalism, including a hole cut in the fence, a cut deadbolt, cut cables, missing equipment, and missing plastic shielding from battery terminals.

{¶ 8} The state introduced a variety of evidence from the scene, which included photos of the damage and missing items, his bodycam footage and a notebook containing writings about the effects of electromagnetic fields, which was recovered from the defendant’s backpack. Detective Manjas testified that the

defendant had plastic panels that matched the missing shielding from the tower site, and other items like tools and a DeWalt angle grinder.

**{¶ 9}** During cross-examination, Detective Manjas testified that he was dispatched an hour and 20 minutes after the cell tower went offline and that there were multiple footprints at the site when he arrived, none of which he witnessed being made. He also admitted not retaining some pieces of evidence, like the plastic panels and resonators, which were returned to the Verizon employees on the scene. Detective Manjas testified that a missing HVAC controller unit was never located; Talley did not have it with him when he was detained. The detective conceded that the tools that Talley had were commonly available and there was no evidence they had been used in the incident.

**{¶ 10}** Detective Manjas admitted that despite noting in his report that 95-pound magnets can be used to wipe hard drives, no evidence of any hard drives having been magnetically wiped was found in this case. He also acknowledged that the blowtorch head found in the defendant's possession requires propane to operate, which the defendant did not have. The angle grinder found also lacked any attachment or blade.

**{¶ 11}** Upon redirect examination, Detective Manjas testified that he decided not to order trace evidence and forensics because he believed he already had sufficient evidence identifying Talley as the perpetrator. However, on re-cross examination, Detective Manjas admitted there were no witnesses who could testify seeing the defendant inside the cell site.

**{¶ 12}** Carmine DeCandia (“DeCandia”), an outside technician for Verizon, testified about his role and the events surrounding the disruption at the cell tower site. DeCandia said on February 22, 2021, he was working at his office, approximately five minutes away from the cell tower site, when it went offline around 11:12 a.m. DeCandia testified that he noticed the offline status between 11:30-11:45 a.m., due to the rarity of such events and redundancies in the system. Verizon owns the equipment within the cell tower site, while the site itself is owned by American Tower.

**{¶ 13}** Upon reaching the site around noon with Seth Chappell, another technician, DeCandia observed a set of footprints leading to the site that they both avoided. DeCandia testified that normally there is a sign on the fence indicating the existence of a Verizon facility and the fence around the site was meant to “keep unauthorized” people out of the compound. He observed that the gate had been broken and noticed the smell of a recently used grinder. Further observations revealed additional signs of vandalism, such as a cut deadbolt on the cell hut door, cut-off handle of switched-off breakers and damage to the secondary door lock and components inside the cell hut.

**{¶ 14}** Based on DeCandia’s testimony, the state offered the following photographs showing plastic battery covers, battery strings inside the cell site, cut generator feed lines, and a diagram depicting how plastic panels are attached as shielding to the battery strings.

**{¶ 15}** On cross-examination, DeCandia testified that the HVAC controller unit, a plastic metal object approximately ten-inches wide and two-inches thick, was missing and never found. Other equipment, referred to as “rectifiers,” were ruined due to water exposure and were subsequently discarded because they were never intended to be reused and the police did not request to keep them as evidence. The rectifiers were located beyond a cut in the fence on the west side of the property. Given the lack of returning footprints, DeCandia believed that the perpetrator had entered the site through the front gate but exited through the fence on the other side.

**{¶ 16}** The jury heard undisputed testimony from Seth Chappell (“Chappell”). Chappell, an HVAC technician with Red Path Mechanical and a subcontractor for Verizon, was dispatched to the cell tower site around noon on February 22, 2021, due to a power outage. He arrived at the site subsequent to DeCandia, but prior to the police. Chappell observed significant damage to both the site and equipment. He also noticed a single set of footprints that led to the site, moved through it, and then continued out the back into the woods.

**{¶ 17}** John Schubert, Verizon corporate security investigator, testified regarding his employment with Verizon as a corporate security investigator. The state used his testimony to identify two work orders for repairs to the cell tower site. All exhibits except state exhibit No. 5 were admitted, and the state rested.

