[Cite as *State v. Anderson*, 2010-Ohio-2291.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-T-0041**
- vs -	:	
TIMOTHY R. ANDERSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2008 CR 515.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Timothy R. Anderson, appeals the Judgment Entry of the Trumbull County Court of Common Pleas, in which the trial court denied Anderson's Motion to Suppress; found him Guilty of one count of Aggravated Robbery and two counts of Felonious Assault; sentenced him to a total imprisonment term of

sixteen years; and ordered him to pay restitution to the Warren City Schools in the amount of $11,180.00.

{¶2} For the following reasons, we affirm the decision of the trial court.

{¶3} On June 16, 2008, the Lincoln School in the City of Warren, Ohio, was robbed at gunpoint.

{¶4} After an investigation, Anderson was determined to be a suspect and an arrest warrant was issued. Anderson was eventually arrested in Las Vegas, Nevada. Warren police detectives, Michael Currington and Wayne Mackey, took custody of Anderson in Nevada for a return trip to Ohio.

{¶5} Anderson was ultimately indicted on one count of Aggravated Robbery, with a firearm specification, in violation of R.C. 2911.01(A)(2) and R.C. 2941.145, and two counts of Felonious Assault, with a firearm specification, in violation of R.C. 2903.11(A)(2) and R.C. 2941.145.

{¶6} Anderson subsequently filed a Motion to Suppress, requesting suppression of any statements made to Detectives Currington and Mackey on his return trip to Ohio. After a hearing, the court denied the motion, finding that Anderson "was advised of his Miranda rights in the automobile en route to the airport in Las Vegas" and Anderson "was aware that his Miranda protections were in effect when the continued interrogation began near the Pittsburgh Airport."

{¶7} The matter then proceeded to a jury trial. At trial, Michelle Douglas, the Warren City School Summer School Coordinator, testified that on June 16, 2008, she was at Lincoln School to register students and take payment for summer school; payment was collected in cash or money order only. She further testified that at around

1:00 p.m., she was sitting at a table with the money box and she "felt something poking [her] back and they said 'Give me your money.' And [she] glanced up and [she] saw somebody with a mask over their face." Douglas originally thought it was a student "playing around"; however, the robber put a gun "around the left-hand side of [her] face and he said, 'I'm serious.'" He eventually grabbed the money box and ran out of the school. She estimated that there was at least $10,000 in the money box.

{¶8} The Harding High School Assistant Principal, Claudia Von Ostwalden, next testified that she witnessed the robber point a gun at Douglas. She then told the robber that "You don't want to do this. Don't do this." To which he replied, "Stop or I'll shoot" and pointed the gun at her. She estimated that there was over $11,000 in the money box. She stated that the robber was wearing a ski mask, a "bulky", "oversized", "dark" shirt, and had a backpack.

{¶9} The State then called various teachers and parents that were registering children for summer school and witnessed the robbery take place. Mary Mignella described the robber as an "African American male, probably around 6' *** dressed in dark clothing" and wearing a mask. Sherrie Gibson testified that the robber was "pretty tall" had a "a coat" and a "mask on." Kelly O'Grady-Lowry testified that the robber was a "6' tall black man."

{¶10} Eddie Cruz testified that he was walking, with his friend Tiffany Robison, to Lincoln School shortly before the robbery took place. He stated that he talked to a "kind of dark" male that was "tall *** [a]nd had on a black shirt and black jeans with a gold design on the back of the jeans" and had a "bookbag" with him. He asked Eddie about the cost of summer school. He identified Anderson as the male to whom he was

talking. He further testified that around 1:00 p.m., he was near the side of Lincoln School smoking a cigarette, and witnessed an individual, who he said appeared to be Anderson, run "out of the school in a mask, a black mask, with a sliver box." Tiffany Robison corroborated Cruz's testimony about his conversation with Anderson prior to the robbery. She recalled Anderson was dressed in "jeans and a black shirt and a bookbag." She stated that after the robbery, she "saw the same one with the same kind of clothes on and the bookbag" running out of the building.

