[Cite as *State v. Thompson*, 2015-Ohio-655.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 14AP-488
v.	:	(C.P.C. No. 13CR-4470)
Christopher F. Thompson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 24, 2015

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas

T. BRYANT, J.

{¶1} Defendant-appellant, Christopher F. Thompson, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas pursuant to jury verdicts finding him guilty of two counts of aggravated robbery, two counts of robbery, and associated firearm specifications. For the following reasons, we affirm.

I. BACKGROUND

{¶2} On August 22, 2013, a Franklin County Grand Jury indicted appellant 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 robbery, in violation of R.C. 2911.02, felonies of the third degree, and two counts

of kidnapping, in violation of R.C. 2905.01, felonies of the first degree. All eight counts carried three-year firearm specifications under R.C. 2941.145. The charges against appellant arose from the May 20, 2013 robberies of Ricky New, Jr. and Timothy Elkins. Prior to trial, the state dismissed the third-degree felony robbery counts and the kidnapping counts. Following trial, the jury convicted appellant of the aggravated robbery and second-degree felony robbery counts, as well as the attendant firearm specifications. The trial court imposed an aggregate prison sentence of eighteen years and ordered appellant to pay restitution to the victims.

II. ASSIGNMENT OF ERROR

{¶3} In a timely appeal, appellant raises a single assignment of error for our review:

> THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE JUDGMENT WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

III. DISCUSSION

{¶4} In his sole assignment of error, appellant asserts his convictions were against the manifest weight of the evidence. When presented with a manifest-weight-of-the-evidence 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. *State v. Thompkins,* 78 Ohio St.3d 380, 387 (1997), citing *State v. Martin,* 20 Ohio App.3d 172, 175 (1st Dist.1983). 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.,* quoting *Martin* at 175.

{¶5} In conducting a manifest-weight review, an appellate court 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 proferred testimony.' " *Id.,* quoting *Seasons Coal Co. v. Cleveland,* 10 Ohio St.3d 77, 80 (1984). Accordingly, an appellate court must defer to the factual findings of the trier of fact regarding the credibility of the witnesses. *Id.,* citing *State v. DeHass,* 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. "Concerning the issue of assessing witness credibility, the general rule of law is that '[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact.' " *Id.,* quoting *State v. Awan,* 22 Ohio St.3d 120, 123 (1986). Indeed, the trier of fact is free to believe all, part, or none of the testimony of each witness appearing before it. *Id.,* citing *Hill v. Briggs,* 111 Ohio App.3d 405, 412 (10th Dist.1996). "If evidence is susceptible to more than one construction, reviewing courts must give it the interpretation that is consistent with the verdict and judgment." *Id.,* citing *White v. Euclid Square Mall,* 107 Ohio App.3d 536, 539 (8th Dist.1995). "Mere disagreement over the credibility of witnesses is not sufficient reason to reverse a judgment." *Id.,* citing *State v. Wilson,* 113 Ohio St.3d 382, 387, 2007-Ohio-2202.

{¶6} In order to sustain the convictions for aggravated robbery, in violation of R.C. 2911.01, the state was required to prove that appellant, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, had a deadly weapon on or about his person or under his control and either used, displayed, brandished, or indicated he possessed the weapon. In order to sustain the convictions for second-degree felony robbery, as defined in R.C. 2911.02, the state was required to show that appellant, while attempting or committing a theft offense or in fleeing immediately after the attempt or offense, had a deadly weapon on or about his person or under his control and did recklessly inflict, attempt to inflict, or threaten to inflict physical harm on the victims. To support the convictions on the firearm specifications, as defined in R.C. 2941.145, 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 either displayed, brandished, indicated he possessed the firearm, or used the firearm to facilitate the offenses.

{¶7} The state's case was largely based on the testimony of Timothy Elkins, one of the robbery victims. Elkins testified that he buys and sells cars for a living, often using

Craigslist in his business dealings. On May 20, 2013, Elkins' son-in-law, Ricky New, Jr. told Elkins about a Craigslist advertisement listing a 1999 Pontiac Grand Prix for sale. The advertisement included only a telephone number, 390-8989, and a detailed description of the vehicle. No other information, such a name or address, was included in the advertisement.

