

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 14AP-254
Plaintiff-Appellee,	:	(C.P.C. No. 13CR-05-2801)
v.	:	
	:	(REGULAR CALENDAR)
Ricky R. Taylor,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 23, 2015

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

Blaise G. Baker, for appellant.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Ricky R. Taylor, appeals from the March 25, 2014 judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to jury verdict, of two counts of aggravated robbery in violation of R.C. 2911.01, felonies of the first degree, with specifications; two counts of robbery in violation of R.C. 2911.02, a felony of the second degree, with specifications; two counts of robbery in violation of R.C. 2911.02, a felony of the third degree, with specifications; two counts of kidnapping in violation of R.C. 2905.01, a felony of the first degree, with specifications; one count of rape in violation of R.C. 2907.02, a felony of the first degree, with specifications; and one count of having a weapon while under disability in violation of R.C. 2923.13, a felony of the third degree. Because sufficient evidence and the manifest weight of the evidence support the jury's verdict finding appellant guilty of all counts, including all specifications, we affirm.

I. Facts and Procedural History

{¶ 2} Early in the morning hours of May 4, 2013, R.M. and his fiancée, D.W., were in their car after leaving Club 57 near the intersection of Livingston Avenue and Beechwood Road in Columbus. As they prepared to drive away, appellant approached the driver's door and pointed a gun at them. Appellant then opened the driver's door and ordered R.M. and D.W. at gunpoint to give him all of their money and other property. After D.W. emptied her handbag and gave appellant her bank card, R.M. handed over some money from his pockets.

{¶ 3} Appellant then directed R.M. and D.W. to exit the vehicle and take off their clothes. At this time, appellant took from R.M. over \$700 in cash, his state identification card, wallet, and jewelry. Appellant then ordered D.W. to get up off the ground and, at gunpoint, took her to the rear of the vehicle. Appellant told D.W., who was wearing only her top, to put his penis into her vagina. D.W. could not comply initially because, according to her, appellant had an insufficient erection, and D.W. was using a tampon.

{¶ 4} Appellant ordered D.W. to remove the tampon, and she dropped it on the ground. Appellant again attempted to penetrate D.W., and this time succeeded. Appellant engaged in sexual intercourse with D.W. for a few minutes, stopping only when D.W. told him that she had recently given birth. Appellant then told D.W. to get back on the ground and said that he was leaving to rob some other people who were just then leaving the club. Appellant threatened that someone else in a nearby vehicle would shoot R.M. and D.W. if either of them moved.

{¶ 5} After a few moments, R.M. and D.W. got up and drove away. As the two stopped at the club to inform security of the robbery and sexual assault, they heard gunshots. R.M. then took D.W. to Grant Hospital, where she underwent a sexual assault examination. The sexual assault nurse examiner found semen in D.W.'s underwear that was recovered and analyzed.

{¶ 6} Later that same night, Columbus police officers responded to the report of a shooting victim at an apartment building on Maumee Bay Way in Columbus. When police arrived, they found appellant, the shooting victim, on the ground. The officer who put appellant into an ambulance checked his pockets for weapons and found over \$700 in cash and R.M.'s state identification. Investigators also found a gold necklace belonging to

R.M. at the scene. The crime scene investigators later responded to the Club 57 scene where they found spent shell casings, a spent projectile, loose change, a cigarette pack, and a tampon.

{¶ 7} The next day, R.M. identified appellant in a photo array, although D.W. was unable to identify anyone in the array presented to her. After appellant emerged from a coma, a police detective spoke to him at the hospital. In this initial police interview, appellant said that he had been shot on May 2, 2013 in a shootout in the Whitehall Kroger parking lot. A few days later, appellant spoke to another detective and repeated the same account. Appellant denied being present at Club 57 or having sexual intercourse with D.W. that night. Appellant said he had no knowledge of any of the events of May 4, 2013 and did not know how R.M.'s property ended up in his pockets. At trial, appellant attributed these comments to memory loss arising from his shooting and testified that he was at Club 57 on May 4 to complete a drug deal with R.M. and that D.W. was not present.

