[Cite as *State v. Mann*, 2011-Ohio-5286.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1131 (C.P.C. No. 10CR-01-0499)
Justin K. Mann,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 13, 2011

Ron O'Brien, Prosecuting Attorney, and *Susan M. Suriano*, for appellee.

R. William Meeks Co. L.P.A., and *David H. Thomas*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Justin K. Mann, appeals from the judgment of the Franklin County Court of Common Pleas, which convicted him, following a jury trial, of one count of burglary and two counts of robbery. Because the trial court's judgment is supported by sufficient evidence and the manifest weight of the evidence, and because the trial court committed no reversible error, we affirm.

{¶2} On January 27, 2010, the Franklin County Grand Jury indicted appellant on one count of burglary in violation of R.C. 2911.12, a second-degree felony, one count of robbery in violation of R.C. 2911.02, a second-degree felony, and one count of robbery in violation of R.C. 2911.02, a third-degree felony.

{¶3} The indictment arose out of a home invasion that occurred during the early morning hours of January 18, 2010. On that date, Cindy Hawthorne, who resided at 38 Delray Road, asked her friend, Amber Ely, to drive her to a convenient store. Ely lived in a nearby apartment building, located at 2501 South High Street, with her boyfriend, Brandon.

{¶4} Because her home had recently been burglarized, Hawthorne asked her friend, Kris Kellermeyer, to housesit while she was gone. Sometime after Hawthorne left, Kellermeyer heard the back screen door open. He immediately called 911. He then heard the glass in the back door window shatter and observed an arm reach through the broken window to unlock the door. Two men entered the house. One of the men pointed a gun at Kellermeyer and ordered him to sit down and hang up the phone or he would blow his head off. Kellermeyer testified that he was scared when the man pointed the gun at him, so he did as he was told. Shortly thereafter, a police dispatcher called the house to inquire about the aborted 911 call. The man with the gun ordered Kellermeyer to tell the dispatcher that everything was fine.

{¶5} The same man then held the gun 9 to 12 inches from Kellermeyer's head and demanded that he surrender the gold necklace he was wearing. Kellermeyer's necklace was somewhat unique in that he had attached a bracelet to it as a means of lengthening it. The two men then took several video games and DVDs and unsuccessfully attempted to remove a flat screen television from its mount. They then

fled the house through the back door. At trial, Kellermeyer identified appellant as the person who unlocked the back door, pointed the gun at him, and demanded that he relinquish his necklace.

{¶6} Columbus Police Officer Norman Baldwin was dispatched to 38 Delray to investigate the aborted 911 call. Baldwin walked to the back of the residence, where he observed broken glass on the back step. He noticed two men wearing jeans and dark hooded sweatshirts running away from the house. Baldwin chased the men on foot to a nearby apartment building located at 2501 South High Street. Once inside the building, he followed a trail of DVDs, video games, and wet footprints down a hallway to an apartment. Baldwin radioed for backup, and several other officers arrived. Baldwin knocked on the apartment door, and one of the occupants, Brandon Birt, let the officers inside. One of the officers discovered a second man, Donald Justice, hiding in one of the bedrooms. The officers held Birt and Justice in the apartment and contacted the robbery squad.

{¶7} Baldwin returned to his cruiser. Shortly thereafter, he received a dispatch stating that a possible suspect in the robbery had arrived at the South High apartment. Baldwin returned to the apartment and found appellant seated in the living room. Appellant had a long, fresh cut on his left forearm, and he was wearing a long, gold necklace.

{¶8} Baldwin then transported Kellermeyer to a location just outside the South High apartment building. Baldwin testified that he separately presented appellant, Birt, and Justice to Kellermeyer, and Kellermeyer identified the necklace appellant was wearing as the one stolen from him during the robbery. On cross-examination, Baldwin admitted that he could not recall whether Kellermeyer identified appellant as the person

who held him at gunpoint. At trial, Kellermeyer testified that he identified appellant at the scene as the person who held him at gunpoint and ordered him to surrender his necklace.

{¶9} Gary Bowman, the lead detective on the case, directed Detective Yvonne Taliaferro of the Crime Scene Search Unit to take photographs and collect evidence from both Hawthorne's home and the South High apartment. Taliaferro obtained fingerprint evidence from the television in Hawthorne's home; however, none of the fingerprints matched those of appellant, Justice or Birt. Photographs taken of appellant following his apprehension depict him with a long, jagged cut on his left forearm and a long, gold necklace around his neck. Taliaferro recovered the necklace from appellant and logged it as evidence. She also retrieved an air pistol and an empty clip from a closet in the South High apartment.

