[Cite as *State v. Bridgeman*, 2009-Ohio-4578.]

IN THE COURT OF APPEALS FOR CHAMPAIGN COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 19
v.	:	T.C. NO. 08 CR 81
ADAM C. BRIDGEMAN	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 4th day of September, 2009.

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Adam C. Bridgeman appeals from his conviction and sentence for aggravated burglary, aggravated robbery and grand theft. Bridgeman filed the instant appeal with this Court on July 25, 2008.

I

{¶ 2} On the afternoon of December 17, 2007, a man entered the First Central National

Bank in Christiansburg, Ohio. He wore a black ski mask, a black coat, dark pants, boots, and gloves. The man pointed a gun at the bank manager and a teller and demanded money. The man was given several bags of money and he then left the bank.

{¶ 3} Later that same afternoon, William Davis, who resides on North Alcony Conover Road in Miami County, not far from Christiansburg, discovered a pair of pants in his front yard. That same afternoon police officers found a coat, boots, gloves and a ski mask scattered along North Alcony Conover Road. It appeared that the items had been thrown from a moving vehicle.

{¶ 4} On February 9, 2008, Detective Brown of the Champaign County Sheriff's Office received an anonymous telephone tip identifying Bridgeman as a suspect in the bank robbery. After searching several law enforcement databases, Detective Brown discovered that Bridgeman's age, height, and race matched the general description of the robber given by bank employees.

{¶ 5} When Detective Brown interviewed Bridgeman, he denied involvement, claiming that he was incarcerated in the Miami County jail at the time of the bank robbery on December 17, 2007. Jail records refuted that claim, however, and show that Bridgeman was released from jail on December 7, 2007, and was not booked into the jail again until January 5, 2008. Detective Brown procured a warrant and obtained DNA samples from Bridgeman. Laboratory analysis revealed that Bridgeman's DNA matched DNA found on the ski mask and the gloves. The mask and gloves were also found to contain the DNA of an unknown individual; thus, it was unclear who wore the articles of clothing last according to the State's DNA expert.

{¶ 6} Defendant was subsequently indicted on one count of aggravated burglary, R.C. 2911.11(A)(2), one count of aggravated robbery, R.C. 2911.01(A)(1), and one count of grand theft, R.C. 2913.02(A)(5), (B)(2). A three year firearm specification was attached to each

charge. Following a jury trial, Defendant was found guilty of all charges and specifications. The trial court sentenced Defendant to concurrent prison terms of ten years each for aggravated burglary and aggravated robbery and eighteen months for grand theft. The court also merged the firearm specifications and imposed one additional and consecutive three year prison term on those, for a total sentence of thirteen years.

{¶ 7} It is from this judgment that Bridgeman now appeals.

II

{¶ 8} As an initial matter, we find Bridgeman's third assignment of error to be meritorious in the instant appeal. We will, therefore, discuss the third assignment out of order as follows:

{¶ 9} "THE TRIAL COURT ERRED IN ALLOWING HEARSAY TESTIMONY BY DETECTIVE BROWN, BECAUSE THIS TESTIMONY WAS USED FOR THE TRUTH OF THE MATTER ASSERTED, THE PREJUDICE TO THE APPELLANT OUTWEIGHED THE PROBATIVE VALUE OF THE TESTIMONY, AND THIS ERROR WAS NOT HARMLESS."

{¶ 10} Detective Aaron Brown testified that on February 9, 2008, nearly two months after the bank robbery, he received an anonymous phone tip. The caller asked if Det. Brown was working the Christiansburg bank robbery case. When Det. Brown said "yes," the caller said Det. Brown needed to look at Defendant, Adam Bridgeman.

{¶ 11} Bridgeman objected to Det. Brown's testimony as inadmissible hearsay. The trial court admitted the evidence over Bridgeman's objection, finding that the evidence was not offered for the truth of the matter asserted, but rather was offered to show why Det. Brown took the next steps that he did in his investigation, which focused specifically on Bridgeman.

{¶ 12} In *State v. Sinkfield* (October 2, 1998), Montgomery App. No. 16277, this court observed.