**{¶ 18}** Talley moved for a Crim.R. 29 acquittal based on the state’s failure to offer sufficient evidence of ownership of the site or that there was an actual trespass, which is required to convict Talley of breaking and entering. Regarding the

vandalism count, Talley argued that no conclusive evidence as to the ownership of the land and property in question was offered. Talley also argued that the furthermore specification charge should be amended by the deletion of the furthermore specification of damages exceeding \$7,500. Talley noted that the invoices in evidence suggest damages of only around \$3,000. Third, on the petty theft count, Talley argued there was no testimony that the panels in his possession had any value. Additionally, Talley argued there was no evidence to support a theft of services charge, nor intent to deprive the owner of the resonators (or rectifiers) that were recovered on scene. Finally, Talley asserts that Count 4, possession of criminal tools, relies upon the other counts to establish the purpose of the tools.

**{¶ 19}** The court denied the motion as to Count 1, indicating that even if a person has permission to enter the premises, the permission is presumably revoked when the person begins to vandalize it. The court deleted the furthermore specification from Count 2, vandalism, reducing it to a felony of the fifth degree, but denied the motion to acquit on that count. The court denied the motion with regard to Count 3, theft, indicating that the panels could be presumed to have some value and that throwing the resonator or rectifiers in the snow destroyed them, thus depriving the owner of their value. Finally, the court denied the motion with respect to Count 4, criminal tools. *Id.*

**{¶ 20}** Talley presented no evidence, rested, and renewed his Crim.R. 29 motion, which was denied. The jury convicted Talley on all counts.

**{¶ 21}** Talley raises two assignments of error on appeal.

### **First Assignment of Error**

Defendant's conviction is not supported by sufficient evidence.

### **Second Assignment of Error**

Appellant's convictions are against the manifest weight of the evidence.

### **Sufficiency of Evidence**

{¶ 22} In a criminal case, the state bears the burden of producing sufficient evidence for each element of an offense in order to sustain a conviction of the offense. *Strongsville v. Eskander*, 8th Dist. Cuyahoga No. 92448, 2009-Ohio-5370, ¶ 10. The standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime are proven beyond a reasonable doubt. *State v. Wilks*, 154 Ohio St.3d 359, 2018-Ohio-1562, 114 N.E.3d 1092, ¶ 156. A reviewing court applies a sufficiency standard when reviewing a denial of a Crim.R. 29 motion for acquittal. *State v. Crenshaw*, 8th Dist. Cuyahoga No. 108830, 2020-Ohio-4922, ¶ 16. If the state fails to produce sufficient evidence to support each element of the offense charged, the defendant must be acquitted. Crim.R. 29.

{¶ 23} An appellate court determines whether the state has met its burden of production at trial for sufficiency claims; “a manifest weight challenge questions whether the state has presented evidence to meet its burden of persuasion.” *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598; *State v. O'Malley*, 8th Dist. Cuyahoga No. 109454, 2021-Ohio-2038, ¶ 20.



**{¶ 24}** Talley argues the trial court erred when it denied his motion for acquittal pursuant to Crim.R. 29 regarding each count of the indictment. First, as to Count 1, breaking and entering, Talley argues the state failed to offer sufficient evidence of ownership of the site or that there was an actual trespass, as required for a breaking and entering conviction. Next, Talley claims he was entitled to acquittal pursuant to Crim.R. 29 on Count 2, vandalism, because no conclusive evidence as to the ownership of the land and property in question was offered. Furthermore, Talley claims the state erred in denying his motion for acquittal as to Count 3, petty theft. Talley argues there was no evidence that the panels found in his possession had any value. Additionally, Talley argued there was no evidence to support a theft of services charge, nor intent to deprive the owner of the resonators or rectifiers that were recovered on scene. Finally, Talley asserts entitlement to Crim.R. 29 acquittal on Count 4, possession of criminal tools, because that conviction relies upon the other counts to establish the purpose of the tools.

**{¶ 25}** A defendant is entitled to an acquittal of one or more offenses under Crim.R. 29 “[i]f the evidence is insufficient to sustain a conviction.” *State v. Macalla*, 8th Dist. Cuyahoga No. 88825, 2008-Ohio-569, ¶ 38. In order to satisfy the burden of production, a party is required to furnish ample evidence to establish a prima facie case. *See State v. Petway*, 2020-Ohio-3848, 156 N.E.3d 467, ¶ 47 (11th Dist.). The role of an appellate court is not to determine whether the evidence presented by the state should be accepted as true, but rather to ascertain if the evidence, when accepted as true, would sustain a conviction against the defendant.