{¶11} Richard Bartunek, who lives near the school, testified that he saw a "young black man running up [his] property line in the backyard" dressed in "black shoes, black pants, black shirt *** [and] a black backpack on his back." He testified that Anderson "appears to be the same young man that [he] saw."

{¶12} Andrea Wims, Anderson's girlfriend at the time of the robbery, testified that she was supposed to meet Anderson "probably around 1, 1 or 2" on the day of the robbery and he did not show up until around 3:00 p.m. She also testified that later that day, Anderson took her to the mall and bought himself "some shoes" and her "two summer dresses." The day after the robbery, he bought two outfits, spending approximately $300. She also stated that Anderson had about $2,000 in cash with him. Wims noted that Anderson's "phone kept ringing" and he told her "that he had got into some trouble." He later admitted to her that "there had been a robbery and he had a gun."

{¶13} Detective Wayne Mackey testified that he traveled to Nevada to pick up Anderson. He stated that Detective Currington read Anderson his Miranda rights from a card. He said that Anderson had told them "that the robbery had been done in order to

pay back a debt that [Anderson's half-]brother, Michael, owed to a local gang called the Fourth Street Boys because Michael had apparently ripped them off. *** [H]e did that to save his brother's life." Anderson also told them that the gun he used was not a real gun. Mackey further testified that they did not "develop enough information to charge Michael Anderson with this crime." He also stated that Anderson matched the general description the witnesses gave of the robber.

{¶14} Michael's mother, Kimberly Calvert, who is not the biological mother of Anderson, testified that she was shown the surveillance video footage and still photographs from the school and recognized Anderson in the video and photographs standing outside of the school prior to the robbery.

{¶15} Detective Currington testified, corroborating Mackey's testimony. He also stated that another suspect for the robbery, Delsean Peterman, was included in a photographic lineup for Cruz and he failed to recognize him from the robbery. He also stated that when Anderson was talking about the robbery with them, he became emotional and "actually [began to] cry because he was upset with this whole Fourth Street Boys incident."

{¶16} Anderson was the last to testify. He testified that he was 6'4" and had a tattoo on his left hand. He further stated that he went to Lincoln School to play basketball with his brother, Michael, on the day of the robbery. He was dropped off at the school by a man named "Casper." He could not find Michael at the school and eventually Michael called and told Anderson to meet him at Rite Aid on Elm Road. Anderson complied and walked to the store. When he arrived, Michael was with Delsean Peterman and Casper. Anderson got in the car with the three men and "went

down to Elm to go to this crack house to sell some dope" while Anderson waited in the car. Anderson stated that Michael had on a white shirt and blue jeans, Delsean had on a black shirt, black pants, and a backpack. Anderson was later dropped off at his grandmother's house, where Wims was waiting. They then went to the mall so Anderson could buy clothing he needed for his job. The next day, Anderson said he told Wims that he "was gonna stay with [his] baby mother [Raneesha Knowles] because [he] wanted to stay with her for [his] baby's purposes and that [they] were about to get an apartment together."

{¶17} Anderson testified that Michael and Delsean told him that they had committed the robbery and he had lied to the detectives to protect his brother.

{¶18} He testified that he was on the surveillance video from the Lincoln School, wearing a black backpack. He also stated that it was a "coincidence" that the robber on the video was wearing very similar, possibly the same, clothing and the same backpack as Anderson. Anderson also testified that he went to Nevada because he "already had a ticket" because he "planned on going out there *** for a friend and to find a new job."

{¶19} Anderson was found Guilty on all charges. He was sentenced to serve a prison term of 10 years for the Aggravated Robbery, plus three years for the firearm specification and three years on each of the Felonious Assault charges, with an additional three years on each count for the firearm specification. One of the Felonious Assault charges sentences was to run concurrent with the Aggravated Robbery charge, while the other Felonious Assault charge was to be served consecutively. The court merged the firearm specifications for a total imprisonment term of sixteen years.

Anderson was also ordered to pay restitution to the Warren City Schools in the amount of $11,180.00.

{¶20} Anderson timely appeals and raises the following assignments of error:

{¶21} "[1.] The trial court erred by denying the appellant's motion to suppress.