{¶ 8} Appellant was charged by indictment filed on May 23, 2013, with two counts of aggravated robbery; two counts of robbery, felonies of the second degree; two counts of robbery, felonies of the third degree; two counts of kidnapping; one count of rape; and one count of having a weapon while under disability. All counts except the last were charged with firearm specifications. Appellant pled not guilty to all the charges, and a jury trial began on March 18, 2014.

{¶ 9} On March 21, 2014, the jury returned a verdict, finding appellant guilty on all counts, including the firearm specifications. For the purposes of sentencing, the trial court merged the two robbery counts and one kidnapping count into the aggravated robbery count with respect to D.W.; the two robbery counts and one kidnapping count into the aggravated robbery count with respect to R.M.; and all the specifications, with the exception of those charged in the aggravated robbery and rape counts with respect to D.W. Appellant was sentenced to 11 years on each aggravated robbery count and the rape count, and 3 years on the weapon under disability count. The court ordered that the aggravated robbery count with respect to D.W., the rape count, the weapon while under disability count, and the two firearm specifications be served consecutively. The court also ordered that the aggravated robbery count with respect to R.M. be served concurrently to the other counts and specifications, for a total incarceration of 31 years.

The court also informed appellant that he was a Tier III sexual offender and would be required to register and verify his address in person every 90 days.

II. Assignment of Error

{¶ 10} Appellant assigns the following error:

The trial court violated Defendant-Appellant's rights to due process and a fair trial when in the absence of sufficient evidence and against the manifest weight of evidence the trial court found Defendant-Appellant guilty of aggravated robbery, robbery, kidnapping, rape, having a weapon while under disability, and corresponding specifications.

III. Sufficiency of the Evidence

{¶ 11} Whether evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). A reviewing court's function is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the appellant's guilt beyond a reasonable doubt. "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. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A reviewing court, therefore, determines not whether the prosecution's evidence is to be believed but whether, if believed, the evidence against an appellant would support conviction. *Thompkins* at 390.

A. Sufficiency of the Evidence—Counts 1 and 6 Aggravated Robbery

{¶ 12} To convict appellant of aggravated robbery in violation of R.C. 2911.01(A)(1), the state was required to prove that, while committing a theft offense as defined in R.C. 2913.01(K), appellant had a deadly weapon on or about his person or under his control and displayed or brandished the weapon or indicated that he possessed the weapon. The definition of theft offense, pursuant to R.C. 2913.01(K), includes violations of R.C. 2911.02, robbery, as well as R.C. 2913.02, theft. Theft prohibits a person, with purpose to deprive the owner of property, from knowingly obtaining or exerting control over the property, without consent of the owner, by threat or by intimidation. A person acts with a particular purpose when "it is [his] specific intention to cause a certain result." R.C. 2901.22(A). Deadly weapon is defined in R.C. 2923.11 as

"any instrument, device, or thing capable of inflicting death, and designed or specifically adapted for use as a weapon, or possessed, carried, or used as a weapon."

{¶ 13} R.M. testified that appellant "come up from the side of the car with the gun and pointed -- and put it to the window" of the car in which he and D.W. were parked. (Tr. Vol. I, 47.) R.M. stated that, after demanding money from D.W., he turned to R.M. and said "[W]hat you got?" (Tr. 47.) R.M. then gave him money and other items that were in his pockets. R.M. testified that appellant searched his pockets and took his jewelry, personal identification, wallet, pocketknife, and approximately \$700 from him at gunpoint.

{¶ 14} Detective Kevin Jackson testified that he responded later that night to a report that a shooting victim, who later turned out to be appellant, was found at a residential complex. At that scene, he found a wallet, R.M.'s personal identification, a pocketknife, jewelry, and approximately \$700. Officer Heidi Dripps testified that she was the officer who removed R.M.'s personal identification and the \$700 from appellant's pockets upon arriving at the scene.

{¶ 15} Furthermore, R.M. positively identified appellant in a photo array and testified in court that appellant was the person who pointed a gun at D.W. while she was in the driver's seat of their parked car and demanded money and their other property. Although D.W. was unable to identify a photograph of appellant in a police photo array, she testified that the perpetrator put a gun in her face and told her to "shut up, give me all your money." (Tr. Vol. I, 100.) D.W. further testified that she emptied out her handbag at gunpoint and gave appellant her bank card. Appellant admitted during an interview with police that he had a 9 mm Hi-Point on the night of the events in question, although he denied it at trial. In light of R.M. and D.W.'s testimony, coupled with R.M.'s photo array identification of appellant, the record contains sufficient evidence supporting the jury's verdict that appellant committed aggravated robbery in violation of R.C. 2911.01 both with respect to D.W. and R.M.