{¶10} Bowman interviewed appellant at 7:17 a.m. on January 18, 2010. Appellant initially stated that he broke the glass in Hawthorne's back door but never entered the house. He later revised his story, asserting that Justice forced him at gunpoint to break the glass, unlock the door, and participate in the robbery. Appellant told Bowman that he cut his arm on the broken glass when he unlocked the door. He further said that after the robbery, he ran to Birt's apartment, but was denied entrance by Justice; he then hid in the closet of an apartment across the hallway.

{¶11} In the meantime, around 7:30 a.m. on January 18, 2010, Columbus Police Officer James Massie responded to a call from a man who resided at 8 Delray Road, which is approximately 150 to 200 feet from Hawthorne's residence and 75 to 100 feet from the South High apartment building. The man told Massie that he found a gun in an alley just outside the fence that surrounded his property. Massie retrieved the gun from the man, who had taken it inside his house. Massie then transported the gun to police

headquarters and turned it over to Bowman. The gun was later identified as an air pistol. At trial, Kellermeyer identified the air pistol as the one appellant used during the robbery.

{¶12} DNA analyst Dawn Fryback testified that DNA samples collected from appellant and Justice were compared to DNA evidence recovered from the air pistol found in the alley. The DNA evidence on the air pistol indicated a DNA mixture from at least two individuals. Comparison of the DNA samples taken from appellant and Justice to the DNA evidence on the air pistol excluded Justice as being a contributor, but did not exclude appellant as being a contributor. According to Fryback, the probability that a randomly selected individual would be included as a possible contributor to the DNA mixture found on the air pistol is 1 in 105,000. On cross-examination, Fryback acknowledged that the DNA comparison did not conclusively establish that the DNA recovered from the air pistol was from appellant.

{¶13} Upon this evidence, the jury found appellant guilty as charged in the indictment. The trial court sentenced appellant in accordance with law.

{¶14} Appellant appeals, advancing the following assignments of error:

> [I.] THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S REQUEST FOR MISTRIAL AFTER A DISCOVERY VIOLATION PREVENTED APPELLANT'S COUNSEL FROM FILING A CRITICAL PRETRIAL MOTION REGARDING IDENTIFICATION VIOLATING APPELLANT'S RIGHT TO PRESENT A FULL AND COMPLETE DEFENSE AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.
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> [II.] THE TRIAL COURT ERRED BY OVERRULING APPELLANT'S CRIM. R. 29 MOTION FOR JUDGMENT OF ACQUITTAL, AND THEREBY DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND COMPARABLE PROVISIONS OF THE OHIO CONSTITUTION.

> [III.] THE TRIAL COURT ERRED BY FINDING DEFENDANT GUILTY AND THEREBY DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND COMPARABLE PROVISIONS OF THE OHIO CONSTITUION BECAUSE THE VERDICT OF GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} Appellant's first assignment of error contends that the prosecution contravened Crim.R. 16 discovery rules by failing to disclose prior to trial that Kellermeyer would testify that he positively identified appellant at the scene as the person who held him at gunpoint and ordered him to surrender his necklace. Appellant contends that the discovery provided by the state and the negotiations between the parties prior to trial established only that Kellermeyer positively identified the necklace found on appellant's person as the one stolen from him. Appellant contends that Kellermeyer's surprise inculpatory testimony impeded defense counsel's trial strategy and prevented defense counsel from filing a pretrial motion to challenge the show-up identification. Appellant argues that the discovery violation required the trial court to declare a mistrial.

{¶16} "Prosecutorial violations of Crim.R. 16 result in reversible error only when there is a showing that (1) the violation was willful, (2) disclosure of the information prior to trial would have aided the accused's defense, and (3) the accused suffered prejudice." *State v. Anderson,* 10th Dist. No. 08AP-1071, 2009-Ohio-6566, ¶21, citing *State v. Jackson,* 107 Ohio St.3d 53, 2005-Ohio-5981, ¶131.

{¶17} Following Kellermeyer's testimony, Bowman testified in the prosecution's case-in-chief. On cross-examination, defense counsel questioned Bowman about the affidavit he prepared in support of the search warrant to obtain the DNA sample from appellant. Bowman acknowledged that the affidavit included a statement that, during the

show-up identification process, Kellermeyer identified the necklace appellant was wearing, but was unable to identify appellant as the person who aimed the gun at him and ordered him to relinquish his necklace.