{¶22} "[2.] The trial court erred by denying appellant his right to secure counsel of his own choosing, in violation of the Sixth Amendment to the United States Constitution.

{¶23} "[3.] The trial court erred by denying appellant's motion for a mistrial.

{¶24} "[4.] The appellant's convictions for aggravated robbery and felonious assault, and their accompanying specifications, are against the manifest weight of the evidence."

{¶25} In the first assignment of error, Anderson argues that he needed to be re-Mirandized after the airplane landed in Pittsburgh, therefore, the statements he gave to the police thereafter should have been excluded and the Motion to Suppress granted.

{¶26} "Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *** Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *** Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, at ¶50 (citations omitted); *State v. Djisheff*, 11th Dist. No. 2005-T-0001, 2006-

Ohio-6201, at ¶19 ("[a]ccepting these findings of facts as true, a reviewing court must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the appropriate legal standard") (citation omitted).

{¶27} Anderson was read his Miranda rights while riding in a car in Nevada with Detectives Mackey and Currington. Currington stated at the suppression hearing that he "read 'em off of a card, the Miranda rights." Moreover, Currington recorded the conversation on a small tape recorder. Currington testified that Anderson understood those rights and was not under the influence of drugs or alcohol. Further, on the approximately four-hour plane ride, Anderson did not invoke his attorney rights, refuse to speak to the detectives, or indicate any refusal to speak. Although after the flight, Anderson was not re-Mirandized, Detective Currington told Anderson, "Tim, obviously the same rules apply, you know whatever we told you about the Miranda, you know all the rights, do you remember those that I told ya?" Anderson responded affirmatively and the interrogation continued until Anderson's confession.

{¶28} Prior to an interrogation of a suspect in custody, the suspect must be advised of his right to remain silent and his right to an attorney. *Miranda v. Arizona* (1966), 384 U.S. 436, 444. A suspect may waive these rights, but the government has the burden of demonstrating that the waiver was knowingly and voluntarily made. Id. at 475 (citation omitted). "Whether the original *Miranda* warning *** was still effective is determined by reference to the totality of the circumstances." *State v. Brewer* (1990), 48 Ohio St.3d 50, 60 (emphasis sic); *State v. Roberts* (1987), 32 Ohio St.3d 225, 232 (in making that determination, courts must consider the totality of the circumstances, including: "(1) the length of time between the giving of the first warnings and subsequent

interrogation, *** (2) whether the warnings and the subsequent interrogation were given in the same or different places, *** (3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers, *** (4) the extent to which the subsequent statement differed from any previous statements; *** [and] (5) the apparent intellectual and emotional state of the suspect") (citation omitted).

{¶29} In *Brewer*, the Ohio Supreme Court found Miranda warnings had not become stale when incriminating statements were made by a defendant close to twenty-four hours following the warnings. Id. at 59-60. Brewer was given Miranda warnings by police officers at the station at 6:43 p.m., and he made incriminating statements without subsequent warnings well into the next day. In reviewing the totality of the circumstances, the court relied on Brewer's indication that he understood his rights at the time the warnings were given, and that the statements occurred during a series of discussions held with the police officers. Further, the statements made were simply elaborations of information that was relayed in earlier statements. Id. at 60.

{¶30} In *State v. Butler*, 2nd Dist. No. 16852, 1998 Ohio App. LEXIS 4471, the appellant was given his Miranda warnings at a jail in Florida at approximately 1:30 p.m. by a detective. The same detective, who was accompanying the appellant back to Ohio, engaged him in conversation in the Atlanta airport at 6:30 p.m., at which time the appellant made incriminating statements. The same detective had read the appellant the warnings and later questioned him in the course of the same custodial episode. The court found that "[t]here is no reason to conclude that the difference in locations as between the warning and the interrogation reasonably caused Butler to lack an understanding of his rights when questions were asked about his alleged crime." Id. at

*9-*10. Further, the court found that under "the totality of the circumstances, *** the evidence fails to demonstrate that Butler did not understand his Miranda rights to an extent that impaired his exercise of them when he was interrogated at the Atlanta airport. [Moreover, the court found that] Butler's subsequent voluntary statements on the flight between Atlanta and Cincinnati, being initiated by him, fail to portray interrogation to which Miranda applies." Id. at *10-*11 (citation omitted).

