[Cite as *State v. Boddie*, 2012-Ohio-5473.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-74
v.	:	(C.P.C. No. 10CR-06-3236)
Howard Boddie, Jr.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 27, 2012

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Steven A. Larson, for appellant; *Howard Boddie, Jr.*, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Howard Boddie, Jr. ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of having a weapon while under disability. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted on one count of having a weapon while under disability. The charge is a third-degree felony. He pleaded not guilty to the charge, and the trial court appointed an attorney to represent him because he was indigent. Before trial, however, appellant complained about his attorney's performance. The trial court

refused to appoint another attorney, and appellant kept his attorney rather than represent himself.

{¶ 3} At trial, Karen Monroe testified as follows. Monroe dated appellant, and they shared an apartment. On February 23, 2008, Monroe saw appellant in the apartment with a gun, and she left because she was scared. When she returned later that day, appellant pointed his gun at her and started shooting. Monroe called the police. Appellant jumped out a window and landed on the roof of the porch. The police arrested appellant and took him to jail. Appellant told Monroe in a letter from jail that " '[a]fter we get these charges dismissed, we never have to worry about that weapon again.' " (Tr. 98-99.) He also previously admitted to being convicted of aggravated burglary in the 1980s. Lastly, Monroe identified state's exhibit A as appellant's gun.

{¶ 4} Columbus Police Officer Troy Hammel responded to Monroe's call for help, and he testified that bullet casings were inside her apartment. He also said that he found appellant on the roof of the porch and that a gun was four to six feet away from appellant. Hammel identified state's exhibit A as that gun. Columbus Police Officer Phillip Jackson testified that there were multiple bullet holes on the walls where the shooting occurred. Mark Hardy, a forensic scientist with the Columbus Police Department, tested the gun and bullet casings that were recovered after the shooting. He testified that the gun was operable and that the bullet casings were fired from that gun.

{¶ 5} Lisa Beck is employed with the Identification Bureau at the Franklin County Sheriff's Department, and she testified as follows. Beck has been in her position for nine years, and she has compared "[t]housands" of fingerprints as part of her job. (Tr. 240.) The prosecutor asked Beck to discuss the different ways fingerprints are collected, and defense counsel objected. The parties had a discussion off the record, and Beck continued with her testimony. The prosecutor asked Beck to compare appellant's fingerprints, which were taken in court, with the fingerprint of a Howard Boddie, Jr., taken in August 1987. Beck said the fingerprints matched.

{¶ 6} Beck noted that appellant was fingerprinted in August 1987 after he was incarcerated in the county jail for an aggravated burglary arrest. Beck said that the

fingerprint was on a record containing appellant's physical characteristics and military history. She indicated that her employer, the identification bureau, creates a record for each county jail inmate, and she said that the records are never destroyed. Beck identified state's exhibit E as a copy of the 1987 record, and she said that the exhibit was "true and accurate." (Tr. 241.) The trial court admitted the exhibit into evidence with no objection from defense counsel. The prosecutor also moved to admit a certified copy of a judgment entry indicating that a person named Howard Boddie, Jr., was convicted of aggravated burglary in May 1988, and the trial court admitted the entry into evidence.

{¶ 7} On cross-examination, Beck acknowledged that she has never been declared a fingerprint expert. She noted, however, that she took classes on fingerprint comparison and that she previously compared fingerprints while testifying in court. Defense counsel subsequently argued that Beck was not qualified to compare the fingerprints taken in court with the 1987 fingerprint. The trial court concluded, however, that Beck "had enough training" to make that comparison. (Tr. 266.)

{¶ 8} At the close of the evidence, defense counsel moved for an acquittal pursuant to Crim.R. 29(A). As above, defense counsel challenged Beck's fingerprint comparison. The trial court concluded that the jury was permitted to consider Beck's testimony, however, and it denied the motion for acquittal. Defense counsel also criticized Beck's fingerprint comparison during closing argument. Afterward, the jury found appellant guilty of having a weapon while under disability.