{¶ 13} "“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’ Evid.R. 801(C). Generally, out-of-court statements offered to explain a police officer's conduct while investigating a crime, rather than for their truth, are not hearsay. *State v. Thomas* (1980), 61 Ohio St.2d 223, 232. Nevertheless, where out-of-court statements are admitted merely to explain a police officer's conduct during the course of an investigation, ‘the potential for abuse in admitting such statements is great.’ *State v. Blevins* (1987), 36 Ohio App.3d 147, 149. Specifically, a prosecutor might use a police officer's testimony regarding his investigative activities as a pretext to introduce a number of highly prejudicial out-of-court statements, justifying their admission on the grounds that the statements are being offered merely to explain the police officer's conduct, rather than for their truth.

{¶ 14} “In order to limit this potential for abuse, the *Blevins* court set forth the following standard governing the admission of out-of-court statements offered, ostensibly, to explain a police officer's conduct during the course of an investigation. First, the conduct to be explained must be ‘relevant, equivocal, and contemporaneous’ with the out-of-court statements. *Id.* Second, the out-of-court statements must meet the standard of Evid.R. 403(A). Thus, even if the statements are relevant to proving some fact other than the truth of the matter asserted, the evidence still must be excluded if its probative value is substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or misleading the jury. *Blevins, supra,* and Evid.R. 403(A).” *Id.*, p. 4.

{¶ 15} Bridgeman relies upon *Sinkfield,* wherein we found that a police officer’s

testimony regarding an anonymous tip he received implicating the defendant in the crime should not have been admitted. Unlike the defendant in *Sinkfield*, no witness had identified Bridgeman as a suspect in this crime prior to Det. Brown's testimony about the anonymous phone tip he received implicating Defendant in the bank robbery. Absent the anonymous tip identifying Bridgeman as a person of interest, it is unlikely that he would have been looked at for the crime. The State argues that it presented the testimony of Det. Brown merely in order to explain his conduct in investigating Bridgeman as a possible suspect in the robbery, and not as evidence of Bridgeman's guilt. Det. Brown's testimony regarding the tip, however, placed in the minds of the jury that an unidentified person identified Bridgeman as the perpetrator of the robbery.

{¶ 16} Pursuant to Evid. R. 403(A), the probative value of Detective Brown's testimony concerning the out-of-court statement was substantially outweighed by the danger of unfair prejudice to Bridgeman. Detective Brown's testimony regarding the anonymous phone tip was clearly prejudicial to Defendant, inasmuch as the tip implicated Defendant in the bank robbery. After admitting Det. Brown's hearsay testimony, the trial court failed to provide the jury with a limiting instruction indicating that the testimony could only be used to explain Det. Brown's conduct when investigating the robbery. This failure only exacerbates the error.

{¶ 17} In determining whether the admission of the hearsay statement was unduly prejudicial to Bridgeman, we are guided by the following passage from *State v. Kidder* (1987), 32 Ohio St.3d 279, wherein the Ohio Supreme Court stated:

{¶ 18} "'*** [O]ur judgment mut be based on our own reading of the record and on what seems to us to have been the probable impact of the *** [statements] on the minds of an average jury.' (Citation omitted.) In the final analysis, the evidence in favor of conviction, absent the hearsay, must be so overwhelming that the admission of those statements was harmless beyond a

reasonable doubt." (Citation omitted.) *Id*. at 284.

{¶ 19} "An error is harmless where there is no reasonable probability that the error contributed to the outcome of [a] defendant's trial." *State v. Holt*, Franklin App. No. 97APA10-1361, citing *State v. Brown*, 65 Ohio St.3d 483, 485, 1992-Ohio-61.

{¶ 20} The State did not present overwhelming evidence of Bridgeman's guilt in the instant case. Although Bridgeman's DNA matched some of the DNA found in the mask and gloves allegedly worn by the perpetrator of the robbery, there was a second individual's DNA found on the mask and gloves, as well. In light of the presence of a second set of DNA other than Bridgeman's, the State's own expert testified that it was unclear who last wore the mask and gloves when the actual robbery occurred. Additionally, the bank employees, as well as the delivery truck driver who encountered the perpetrator outside of the bank, only provided a general physical description of the perpetrator because his face was obscured by a mask. Absent the hearsay testimony provided by Det. Brown, the remaining evidence adduced by the State did not overwhelmingly support Bridgeman's conviction beyond a reasonable doubt.