*State v. Nelson*, 8th Dist. Cuyahoga No. 100439, 2014-Ohio-2189, ¶ 14, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997). We are precluded from setting aside a conviction based on insufficiency of the evidence, unless we conclude “that reasonable minds could not reach the conclusion reached by the trier of fact.” *State v. Treesh*, 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 26} We must determine whether the state offered sufficient evidence that the property in question was “owned by another.” Breaking and entering is prohibited under R.C. 2911.13 as follows:

- (A) No person by force, stealth, or deception, shall trespass in an unoccupied structure, with a purpose to commit therein any theft offense, as defined in section 2913.01 of the Revised Code, or any felony.
- (B) No person shall trespass on the land or premises of another, with the purpose to commit a felony.

{¶ 27} Talley claims the state failed to produce sufficient evidence of the element of trespass to sustain a conviction for breaking and entering. Talley argues there was no direct witness testimony that he was ever on the premises or lacked authorization to enter the premises. It is undisputed that Talley was convicted, in part, based on circumstantial evidence. Circumstantial evidence is probative and may be relied upon to establish guilt. *See State v. James*, 8th Dist. Cuyahoga No. 86774, 2006-Ohio-2570. “This court has long held that circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Jones*, 8th Dist. Cuyahoga No. 108894, 2020-Ohio-4915, ¶ 39, quoting *State v. Heinish*, 50 Ohio

St.3d 231, 238, 553 N.E.2d 1026 (1990). Under Ohio law, a defendant may be convicted based on (1) circumstantial evidence, (2) physical evidence, or (3) direct or testimonial evidence. *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1988). A conviction may be supported by one or any combination of these three categories of evidence. *Id.* The relevant issue is not whether the state presented direct evidence of trespass, but whether the state presented sufficient evidence, circumstantial or otherwise, tending to prove Talley trespassed.

**{¶ 28}** “A criminal trespass occurs when a person, ‘without privilege to do so,’ ‘knowingly enters or remains on the land or premises of another.’ R.C. 2911.21(A)(1). ‘Land or premises’ includes ‘any land, building, structure, or place belonging to, controlled by, or in the custody of another.’ R.C. 2911.21(E).” *State v. O’Neal*, 87 Ohio St.3d 402, 408, 721 N.E.2d 73 (2000). When construing the evidence in favor of the state, the record contains sufficient evidence that a jury could find beyond a reasonable doubt that Talley knowingly entered the premises where the towers were housed. However, to sustain a trespass conviction, the state must first present sufficient evidence that the premises are owned by, in the custody of, or under the control of someone besides the defendant.

**{¶ 29}** Talley argues the state failed to establish that the premises or land belonged to another because it did not produce a single witness to testify as to who owned the premises or the property. We disagree. Under R.C. 2913.01, “[O]wner” means, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the

ownership, possession, control, license, or interest is unlawful. At trial, the state presented testimony from DeCandia, a Verizon technician, that American Tower owns the cell tower site and that Verizon owns all the equipment inside the cell tower site. DeCandia stated that the premises are enclosed within a fence meant to “keep unauthorized” people out of the compound. Furthermore, DeCandia testified that normally there is a sign on the fence, indicating the existence of a Verizon facility. If believed, the testimony of DeCandia is sufficient evidence of ownership of the premises and cell towers for a jury to find, beyond a reasonable doubt, the property was owned or controlled by another. In addition to offering sufficient evidence that Talley trespassed onto land belonging to another, the state must prove that Talley was not authorized to enter or remain on the premises.

**{¶ 30}** Talley claims that the state failed to produce sufficient evidence that he was not authorized to enter the premises containing the towers. Talley’s argument is based on the state’s failure to produce witness testimony that Talley was ever seen on the property or told to leave. We are not persuaded by Talley’s argument because (1) the tower was contained within a fence; (2) a portion of the fence and the locks securing the area were destroyed; and (3) Talley had pieces of the tower and the appropriate tools to commit the type of vandalism observed at the tower in his backpack. Evidence of the observations at the tower and the contents found in Talley’s backpack are sufficient to overcome Talley’s argument.

