[Cite as *State v. Samuel*, 2011-Ohio-6821.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-158
v.	:	(C.P.C. No. 10CR-678)
Mickey D. Samuel,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 30, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Clark Law Office, and *Toki Michelle Clark*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Defendant-appellant, Mickey D. Samuel, appeals the judgment of the Franklin County Court of Common Pleas convicting him of two counts of aggravated robbery, two counts of robbery, two counts of kidnapping, as well as the firearm and repeat violent offender specifications attached to those counts, and one count of having a weapon while under disability.

{¶2} On February 3, 2010, appellant was indicted on two counts of aggravated robbery in violation of R.C. 2911.01, felonies of the first degree; two counts of robbery in

violation of R.C. 2911.02, felonies of the second degree; two counts of kidnapping in violation of R.C. 2905.01, felonies of the first degree; and one count of having a weapon while under disability in violation of R.C. 2923.13, a felony of the third degree. Each of the aggravated robbery, robbery, and kidnapping counts included firearm specifications pursuant to R.C. 2941.145, and repeat violent offender specifications pursuant to R.C. 2941.149. These charges arose from the alleged robbery of Amanda Hair and Tara Shea on May 29, 2009.[1]

{¶3} Appellant waived his right to a jury on the weapons under disability charge. A jury trial was held on the remaining charges, at which the following evidence was adduced.

{¶4} At approximately 6:15 p.m. on May 29, 2009, Shea and her friend, Hair, were driving in Shea's car in the area of Sixth and Krumm in Columbus. Appellant, an acquaintance of both Shea and Hair who lived in the area, flagged Shea down and asked her to take him to a nearby store. Shea agreed on condition that appellant give her $10 for gas money. Shea used the $10 for gas and then drove appellant to the store.

{¶5} After leaving the store a short time later, the three went to appellant's home to smoke a "blunt." (Tr. 66.) Once inside the house, they walked downstairs and into appellant's bedroom. After Shea and Hair sat down, appellant pulled out a gun and demanded that the women turn over their belongings. When Shea began screaming, appellant stomped on her foot and ordered her to be quiet or he would shoot her.

[1] The indictment also charged appellant with one count of aggravated robbery, one count of robbery, one count of kidnapping, all with firearm and repeat violent offender specifications, and one count of having a weapon while under disability, arising from the alleged robbery of Bruce Fleming on November 2, 2009. Prior to trial in the instant matter, the trial court, upon motion of appellant and, with agreement of the prosecution, severed these charges from the indictment. In its amended judgment entry filed following trial

{¶6} Appellant took $15 in cash and a small amount of marijuana Shea had hidden in her shirt. Appellant took a "[weed] grinder," cigarettes, some marijuana, and a cell phone from Hair's purse, as well as $190 in cash and two Oxycontin pills she had hidden in her shirt. (Tr. 115.) When Hair asked appellant to return her cell phone, appellant threatened to kill her and asked her if she planned to call the police. Both she and Shea assured appellant they would not report the robbery.

{¶7} Appellant then ordered the women to leave and continued pointing the gun at them as they walked up the stairs to the first floor. At trial, Shea testified that appellant stated, "I know where you both live and don't think I won't come * * * i[f] you guys tell on me." Shea believed appellant meant "he was going to kill us or something if we told on him." (Tr. 70.) Hair corroborated Shea's testimony, averring that appellant threatened to kill both women if they reported the incident to the police.

{¶8} The women ran out the front door and drove to the home of Hair's mother in Gahanna. Although Shea still had her cell phone, it had no minutes on it, so she could not call the police. The women reported the robbery to Hair's mother, who convinced Hair to call 911. Because Hair's mother's home was outside the jurisdiction of the Columbus police department, Shea and Hair agreed to meet a Columbus police officer at a Columbus location to make a report.