II. ASSIGNMENTS OF ERROR

{¶ 9} Appellant appeals, and his counsel assigns the following as error:

> [I.] HOWARD BODDIE JR. WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS BECAUSE TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO LISA BECK GIVING HER EXPERT OPINION ON THE IDENTIFICATION AND COMPARISON OF FINGERPRINTS WHEN SHE WAS NOT AN EXPERT ON FINGERPRINT COMPARISON.
>
> [II.] HOWARD BODDIE JR. WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS BECAUSE TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE ADMISSION OF STATE'S EXHIBIT "E" OR ANY

> DISCUSSION REGARDING THE ORIGINAL DOCUMENT P[UR]PORTING TO CONTAIN AN ORIGINAL PRINT OF APPELLANT AS NEITHER THE ORIGINAL DOCUMENT OR THE COPY WERE PRODUCED BY A RECORDS CUSTODIAN OR WERE SELF-AUTHENTICATING.
>
> [III.] THE TRIAL COURT VIOLATED HOWARD BODDIE, JR.'S R[I]GHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION FOR HAVING WEAPONS WHILE UNDER DISABILITY WHICH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U. S. CONSTITUTION, AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.
>
> [IV.] THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S RULE 29 MOTION AS THERE WAS NOT SUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT.

{¶ 10} This court also granted appellant leave to file a supplemental brief, pro se, in which he asserts the following assignment of error:

> APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL FOR COUNSEL'S FAILURE TO INVESTIGATE VARIOUS REPORTS IN CONJUNCTION TO PLAINTIFF'S WITNESS KAREN MONROE AND OTHER PERTINENT INVESTIGATIONS[.]

III. DISCUSSION

A. First, Second, and Supplemental Assignments of Error: Ineffective Assistance of Counsel

{¶ 11} In his first, second, and supplemental assignments of error, appellant argues that his defense counsel rendered ineffective assistance. We disagree.

{¶ 12} The United States Supreme Court established a two-pronged test for ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). First, the defendant must show that counsel's performance was outside the range of professionally competent assistance and, therefore, deficient. *Id.* at 687. Second, the defendant must show that counsel's deficient performance prejudiced the defense and deprived the defendant of a fair trial. *Id.* A defendant establishes prejudice if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 694.

{¶ 13} Appellant first claims that defense counsel failed to challenge Beck's opinion that the 1987 fingerprint matches the fingerprints he provided in court. But defense counsel made multiple arguments to the trial court that Beck was not qualified to provide that opinion, and he objected when the prosecutor began to lay a foundation for Beck to testify about her opinion. In addition, defense counsel cross-examined Beck on her opinion, and he criticized it during closing argument. Therefore, we reject appellant's contention that defense counsel did not challenge Beck's opinion.

{¶ 14} Next, appellant asserts that defense counsel was ineffective for failing to object to state's exhibit E on grounds that it was not authenticated. An exhibit must be authenticated before it is admitted into evidence. *State v. Griffin*, 10th Dist. No. 10AP-902, 2011-Ohio-4250, ¶ 64. An exhibit is authenticated when the record establishes that it "is what its proponent claims." Evid.R. 901(A). "[T]he threshold standard for authenticating evidence pursuant to Evid.R. 901(A) is low, and 'does not require *conclusive* proof of authenticity * * *.' " (Emphasis sic.) *State ex rel. Montgomery v. Villa*, 101 Ohio App.3d 478, 485 (10th Dist.1995), quoting *State v. Easter*, 75 Ohio App.3d 22, 25 (4th Dist.1991). Here, the prosecution submitted state's exhibit E as a copy of Howard Boddie, Jr.'s record from county jail, and Beck authenticated the exhibit when she testified that it was a true and accurate copy of the inmate's record, which was created and maintained by her employer, the identification bureau, as part of its regular duties. *See* Evid.R. 901(B)(7). Consequently, defense counsel was not deficient for declining to challenge the authenticity of state's exhibit E.

