

[Cite as *In re J.H.*, 2018-Ohio-5360.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107201

IN RE: J.H., JR.
A Minor Child

JUDGMENT
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL 17112550

BEFORE: Jones, J., Kilbane, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: December 27, 2018

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant “J.H.” appeals the trial court’s finding of delinquency. He raises the following assignment of error for our review:

I. The delinquency adjudications for aggravated robbery, kidnapping, and grand theft were against the manifest weight of the evidence.

{¶2} We affirm.

{¶3} In 2017, J.H. was charged in juvenile court with aggravated robbery, kidnapping, and grand theft. All charges had one- and three-year firearm specifications. After an amenability hearing, the trial court declined to bind J.H. over to adult court and the matter proceeded to a bench trial in juvenile court. The following evidence was adduced at trial.

{¶4} Khalia Snowden (“Snowden”) was sitting in her red Toyota Corolla after dropping a friend off in Euclid. She was going to back out of her friend’s driveway when a silver car blocked her exit. Two young males approached her car, one holding a gun, and told her “get out of the car, this is not a game.” Snowden got out of her car, and the male holding the gun got into the driver’s seat. The other male got in the passenger seat, and they drove off with Snowden’s car. Snowden did not get a good look at the males who stole her car and did not see what happened to the silver car. Police later showed her a photo lineup but she was unable to identify anyone in the lineup.

{¶5} Snowden walked to a nearby gas station and called 911. Euclid Police responded to the scene. Officer David Trend (“Officer Trend”) patrolled the area looking for Snowden’s car. While driving westbound on Lakeshore Boulevard, Officer Trend saw the stolen red Toyota Corolla pass him, heading eastbound on Lakeshore Boulevard. Officer Trend noticed two individuals inside the vehicle as it passed him. He then turned his police cruiser around, activated his lights, and the stolen vehicle “drove away even faster.” Officer Trend saw the

stolen vehicle turn onto East 244th Street, head southbound, and turn into the driveway of an apartment complex. By the time Officer Trend caught up to the car, the occupants had abandoned the vehicle with the car rolling.

{¶6} Euclid Police Sergeant Bees (“Sergeant Bees”) testified that the call came into dispatch about an armed robbery about 4:15 a.m. He responded to the area of the crime by 4:20 a.m. and learned that officers had lost sight of the suspect vehicle but quickly found it abandoned nearby. Sergeant Bees positioned himself on Lakeshore Boulevard and East 250th Street. While stationed in that position, Sergeant Bees heard other Euclid police officers call out that they heard rustling in bushes near the abandoned car. Sergeant Bees saw two silhouettes run eastbound across East 250th Street. He drove his police cruiser to the area where he saw the two silhouettes and located a white tennis shoe in the middle of the road. Sergeant Bees noticed there was fresh wet grass and morning dew on the shoe. Euclid Detective Philip Tschetter (“Detective Tschetter”) was assigned to investigate the case. He processed the red Toyota Corolla for trace evidence. Detective Tschetter testified he swabbed the steering wheel, the interior forward door handles, and the gear shift knob and sent it to the Ohio Bureau of Criminal Investigations (“BCI”) for processing. He also requested the recovered tennis shoe be swabbed for DNA.

{¶7} Detective Tschetter interviewed J.H., who admitted that he had been the passenger in the stolen Corolla with another male named “Jo Jo” the night of the robbery. J.H. told Detective Tschetter that Jo Jo had a gun and admitted that he (J.H.) had borrowed a pair of shoes, one of which was recovered by police.

{¶8} Forensic DNA Analyst Samuel Troyer (“Troyer”) received the DNA swabs and analyzed them. Troyer determined that J.H.’s DNA matched the swab taken from the gear shift

to a certainty of 1 in 20 million people. He also matched J.H.'s DNA to the swab taken from the recovered tennis shoe. Troyer testified that there was a mixture of DNA on the shoe but the major contributor was J.H., to a certainty of 1 in 1 trillion people.

{¶9} The trial court found J.H. delinquent of all counts and specifications, merged the counts and specifications, and committed him to a total of two years at the Ohio Department of Youth Services.

{¶10} In his sole assignment of error, J.H. argues that the court's findings of delinquency were against the manifest weight of the evidence.

{¶11} When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the factfinder clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). This court sits as the "thirteenth juror" and scrutinizes "the factfinder's resolution of the conflicting testimony." *Id.* at 388. Reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Id.* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶12} Although under a manifest-weight standard we consider the credibility of witnesses, we must nonetheless extend special deference to the factfinder's credibility determinations given that it is the factfinder who has the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities such as hesitancy, equivocation, and candor. *State v. Fell*, 6th Dist. Lucas No. L-10-1162, 2012-Ohio-616, ¶ 14. "[I]t is well-established that the juvenile court, as the trier

of fact, [is] free to believe all, part or none of [the] witnesses' testimony.” *State v. Z.G.B.*, 12th Dist. Warren No. CA2016-04-029, 2016-Ohio-7195, ¶ 17, citing *In re D.T.W.*, 12th Dist. Butler No. CA2014-09-198, 2015-Ohio-2317, ¶ 37.

{¶13} In this assignment of error, J.H. argues that he was not present for the carjacking and Jo Jo picked him up after the robbery. He contends that it was another unidentified male with Jo Jo who assisted Jo Jo with the actual robbery.

{¶14} The trier of fact in this case based its decision upon hearing the witnesses and the evidence presented at trial. The victim, Snowden, testified she attempted to back her red Toyota Corolla out of her friend's driveway when a silver car pulled in behind her and blocked in her vehicle. Two males, one holding a gun, approached the vehicle, and told her to get out of her car. Snowden complied.

{¶15} Euclid Police responded to the area of where the robbery took place, and proceeded to patrol the area. Officer Trend saw the red Corolla with two people in it. He pursued the car and found it, abandoned and still rolling. Sergeant Bees saw two silhouettes running east across East 250th Street and pursued the two silhouettes. Bees found a white tennis shoe that was damp with dew and had fresh grass clippings on it. Detective Tschetter took DNA samples of the car and J.H. J.H.'s DNA was found on the gear shift of the stolen car and on the white tennis shoe. Witnesses testified that the time frame from when the car was stolen until it was found abandoned was approximately ten minutes.

{¶16} J.H. admitted that he was a passenger in the stolen Corolla on the night of the incident. He further admitted that Jo Jo had a gun and that he (J.H.) was wearing the white tennis shoes, one of which was recovered by police.

{¶17} In light of the above, there was evidence for the trier of fact to find that the state proved the essential elements of aggravated robbery, kidnapping, and grand theft beyond a reasonable doubt. Thus, the trial court's adjudication of delinquency was not against the manifest weight of the evidence, and this is not the exceptional case requiring reversal.

{¶18} Judgment 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 be sent to said 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.

LARRY A. JONES, SR., JUDGE

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