{¶9} Columbus Police Officers Robert Shepherd and David Gardner met with Shea and Hair at approximately 7:15 p.m. on May 29, 2009. The women reported they had been robbed at gunpoint inside appellant's residence. In particular, Hair reported only that appellant took her cash and cell phone. She did not tell the officers about the

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in the instant matter, the trial court, upon request of the prosecution, entered a nolle prosequi on these

Oxycontin pills because she did not have a prescription for them and did not want to get in trouble. Shea reported only that she was present during the robbery. She did not tell the officers she had been robbed because she did not want to get in trouble for having marijuana and she was afraid appellant would retaliate against her. Both women described appellant as an African-American male with short black hair, 5'10" tall, 220 pounds, and missing a tooth. According to Officer Shepherd, the women appeared to be "shaken" and were concerned for their safety; they did not want to return to the scene of the robbery because they were afraid appellant would hurt them. (Tr. 43.)

{¶10} In mid-January 2010, Shea met with a Columbus police detective and identified appellant from a photo array as the individual who had pointed a gun at her, robbed Hair, and threatened to physically harm both women if they reported the incident. Because she was still fearful of appellant, Shea once again did not report that appellant had stolen anything from her. Shea subsequently met with a Franklin County prosecutor and reported that appellant had stolen $15 and marijuana from her.

{¶11} Upon this evidence, the jury returned verdicts finding appellant guilty on the aggravated robbery, robbery, and kidnapping counts and the attendant firearm specifications. The court subsequently found appellant guilty of the repeat violent offender specifications and having a weapon under disability. Based on the convictions and specifications, the trial court sentenced appellant to a 35-year prison term.

{¶12} On appeal, appellant sets forth the following five assignments of error for this court's review:

ASSIGNMENT OF ERROR NO. 1:

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counts, subject to reinstatement upon reversal, vacation or nullification of the conviction in the instant case.

> A TRIAL COURT ERRS AND VIOLATES THE RIGHTS OF A CRIMINAL DEFENDANT WHEN IT ALLOWS THE PROSECUTOR TO MODIFY AN INDCITMENT ON THE EVE OF TRIAL, ESPECIALLY WHERE THE DEFENDANT IS PRO SE.
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> ASSIGNMENT OF ERROR NO. 2:
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> THE CONVICTION IN THIS CASE IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
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> ASSIGNMENT OF ERROR NO. 3:
>
> THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE DEFENDANT'S MOTION FOR ACQUITTAL.
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> ASSIGNMENT OF ERROR NO. 4:
>
> THE JUDGMENT OF CONVICTION AND SENTENCE IMPOSED UPON APPELLANT SAMUEL FOR BEING A REPEAT VIOLENT OFFENDER VIOLATES HIS RIGHT TO DUE PROCESS OF LAW, UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND HIS RIGHT TO TRIAL BY JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, AND THEIR COUNTER PARTS IN THE OHIO CONSTITUTION, ART. I §§9, 16, IN THAT APPELLANT DID NOT WAIVE HIS RIGHT TO TRIAL BY JURY OF THAT OFFENSE/SPECIFICATION AS REQUIRED BY R.C. 2945.05.
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> ASSIGNMENT OF ERROR NO. 5:
>
> THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT'S RIGHT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION BY ENTERING JUDGMENT OF CONVICTION AND SENTENCE UPON HIM FOR BEING A REPEAT VIOLENT OFFENDER IN THE ABSENCE OF LEGALLY SUFFICIENT EVIDENCE TO SUPPORT SUCH A CONVICTION AND SENTENCE.

{¶13} Under the first assignment of error, appellant asserts that the trial court erred in allowing the prosecution, immediately prior to the commencement of trial, to amend Count 4 of the indictment (charging appellant with robbery) to allege Shea rather

than Hair as the victim. Appellant contends that the amendment constituted "a prohibited modification to the substance of the indictment" and that he was required to make "last minute adjustments" to his defense as a result of the amendment.

