[Cite as *State v. Williams*, 2011-Ohio-4595.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 10AP-1042
v.	:	(C.P.C. No. 09CR-06-3830)
Shashawn L. Williams,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 13, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Howard Legal LLC, and *Felice Howard*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Shashawn L. Williams ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted and sentenced him on 14 counts of aggravated robbery, with firearm specifications, and two counts of receiving stolen property. For the following reasons, we affirm that judgment

in part, and reverse it in part, and we remand this matter to the trial court for further proceedings.

{¶2} Appellant was indicted on the following: (1) four counts of aggravated robbery, with firearm specifications, pertaining to a July 8, 2008 incident at Grandad's Pizza; (2) one count of aggravated robbery, and a firearm specification, for a July 22, 2008 incident at a CVS Pharmacy; (3) nine counts of aggravated robbery, with firearm specifications, for a July 28, 2008 incident at a Pizza Hut; (4) one count of receiving stolen property regarding a credit card stolen from Spencer Morgan during the incident at Grandad's Pizza; and (5) one count of receiving stolen property regarding credit cards stolen from Scott Ackerman and Melissa Otero during the Pizza Hut incident. Appellant pleaded not guilty to the charges, and a jury trial ensued.

{¶3} At trial, the parties stipulated that an armed robbery occurred on July 8, 2008, when three men entered Grandad's Pizza and stole money from the business and money, credit cards, and cell phones from four people present. According to the stipulation, one credit card, stolen from Morgan, was used at a bar shortly after the robbery. In addition, the parties stipulated that on July 22, 2008, two armed men entered a CVS Pharmacy and stole drugs and money. Lastly, the parties stipulated that on July 28, 2008, two armed men entered a Pizza Hut and stole money from the restaurant, and cell phones, credit cards, and money from eight people present.

{¶4} Marcellus Henry was one of the armed perpetrators in each of the aggravated robberies, and he testified as follows. On July 8, 2008, Henry, appellant, Toris Richardson, and three other men agreed to rob Grandad's Pizza. Appellant

provided guns and the car for the robbery. Afterward, appellant was given a portion of the stolen money because he provided the guns and the car. Additionally, appellant and Richardson were given the stolen credit cards.

{¶5} Next, appellant came up with a plan to steal drugs from a pharmacy, and Richardson and Henry agreed to the plan. After scouting for a pharmacy to rob, they decided on a CVS Pharmacy. Richardson recruited Odulex Leger to assist them. On July 22, 2008, appellant drove Richardson to the pharmacy, and they met Henry and Leger. Appellant and Richardson stayed in the car watching for police while Henry and Leger went inside with guns, which appellant provided. After the robbery, everyone met at appellant's house, where Leger and Henry split the money stolen from the pharmacy, and appellant and Richardson kept the drugs.

{¶6} On July 28, 2008, Henry and Leger decided to rob a Pizza Hut. They went to the restaurant in appellant's car with the guns they previously obtained from appellant. After the robbery, Leger and Henry went to Richardson's apartment, where the stolen items were split among Henry, Leger, Richardson, and appellant, although appellant was not present. Richardson left to go pick up appellant at a bar, and Leger and Henry remained. The police later arrived and arrested Leger and Henry.

{¶7} Henry had no "doubt in [his] mind" that appellant "knew what was going on" with the robbery-ring they were participating in. (Tr. Vol. I, 114.) Henry, Richardson, and appellant were not working, and they were "supporting" themselves with the robbery proceeds. (Tr. Vol. I, 116.)

{¶8} Leger testified that appellant and Richardson lived in the same apartment complex and were very close friends. He also confirmed his involvement in the aggravated robberies at the CVS Pharmacy and Pizza Hut.

{¶9} Richardson testified that he planned robberies and recruited others to execute them, and he said that appellant helped him with robberies in 2008. He admitted to participating in the CVS Pharmacy robbery with appellant, Henry, and Leger. He also testified that Henry came up with the idea to rob Grandad's Pizza. He claimed that he gave Henry a gun for the robbery, but Henry used his own car. He said that appellant received no proceeds from the robbery because he was not involved in it.

{¶10} Richardson also testified that, on July 28, 2008, Henry and Leger approached him with the idea of committing a robbery. Richardson contacted appellant about allowing Henry and Leger to use his car, and appellant agreed. At one point, Richardson testified that appellant "knew in advance that [Henry and Leger] were using the car for a robbery." (Tr. Vol. II, 284.) But, other times, Richardson indicated that appellant only knew that Henry and Leger were using the car to search for a place to rob and that appellant was never contacted when the men decided to rob a Pizza Hut while on that search.

{¶11} Henry and Leger returned to Richardson's apartment after the robbery at the Pizza Hut, and the stolen money was divided among Henry, Leger, Richardson, and appellant, although appellant was not there at the time. Richardson said that he received a share for supplying guns for the robbery and that appellant received a share for supplying guns and the car.