{¶8} Elkins called the number listed in the Craigslist advertisement, and he arranged with the man who answered the call (later identified as appellant) to meet at 1061 Ashburton Road ("1061 Ashburton") to view the Grand Prix. Elkins and New drove to the specified location at approximately 9:00 p.m. and noticed the Grand Prix parked on the street. Appellant, walking southbound on Ashburton Road, approached the two men and shook hands with Elkins. According to Elkins, the lighting in the area "wasn't bad at all," as it was "pretty lit up" from streetlights and other lighting, and he could see appellant's face and "physical makeup." (Tr. 124-125, 133.)

{¶9} Elkins, New, and appellant discussed the price of the Grand Prix for approximately eight minutes. During that time, appellant reported that the engine was bad, and touched the vehicle near the hood when he raised it to show Elkins and New the engine. Appellant averred he had a second vehicle, a Pontiac Bonneville, that was in "rough condition," but had a good engine. (Tr. 130.) Knowing that the Bonneville engine "would work" in the Grand Prix (Tr. 130), Elkins agreed to look at the Bonneville, which was parked approximately two blocks north, at 957 Ashburton Road ("957 Ashburton").

{¶10} Elkins testified that although it was dark at the 957 Ashburton location, he could still see appellant, as he was standing only a few feet away from him. Elkins, New, and appellant discussed the price of both vehicles for about 10 minutes. During that time, Elkins noted that the driver's side of the Bonneville had some bullet holes, but that the engine ran well. Elkins and New ultimately agreed to pay a total of $900 for both cars. Elkins had approximately $2,000 in cash with him. Because New only had $700 in cash, Elkins gave him $200 to make up the difference. In doing so, Elkins pulled the entire $2,000 out of his pocket.

{¶11} Appellant took the $900 but told New and Elkins he could not get the titles to the vehicles until the next day. After some discussion, New asked appellant to refund the $900. At that point, Elkins noticed a change in appellant's demeanor and body

language; he became aggressive and would not return the money. Appellant then pulled a handgun from his pocket and pointed it at New. Appellant then turned, pointed the gun at Elkins' head, and demanded that Elkins give him the remainder of the $2,000. Fearing for his own life as well as that of New, Elkins complied with appellant's demand.

{¶12} Appellant then walked Elkins and New at gunpoint past where they had parked their vehicle and ordered them to remove their clothing. They refused, ran away, and called 911. Two officers from the Columbus Police Department ("CPD") responded within 2 or 3 minutes. Elkins reported the incident to the police, describing appellant as 18 to 25 years old, 6' 3" tall, weighing 225 to 230 pounds.

{¶13} On May 28, 2013, Elkins identified appellant from a CPD photo array as the person who robbed him and New on May 20, 2013. At trial, Elkins identified appellant as the perpetrator of the crimes, stating that he got "a good look" at appellant (Tr. 146) and that he was "certain" that appellant robbed him. (Tr. 148.)

{¶14} Several CPD officers and employees involved in the robbery investigation also testified in the state's case. Officer Caroline Castro testified that she and her partner were dispatched to 1061 Ashburton on a reported robbery. The victims, New and Elkins, told the officers they went to that location to look at a car appellant had advertised for sale, then went with appellant to 957 Ashburton to look at a second car, where they were robbed at gunpoint. Thereafter, the officers secured both scenes. On cross-examination, Officer Castro acknowledged that she did not observe appellant at either scene. However, Officer Castro averred on redirect examination that persons frequently do not remain in the area where they committed a crime.

{¶15} Detectives Arthur Hughes and William Doherty arrived at 1061 Ashburton at approximately 9:30 p.m. Detective Hughes testified that he took several photographs of the Grand Prix parked on the street in front of 1061 Ashburton and one photograph of the vacant residence at 957 Ashburton. On cross-examination, he acknowledged using a flash while taking the photographs because it was dark outside. He also averred he did not observe appellant at either location.