{¶31} It is undisputed that Anderson was in custody when he was given Miranda warnings in Nevada by the two detectives from Warren, Ohio. It is also undisputed that the form and substance of those warnings satisfied the Miranda requirements when they were given. Although Anderson was in a different location, the same detective that Mirandized him, questioned him during his interrogation. The same officers were always in custody of him and there is no showing of any coercive tactics. Furthermore, Anderson's Miranda rights were re-affirmed, albeit generally, prior to the continued interrogation after the flight. See *State v. Parrish*, 2nd Dist. No. 21091, 2006-Ohio-2677, at ¶28 ("[a]lthough Defendant was not then given fresh Miranda warnings, Detective Colvin asked Defendant if he recalled being advised of his rights and if he understood them. Defendant responded, 'yes' to both questions. We conclude that this nine hour time lapse is not so great as to cause Defendant to forget or lose an understanding of his rights").

{¶32} There is nothing in the record to demonstrate that Anderson had a lack of understanding of his rights when questions were asked about his alleged crime. Based on the totality of the circumstances, the original Miranda warning was still effective.

{¶33} Anderson's first assignment of error is without merit.

{¶34} In his next assignment of error, Anderson contends that the trial court denied him the right to counsel of his own choosing. "Decisions regarding substitution of counsel are reviewed for abuse of discretion." *State v. Goodman*, 11th Dist. No. 2006-T-1030, 2007-Ohio-6252, at ¶29.

{¶35} "It is axiomatic that the accused enjoys the right to have assistance of counsel in all criminal prosecutions. *** The Sixth Amendment guarantees only competent representation, not 'a meaningful attorney-client relationship.' *** Further, the right cannot be exercised in such a way as to impede the orderly administration of justice by the courts." Id. at ¶30 (citation omitted).

{¶36} "Factors to consider in deciding whether a trial court erred in denying a defendant's motion to substitute counsel include 'the timeliness of the motion; the adequacy of the court's inquiry into the defendant's complaint; and whether the conflict between the attorney and client was so great that it resulted in a total lack of communication preventing an adequate defense.'" Id. at ¶32 (citation omitted).

{¶37} At the hearing on Anderson's Motion to Suppress, Anderson asked to address the court. He indicated that he wanted a new attorney. When asked if he had retained another counsel he responded "no, sir." He then told the court that he did not "want an attorney that's lying to me about my case. I don't, I can't, I don't feel confident." The court responded that they were going to proceed on the motion, "We hear that many times from defendants who don't, don't agree with the advice they've been given by counsel. And that's, I think, where we are in this case."

{¶38} "'While the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to

guarantee an effective advocate *** rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.' *** In order to justify the discharge of court-appointed counsel, a defendant must show 'good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result.'" *State v. Griesmar*, 11th Dist. No. 2009-L-061, 2010-Ohio-824, at ¶22 (citations omitted).

{¶39} In *Griesmar*, this court recently held that Griesmar was not entitled to a last minute change in counsel because he "had ample time to request a continuance and/or obtain private counsel of his choosing," had "never expressed any dissatisfaction with his court appointed attorney", "failed to provide the court with a time frame for hiring new counsel", "a private attorney never entered a notice of appearance," and "Griesmar failed to provide the trial court with an adequate reason why his appointed counsel should be replaced." Id. at ¶23.

{¶40} In *Goodman*, similar to the instant case, "the motion to withdraw was made the morning of trial. It was untimely. The trial court did not ask Mr. Goodman directly the nature of his dissatisfaction with defense counsel. *** The trial court strongly hinted its belief the attempt to substitute counsel was a delaying tactic -- which is a valid reason to refuse a substitution. *** Finally, and most significantly, there is no indication in the record that defense counsel and Mr. Goodman failed to communicate during trial, or that defense counsel put on anything but a strong defense." 2007-Ohio-6252, at ¶¶33-34 (citations omitted).