{¶14} Crim.R 7(D) permits amendment of an indictment at any time before, during or after a trial, with respect to any defect, imperfection or omission in form or substance or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. "An amendment may also not change the penalty or degree of the offenses charged." *State v. Williams,* 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶10, citing *State v. Davis*, 121 Ohio St.3d 239, 2008-Ohio-4537, syllabus.

{¶15} A trial court's decision permitting amendment to an indictment that changes the name or identity of the offense charged constitutes reversible error regardless of whether the accused can demonstrate prejudice. *Columbus v. Bishop,* 10th Dist. No. 08AP-300, 2008-Ohio-6964, ¶24, citing *State v. Honeycutt,* 2d Dist. No. 19004, 2002-Ohio-3490. An amendment that does not change the name or identity of the crime charged is reviewed for an abuse of discretion. *Williams* at ¶11, citing *State v. Kittle,* 4th Dist. No. 04CA41, 2005-Ohio-3198, ¶13, and *State v. Beach,* 148 Ohio App.3d 181, 2002-Ohio-2759, ¶23. An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Williams* at ¶11, citing *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶16} Under Ohio law, "[a]n amendment to an indictment which changes the name of the victim changes neither the name nor the identity of the crime charged." *State v. Henize* (Nov. 1, 1999), 12th Dist. No. CA99-04-008, citing *State v. Owens* (1975), 51 Ohio App.2d 132, 149. See also *State v. Brightman,* 2d Dist. No. 20344, 2005-Ohio-

3173, ¶22 ("changing the person named in the indictment would not have changed the name or the identity of the crime").

{¶17} In the instant case, the amendment of Count 4 of the indictment to correctly name Shea as the victim rather than Hair did not change the name or identify of the offense charged, nor did it change the penalty or degree of the charged offense. Both before and after the amendment, appellant was charged with robbery in violation of R.C. 2911.02, a felony of the second degree.

{¶18} "When an amendment is allowed that does not change the name or identify of the offense charged, the accused is entitled to a discharge of the jury or a continuance, ' "unless it clearly appears from the whole proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which the amendment is made." ' " *Bishop* at ¶26, quoting *Honeycutt,* quoting Crim.R. 7(D). Appellant did not request a continuance[2] or otherwise argue below that he was misled or that the amendment prejudiced his case. Appellant's only objection to the amendment was that "it's not [his] mistake." (Tr. 6.) Absent a demonstration of prejudice, appellant was not entitled to a continuance. In any event, appellant did not request a continuance, but, instead, chose to proceed with the trial. Therefore, appellant failed to request the only available remedy when there has been an amendment of the indictment that changes neither the name nor the identity of the crime charged. *Bishop* at ¶27.

{¶19} Moreover, we agree with plaintiff-appellee, state of Ohio, that a continuance would not have been warranted under the circumstances of this case. Prior to the amendment, the indictment put appellant on notice that his conduct toward Shea would

[2] The jury had not yet been impaneled at the time of the amendment.

be at issue during the trial. Indeed, the indictment alleged Shea to be the victim on Count 2 (aggravated robbery) and Count 6 (kidnapping). In addition, although the physical harm component to Count 4 misidentified the victim as Hair rather than Shea, the theft offense component to Count 4 accurately identified Shea as the victim. In addition, the record includes two handwritten motions to dismiss filed by appellant arguing his innocence with respect to both Shea and Hair. As such, appellant's contention that the amendment required him to make "last minute adjustments" to his defense is unavailing. Appellant was clearly aware that the charges against him pertained to both Shea and Hair. Finally, appellant does not explain what, if anything, he would have done differently had the prosecution not amended the indictment. *Bishop* at ¶26.

{¶20} Given these circumstances, we conclude that the trial court did not abuse its discretion in allowing the prosecution to amend Count 4 of the indictment to allege Shea as the victim of robbery. Accordingly, the first assignment of error is overruled.

{¶21} Appellant's second and third assignments of error are interrelated and will be considered together. Under these assignments of error, appellant challenges both the weight and sufficiency of the evidence, arguing that his convictions were against the manifest weight of the evidence and that the trial court erred in denying his Crim.R. 29(A) motion for acquittal.