{¶ 21} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of that discretion. *State v. Robb*, 88 Ohio St.3d 59, 2000-Ohio-275. An abuse of discretion means more than a mere error of law or an error in judgment. It implies an arbitrary, unreasonable, unconscionable attitude on the part of the court. *Adams*, *supra*. After a thorough review of the record in this matter, the trial court abused its discretion in admitting Detective Brown's testimony about the anonymous phone tip that he received which implicated Bridgeman as the perpetrator of the robbery.

{¶ 22} Defendant's third assignment of error is sustained.

III

{¶ 23} Bridgeman's first assignment of error is as follows:

{¶ 24} "THE APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED BECAUSE THE TRIAL COURT FAILED TO FOLLOW THE PROCEDURES REQUIRED BY THE SUPREME COURT OF OHIO FOR QUESTIONING BY JURORS, WHEN IT NEGLECTED TO PROVIDE THE REQUIRED JURY INSTRUCTION."

{¶ 25} In *State v. Fisher*, 99 Ohio St.3d 127, 2003-Ohio-2761, the Ohio Supreme Court held that the decision whether to allow jurors to question witnesses is a matter within the discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion. *Id*., at ¶31. The Supreme Court further observed:

{¶ 26} "To minimize the danger of prejudice, however, trial courts that permit juror questioning should (1) require jurors to submit their questions to the court in writing, (2) ensure that jurors do not display or discuss a question with other jurors until the court reads the question to the witness, (3) provide counsel an opportunity to object to each question at sidebar or outside the presence of the jury, (4) instruct jurors that they should not draw adverse inferences from the court's refusal to allow certain questions, and (5) allow counsel to ask followup questions of the witnesses." *Id*., at ¶29.

{¶ 27} Bridgeman argues that the trial court did not follow *Fisher's* requirement that the court instruct the jury that they should not draw adverse inferences from the court's refusal to ask certain questions. At the outset, we note that Bridgeman failed to object to the trial court's instruction to the jury regarding the procedure for allowing jurors to question witnesses.

{¶ 28} Crim.R. 30(A) states:

{¶ 29} "On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury."

{¶ 30} Having failed to object to the trial court's instruction, Bridgeman has waived all but "plain error." *State v. Underwood* (1983), 3 Ohio St.3d 12. Plain error does not exist unless it can be said that but for the error the outcome of the trial clearly would have been otherwise. *State v. Long* (1978), 53 Ohio St.2d 91.

{¶ 31} With regard to allowing jurors to question witnesses, the trial court instructed the jury as follows:

{¶ 32} "This court also permits the jury to ask questions of the witness. So there is a specific procedure that we are required to follow in doing that.

{¶ 33} "After the witness has completed the testimony, then we'll pause and you have the opportunity to write down your questions. There's a form in your notebooks for jury questions. We want each of you to write something. If you don't have a question, then you just write no question. If you have a question, you write it out.

{¶ 34} "The bailiff collects the questions. Then we have one of those bench conferences where the judge and the lawyers gather around the court reporter and the judge reads the question into the record.

{¶ 35} "And then the lawyers are permitted to object to the question if they wish.

{¶ 36} "And once the lawyers have had the opportunity to consider the questions, then the Court rules whether the question will be asked of the witness or not. Your questions are subject to the same rules of evidence that lawyers' questions are subject to. So you may have

what you believe is a legitimate question but the Rules of Evidence do not permit the judge to ask that question.

{¶ 37} "Please don't be offended if you're in that kind of situation. It's not personal. We assure you it's just a question of the judge applying the Rules of Evidence.

{¶ 38} "Once we have everything on the record in our conversation then the judge comes back here to the bench and the judge asks the question of the witness as you have written it in most cases. And the witness is permitted to answer.

{¶ 39} "Once we've completed your questions of the witness, then each lawyer has the opportunity to ask follow-up questions on the subjects that were covered by the questions you have.

{¶ 40} "Once that is done, then the witness is excused." (T. 109-110). (Emphasis supplied).

{¶ 41} *Fisher* explains that the purpose of the five requirements it imposes when jurors are permitted to submit questions is "[t]o minimize the danger of prejudice." Bridgeman argues that the instruction the court gave was insufficient with respect to the adverse inferences prong, because "the Court appeared to be more concerned with the juror's feelings, rather than the potential prejudice to the Appellant." (Brief, p. 6).