{¶16} Detective Doherty interviewed New and Elkins at the scene; both reported they had been robbed at gunpoint by a "taller, thicker" African-American male, approximately 18 to 25 years of age. (Tr. 69.) Detective Doherty averred that the Grand

Prix was impounded, dusted for fingerprints, and searched. A Faslube receipt and a Delaware County Municipal Court document were recovered from the vehicle's interior. The Faslube receipt contained appellant's name, an address of 2103 Grasmere Avenue, and a phone number of 390-8989. The address was that of appellant's girlfriend, Amber Evans, and the phone number was the same number used in the Craigslist advertisement to which the victims responded. The municipal court document was ultimately tied to appellant. Subsequent investigation of cell phone billing records revealed that the number utilized in the Craigslist advertisement, 390-8989, was registered to a fictitious name and address.

{¶17} On cross-examination, Detective Doherty acknowledged that it was dark at the time of the alleged robbery, that no weapon was recovered at or near either 957 or 1061 Ashburton, and that he did not observe appellant at either location. However, he testified on redirect examination that the street was lit well enough that he could see Detective Hughes standing approximately ten feet away without difficulty. He further testified it was commonplace for an individual to remove evidence from a crime scene in order to avoid its collection.

{¶18} Detective Larry Shoaf testified that he recovered a latent palm print and fingerprint near the hood of the Grand Prix on May 28, 2013, and thereafter sent them to the crime lab for analysis. Although Detective Shoaf conceded on cross-examination that it was "impossible to say" how long palm prints and fingerprints could remain on a metal surface such as a vehicle, he averred on redirect examination that the prints recovered from the vehicle "developed pretty easily," which suggested that they were not "very old." (Tr. 114-115.)

{¶19} Robert Lawson, a certified latent fingerprint examiner and supervisor of the CPD latent fingerprint section, testified as an expert in the area of fingerprint identification. Mr. Lawson testified that the latent palm print and fingerprint recovered from the Grand Prix matched those of appellant.[1]

{¶20} Detective Ronald Lemmon testified that, at the request of Detective Doherty, he presented a photo array to New on May 28, 2013. According to Detective

[1] The parties stipulated that the palm print and fingerprint to which the latent prints were compared were those of appellant. (Tr. 175.)

Lemmon, New immediately identified appellant as the person who robbed him on May 20, 2013, stating "that's him 100 percent." (Tr. 192.) Detective Lemmon's testimony was corroborated by New's handwritten statement on the form that accompanied the photo array, i.e., that "[t]he guy in the pic is 100% the guy who robbed me[.]" (State's exhibit E.) Later that same day, Detective Lemmon presented a photo array to Elkins, who also identified appellant as the robber. This testimony was corroborated by Elkins' handwritten statement on the form that accompanied the photo array, i.e., "[h]e is the person that robbed me (Tim Elkins) & Ricky New at gunpoint[.]" (State's exhibit G.) Detective Lemmon testified on cross-examination that appellant was 32 years old at the time of the incident.

{¶21} Appellant's former girlfriend, Amber Evans, also testified on behalf of the state. According to Ms. Evans, on May 20, 2013, she lived at 2103 Grasmere Avenue. Appellant, whom she described as being 6' 1" tall and weighing 220 to 230 pounds, sometimes resided with her, and she saw him around Columbus between May 20 and 27, 2013. Ms. Evans owned the subject Grand Prix, and she permitted appellant to drive it on occasion. Sometime prior to May 20, 2013, Ms. Evans was driving the Grand Prix when it broke down on Ashburton Road; Ms. Evans left the car on the street because she could not afford to have it repaired. On May 23, 2013, Ms. Evans returned to Ashburton Road to retrieve the vehicle; however, it was gone. When Ms. Evans questioned appellant about the vehicle, he suggested she call the CPD impound lot because it might have been towed. After discovering that the Grand Prix was not at the impound lot, she again asked appellant about it. Appellant told her he tried to sell the vehicle to two men. When they refused to follow him back to his house to get the title, they became belligerent and asked for a refund of the money they had given him; he then decided to rob them. He did not mention whether he used a gun in the robbery. On May 27, 2013, Ms. Evans contacted the police and reported appellant's confession and his cell phone number, which at the time was 893-8546. At trial, Ms. Evans acknowledged that she did not recognize the 390-8989 number; however, she averred that appellant frequently changed his cell phone number.

