

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

STATE OF OHIO ,	:	APPEAL NO. C-120812
	:	TRIAL NO. B-1204993
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
HENRY CLARK, III,	:	
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. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

After a bench trial, the trial court convicted Henry Clark, III, of first-degree misdemeanor theft, in violation of R.C. 2912.02(A)(1). He now appeals.

Clark operated a cash register in the electronics department of Walmart on Ferguson Road from December 2011 until the end of January 2012. During that time, he stole money from the cash register. His theft was captured on the store's video-surveillance system and observed in real time by Billy Owens, Walmart's asset-protection manager. When confronted by his employer, Clark admitted to the theft in an oral statement and incriminated himself in a written statement.

In his first assignment of error, Clark argues that the trial court erred by admitting into evidence state's exhibit 3, which contained the video-surveillance footage of the theft. Clark contends that the state failed to present a proper foundation for admission, where

there was confusion concerning the date of the surveillance, and that, without this proper foundation, the video was not relevant.

Although the court had first excluded the exhibit based on confusion concerning the date of the surveillance, the court later admitted the exhibit after Owens testified that the video captured what he had seen in real time on January 12, 2012, and that another Walmart employee had incorrectly listed the date of the recording as January 12, 2011, on paperwork related to the video surveillance.

In light of Owens's testimony, which was corroborated by the date that appeared on the actual video file, we hold that the state laid the proper foundation to admit the exhibit, *see* Evid.R. 901(A), and that the exhibit, which depicted Clark during the commission of the theft, was relevant evidence. *See* Evid.R. 401. Thus, the trial court did not err by admitting state's exhibit 3. Accordingly, we overrule the first assignment of error.

In his second assignment of error, Clark contends that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We disagree.

First, upon the evidence adduced at trial, reasonable minds could have reached different conclusions as to whether each element of the offense had been proved beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

And second, we find nothing in the record of the proceedings below to suggest that the trial court, in resolving the conflicts in the evidence adduced on the charged offense, lost its way or created such a manifest miscarriage of justice as to warrant the reversal of Clark's conviction. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541

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(1997). We note that the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

Therefore, we overrule the second assignment of error.

Accordingly, we affirm the trial court's judgment.

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.

**HENDON, P.J., HILDEBRANDT and CUNNINGHAM, JJ.**

To the clerk:

Enter upon the journal of the court on December 11, 2013  
per order of the court \_\_\_\_\_.  
Presiding Judge