{¶ 15} Appellant also claims that state's exhibit E was inadmissible because it was a photocopy. Under Evid.R. 1003, however, the trial court is permitted to admit photocopied records into evidence. Therefore, defense counsel need not have objected to state's exhibit E on grounds that it was a photocopy. Lastly, appellant argues that defense counsel should have objected to the exhibit because it contained information about his military record. According to appellant, the jury might have determined that he had a propensity to use guns because of his military background. But it was

reasonable for defense counsel to have concluded instead that the jury would look favorably on appellant for his military service.

{¶ 16} Appellant additionally contends that defense counsel was ineffective for not calling witnesses on his behalf. An attorney's decision not to call witnesses is a matter of trial strategy, however, and a reviewing court will not second-guess it. *State v. Treesh*, 90 Ohio St.3d 460, 490 (2001). In addition, appellant claims that defense counsel was ineffective when he cross-examined the prosecution's witnesses. But cross-examination is also a matter of trial strategy, and even debatable trial tactics do not establish ineffective assistance of counsel. *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, ¶ 146.

{¶ 17} Next, appellant argues that defense counsel was ineffective for not presenting evidence that he was originally charged with a misdemeanor gun offense. Appellant fails to establish why that fact is relevant, however. In any event, appellant's argument is based on evidence not in the record, and "[a]n appellate court's direct review of an ineffective assistance claim 'is strictly limited to the record.' " *State v. McClurkin*, 10th Dist. No. 08AP-781, 2009-Ohio-4545, ¶ 61, quoting *State v. Lewis*, 10th Dist. No. 04AP-1112, 2005-Ohio-6955, ¶ 35-36. Likewise, there is nothing in the record to support appellant's claim that defense counsel was required to assert a discovery violation.

{¶ 18} Appellant further contends that defense counsel should have objected to the indictment because the evidence does not support the weapon under disability charge. We reject that contention, however, for the reasons we discuss below. Lastly, appellant argues that defense counsel was ineffective for not withdrawing before trial so that another attorney could have been appointed to represent him. But an indigent defendant is not entitled to his counsel of choice. *State v. Hairston,* 10th Dist. No. 08AP-735, 2009-Ohio-2346, ¶ 38.

{¶ 19} For all these reasons, we hold that appellant's defense counsel did not render ineffective assistance. We overrule appellant's first, second, and supplemental assignments of error.

B. Fourth Assignment of Error: Crim.R. 29(A)

{¶ 20} We next address appellant's fourth assignment of error, in which he argues that the trial court erred by denying his Crim.R. 29(A) motion for acquittal. We disagree.

{¶ 21} A motion for acquittal under Crim.R. 29(A) is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37. That standard tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶ 192. 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. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Treesh* at 484. 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. *State v. Lindsey*, 190 Ohio App.3d 595, 2010-Ohio-5859, ¶ 35 (10th Dist.). *See also State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶ 22} Appellant was convicted of having a weapon while under disability, pursuant to R.C. 2923.13(A)(2), which states that "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if * * * [t]he person * * * has been convicted of any felony offense of violence." At trial, the prosecution contended that appellant was previously convicted of aggravated burglary and submitted evidence to that effect.

{¶ 23} We have two briefs before us that were filed on behalf of appellant. In his counsel-filed brief, appellant admits that aggravated burglary is a felony offense of violence, but he contends that the prosecution failed to prove that he had a prior conviction for aggravated burglary. In his pro se, supplemental brief, however,

appellant admits that he was on "parole for Aggravated Burglary in 1999." (Supplemental brief of defendant-appellant at 5.) Despite this contradiction, we turn to the law and evidence at issue.

{¶ 24} R.C. 2945.75(B)(1) provides that a copy of a judgment entry, with proof that the individual named in the entry is the offender in the case at bar, is "sufficient to prove such prior conviction." While this provision prescribes a sufficient method for proving a prior conviction, it is not the only method by which to do so. *State v. Gwen*, __ Ohio St.3d __, 2012-Ohio-5046, ¶ 1, 14; *State v. Volpe*, 10th Dist. No. 06AP-1153, 2008-Ohio-1678, ¶ 51. Moreover, a match between the defendant's name and the name on a prior entry is not enough to make this showing. *State v. Lumpkin*, 10th Dist. No. 05AP-656, 2006-Ohio-1657, ¶ 16.