{¶ 42} In our judgment, the trial court's instruction was sufficient to apprise jurors that the court might not ask all of the questions that they submit, and that if a question were not asked they should not be offended because the court had a good reason for not doing so. Although the trial court did not use the exact language in *Fisher* that the jury "should not draw adverse inferences from the court's refusal to allow certain questions," that message was sufficiently conveyed. *State v. Myers*, Darke App. No. 1643, 2006-Ohio-1604. No error, much less plain

error, is demonstrated.

{¶ 43} Bridgeman's first assignment of error is overruled.

IV

{¶ 44} Bridgeman's second assignment of error is as follows:

{¶ 45} "THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S MOTION FOR A MISTRIAL, BECAUSE THE APPELLANT WAS PREJUDICED WHEN MULTIPLE MEMBERS OF THE JURY OBSERVED THE APPELLANT IN CUSTODY ON MULTIPLE OCCASIONS DURING THE TRIAL."

{¶ 46} Bridgeman argues that the trial court abused its discretion in refusing to grant his motion for a mistrial, because during the trial several jurors, on more than one occasion, observed Bridgeman either in handcuffs or in the custody of court security personnel.

{¶ 47} The decision whether to grant a mistrial lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059. An abuse of discretion means more than a mere error of law or an error in judgment. It implies an arbitrary, unreasonable, unconscionable attitude on the part of the trial court. *State v. Adams* (1980), 62 Ohio St.2d 151.

{¶ 48} Ordinarily, a defendant should appear in court free from shackles because the presence of restraints tends to erode the presumption of innocence that our system attaches to every defendant. *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304 at ¶79. In cases involving outside influences on jurors, trial courts are granted broad discretion in assessing the impact and determining the appropriate remedy. *State v. Williams*, Montgomery App. No. 22126, 2008-Ohio-2069, citing *State v. Phillips*, 74 Ohio St.3d 72, 1995-Ohio-171.

{¶ 49} On the first day of trial, two to four of the jurors briefly saw Bridgeman in handcuffs as they were coming down the stairs to leave the courthouse for the lunchtime recess. The trial court questioned both Bridgeman and the deputy sheriff in charge of court security about this incident. Counsel for both parties were permitted to participate in that questioning. Bridgeman's counsel did not want the particular jurors who saw him in handcuffs questioned, and the trial court did not do that.

{¶ 50} Bridgeman moved for a mistrial, but the trial court overruled that motion, concluding that any viewing of Defendant in handcuffs during the noon recess was brief and inadvertent, and there had been no demonstration that Bridgeman suffered any prejudice as a result of this incident. The trial court instructed the jury that "anything you see or hear outside the courtroom related to this case must be deleted from your mind. You must determine the case based on what you see and hear in this courtroom and in your jury deliberation room and nothing else."

{¶ 51} On the second day of trial, defense counsel informed the trial court that at the conclusion of the previous day's proceedings, three jurors who were in the courthouse parking lot area observed Defendant. Two jurors saw Bridgeman in handcuffs, being placed into a police cruiser for transport to the Tri-County jail in Mechanicsburg, and one other juror saw Bridgeman inside the police cruiser. The trial court questioned the deputy sheriff in charge of court security and transporting Bridgeman, who stated that he did not see any jurors outside in the parking lot area. Counsel for both parties participated in that questioning. This time, the trial court also questioned the three jurors involved who allegedly saw Bridgeman out in the parking lot at the close of the first day's court proceedings.

{¶ 52} Juror Number Two denied ever seeing Bridgeman anywhere outside the

courthouse, but did acknowledge briefly seeing Bridgeman inside the building near the first floor, escorted by police during the noon recess. Juror Number Two stated that nothing about that observation of Bridgeman would influence the juror in this case, and that the juror could be fair and impartial.

{¶ 53} Juror Number Four acknowledged seeing Bridgeman in handcuffs in the hallway, being escorted somewhere by police, during the noon recess. Juror Number Four stated that nothing about that observation of Bridgeman would influence the juror' s decision in this case, and that the juror could be fair and impartial.

{¶ 54} Juror Number Nine likewise acknowledged seeing Bridgeman in handcuffs being escorted by police during the noon recess. Juror Number Nine stated that nothing about that observation of Bridgeman would influence the juror's thinking about this case, and the juror could be fair and impartial.