{¶18} On redirect, the prosecution questioned Bowman about the source of the information included in the search warrant affidavit. Defense counsel objected and, during a sidebar, asked the prosecution if it intended to argue to the jury that Kellermeyer identified appellant at the scene. Defense counsel informed the court that the prosecution had consistently said that Kellermeyer never identified appellant at the scene. Defense counsel alleged that the prosecution would be committing an ethical violation by suggesting to the jury that Kellermeyer identified appellant at the scene when the prosecution knew that to be false. Defense counsel argued that the written discovery provided by the prosecution indicated that Kellermeyer did not identify appellant at the scene. In response, the prosecution pointed out that Kellermeyer had already testified that he identified appellant at the scene.

{¶19} Following this exchange, the trial court concluded that the prosecution was merely attempting to address some of the issues defense counsel raised on cross-examination regarding Bowman's preparation of the search warrant affidavit. The prosecution and defense counsel continued their questioning of Bowman regarding the search warrant affidavit. Following Bowman's testimony, the court recessed until the next day.

{¶20} When court resumed, defense counsel immediately moved for a mistrial on grounds that the prosecution had disingenuously led her to believe that Kellermeyer never identified appellant at the scene. In support of her contention, defense counsel said that the prosecution's discovery packet contained Bowman's search warrant affidavit,

which included a statement that Kellermeyer identified the necklace appellant was wearing, but was unable to identify appellant as a participant in the robbery. Defense counsel further asserted that, prior to trial, she and the prosecution discussed the fact that Kellermeyer did not identify appellant at the scene. Defense counsel argued that the prosecution must have, at some point, become aware that Kellermeyer would testify that he identified appellant at the scene, as the prosecution cited that fact in opening statement. Defense counsel maintained that under the discovery rules, the prosecution was obligated to provide the defense with any police documentation memorializing Kellermeyer's identification of appellant at the scene. Defense counsel said that she did not file a motion to suppress Kellermeyer's identification of appellant because she relied on the information the prosecution had provided to her both orally and through discovery, and that such failure to file a motion to suppress caused prejudice to appellant.

{¶21} In response, the prosecution asserted that, while he could not remember exactly what he had told defense counsel, he "may have told her that [Kellermeyer] may have trouble ID'ing [appellant because] he had more focus on the weapon that was stuck in his face by this Defendant than actually seeing him." (Tr. 289.) The prosecution noted that defense counsel was aware there had been a show-up identification and that Baldwin had testified that he did not create a written report memorializing that event.

{¶22} Defense counsel reiterated that the prosecution had repeatedly advised her that Kellermeyer could not identify appellant at the scene and this same information was provided in discovery. Defense counsel further reiterated that, had she been apprised that Kellermeyer had identified appellant at the scene, she would have filed a motion to suppress that identification.

{¶23} Following this colloquy, the trial court summarily overruled the motion for mistrial.

{¶24} Upon review of the record and the arguments presented both at trial and on appeal, we conclude that even if appellant could demonstrate that the prosecution committed a discovery violation, that such violation was willful, and that pre-trial disclosure of Kellermeyer's testimony would have aided his defense, we discern no resulting prejudice. Defense counsel was made aware of Kellermeyer's potential testimony during the prosecution's opening statement. The prosecution stated then that Kellermeyer would testify that he had positively identified appellant at the scene as the person who held him at gunpoint and ordered him to surrender his necklace. Kellermeyer later testified exactly as the prosecution said he would. Defense counsel did not object to the prosecution's opening statement or to Kellermeyer's testimony, nor did she request a continuance or move for a mistrial. Because defense counsel was aware of Kellermeyer's testimony during the proceedings, she had an opportunity to alter her trial strategy to account for this testimony.

{¶25} Moreover, defense counsel successfully challenged the credibility of Kellermeyer's testimony as to his purported identification of appellant at the scene. Indeed, defendant elicited testimony from Baldwin that he could not recall whether Kellermeyer identified appellant at the scene as the person who had stolen his necklace at gunpoint. Defense counsel also elicited testimony from Bowman that the search warrant affidavit he prepared included a statement that Kellermeyer was unable to identify appellant at the scene.

{¶26} Finally, even without Kellermeyer's testimony regarding his on-scene identification of appellant, competent, credible evidence established appellant's guilt

beyond a reasonable doubt. At trial, Kellermeyer unequivocally identified appellant as the individual who held him at gunpoint and ordered him to relinquish his necklace. Kellermeyer also identified the air pistol, which contained DNA evidence that could not exclude appellant as a contributor, as the one appellant aimed at him during the robbery. Uncontroverted photographic and testimonial evidence offered by Taliaferro and Kellermeyer established that appellant was wearing Kellermeyer's unique necklace when he was apprehended. At trial, Kellermeyer identified the necklace retrieved from appellant as the one stolen from him during the robbery. During his interview with Bowman, appellant admitted that he broke the glass in Hawthorne's back door. Although he initially denied entering the house, he ultimately admitted that he participated in the robbery, albeit under Justice's orders.