{¶12} Richardson also received credit cards stolen during the incident, and he called appellant, who was at a strip club, and asked him if he knew of anyone who would take the credit cards. Appellant said, "yeah, just come on down here." (Tr. Vol. II, 289.) Richardson, joined by two women, picked appellant up. Later, the police stopped the vehicle those individuals were in, and Richardson was arrested for driving without a license and for being in possession of the credit cards stolen during the Pizza Hut incident. Lastly, Richardson testified that he did not give appellant his share of the money or the credit cards stolen during the Pizza Hut incident because he was arrested before he had an opportunity to do so.

{¶13} Columbus Police Officer Kareem Kashmiry stopped the vehicle Richardson was driving and he confirmed at trial that Richardson was in possession of credit cards stolen during the Pizza Hut incident. Detective Brian Boesch verified that those credit cards belonged to Ackerman and Otero.

{¶14} Before deliberations, the trial court instructed the jury that appellant "may be convicted of all counts and specifications as an aider and abettor." (Tr. Vol. II, 518.) The jury found appellant guilty of all charges, but it failed to find that the receiving stolen property offense, pertaining to Morgan, involved a credit card. The trial court sentenced appellant to prison and informed him that for his receiving stolen property convictions, the "period of post-release control could be for as much as three years" and that the aggravated robbery convictions carry mandatory post-release control for a period of five years. (Tr. Vol. III, 8.) The court also noted that the parole board could send appellant back to prison if he violated post-release control.

{¶15} Appellant signed a notice of imprisonment on the date he was sentenced. The form indicated that the "Court hereby notifies" appellant that if he violates a post-release control condition, the parole board may impose a prison term for up to nine months "and the maximum cumulative prison term so imposed for all violations during the period of post-release control cannot exceed one-half of the stated prison term originally imposed." And, in its sentencing entry, the court stated that it notified appellant that he would receive a period of post-release control for five years and that "if he violates post-release control his sentence will be extended administratively in accordance with State law."

{¶16} Appellant appeals, raising the following assignments of error:

> [I.] The state's evidence is not sufficient to sustain Mr. Williams' convictions for aggravated robbery and receiving stolen property in Counts 6 through 16 of the Indictment.
>
> [II.] Mr. Williams' convictions for aggravated robbery are against the manifest weight of the evidence.
>
> [III.] The trial court erred when it failed to verbally inform Mr. Williams that the parole board can return him to prison for up to one-half of his stated prison term as a consequence of violating a term of post-release control.

{¶17} In his first assignment of error, appellant argues that his convictions are based on insufficient evidence. Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of

the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks,* paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶18} First, appellant challenges his aggravated robbery convictions for the July 28, 2008 incident at Pizza Hut, in which Henry and Ledger robbed the business and individuals. Aggravated robbery occurs when someone uses a deadly weapon while committing or attempting to commit a theft offense. R.C. 2911.01. The prosecution alleged that appellant was guilty of the aggravated robberies at the Pizza Hut under a complicity theory because he aided and abetted Henry and Leger in their commission of those crimes. To prove aggravated robbery by aiding and abetting, the prosecution must show that "the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal." *State v. Johnson*, 93 Ohio St.3d 240, 245, 2001-Ohio-1336. Participation " 'in criminal intent may be inferred from presence, companionship and conduct before and after the offense is committed.' " Id., quoting *State v. Pruett* (1971), 28 Ohio App.2d 29, 34. " 'Mere approval or acquiescence, without expressed concurrence or the doing of something to contribute to

an unlawful act, is not an aiding or abetting of the act.' " *State v. Philpot*, 10th Dist. No. 03AP-758, 2004-Ohio-5063, ¶26 (citations omitted).

{¶19} Appellant claims that he did not share in Henry and Leger's intent to commit the aggravated robberies, but, instead, only acquiesced to them using his car to find a place to rob. Richardson testified, however, that appellant knew that Henry and Leger were going to use his car to commit the aggravated robberies. Although appellant challenges the credibility of Richardson's testimony about that knowledge, questions of credibility are irrelevant to the issue of whether there is sufficient evidence to support a conviction. See *State v. Preston-Glenn*, 10th Dist. No. 09AP-92, 2009-Ohio-6771, ¶38.

{¶20} Nevertheless, contrary to appellant's contentions, when he permitted Henry and Leger to use his car, he demonstrated his encouragement and support in the execution of the aggravated robberies from the earliest stage of events. In fact, he provided this permission after having already given Henry and Leger guns. Also, the participants reserved some of the proceeds from the crimes for him, due to his involvement, and he agreed to assist Richardson with passing along credit cards stolen during the incident.

{¶21} Consequently, the evidence, construed in a light most favorable to the state, establishes that appellant aided and abetted Henry and Leger in committing aggravated robberies at the Pizza Hut. Therefore, there is sufficient evidence to support appellant's convictions for those robberies.

{¶22} Next, appellant challenges his conviction for receiving stolen property based on the credit cards stolen from Ackerman and Otero during the Pizza Hut robberies. R.C. 2913.51(A) defines receiving stolen property and states that "[n]o person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense."