**{¶ 31}** Officer Grayson was the first person on the scene. He first noticed a bicycle locked up at a bus stop for an extended period, and he subsequently observed

Talley coming from the direction of the Verizon tower. Grayson noticed Talley's winter boots, which matched the footprints around the tower. Consequently, he advised others to avoid the footprints as they evaluated the scene and made other observations.

**{¶ 32}** Officer Haynes, along with technicians DeCandia and Chappell, testified to being aware of and avoiding the distinct footprints. This awareness dovetailed into further inquiry by Officer Grayson who questioned Talley and found his explanation — that he was relieving himself in the woods — inconsistent with the time his bicycle had been at the bus stop. DeCandia noted signs of forced entry, such as a broken gate and the smell of a recently used grinder. Detective Manjas offered testimony that he observed additional signs of vandalism, including a hole in the fence and cut cables. Similarly, technician Chappell made a critical identification, connecting plastic objects in Talley's possession to the missing shielding for the battery terminals inside the cell tower site. This led to an examination of Talley's belongings.

**{¶ 33}** The record contains evidence that Talley had a backpack filled with writings concerning cell phone towers and various tools, including a DeWalt angle grinder, magnets, knives, and a propane torch fitting. Our review of the record indicates that there was sufficient probative evidence from which reasonable minds could conclude, as the jury did, that Talley was not authorized to enter or remain on the premises.

{¶ 34} Talley argues that the trial court erred when it denied his motion for acquittal for vandalism because, like the breaking and entering conviction, the state failed to prove the premises were owned or controlled by another. Vandalism is defined in R.C. 2909.05(B) as

(1) No person shall knowingly cause physical harm to property that is owned or possessed by another, when either of the following applies:

(a) The property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and the value of the property or the amount of physical harm involved is one thousand dollars or more;

(b) Regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation.

{¶ 35} Talley was convicted of vandalism of the cell towers. In addition to the testimony of Decandia that the towers were owned by Verizon, the state offered evidence of the cost to repair the towers. Also, the towers were behind a fence and locked gate. Accordingly, the state offered sufficient evidence that the towers belonged to or were under the control of Verizon.

{¶ 36} Next, Talley claims the state failed to produce evidence of the value of items allegedly taken, thereby rendering his conviction for theft unsustainable. He posits that without evidence of value, theft cannot be substantiated and therefore, the trial court's judgment should be reversed. However, we must consider the precedent set by *State v. Bronczyk*, 8th Dist. Cuyahoga No. 96326, 2011-Ohio-5924, ¶ 42-43, where this court addressed a similar issue.

**{¶ 37}** In *Bronczyk*, we held that even when the state offers no evidence of the value of the items that a defendant unsuccessfully attempted to take, the defendant may still be convicted of misdemeanor theft. *Id.* “[T]he value of stolen property is not an essential element of the offense of theft but, rather, is a finding that enhances the penalty of the offense.” *State v. Smith*, 121 Ohio St.3d 409, 2009-Ohio-787, 905 N.E.2d 151, ¶ 13. “As such, it is submitted to a factfinder for a special finding in order to determine the degree of the offense.” *Id.* at *id.* The absence of evidence pertaining to the value of the items does not preclude a theft conviction. *Bronczyk* at ¶43. Rather, the court may reclassify the theft as a misdemeanor when the value cannot be determined.

**{¶ 38}** In line with our ruling in *Bronczyk*, a misdemeanor theft conviction is entirely appropriate when the value of the stolen items cannot be determined. The record contains substantial evidence demonstrating that Talley had the purpose to take components from the cell towers, with several panels found in his backpack. While it is true that the record does not indicate the value of the components, this does not vitiate the possibility of a theft conviction. In the present case, the trial court did not err when it denied Talley’s motion for acquittal concerning the theft charge. The failure to produce the value of the items does not render the evidence insufficient for the misdemeanor theft conviction.

**{¶ 39}** Talley alleges that he is entitled to acquittal on Count 4, possession of criminal tools because that offense relies upon the other counts to establish the purpose of the tools. Having found that the record contains sufficient evidence to

support Talley's convictions for breaking and entering, vandalism, and theft, Talley's argument that the trial court erred when it failed to grant his motion for acquittal of possession of criminal tools is without merit.