{¶27} Because appellant cannot satisfy all three prongs of the *Jackson* test, we discern no reversible error from the prosecution's possible Crim.R. 16 violation. Accordingly, we need not disturb the trial court's decision to deny appellant's motion for mistrial. Therefore, we overrule appellant's first assignment of error.

{¶28} Appellant's second and third assignments of error are interrelated and thus will be considered jointly. By these assignments of error, appellant contends that the trial court erred by denying his original and renewed Crim.R. 29 motions for acquittal and that his convictions are against the manifest weight of the evidence.

{¶29} A Crim.R. 29(A) motion for acquittal tests the sufficiency of the evidence. *State v. Reddy,* 10th Dist. No. 09AP-868, 2010-Ohio-3892, ¶12. Accordingly, we review the trial court's denial of appellant's motions for acquittal using the same standard applied for reviewing a sufficiency-of-the-evidence claim. Id.

{¶30} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. Whether the evidence is legally sufficient to support a verdict is a question of law. Id.

{¶31} In determining whether the evidence is legally sufficient to support a conviction, " '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶34, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. We will not disturb a verdict unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4.

{¶32} In a sufficiency inquiry, an appellate court does not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence admitted at trial supports the conviction. *State v. Tyson,* 10th Dist. No. 10AP-830, 2011-Ohio-4981, ¶16, citing *Jenks* at paragraph two of the syllabus; *Thompkins* at 390 (Cook, J., concurring); *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79 (noting that evaluation of witness credibility not proper on review for sufficiency of evidence).

{¶33} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *Thompkins* at 387. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. Id.

{¶34} When confronted with a manifest-weight-of-the-evidence challenge, an appellate court may not merely substitute its judgment for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and 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., citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompson,* citing *Martin.*

{¶35} Appellant was convicted of burglary in violation of R.C. 2911.12(A)(1), which provides that "[n]o person, by force, stealth, or deception, shall * * * [t]respass in an occupied structure * * * when another person other than an accomplice of the offender is present, with purpose to commit in the structure * * * any criminal offense." Appellant was also convicted of second-degree felony robbery in violation of R.C. 2911.02(A)(1), which provides that "[n]o person, in attempting or committing a theft offense * * * shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control." Finally, appellant was convicted of third-degree felony robbery in violation of R.C. 2911.02(A)(3), which provides that "[n]o person, in attempting or committing a theft offense * * * shall * * * [u]se or threaten the immediate use of force against another."

{¶36} Appellant does not allege that the prosecution failed to prove a particular element of either burglary or third-degree felony robbery. Rather, appellant premises his sufficiency and manifest-weight challenges to those convictions on essentially the same issues as follows: (1) Kellermeyer did not positively identify appellant at the scene; (2) no fingerprint or evidence linked appellant to Hawthorne's home; (3) appellant was not one of

the two individuals Baldwin initially discovered inside the South High apartment; (4) the DNA evidence obtained from the air pistol did not conclusively connect appellant to the crime; and (5) appellant's admission regarding his presence in Hawthorne's home during the robbery resulted from coercive police tactics, including the threat of a 30-year prison term.

{¶37} Contrary to appellant's first contention, Kellermeyer testified that he positively identified appellant as his assailant at the scene. Although defense counsel elicited testimony from Baldwin and Bowman that arguably cast doubt on Kellermeyer's averment, it was within the province of the jury to assess and resolve the conflicting testimony. "While the jury may take note of the inconsistencies and resolve or discount them accordingly, * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. Moreover, Kellermeyer unequivocally identified appellant in court as the individual who held him at gunpoint and stole his necklace.

{¶38} Regarding appellant's second assertion, while it is true that the prosecution's fingerprint evidence did not link appellant to Hawthorne's home conclusively, the prosecution's witness provided a plausible explanation. Mark Bryant, a latent fingerprint examiner for the Columbus Police Department, testified that obtaining valuable fingerprint evidence from a crime scene is extremely difficult. Indeed, he estimated that such evidence is obtained in only about 30 percent of the cases. He further testified that appellant's touching of the television in Hawthorne's home would not necessarily provide useful fingerprint evidence. Thus, the lack of fingerprint evidence in Hawthorne's home is not, in and of itself, compelling. Moreover, Bowman's testimony places appellant inside Hawthorne's home. Indeed, Bowman testified that appellant

admitted that he broke the glass in the back door in order to unlock it and thereafter participated in the robbery.