{¶22} Appellant's mother, Betty Thompson, testified on behalf of appellant. Ms. Thompson averred that appellant was at her residence in Benton Harbor, Michigan on

May 20, 2013. On cross-examination, she acknowledged that an affidavit she executed at the request of appellant's counsel on November 14, 2013, in which she averred she saw appellant at her Benton Harbor residence on May 20, 2013, did not include any specifics other than a general statement that she saw appellant. She also acknowledged that she never contacted the police after appellant's June 5, 2013 arrest to report that he was in Michigan on May 20, 2013.

{¶23} Ella Willis, appellant's aunt, also testified that she saw appellant in Benton Harbor, Michigan on May 20, 2013. On cross-examination, Ms. Willis acknowledged that an affidavit she executed at the request of appellant's counsel on November 20, 2013 averred only that she saw appellant "in the neighborhood" on May 20, 2013, and that the affidavit contained no other specific information, such as where or what time she saw appellant. (Tr. 244.) She further conceded that she never contacted the police after she learned about appellant's legal problems in late May 2013 to report that he was in Michigan on May 20, 2013.

{¶24} In his assignment of error, appellant contends that the state's evidence purportedly establishing that he committed the robberies was "highly circumstantial" and "not directly related to the crime itself." (Appellant's brief, 9.) Appellant specifically maintains that the state's circumstantial evidence did not establish his presence at the scene of the robberies.

{¶25} We note initially that " 'proof of guilt may be made by circumstantial evidence as well as by real evidence and direct or testimonial evidence, or any combination of these three classes of evidence.' " *State v. Koss*, 10th Dist. No. 13AP-970, 2014-Ohio-5042, ¶ 62, quoting *State v. Griffin*, 13 Ohio App.3d 376, 377 (1st Dist.1979). "Circumstantial evidence is the 'proof of facts by direct evidence from which the trier of fact may infer or derive by reasoning other facts in accordance with the common experience of mankind.' " *Id.*, quoting *State v. Bentz*, 2 Ohio App.3d 352, 355 (1st Dist.1981), fn. 6, citing 1 Ohio Jury Instructions, Section 5.10(d) (1968). " 'Circumstantial evidence and direct evidence inherently possess the same probative value.' " *Koss*, quoting *State v. Jenks*, 61 Ohio St.3d 259, 272 (1991).

{¶26} Appellant first contends that the fact that his fingerprint and palm print were found on the exterior of the Grand Prix and a sales receipt bearing his name was

recovered from the interior of the Grand Prix did not establish that he committed the robberies. Appellant relies on evidence establishing that he often drove the vehicle prior to the night of the robberies to explain the presence of his prints on the outside of the vehicle and the presence of the sales receipt inside the vehicle. However, regarding the fingerprint/palm print evidence, appellant's argument completely disregards other testimony that these prints were not "very old" (Tr. 114-15) and were recovered from the spot he lifted the hood to show the victims the engine. As to the sales receipt, appellant's contention wholly ignores that it included the same cell phone number, 390-8989, included on the Craigslist advertisement to which the victims responded. From the foregoing evidence, the jury could reasonably conclude that appellant, utilizing the 390-8989 cell phone number, arranged the meeting with the victims with the intention of selling the Grand Prix, opened the hood of the car to show the victims the vehicle's engine, and then robbed the victims when they requested a refund of their money.