B. Sufficiency of the Evidence—Counts 2 and 7 Robbery, Felonies Second Degree

{¶ 16} To convict appellant of robbery in the second degree in violation of R.C. 2911.02(A)(1) or (2), the state was required to prove that appellant, in attempting or

committing a theft offense or in fleeing immediately thereafter, had a deadly weapon on or about his person or under his control and/or inflicted, attempted to inflict, or threatened to inflict physical harm on another. Theft and deadly weapon are defined above in our analysis of the aggravated robbery counts. The record contains sufficient evidence supporting the jury's conclusion that appellant committed a theft offense against D.W. and R.M. while in possession of a deadly weapon. Additionally, D.W. and R.M. both testified that appellant, as he was fleeing the scene, told them that, if they got up off the ground, someone in a nearby car would shoot them. In view of R.M. and D.W.'s testimony, the record contains sufficient evidence supporting the jury's verdict that appellant committed robbery in the second degree in violation of R.C. 2911.02(A)(1) and (2).

C. Sufficiency of the Evidence—Counts 3 and 8 Robbery, Felonies Third Degree

{¶ 17} To convict appellant of robbery in the third degree in violation of R.C. 2911.02(A)(3), the state was required to prove that appellant, in attempting or committing a theft offense, or in fleeing immediately thereafter, used or threatened the immediate use of force against D.W. and R.M. Force means "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). As noted in our discussion of facts regarding the aggravated robbery and robbery of the second degree, the record contains sufficient evidence supporting the jury's conclusion that appellant committed a theft offense against D.W. and R.M. while threatening the immediate use of force against another. R.M. testified that appellant pointed a gun at him during the robbery and made him lie on the ground at gunpoint afterward. R.M. and D.W. testified that appellant pointed a gun at D.W. a few inches from her head. D.W. testified that, upon fleeing, appellant threatened that an accomplice would shoot them if they got up off the ground. This evidence constitutes sufficient evidence supporting the jury's verdict that appellant committed robbery in the third degree in violation of R.C. 2911.02(A)(3).

D. Sufficiency of the Evidence—Counts 4 and 9 Kidnapping

{¶ 18} To convict appellant of kidnapping in violation of R.C. 2905.01, the state was required to prove that appellant by force, threat, or deception, restrained D.W. and R.M. of their liberty for the purpose of facilitating the commission of any felony or to engage in sexual activity, as defined in R.C. 2907.01, against the victim's will. To restrain one of his or her liberty means to limit or restrain another's freedom of movement. The restraint need not be for any specific duration or in any specific manner. 2 Ohio Jury Instructions, CR Section 505.01(A) (Rev. Jan. 20, 2007). Sexual activity means sexual conduct or sexual contact or both. R.C. 2907.01(C).

{¶ 19} R.M. testified that, after taking their money and other property, appellant demanded that both he and D.W. get out of the car and then made them each take off their clothes and lie on the ground. While R.M. was on the ground, appellant raped D.W., at which point appellant told R.M., "[D]on't look at me, I'm going to shoot you." (Tr. Vol. I, 54.) According to R.M., at no time did appellant put down his weapon. He also testified that he did not run away because he was both scared to try and concerned about what would happen to D.W. He further testified that, after raping D.W., appellant threw her back on the ground and told her, "[L]ay down, and if you all move, my dude in the car is going to shoot, you know what I mean?" (Tr. Vol. I, 56.) D.W. testified similarly that, after taking their money and other property, appellant made them take off their clothes and lie down on the ground while he pointed a gun at her. This testimony is sufficient evidence to support the jury's conclusion that appellant deprived D.W. and R.M. of their liberty.