{¶23} Richardson obtained the credit cards stolen during the Pizza Hut robberies because of his involvement in that incident. Although appellant agreed to help Richardson pass the credit cards along to others, Richardson was arrested before he had an opportunity to relinquish them. Therefore, appellant argues that his receiving stolen property conviction cannot stand because he never obtained the credit cards. Appellant was prosecuted under principles of complicity, however. We apply those principles, as stated in *Johnson*, to determine whether appellant aided and abetted Richardson in receiving the stolen credit cards.

{¶24} Appellant played a crucial role in Richardson's receipt of the credit cards through his assistance with the implementation of the Pizza Hut robberies, which yielded the credit cards. And appellant agreed to participate in those crimes with knowledge that Richardson took proceeds from robberies he was involved in. Accordingly, the evidence, construed in a light most favorable to the state, establishes that appellant aided and abetted Richardson in receiving the credit cards stolen from Ackerman and Otero during the Pizza Hut robberies. Therefore, there is sufficient

evidence to support appellant's conviction for receiving stolen property based on those stolen credit cards.

{¶25} Lastly, appellant challenges his conviction for receiving stolen property pertaining to Morgan's stolen credit card. The trial court treated the conviction as a felony and sentenced appellant to 12 months imprisonment for it. Appellant contends that the offense is a first-degree misdemeanor, which carries a maximum penalty of 180 days in jail, because the jury failed to make a specific finding that the stolen property was a credit card. Plaintiff-appellee, the state of Ohio, concedes that the trial court must be required to enter a judgment convicting and sentencing the receiving stolen property offense as a first-degree misdemeanor. We agree, based on *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256. For all these reasons, we overrule in part and sustain in part appellant's first assignment of error.

{¶26} In his second assignment of error, appellant argues that his aggravated robbery convictions based on the incident at Pizza Hut and Grandad's Pizza are against the manifest weight of the evidence. We disagree.

{¶27} In determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.' " *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. Id. Additionally, we determine "whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest

weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier-of-fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶28} Appellant claims that his aggravated robbery convictions for the Grandad's Pizza incident are against the manifest weight of the evidence because Henry and Richardson provided inconsistent testimony. Specifically, Henry implicated appellant in the incident, but Richardson did not. A defendant is not entitled to a reversal on manifest-weight grounds merely because inconsistent evidence was offered at trial, however. *State v. Crump*, 190 Ohio App.3d 286, 2010-Ohio-5263, ¶26. The trier-of-fact is free to believe or disbelieve any or all of the testimony presented. Id. Here, Henry provided detailed and unequivocal testimony implicating appellant in the aggravated robberies at Grandad's Pizza, and it was within the jury's province to find appellant guilty based on that testimony.

{¶29} Next, appellant contends that his aggravated robbery convictions for the Pizza Hut incident cannot stand because the greater weight of Richardson's testimony is that appellant only acquiesced to Henry and Leger using his car to find a place to rob. But, as we have already discussed, the totality of the evidence establishes that

appellant aided and abetted Henry and Leger in the aggravated robberies at the Pizza Hut, and it was within the jury's province to accept that evidence.

{¶30} In the final analysis, the trier-of-fact is in the best position to determine witness credibility. *State v. Mitchell*, 10th Dist. No. 10AP-756, 2011-Ohio-3818, ¶37. The jury accepted evidence implicating appellant in the Pizza Hut and Grandad's Pizza aggravated robberies, and appellant has not demonstrated a basis for disturbing the jury's conclusion. Accordingly, we hold that appellant's convictions for aggravated robbery based on the Pizza Hut and Grandad's Pizza incidents are not against the manifest weight of the evidence, and we overrule his second assignment of error.

{¶31} In his third assignment of error, appellant argues that the trial court did not impose post-release control properly at sentencing. We disagree.

{¶32} The trial court was required to notify appellant at the sentencing hearing about post-release control and incorporate the notice in the sentencing entry. See *State v. Williams*, 10th Dist. No. 08AP-1090, 2009-Ohio-3233, ¶7. For instance, the trial court was required to notify appellant that if he violated post-release control, the parole board could return him to prison for up to one-half of the prison term originally imposed. See R.C. 2929.19(B)(3)(e). Appellant contends that the trial court did not meet this requirement in R.C. 2929.19(B)(3)(e) because it did not orally notify him at the sentencing hearing of that consequence of post-release control. In *State v. Easley*, 10th Dist. No. 10AP-505, 2011-Ohio-2412, ¶14, this court concluded that post-release control was properly imposed when a notice of imprisonment, signed by the defendant on the date of sentencing, provided information about post-release control even though

the trial court did not orally mention the topic at the sentencing hearing. Here, although the trial court did not state at the sentencing hearing that the parole board could return appellant to prison for up to one-half the prison term originally imposed if he violated post-release control, the information was contained in the notice of imprisonment he signed on the date of sentencing. Therefore, pursuant to *Easley*, we need not disturb the post-release control part of appellant's sentence, and we overrule his third assignment of error.

{¶33} In summary, we sustain in part and overrule in part appellant's first assignment of error, and we overrule appellant's second and third assignments of error. Consequently, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for proceedings consistent with this decision.

Judgment affirmed in part and reversed in part; cause remanded.

BROWN and TYACK, JJ., concur.