{¶27} Appellant next challenges his convictions on grounds that neither he nor the handgun purportedly used to commit the robberies were discovered near the scene of the robberies. Appellant's argument totally disregards testimony from CPD officers involved in the investigation establishing that perpetrators of crimes rarely remain in the area and commonly remove evidence used in the crime to avoid its collection. The jury could reasonably conclude from this testimony that the failure to discover either appellant or a handgun at the scene did not indisputably establish that appellant did not commit the robberies. To the contrary, the jury could reasonably conclude from the testimony that appellant, following commission of the robberies, fled the scene, carrying the handgun with him, in order to avoid detection.

{¶28} Appellant lastly contends the identifications made by Elkins and New were questionable given the time and location of the robberies. Noting that the robberies occurred around 9:00 p.m. on the street in front of a vacant residence, appellant maintains that these conditions prevented the victims from "getting a very good look at the man who robbed them." (Appellant's brief at 10.) Appellant further notes that the victims initially described the suspect as 18 to 25 years old, which appellant characterizes as "much younger" than his actual age, i.e., 32.

{¶29} "In reviewing the 'manifest weight of the evidence, this court frequently has held that, even where discrepancies exist, eyewitness identification testimony alone is sufficient to support a conviction so long as a reasonable juror could find the eyewitness testimony to be credible.' " *State v. Humberto,* 196 Ohio App.3d 230, 2011-Ohio-3080, ¶ 12 (10th Dist.), quoting *State v. Jordan,* 10th Dist. No. 04AP-827, 2005-Ohio-3790, ¶ 14. As noted above, Elkins testified that the lighting in the area of 1061 Ashburton "wasn't bad at all," as it was "pretty lit up" from streetlights and other lighting, and that he got a "good look" at appellant's face during their eight-minute discussion about the car. (Tr. 124-25, 146.) Elkins further testified that although it was dark at the 957 Ashburton location, he could still see appellant, as he stood only a few feet away. In addition, both Elkins and New unequivocally identified appellant from photo arrays, and Elkins testified at trial that he was "certain" that appellant robbed him. (Tr. 148.) Further, even assuming that Elkins' estimate of appellant being 18 to 25 years of age, when in fact he was 32, diminishes to some degree the evidentiary value of the identification, this discrepancy does not render Elkins' testimony incredible, nor does it render the verdicts against the manifest weight of the evidence. The jury was in the best position to observe Elkins as he testified, assess his credibility, and weigh the age inaccuracy against his unequivocal identification testimony. " 'Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable features.' " *State v. Coleman,* 10th Dist. No. 99AP-1387 (Nov. 21, 2000), quoting *Manson v. Brathwaite,* 432 U.S. 98, 116 (1977).

{¶30} Moreover, in contrast to Elkins' and New's unequivocal identifications, the alibi testimony presented by appellant was not particularly credible. To be sure, appellant's mother and aunt testified that appellant was in Michigan on May 20, 2013; however, neither provided a specific timeframe or other details regarding his presence in Michigan. Further, both acknowledged that they never notified police of appellant's alibi even though they knew appellant had been charged with a robbery that had occurred on May 20, 2013. Given the close family relationship between appellant and his mother and aunt, coupled with the lack of specifics as to appellant's whereabouts at the time of the crimes, the jury could reasonably discount the credibility of this testimony.

{¶31} Finally, in addition to the evidence linking appellant to both the Craigslist advertisement and the Grand Prix, and the eyewitness identification testimony provided by Elkins (both via the photo array and at trial) and New (via the photo array), the jury also had before it Ms. Evans' testimony regarding appellant's confession to the crimes. As noted above, witness credibility is a matter for determination by the trier of fact. In closing argument, defense counsel raised the possibility that Ms. Evans' failed relationship with appellant may have led her to testify against him; however, the jury was free to believe that her testimony regarding appellant's confession was not contrived.

{¶32} Based upon our thorough review of the evidence heard at trial, we conclude that appellant's convictions for aggravated robbery, robbery, and associated firearm specifications were not against the manifest weight of the evidence. Accordingly, appellant's sole assignment of error is overruled.

IV. CONCLUSION

{¶33} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).