{¶ 20} A conviction under R.C. 2905.01 requires that the trier of fact also find that appellant restrained D.W. and R.M. with purpose to facilitate aggravated robbery or robbery or with purpose to engage in sexual activity against D.W.'s will. A person acts purposely when it is his specific intention to cause a certain result. R.C. 2901.22(A). Such intent "must be gathered from the surrounding facts and circumstances under proper instructions from the court." *State v. Huffman*, 131 Ohio St. 27, 28 (1936). In view of R.M. and D.W.'s testimony that appellant made D.W. take off her clothes and lie on the ground in order to rob her, rape her (as discussed below), and flee the scene, and held R.M. at gunpoint in order to rob him and flee the scene, the record contains sufficient

evidence to support the jury's verdict that appellant kidnapped D.W. and R.M. in violation of R.C. 2905.01.

E. Sufficiency of the Evidence—Count 5 Rape

{¶ 21} To convict appellant of rape in violation of R.C. 2907.02(A)(2), the state was required to prove that appellant engaged in sexual conduct with D.W. and purposely compelled her to submit by force or threat of force. Sexual conduct includes vaginal penetration, however slight, without privilege to do so. R.C. 2907.01(A).

{¶ 22} R.M. testified that, after appellant made him and D.W. remove their clothes and lie on the ground, appellant took D.W. at gunpoint to the back of their car and raped her. R.M. testified in great detail, remarking that appellant had to make multiple attempts to penetrate D.W. because she was using a tampon. According to R.M., after making D.W. remove the tampon, appellant proceeded to rape her, after which he made her lie down on the ground again.

{¶ 23} D.W. testified that appellant pointed a gun in her face and made her take her clothes off, after which he leaned her against the back of the car and raped her. She testified that he used the gun to force her to submit to his demands. D.W. testified that appellant had difficulty penetrating her vagina initially because he did not have a sufficient erection. She also testified that he could not penetrate her until she removed her tampon, which was subsequently discovered at the scene by crime scene investigators. D.W. testified that he continued to rape her for three or four minutes and that he maintained possession of his gun the entire time. D.W. also testified that, throughout the rape, she was afraid that appellant would shoot her and R.M.

{¶ 24} Sexual assault nurse examiner Theresa Colbert provided corroborating testimony. She testified that, during the sexual assault exam, D.W. reported that the rape included vaginal penetration and that the perpetrator possessed a gun during the assault.

{¶ 25} In light of this testimony and physical evidence, the record contains sufficient evidence to support the jury's verdict that appellant raped D.W. in violation of R.C. 2907.02.

F. Sufficiency of the Evidence—Count 10 Having a Weapon While Under Disability

{¶ 26} To convict appellant of having a weapon while under disability in violation of R.C. 2923.13, the state was required to prove that appellant knowingly acquired, had, carried, or used a firearm or dangerous ordnance if he had previously been convicted of a felony of violence or involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse. The state was further required to prove that appellant had been previously convicted of a felony offense of violence or a felony offense involving the illegal possession of a drug of abuse. Appellant admitted at trial previous felony convictions for aggravated robbery with a gun specification and possession of drugs with a carrying a concealed weapon violation.

{¶ 27} Firearm is defined as "any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. 'Firearm' includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable." R.C. 2923.11(B)(1). When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the jury may rely upon circumstantial evidence, such as appellant's words and actions as described by the state's witnesses. R.C. 2923.11(B)(2). Deadly weapon "means 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." R.C. 2923.11(A).

{¶ 28} Both D.W. and R.M. testified that appellant carried and brandished a handgun while robbing them and raping D.W. and that appellant never relinquished possession of the weapon. R.M. further testified that he thought the gun was a "rusty 9-millimeter, something like that." (Tr. Vol. I, 49.) He further described the gun as a semiautomatic type of handgun that ejects shell casings out. R.M. testified he heard "a whole bunch of gunshots" when he and D.W. notified the bar staff at Club 57 what had happened to them. (Tr. Vol. I, 59.) Detective Kevin Jackson testified that spent shell casings were found at the scene and that the casings were of a "9-millimeter caliber and size, and the make and model of it was a Luger Hornady." (Tr. Vol. I, 193.) Appellant himself admitted, during his initial police interview, to possessing a 9 mm Hi-Point on the

night of the events in question, although he subsequently denied this account at trial. Even disregarding appellant's conflicting accounts, in view of R.M. and D.W.'s testimony, the record contains sufficient evidence supporting the jury's verdict that appellant had a weapon while under disability in violation of R.C. 2923.13.