{¶ 55} Bridgeman renewed his motion for a mistrial. The trial court overruled that motion, concluding that there was no proof that any juror saw Bridgeman outside the courthouse in the parking lot or inside a police cruiser.

{¶ 56} No juror who saw Bridgeman in handcuffs or in the custody of court security personnel indicated that what the juror saw had or would have any influence upon the juror's decision in this case, or that because of their observation the juror could not remain fair and impartial. Accordingly, there is no basis to find that those incidents affected Bridgeman's right to a fair trial or that he suffered prejudice as a result. The trial court did not abuse its discretion in overruling Bridgeman's motion for a mistrial. *Williams*.

{¶ 57} Bridgeman's second assignment of error is overruled.

V

{¶ 58} Bridgeman's fourth assignment of error is as follows:

{¶ 59} "APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND THUS DEPRIVED OF HIS RIGHT TO DUE PROCESS UNDER BOTH THE OHIO AND FEDERAL CONSTITUTIONS."

{¶ 60} Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, the defendant was prejudiced as a result. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. To prove prejudice the defendant must demonstrate that were it not for counsel's errors, the result of the trial would have been different. *Id*., *State v. Bradley* (1989), 42 Ohio St.3d 136.

{¶ 61} Bridgeman argues that his counsel's performance was deficient in several respects. First, Bridgeman complains that after it became apparent that some of the jurors had seen Bridgeman in handcuffs or in the custody of court security personnel during a lunchtime recess on the first day of trial, defense counsel failed to request that the trial court interview those jurors who might have seen Bridgeman. Counsel explained that it probably wouldn't help, and would only call more attention to the matter. Instead, counsel requested a mistrial, which the trial court denied. Bridgeman argues that had his counsel requested the trial court to interview those jurors who might have seen him in custody at lunchtime on the first day of trial, the trial court would have had a better understanding of the incident and could have rendered a more informed decision on the motion for mistrial. That is nothing more than speculation. Furthermore, counsel obviously made a tactical decision, which is within the bounds of reasonable representation per *Strickland*.

{¶ 62} Bridgeman also claims that his counsel performed in a deficient manner by failing to question the State ’s DNA expert about her qualifications to testify as an expert witness. The record demonstrates that the State laid a proper foundation to qualify the witness as an expert, including the fact that the witness had previously testified as an expert in several courts. Bridgeman claims that his counsel should have asked the witness whether she had ever failed to qualify as an expert witness, because an affirmative answer to that question would have resulted in an acquittal due to the fact that the DNA evidence in this case was the cornerstone of the State’s case.

{¶ 63} There is nothing in this record that suggests that the States’ DNA expert ever failed to qualify as an expert witness in other proceedings. Bridgeman’s claim that his counsel performed deficiently by failing to ask the expert witness that question requires reliance on evidence outside this record, and that claim is cognizable only in post-conviction relief proceedings. *State v. Cooperrider* (1983), 4 Ohio St.3d 226. Bridgeman has not shown that he suffered any prejudice as a result of his counsel’s failure to ask the State’s expert whether she had ever failed to qualify as a DNA expert. Indeed, had the witness been asked the question and responded "never," that would have bolstered the witness’s credibility. Ineffective assistance of counsel has not been demonstrated.

{¶ 64} Finally, Bridgeman argues that his counsel performed in a deficient manner by responding to a question an alternate juror asked as they were walking toward the courthouse on the morning of the second day of trial. The alternate juror approached defense counsel and said: "I thought bank robbery was a federal offense." Defense counsel responded: "Sometimes. I can’t talk to you." Upon learning about this incident from defense counsel, the trial court questioned the alternate juror, who stated that he had not discussed this incident with any of the

other jurors. The trial court nevertheless dismissed the alternate juror.

{¶ 65} Bridgeman suggests that the alternate juror may not have been truthful about not discussing this incident with the other jurors. Once again, that is speculation, because there is nothing in this record that in any way suggests that the alternate juror lied to the trial court about not discussing this incident with any of the other jurors. To that extent, Bridgeman's ineffective assistance of counsel claim is based upon evidence outside the record and is not cognizable in this direct appeal. *Cooperrider*. Moreover, Bridgeman fails to demonstrate that he suffered any prejudice as a result of his counsel's conduct, *Strickland*, and therefore ineffective assistance of counsel has not been shown.