{¶41} Anderson failed to request a continuance to obtain private counsel of his choosing, he failed to provide the court with a time frame for hiring a new attorney, and

there was never a notice of appearance by another attorney. There is no indication in the record that Anderson and his attorney failed to communicate during trial. The trial court did not abuse its discretion.

{¶42} Anderson's second assignment of error is without merit.

{¶43} In his third assignment of error, Anderson argues that the trial court erred in denying his Motion for Mistrial which he claims was "made in response to a willful and purposeful prosecutorial misconduct, in the form of withholding material, exculpatory/impeachment evidence where the effect of such evidence undermines any confidence in the defendant's conviction."

{¶44} The grant or denial of a mistrial rests within the sound discretion of the trial court. See *State v. Sage* (1987), 31 Ohio St.3d 173, 182.

{¶45} During cross-examination at trial, Wims testified that after the robbery, she had been arrested for Obstruction of Justice and that the charge was later dropped. A statement was recorded; however, Anderson argues that the defense did not receive a copy. In the statement, Wims stated that Anderson did not tell her that he robbed the school.

{¶46} After Anderson had testified, the prosecutor produced an audio tape of Wims' police interview after the robbery. Anderson's attorney argued that he "could have cross-examined [Wims] on it, whether he specifically robbed the school." Anderson's counsel requested a mistrial on a Brady violation. The State argued that Wims "never stated [Anderson] robbed the school or a school. [Anderson's counsel] was free to ask her if he ever admitted to robbing the school." The trial court subsequently overruled the Motion for Mistrial.

{¶47} The suppression by the prosecution of evidence favorable to an accused "violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland* (1963), 373 U.S. 83, 87.

{¶48} "Thus, the touchstone issue in a case where exculpatory evidence is alleged to have been withheld is whether the evidence is material. In determining whether the prosecution improperly suppressed evidence favorable to an accused, such evidence shall be deemed material 'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *** A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.' *** The court held that this standard of materiality applies regardless of whether the evidence was specifically, generally or not at all requested by the defense." *State v. Hoffman*, 11th Dist. No. 2001-L-022, 2002-Ohio-6576, at ¶21 (citations omitted).

{¶49} Anderson claims that because he was unable to cross examine Wims on her statement, specifically "the statement concerning what [Anderson] had allegedly told her about the robbery", that he was entitled to a mistrial. He claims that he was denied the opportunity to present this "exculpatory evidence" and "cross-examine Wims with her own statement." Further, Anderson contends that the statement Wims made to the police was material evidence subject to disclosure. For the following reasons, we disagree with Anderson's arguments.

{¶50} Wims never testified that Anderson told her he had robbed the school. She stated regarding what Anderson had done, that "he technically didn't tell me. I

found out the next day." Further, she said Anderson and "his brother and someone else, they had did something. But at the time, I didn't know what it was." Eventually, Anderson told Wims that "there had been a robbery and he had a gun." Wims was never asked whether Anderson specifically admitted or denied robbing the school, thus her statement would have no impeachment value.

{¶51} Moreover, in closing augments, Anderson's counsel was permitted to state to the jury that Wims "just failed to mention when she asked [Anderson] specifically, 'Did Tim tell you he robbed the school?' 'No.' She failed to tell us that."

{¶52} Therefore, we hold that the evidence in question fails to put this case in a whole new light so as to undermine the confidence in Anderson's conviction.

{¶53} Anderson's third assignment of error is without merit.

{¶54} In his final assignment of error, Anderson argues that his convictions for Felonious Assault and Aggravated Robbery are against the manifest weight of the evidence.

{¶55} A challenge to the manifest weight of the evidence involves factual issues. The "weight of the evidence addresses the evidence's effect of inducing belief." *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25 (citation omitted); *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52 ("[w]eight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial'") (citation omitted) (emphasis sic). "In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's?" *Wilson*, 2007-Ohio-2202, at ¶25.