{¶22} 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, citing *State v. Knipp,* 4th Dist. No. 06CA641, 2006-Ohio-4704, ¶11. We thus review the trial court's denial of appellant's motion for acquittal using the same standard applicable to a sufficiency of the

evidence review. *Reddy,* citing *State v. Darrington,* 10th Dist. No. 06AP-160, 2006-Ohio-5042, ¶15.

{¶23} Sufficiency of the evidence is a legal standard that tests whether the evidence 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, not fact. Id.

{¶24} In determining whether the evidence is legally sufficient to support a conviction, " 'the 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. A verdict will not be disturbed 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* (2001), 90 Ohio St.3d 460, 484.

{¶25} In a sufficiency of the evidence inquiry, appellate courts do not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence supports the conviction. *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified truthfully and determines if that testimony satisfies each element of the crime").

{¶26} Although there may be sufficient evidence to support a judgment, a court may nevertheless conclude that a judgment is against the manifest weight of the evidence. *Thompkins* at 387. Weight of the evidence concerns the inclination of the greater amount of credible evidence offered at trial to support one side of the issue rather than the other. Id.

{¶27} When presented with a manifest weight challenge, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of 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.' " Id., citing *Martin.*

{¶28} As noted above, in conducting a manifest weight of the evidence review, we may consider the credibility of the witnesses. *State v. Cattledge,* 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶6. However, in conducting such review, "we are guided by the presumption that the jury, or the trial court in a bench trial, 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " Id., quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶29} Appellant was convicted of two counts of aggravated robbery in violation of R.C. 2911.01(A)(1), which provides, as relevant here, that "[n]o person, in * * * committing

a theft offense * * * shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it." Appellant was also convicted of two counts of robbery in violation of R.C. 2911.02(A)(1) and (2), which provides, as pertinent here, that "[n]o person, in * * * committing a theft offense * * * shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control [or] threaten to inflict physical harm on another." Finally, appellant was convicted of two counts of kidnapping in violation of R.C. 2905.01(A)(2), which provides, as relevant here, that "[n]o person, by force [or] threat, * * * shall * * * restrain the liberty of the other person * * * [t]o facilitate the commission of any felony."[3]

{¶30} Appellant does not allege that the prosecution failed to prove a particular element of aggravated robbery, robbery or kidnapping. Rather, appellant premises his sufficiency and manifest weight arguments on essentially the same grounds, i.e., that Shea and Hair lacked credibility. As noted above, in a sufficiency of the evidence inquiry, appellate courts do not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence supports the conviction. *Yarbrough.* Accepting the testimony offered by Shea and Hair as true, a rational trier of fact could have found the essential elements of aggravated robbery, robbery, and kidnapping proven beyond a reasonable doubt. Both Shea and Hair testified that appellant ordered them at gunpoint to give him their belongings and threatened to kill them if they reported the incident to the police. Contrary to appellant's assertion, the fact that the gun was never recovered has no bearing on the sufficiency of the evidence. Testimony offered by Shea and Hair

[3] Appellant does not challenge his conviction for having a weapon while under disability.

sufficiently established that appellant used a gun in the commission of the crimes. As such, we conclude that sufficient evidence supported appellant's convictions for aggravated robbery, robbery, and kidnapping.

{¶31} Appellant's manifest weight arguments are similarly unavailing. Appellant again challenges the credibility of both Shea and Hair. In particular, appellant argues that both women had a history of drug usage, both accompanied appellant to his home in order to use an illegal substance, and both failed to inform the police they were hiding illegal substances on their persons at the time of the robbery. Appellant further notes that he and Shea had a sexual history and that Shea admitted to a theft conviction in February 2007.

