

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|                      |   |                           |
|----------------------|---|---------------------------|
| State of Ohio,       | : |                           |
|                      | : |                           |
| Plaintiff-Appellee,  | : |                           |
|                      | : |                           |
| v.                   | : | No. 12AP-470              |
|                      | : | (C.P.C. No. 11CR-11-5866) |
| Brandon D. Harris,   | : |                           |
|                      | : | (REGULAR CALENDAR)        |
| Defendant-Appellant. | : |                           |

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D E C I S I O N

Rendered on June 27, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellee.

*Kirk A. McVay*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Brandon D. Harris is appealing from his conviction for robbery, a felony of the second degree. A second charge of robbery as a felony of the third degree was merged with the second degree robbery. Harris assigns a single error for our consideration:

THE TRIAL COURT ERRED, DEPRIVING DEFENDANT-APPELLANT OF HIS RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WHEN IT PRONOUNCED APPELLANT GUILTY PURSUANT TO THE JURY'S VERDICTS WHEN THE MANIFEST WEIGHT OF THE EVIDENCE WOULD NOT SUPPORT SAID VERDICTS.

{¶ 2} Since the only issue on appeal is whether the jury's verdicts are consistent with the manifest weight of the evidence, we will address that issue in some detail. In

determining whether a verdict is against the manifest weight of the evidence, this court acts as a "thirteenth juror." This role allows the court to weigh the evidence in order 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. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (Feb. 9, 1983). However, the power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, i.e., when "the evidence weighs heavily against the conviction." *Thompkins* at 387, quoting *Martin* at 175.

{¶ 3} An appellate court acting in its role as "thirteenth juror" also must keep in mind the trier of fact's superior, first-hand position in judging the demeanor and credibility of witnesses. "On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. A court of appeals cannot reverse a jury verdict on manifest-weight grounds unless all three appellate judges concur. *Thompkins* at 389.

{¶ 4} Turning to the evidence presented at trial, Michael Hammond was walking home from a local bar when he was wrestled to the ground and robbed by three individuals, two African-American males and a white female. Hammond called 911 and police responded promptly. The sole question addressed at trial was the identity of the three robbers.

{¶ 5} After they received Hammond's call, police stopped two African-American males and a white female nearby. Hammond was taken to the place where the three were being detained in order for him to identify the three as the group who robbed him. Brandon D. Harris was one of the three. Harris had fled when police first approached the group.

{¶ 6} Hammond told police that Harris was one of the robbers. At that time, Hammond was 100 percent sure of Harris's involvement.

{¶ 7} Harris denied being involved in the robbery but admitted seeing Hammond that night and described Hammond as "drunk and boozy as a bitch when he was walking down the street." (Tr. 122.) Harris claims that he had run from police when they approached him because he was on probation already.

{¶ 8} Hammond testified at the trial that he had drank six beers and had a couple of shots of tequila during the four and one-half hours before he was robbed. However, Hammond did not feel drunk.

{¶ 9} Hammond down-graded his level of certainty about the identity issue from 100 percent to 70 percent at trial. However, this change did not make the jury's verdict unreasonable. Harris and two companions who matched the description given by Hammond were seen by a police helicopter a matter of blocks away very shortly after the robbery. Harris fled upon being approached by police. Hammond was sure of Harris's involvement almost immediately after the robbery.

{¶ 10} The guilty verdicts were in fact consistent with the weight of the evidence.

{¶ 11} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BROWN and CONNOR, JJ., concur.

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