{¶39} Appellant's third claim is similarly unavailing. Appellant was eventually apprehended inside the same South High apartment where Baldwin initially discovered Justice and Birt. Indeed, Bowman testified that appellant admitted that after he and Justice robbed Kellermeyer, he ran to Birt's apartment. When Justice denied him entrance, he hid in the closet of an apartment across the hallway. Baldwin testified that when he returned to Birt's apartment, he found appellant sitting in the living room wearing Kellermeyer's necklace.

{¶40} As to appellant's fourth argument, although Fryback acknowledged that the DNA evidence obtained from the air pistol did not establish conclusively that appellant handled the gun, she also testified that appellant could not be ruled out as a contributor to the DNA mixture found on the air pistol. Moreover, "the lack of physical evidence such as fingerprints [or DNA] linking defendant to the gun [does] not preclude the jury from concluding that defendant had handled the gun." *State v. Jackson* (Feb. 22, 2000), 10th Dist. No. 99AP-138.

{¶41} Appellant's final contention is also without merit. Appellant did not testify at trial; hence, the only testimony about the interview came from Bowman. Defense counsel thoroughly cross-examined Bowman about the details of the interview. Indeed, defense counsel asked Bowman if he remembered telling appellant that if he did not cooperate in the investigation, he would receive a 30-year prison sentence. Bowman responded that he "remember[ed] saying the maximum amount of time and I gave him a number, because I do that typically in an interview. I tell him this is the maximum amount of time, and those are all techniques to enable people to tell the truth. * * * I'm sure I [told him

about the time]. I don't recall exactly how much time." (Tr. 251.) Bowman's testimony establishes only that he advised appellant of the maximum penalty he could receive if convicted. Such practice falls short of proof of coercion.

{¶42} Turning now to the second-degree felony robbery conviction, appellant contends that the air pistol used in the robbery did not constitute a "deadly weapon" as required by R.C. 2902.11(A)(1). R.C. 2923.11(A) defines " '[d]eadly weapon' " as "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon."

{¶43} The prosecution's evidence clearly establishes that appellant "used" the air pistol as a weapon during the robbery. Upon entering Hawthorne's house, appellant pointed the air pistol at Kellermeyer and told him he would blow his head off if he did not sit down. Appellant then held the air pistol 9 to 12 inches from Kellermeyer's head and ordered him to hand over his necklace. Kellermeyer testified that he complied with appellant's demand because he was scared. Bowman testified that the air pistol looked like a real gun. Indeed, he said that "[i]f somebody pointed it at me, I would believe it [was a real gun]." (Tr. 220.) Thus, the issue resolves to whether the air pistol was "capable of inflicting death."

{¶44} "A jury is 'entitled to infer the deadly nature of an instrument from the facts and circumstances of its use.' " *State v. Branche,* 10th Dist. No. 01AP-523, 2002-Ohio-1441, quoting *State v. McKnight* (Feb. 5, 1996), 5th Dist. No. 1995CA00241. The test of a deadly weapon is whether it is capable of inflicting death, and the actual use of the weapon does not require the same means for which it was designed. Id., citing *State v. Marshall* (1978), 61 Ohio App.2d 84, 86. In *Marshall,* the defendant pulled a handgun on a convenient store employee and demanded that the employee give him money. The

handgun was later determined to be inoperable. This court concluded that the inoperable handgun used in the robbery was a "deadly weapon" as defined in R.C. 2923.11(A). We stated that "[a] deadly weapon * * * is not limited to firearms because R.C. 2923.11(A) defines 'deadly weapon' to include anything capable of inflicting death for use as a weapon. A gun may inflict death in two ways: (1) in the manner for which it was designed by firing a bullet; (2) by being used as a bludgeon. An inspection of the gun in this case shows that it was capable of inflicting death if used as a bludgeon."

{¶45} In this case, the prosecution introduced the air pistol into evidence as State's Exhibit B. We presume that the jury inspected the air pistol and determined that it was of such size and weight that it was capable of inflicting death if used as a bludgeon. As such, the jury could have concluded that the air pistol used by appellant during the course of the robbery constituted a deadly weapon as provided in R.C. 2911.02(A)(1).

{¶46} Based on a thorough review of the record, we find that the prosecution established that appellant committed the crimes of burglary, second-degree felony robbery, and third-degree felony robbery beyond a reasonable doubt and that his convictions on those crimes is not against the manifest weight of the evidence. Accordingly, we overrule appellant's second and third assignments of error.

{¶47} Having overruled appellant's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and BROWN, J., concur.