G. Sufficiency of the Evidence--Firearm Specifications

{¶ 29} To convict appellant on the firearm specifications attached to Counts 1-9, the state was required to prove that appellant had a firearm on or about his person or under his control while committing the offenses and that he displayed or brandished the firearm, indicated that he possessed the firearm, or used it to facilitate commission of the offense. R.C. 2941.145. As noted in our discussion of Count 10, having a weapon under disability, there was more than sufficient evidence supporting the firearm specifications.

IV. Manifest Weight of the Evidence

{¶ 30} Appellant also challenges the manifest weight of the evidence used to convict him of aggravated robbery, robbery, kidnapping, rape, and having a weapon while under disability, all but the last count with firearm specifications attached. Sufficiency of the evidence and manifest weight of the evidence are distinct concepts. They are "quantitatively and qualitatively different." *Thompkins* at 386. "While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief." *State v. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶ 38. A reviewing court, when presented with a challenge to the manifest weight of the evidence, engages in a limited weighing of the evidence to determine whether the jury's verdict is supported by sufficient competent, credible evidence to permit reasonable minds to find guilt beyond a reasonable doubt. *Thompkins* at 387. A reviewing court may not substitute its judgment for that of the jury unless it is manifestly clear that the jury lost its way. *State v. Green*, 10th Dist. No. 03AP-813, 2004-Ohio-3697, ¶ 25. In order for a reviewing court to reverse the judgment of a trial court on manifest-weight grounds, the appellate court must unanimously disagree with the jury's resolution of the conflicting evidence. *Thompkins* at 389. This discretionary authority " 'should be exercised only in the exceptional case in which the

evidence weighs heavily against the conviction.' " *State v. Shedwick*, 10th Dist. No. 11AP-709, 2012-Ohio-2270, ¶ 28, quoting *Thompkins*.

{¶ 31} Appellant maintains that his convictions with respect to D.W. were against the manifest weight of the evidence because he offered competent, credible evidence that she was not even present on the night in question. Appellant also argues that D.W.'s testimony was not credible because she testified that she went directly to the hospital after the incident, while her statement at the hospital, as recounted by nurse Colbert, was that she first went to her aunt's house before proceeding to the hospital.

{¶ 32} Appellant further argues that R.M.'s testimony corroborates appellant's version of the night's events, rather than the state's. Specifically, R.M.'s testimony that he typically visits Club 57 only early in the evening, according to appellant, supports the conclusion that R.M. was meeting appellant to consummate a drug deal. According to appellant, such a conclusion would support his argument that R.M. voluntarily handed over his wallet as collateral for the undelivered drugs. Appellant also argues that R.M.'s testimony was legally insufficient to induce belief because he had a motivation to lie about his activities in order to avoid violating his federal parole for prior drug-related felony convictions. Appellant also states that both R.M. and D.W. gave conflicting testimony about the property taken from R.M. because R.M. testified that he was robbed of over \$700, his gold necklace, and a pocketknife, while D.W. admitted that R.M. was not known to wear jewelry or carry a knife, and R.M. testified that he did not usually carry that much cash.

{¶ 33} Finally, appellant argues that the state failed to provide, in support of the firearm specifications or the having a weapon under disability count, credible evidence that appellant possessed a firearm or any weapon at all during the night in question.

{¶ 34} While there was conflicting testimony regarding D.W.'s exact itinerary from the Club 57 scene to the hospital, "an accused is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial." *State v. Rankin*, 10th Dist. No 10AP-1118, 2011-Ohio-5131, ¶ 29. The jury, as trier of fact, may take into consideration a witness's conflicting testimony in determining her credibility and the persuasiveness of her account by either discounting or resolving the discrepancies.

Midstate Educators Credit Union, Inc. v. Werner, 175 Ohio App.3d 288, 2008-Ohio-641 (10th Dist.). A jury, as finder of fact, may believe all, part, or none of a witness's testimony. Furthermore, not all conflicting testimony raises serious questions about credibility. Having heard both D.W.'s initial report to nurse Colbert and her partially conflicting testimony at trial, the jury could have chosen to resolve the conflict in the state's favor, or it could have resolved that portion of the testimony against the state while crediting the remainder of D.W.'s testimony. In any event, the state also provided R.M.'s testimony against appellant, and the jury heard appellant's own conflicting accounts of the night in question. It cannot be said that, by choosing to credit the state's case, in spite of D.W.'s partially conflicting testimony, the jury lost its way.