{¶ 40} We find the record contains sufficient evidence to support the challenged elements of Talley's convictions for breaking and entering, vandalism, theft, and criminal tools. Accordingly, the trial court properly denied Talley's Crim.R. 29 motion for acquittal and his first assignment of error is overruled.

### **Manifest Weight**

{¶ 41} In his second assignment of error, Talley argues that his convictions are against the manifest weight of the evidence. When evaluating a claim that challenges the manifest weight of the evidence, the reviewing court must determine if "there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proven beyond a reasonable doubt." *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 81 quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194, 702 N.E.2d 866 (1998), citing *State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 866 (1998). This court scrutinizes the entire record to ascertain if the jury fundamentally erred, leading to such a gross miscarriage of justice that it necessitates the reversal of the convictions and calls for a new trial. *Id.* A manifest-weight challenge requires the reviewing court to reevaluate the credibility of the evidence presented and questions whether the state met its burden of persuasion at trial. *State v. Johnson*, 8th Dist. Cuyahoga No. 111618, 2023-Ohio-



1367, ¶ 131. Talley claims the manifest weight of the evidence shows that there is insignificant evidence to support the elements of any of his convictions.

{¶ 42} The appellate courts sit as the “thirteenth juror” and must resolve conflicts in testimony after a careful review of the entire record. *Thompkins*, 78 Ohio St.3d at 387. In reviewing the appellant’s contentions that the conviction is against the manifest weight of the evidence, we remain mindful that the credibility of witnesses and the weight of the evidence are primarily matters for the trier of fact to assess. *Johnson*, at ¶ 132. “Reversal on manifest-weight grounds is reserved for the “exceptional case in which the evidence weighs heavily against the conviction.”” *Id.*, quoting *Thompkins* at 387, quoting *Martin*, 20 Ohio App.3d 172, 484 N.E.2d 717 (1st Dist.1983).

{¶ 43} First, Talley argues that the footprints found at the crime scene were directional and that there were no return footprints leading back to where Talley was found. While this point may appear salient on its face, the lack of return footprints does not necessarily exclude the appellant’s guilt. There is no question that a trespass occurred as demonstrated by the footprints and evidence that someone took and damaged property. The fact that the footprints were directional does not sway persuasion from the state having met its burden for conviction. The state is not required to prove how Talley exited the property.

{¶ 44} Additionally, the appellant’s claim of possession of inadequate tools for the crime is also not persuasive in the context of the full record. Despite the lack of an attachment for the grinder and the absence of fuel for the blow torch, other

tools and evidence have significant weight. Additionally, the jury had the opportunity to consider expert testimony on the adequacy of the tools under the circumstances.

**{¶ 45}** Next, the appellant's explanation for his presence in the woods was weighed against other circumstantial evidence. Officer Grayson testified that he challenged Talley's explanation because it was inconsistent with the long period of time that Officer Grayson observed Talley's bicycle in the same location. Furthermore, Talley didn't respond to Officer Grayson when he mentioned the length of time he observed the bicycle in the same spot. Although Talley's explanation, that he was urinating in the woods, might be plausible, the jury had the opportunity to assess the credibility, demeanor, and overall consistency of Officer Grayson's testimony and could have found Officer Grayson's testimony credible.

**{¶ 46}** Talley also argues that his writings, expressing concerns about electronic technology's damaging effects, do not specifically express a desire to damage property. While true, the writings could provide context or motive for Talley's actions. The jury was in a unique position to determine whether possession of such writings would have been instructive in the commission of the crime.

**{¶ 47}** Finally, Talley claims that contradictions relating to the preservation of evidence render his convictions against the manifest weight of the evidence. Talley points to the detective's failure to collect resonators, plastic shielding, and other components as evidence. While there may have been contradictions in

testimony regarding the preservation of evidence, these contradictions are insignificant to impact the state's burden of persuasion.

{¶ 48} The jury did not lose their way in their conviction decisions. The points raised by the appellant do not demonstrate an exceptional case where the evidence weighs heavily against the convictions. Accordingly, we cannot say that Talley's convictions were against the manifest weight of the evidence. Talley's second assignment of error is overruled.

{¶ 49} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant 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.

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

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EMANUELLA D. GROVES, JUDGE

MICHELLE J. SHEEHAN, P.J., and  
MARY J. BOYLE, J., CONCUR