{¶32} Both Shea and Hair provided reasonable explanations for their reluctance to report their drug possession to the police. Indeed, both women testified they did not do so because they were afraid they would get in trouble for having illegal substances. "[T]he jury was not precluded from believing a witness simply because the witness may have been, to some degree, uncooperative with the police." *State v. Darthard,* 10th Dist. No. 07AP-897, 2008-Ohio-2425, ¶18. Moreover, the evidence regarding the women's drug usage, drug possession, Shea's prior conviction, and Shea's relationship with appellant was presented to the jury, and the jury was free to resolve or discount it accordingly. Indeed, the jury is free to believe all, part or none of the testimony of each witness appearing before it. *Cattledge* at ¶6, citing *Hill v. Briggs* (1996), 111 Ohio App.3d 405, 412.

{¶33} Appellant further contends that the women lacked credibility because they waited an hour to call the police and Officer Shepherd opined that an hour delay in calling

indicated that the women "didn't take [the incident] all that serious." (Tr. 57.) We note initially that appellant incorrectly asserts that the women waited an hour to call the police. The evidence established that Hair called 911 approximately 30 minutes after the robbery. She explained that she did not call sooner because appellant had taken her cell phone and she drove to her mother's house in Gahanna before making the call. Hair estimated that the drive from her mother's house to the place they agreed to meet the police took approximately 15 minutes and that she and Shea waited another 15 minutes for the officers to arrive. Accordingly, Officer Shepherd's opinion regarding the women's alleged failure to call the police for one hour was based upon a faulty premise. Moreover, under the circumstances, any delay in calling the police was understandable, given that appellant had stolen Hair's cell phone, Shea's cell phone had no minutes on it, and appellant had threatened to kill the women if they reported the incident to the police.

{¶34} We further cannot agree with appellant's contention that Shea's slamming of the door as she left appellant's house and the fact that the police did not visit the crime scene compels his acquittal. Even accepting appellant's assertion that "[t]he slamming of a man's door by a woman indicates an emotional response," such does not establish that the robbery did not occur. Moreover, Shea explained that she slammed the door as she left because she was "scared and aggravated" because she had just been robbed at gunpoint. (Tr. 93.) Finally, the fact that the police did not visit the crime scene has no bearing on the credibility of Shea and Hair.

{¶35} In a manifest weight review, an appellate court "must bear in mind the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses." *State v. Mickens,* 10th Dist. No. 08AP-626, 2009-Ohio-1973, ¶30, citing

State v. DeHass (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The fact finder's determination of witnesses' credibility is entitled to great deference. *State v. Covington,* 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28. The jury apparently found the testimony offered by Shea and Hair regarding the robbery to be credible. After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of Shea and Hair, we conclude that a reasonable jury could have found that appellant robbed the two women at gunpoint on May 29, 2009, and that the jury did not lose its way and create a manifest miscarriage of justice in so finding. Accordingly, we find that appellant's convictions for aggravated robbery, robbery, and kidnapping are not against the manifest weight of the evidence.

{¶36} Appellant's second and third assignments of error are overruled.

{¶37} Appellant's fourth and fifth assignments of error are interrelated and thus will be considered jointly. Together, they challenge the trial court's determination that appellant is a repeat violent offender.

{¶38} R.C. 2941.149 governs repeat violent specifications. R.C. 2941.149(A) provides that a court may not determine an offender to be a repeat violent offender absent a specification in the indictment to that effect. R.C. 2941.149(B) states that "the court shall determine the issue of whether an offender is a repeat violent offender." R.C. 2941.149(D) avers that the term "repeat violent offender" is defined in R.C. 2929.01. R.C. 2929.01(CC) defines "repeat violent offender" as a person who: (1) is being sentenced for committing or complicity in committing aggravated murder, murder, a felony of the first or second degree that is an offense of violence, an attempt to commit any of these offenses if the attempt is a felony of the first or second degree or a substantially equivalent offense,

and (2) was previously convicted of or pleaded guilty to one of the aforementioned offenses.