{¶ 35} Turning to R.M. and D.W.'s testimony about R.M.'s property, appellant points out that their testimony conflicted with respect to the amount of cash R.M. usually carried. R.M. testified that he did not normally carry "that sum" of cash, namely \$700. D.W., on the other hand, testified that he did regularly carry such large sums. She also testified that he was not known to carry a knife or wear jewelry. The jury, as explained above, was free to resolve the state's conflicting testimony however it chose. Even if the testimony established that R.M. rarely carried large amounts of cash and was not known to wear jewelry or carry a knife, the jury was still free to believe that he did so on the night in question. Both R.M. and D.W. testified as to the property stolen from R.M. Officer Dripps testified to finding the same amount of cash and R.M.'s identification on appellant's person at the Maumee Bay scene. A police detective testified to recovering a pocketknife and a gold necklace there as well. In choosing to credit the state's version of these particulars, we cannot say that the jury clearly lost its way.

{¶ 36} Appellant argues that the circumstances of R.M.'s presence at Club 57—such as the late hour and the large amount of cash in R.M.'s possession—suggests an illegal drug deal, rather than a night out with his fiancée. Again, the jury was free to credit the state's interpretation of these factual circumstances, while discrediting appellant's. R.M. testified that he had just cashed his paycheck that evening. Both he and D.W. testified that they had spent time with their children and gone shopping prior to going to Club 57. We cannot say that the jury lost its way in crediting the state's interpretation of uncontested facts.

{¶ 37} Appellant claims a reasonable juror could not believe R.M.'s testimony because R.M. was on federal parole for drug-related crimes and, thus, had a personal interest in testifying that he was not engaged in illegal activity that night. During cross-examination, however, R.M. admitted that he had previous drug-related convictions and that he was on federal parole at the time. The jury, therefore, was free to evaluate the credibility of R.M.'s testimony in light of his status as a federal parolee. The jury also had reason to find appellant less than credible. He significantly changed his story between his initial police interview and his testimony at trial. The trier of fact was in the best position to observe the demeanor of the witnesses and to evaluate their testimony. The jury apparently found the testimony of R.M. more credible than appellant's. The trier of fact's credibility determinations receive great deference from a reviewing court. As the jury was in the best position to assess the credibility of the witnesses and their testimony, we cannot say that, in crediting R.M.'s version of events over appellant's, the jury clearly lost its way.

{¶ 38} We now turn, finally, to appellant's contention that the state failed to provide credible evidence of his possession of a firearm during the events in question. While it is true that no firearm was ever recovered, either at the Club 57 scene, the Maumee Bay scene, or elsewhere, the state's witnesses both testified that appellant possessed, brandished, and threatened to use a handgun while robbing and assaulting them. R.M. gave testimony identifying the weapon as a 9 mm semiautomatic handgun. Appellant himself admitted during his initial interview with police to possessing a 9 mm Hi-Point. Lastly, R.M. testified to hearing gunshots shortly after he and D.W. were robbed and D.W. was raped. Spent shell casings matching the 9 mm handgun were found at the scene. Ultimately, it was for the jury to weigh the evidence in light of the fact that no firearm was ever found. We cannot say that, by choosing to credit the state's case instead of appellant's, the jury clearly lost its way in concluding that appellant possessed a firearm during the events in question.

{¶ 39} In the end, any inconsistencies between appellant's testimony and the testimony of the state's witnesses are for the jury to resolve. None of appellant's objections to the jury's resolution of the case's factual questions alter that role. We cannot say that the jury lost its way either in finding the state's witnesses to be more credible than

appellant or in concluding that the aggregate evidence the state presented was more convincing than the testimony given by appellant. The victims' testimony, the accounts of officers responding to the two scenes, the victims' property recovered from appellant's possession, and appellant's multiple versions of the night's events, provided the jury with sufficient evidence to find appellant guilty of all counts beyond a reasonable doubt. We do not find that the jury's verdict that appellant was guilty on all counts was against the manifest weight of the evidence.

V. Conclusion

{¶ 40} Accordingly, appellant's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and KLATT, JJ., concur.
