

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

| | | |
|----------------------|---|------------------------|
| STATE OF OHIO, | : | APPEAL NO. C-110267 |
| | : | TRIAL NO. B-1001084 |
| Plaintiff-Appellee, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| BARRY CARR, | : | |
| | : | |
| Defendant-Appellant. | : | |
| | : | |
| | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Following a jury trial, the trial court convicted defendant-appellant Barry Carr of unauthorized use of a computer in violation of R.C. 2913.04(B). Carr was sentenced to seven months in prison. He now appeals, bringing forth four assignments of error. We affirm.

In his first and second assignments of error, Carr contests the weight and the sufficiency of the evidence underlying his conviction. When reviewing the sufficiency of the evidence, this court must view all probative evidence and reasonable inferences in the light most favorable to the prosecution to determine whether any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *State v. Martin*, 20 Ohio App. 3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983). In contrast, when reviewing the weight of the evidence, this court must

independently weigh the evidence and consider the credibility of the witnesses to determine whether the trier of fact lost its way and created a manifest miscarriage of justice in finding the defendant guilty. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

Viewing the evidence in a light most favorable to the state in this case, a rational trier of fact could have found the elements of unauthorized use of a computer proven beyond a reasonable doubt. Although Carr, an on-duty police officer at the time of the offense, argues that the state did not prove that he had used an official police computer for a personal, non-legitimate purpose, there was sufficient circumstantial evidence that he had done so. The evidence demonstrated that Carr had followed White into a restaurant parking lot. There, he ran her license plate through a police computer and then sat in the parking lot waiting for her. When she exited the restaurant, Carr called White to him. This was the first of more than a dozen incidents where Carr would stop White while she was in her car driving and harass her about dating or having sex with him. Further, we hold that the jury did not lose its way or create a manifest miscarriage of justice by finding Carr guilty of the unauthorized use of a computer. The first and second assignments of error are overruled.

In his third assignment of error, Carr argues that he was denied effective assistance of counsel. Specifically, he contends that counsel was deficient in failing to file a pretrial motion to keep the tape recording of Carr's brief internal-affairs interview out of evidence. Because Carr did not show how the playing of the interview for the jury prejudiced him, especially given the circumstantial evidence that Carr had used the police computer improperly to gather information on a woman he wanted to date, we cannot say that Carr was denied the effective

OHIO FIRST DISTRICT COURT OF APPEALS

assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus. The third assignment of error is overruled.

In his final assignment of error, Carr contends that the trial court erred in imposing a seven-month prison term. Under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, a trial court has full discretion to impose a sentence within the applicable statutory range. *Id.* at syllabus. A reviewing court must first determine whether the sentence was clearly and convincingly contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 14-17. If the sentence was not contrary to law, the appellate court then reviews the sentence under an abuse-of-discretion standard. *Id.* Where the trial court does not explicitly put on the record its consideration of applicable sentencing statutes, it is nonetheless presumed that the court properly considered those statutes. *Id.* at fn. 4.

In this case, the sentence was proper. First, the sentence was in the appropriate statutory range. Second, we cannot say that the trial court abused its discretion in imposing a sentence that was one month more than the minimum sentence, given the violation of public trust and the distress that Carr's actions caused White. The fourth assignment of error is overruled.

We, therefore, affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on February 15, 2012

per order of the court _____.
Presiding Judge