{¶39} Prior to resting its case, the prosecution moved to admit State's Exhibit 5, a certified copy of a 1994 Clark County Court of Common Pleas judgment entry of conviction in which appellant pled guilty to five counts of aggravated robbery, including one with a firearm specification, all felonies of the first degree. Appellant stipulated to the convictions, and the trial court admitted the exhibit.

{¶40} Thereafter, just prior to sentencing, the trial court considered the repeat violent offender specifications. Appellant acknowledged that he had previously stipulated to the 1994 convictions, but clarified that the five convictions arose from one incident where he, age 16 at the time, robbed five people simultaneously. The trial court thereafter determined appellant to be a repeat violent offender.

{¶41} Appellant contends in the fourth assignment of error that, absent a written jury waiver, only a jury can determine whether an offender is a repeat violent offender. The record reveals there is no written jury waiver. Appellant argues that R.C. 2941.149(B), which, as noted above, states that "the court shall determine the issue of whether an offender is a repeat violent offender," "can be interpreted" to mean that the determination of whether an offender is a repeat violent offender must be made "in court," and thus must be made by the jury.

{¶42} We note initially that appellant cites no authority supporting his construction of R.C. 2941.149(B). Moreover, this court has stated that "[if] an indictment contains a repeat violent offender specification, *it is the court that shall determine the issue of whether the offender is a [repeat violent offender].*" *State v. Brown,* 10th Dist. No. 10AP-

836, 2011-Ohio-3159, ¶16, citing R.C. 2941.149(B) (emphasis added). See also *State v. Brumley,* 12th Dist. No. CA2004-05-114, 2005-Ohio-5768, ¶20 ("[p]ursuant to R.C. 2941.149(B), the sentencing court, not a jury, must determine an offender's status as a repeat violent offender").

{¶43} Furthermore, appellant stipulated to his 1994 convictions, so the trial court "had no need to conduct fact-finding in connection with" the prior conviction element of the repeat violent offender specifications. *State v. Hunter,* 123 Ohio St.3d 164, 2009-Ohio-4147, ¶33. In addition, the Sixth Amendment does not require the existence of a prior conviction to be found by a jury, so the trial court's finding that appellant is a repeat violent offender did not infringe on his jury trial rights. Id. at ¶34-40.

{¶44} Under the fifth assignment of error, appellant argues that the prosecution presented insufficient evidence of a prior conviction to support the conviction under the repeat violent offender specifications. Appellant contends that, because he was a juvenile at the time, his 1994 aggravated robbery convictions from Clark County do not satisfy the prior-conviction element of the repeat violent offender specifications. However, the definition of repeat violent offender in R.C. 2929.01(CC)(2) requires only that the offender "previously was convicted of or pleaded guilty to" a qualifying offense. The statute does not require that the offender be a certain age at the time of the prior offense.

{¶45} Moreover, appellant admitted that he was bound over to the Clark County Common Pleas Court and convicted as an adult. Appellant's chronological age therefore has no effect on the validity of his 1994 convictions. *State v. Sargent* (1998), 126 Ohio App.3d 557, 564 (prior conviction element of repeat violent offender statute satisfied when evidence showed that Kentucky juvenile court relinquished its jurisdiction and the

defendant was convicted as an adult). See also *State v. Allmond*, 8th Dist. No. 89020, 2007-Ohio-6191 (evidence sufficient to support repeat violent offender specification where defendant stipulated to juvenile delinquency adjudications for aggravated robbery and felonious assault).

{¶46} Finally, appellant argues in passing that the trial court erred by imposing consecutive three-year additional sentences for the two repeat violent offender specifications.[4] Appellant's contention is without merit, as R.C. 2929.14(D)(2)(a) permits a trial court to impose an additional one to ten years on any count in which the offender is found guilty of a repeat violent offender specification, and a trial court has discretion to impose consecutive sentences on multiple counts. *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus.

{¶47} In short, the trial court committed no error in finding appellant guilty of the repeat violent offender specifications. The fourth and fifth assignments of error are overruled.

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

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.

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[4] The trial court merged the robbery and kidnapping convictions into the aggravated robbery convictions.