{¶56} "The [appellate] court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines

whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. "[T]he weight to be given to the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, at syllabus; *State v. Thomas* (1982), 70 Ohio St.2d 79, at the syllabus. However, when considering a weight of the evidence argument, a reviewing court "sits as a 'thirteenth juror'" and may "disagree *** with the factfinder's resolution of the conflicting testimony." *Thompkins*, 78 Ohio St.3d at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42. "The only special deference given in a manifest-weight review attaches to the conclusion reached by the trier of fact." Id. at 390 (Cook, J., concurring).

{¶57} Anderson focuses entirely on the identification issue. He claims that "no one identified Appellant as the robber."

{¶58} In order to convict Anderson on the two counts of Felonious Assault, the state had to prove, beyond a reasonable doubt, that Anderson did knowingly cause or attempt to cause physical harm to Michelle Douglas and Claudia Von Ostwalden, by means of a deadly weapon or dangerous ordnance, to wit: a firearm. R.C. 2903.11(A)(2).

{¶59} In order to convict Anderson of Aggravated Robbery, the state had to prove beyond a reasonable doubt that Anderson, "in attempting or committing a theft offense" "or in fleeing immediately after the attempt or offense" had "a dangerous ordnance on or about the offender's person or under the offender's control." R.C. 2911.01(A)(2).

{¶60} The state presented evidence that Anderson told detectives that "the robbery had been done in order to pay back a debt that [Anderson's] brother, Michael, owed to a local gang called the Fourth Street Boys because Michael had apparently ripped them off." Anderson committed the robbery to "save his brother's life."

{¶61} Wims testified that Anderson told her that he "had set up something" and that there had been a robbery. Additionally, Anderson admitted to having a gun to Wims. Furthermore, the state presented testimony of Cruz and Robison who spoke to Anderson at the school prior to the robbery. Both testified that the same man they were talking to, Anderson, ran out of the school carrying a silver box and wearing a black mask after the robbery. Cruz stated that the man running out of the school had "the same clothes as the person [he] was talking to." A surveillance video from the school was shown to the jury, in which Anderson was seen moments before the robbery. A man in similar or the same clothing as Anderson, and wearing the same backpack, was shown robbing the school and pointing the gun at both Douglas and Von Ostwalden.

{¶62} Douglas testified that a gun was placed somewhere on her head and that "[i]t felt hard. It felt cold. It didn't look plastic. It looked very real to [her]." Von Ostwalden testified that the robber pointed the gun at her and said to her "Stop or I'll shoot."

{¶63} Although none of the witnesses specifically stated that the robber was 6'4", many eye witnesses described the robber as "tall" and "pretty tall." The state notes that Anderson "did not testify how long he had the tattoo and offered no proof that it wasn't acquired during his trip to" Nevada. Further, "the robbery took a matter of seconds and the robber was holding the gun in his right hand and made no obvious

gestures with his left." Anderson also testified that he lied to the cops and was not the robber and that Wims has a bias against her ex-boyfriend, Anderson.

{¶64} When assessing witness credibility, "[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." *State v. Awan* (1986), 22 Ohio St.3d 120, 123. "Indeed, the factfinder is free to believe all, part, or none of the testimony of each witness appearing before it." *Warren v. Simpson*, 11th Dist. No. 98-T-0183, 2000 Ohio App. LEXIS 1073, at *8. Furthermore, if the evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict. Id.

{¶65} "'Moreover, *** a reviewing court will not reverse a conviction 'where there is substantial evidence upon which the court could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt.'" *State v. Ward*, 11th Dist. No. 2008-G-2851, 2009-Ohio-3145, at ¶36 (citations omitted).

{¶66} Accordingly, the verdict is consistent with the manifest weight of the evidence.

{¶67} For the foregoing reasons, the Judgment Entry of the Trumbull County Court of Common Pleas, denying Anderson's Motion to Suppress and finding him Guilty of one count of Aggravated Robbery and two counts of Felonious Assault, is affirmed. Costs to be taxed against appellant.

COLLEEN MARY O'TOOLE, J.,

TIMOTHY P. CANNON, J.,

concur.