{¶ 25} Here, the state submitted a certified judgment entry issued by the Franklin County Court of Common Pleas in May 1988. The entry indicates that a Howard Boddie, Jr., pled guilty to, and was convicted of, aggravated burglary, in violation of R.C. 2911.11. The state also submitted an Identification Bureau Master History Sheet from the Franklin County Sheriff's Office. The sheet indicates that a Howard Boddie, Jr., was charged with aggravated burglary, in violation of R.C. 2911.11, in August 1987, the same crime for which Howard Boddie, Jr., was convicted in 1988. Beck testified that the history sheet records all the information about a person when he is brought in to the sheriff's office and that fingerprints are gathered "to get their FBI, BCI numbers. So this piece of paper right here has all that information on it along with a right index fingerprint." (Tr. 241.) At trial, Beck obtained a right index fingerprint from appellant. She then testified that the fingerprint on the 1987 history sheet matched appellant's fingerprint. And finally, Monroe testified that appellant told her about a conviction for aggravated burglary "in the eighties." (Tr. 87-88.)

{¶ 26} Construing the evidence in a light most favorable to the prosecution, we conclude that the state's evidence was sufficient to prove that appellant has a prior conviction for aggravated burglary. Accordingly, we also conclude that sufficient evidence supports appellant's conviction for having a weapon while under disability and

that the trial court did not err by denying his motion for acquittal on that charge. We overrule appellant's fourth assignment of error.

C. Third Assignment of Error: Manifest Weight of the Evidence

{¶ 27} In his third assignment of error, appellant argues that his conviction is against the manifest weight of the evidence. We disagree.

{¶ 28} When presented with a manifest weight challenge, we weigh the evidence to determine whether 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. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, ¶ 220. The trier of fact is afforded great deference in our review. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 26. And we reverse a conviction on manifest weight grounds for only the most exceptional case in which the evidence weighs heavily against a conviction. *Lang* at ¶ 220.

{¶ 29} Appellant claims that there is no credible evidence linking him to the 1988 aggravated burglary. We have already concluded, however, that Beck provided that link when she testified that appellant's fingerprints, taken during trial, match the fingerprint of the individual arrested and convicted of aggravated burglary. It was within the province of the jury to accept Beck's testimony given that she has training and experience with fingerprint comparisons, and she has previously compared fingerprints while testifying in court. In addition, Beck's opinion is corroborated by appellant's admission that he has a prior aggravated burglary conviction. Therefore, the jury did not lose its way by finding that appellant has a prior aggravated burglary conviction.

{¶ 30} Appellant also asserts that Monroe was not credible when she testified that he had a gun on February 23, 2008. But corroborating evidence supports Monroe's testimony. Monroe identified state's exhibit A as appellant's gun, Hammel said that he found appellant a few feet away from that gun, and the evidence proves that appellant shot the gun. Appellant demonstrated furtive conduct reflective of a consciousness of guilt when he fled out the window after shooting his gun. *See State v. Hamilton*, 10th Dist. No. 11AP-981, 2012-Ohio-2995, ¶ 15. And, in a letter from jail, appellant admitted to Monroe that he had a gun.

{¶ 31} To conclude, the trier of fact is in the best position to determine witness credibility. *State v. Mitchell*, 10th Dist. No. 11AP-377, 2012-Ohio-466, ¶ 19. Here, the jury accepted evidence proving that appellant committed the offense of having a weapon while under disability, and we discern no basis for disturbing the jury's conclusion. Accordingly, appellant's conviction is not against the manifest weight of the evidence. We overrule appellant's third assignment of error.

IV. CONCLUSION

{¶ 32} Having overruled appellant's first, second, third, fourth, and supplemental assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.