{¶ 66} Bridgeman's fourth assignment of error is overruled.

VI

{¶ 67} Bridgeman's fifth and final assignment of error is as follows:

{¶ 68} "THE GUILTY VERDICTS RENDERED BY THE JURY WERE NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 69} A weight of the evidence argument challenges the believability of the evidence; which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15563. The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶ 70} "The 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 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,

1997-Ohio-52.

{¶ 71} Bridgeman argues that his convictions for aggravated burglary, aggravated robbery and grand theft are against the manifest weight of the evidence and that the jury lost its way. Bridgeman claims that the identification evidence was scant because none of the witnesses who witnessed the bank robbery could see the perpetrator's face because he wore a ski mask. Moreover, the testimony of the delivery truck driver who thought he saw the suspect was of little value because he merely saw a man wearing a black ski mask near the First Central National Bank on the day of the incident, but because it was cold that day he didn't think too much about it. Bridgeman also points out that there was no physical evidence linking him to this crime, except for his DNA found on a black ski mask and one glove that police found scattered along a road outside Christiansburg. Bridgeman argues that this DNA evidence was inconclusive as to his guilt because the DNA profile revealed that at least one other person had worn the ski mask and the glove, and the State's DNA expert testified that it was possible that the unknown contributor was the last person to wear the mask and glove.

{¶ 72} Detective Brown testified that Bridgeman's race, age and height matched the description given by the bank employees who witnessed the robbery, and that Bridgeman gave a false alibi when Detective Brown interviewed him. The State's expert testified that Bridgeman's DNA was the major contributor to the DNA profile found on the ski mask and glove recovered by police shortly after the bank robbery. Those items, along with a coat, boots, and pants, were found scattered along North Alcony Conover Road, not far from Christiansburg, and appeared to have been thrown from a moving vehicle. Cheryl Castle, a bank teller who witnessed the robbery testified that the boots, coat, gloves, pants and ski mask resembled the ones worn by the robber. Doug Mosbarger, the bank manager, also identified the gloves and mask as the ones

worn by the robber.

{¶ 73} A defendant who argues that his conviction is against the manifest weight of the evidence has the burden to show a manifest injustice in the guilty verdict the jury returned. *Thompkins*. That burden is not satisfied merely by showing that, on the reasonable doubt standard, the jury might instead have returned a verdict of not guilty. Rather, it requires a showing the evidence preponderates against the verdict of guilt, *State v. McDaniel* (May 1, 1998), Montgomery App. No. 16221, to such an extent that the jury "lost its way" in finding the defendant guilty. *Thompkins*.

{¶ 74} Circumstantial evidence and direct evidence possess the same probative value, *State v. Jenks* (1991), 61 Ohio St.3d 259, and from the combination of significant circumstantial and direct evidence in this case, the trier of facts could reasonably conclude that Bridgeman was the perpetrator of this bank robbery and committed these offenses. The jury did not lose its way in choosing to believe the State ’s version of these events, which it had a right to do. *State v. DeHass* (1967), 10 Ohio St.2d 230.

{¶ 75} Reviewing the record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the jury lost its way in choosing to believe the State’s witnesses, or that a manifest miscarriage of justice occurred. Bridgeman’s conviction for aggravated burglary, aggravated robbery and grand theft is not against the manifest weight of the evidence.

{¶ 76} Bridgeman’s fifth assignment of error is overruled.

VII

{¶ 77} Bridgeman’s third assignment of error having been sustained by this Court, the judgment of the trial court is reversed, and this matter is remanded to the trial court for

proceedings consistent with this opinion.

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FAIN, J. concurs

GRADY, J., dissenting:

{¶ 78} I would overrule the third assignment of error.

{¶ 79} Hearsay evidence offered by the prosecution to show why an officer took a step in his investigation of a crime that led to a defendant's arrest is admissible for that limited purpose when the officer's narrative reasonably requires an explanation for why he proceeded as he did and the evidence does not portray operative facts linking the defendant to the crime of which he is accused on which the jury is asked to rely, or must rely, in order to convict.

{¶ 80} The tip to which Detective Brown testified merely pointed a finger at Bridgeman. In its substance, the tip contained no operative facts linking Bridgeman to the bank robbery. Being from an anonymous source, the tip presented no basis of knowledge on the part of the tipster that would lend weight to what the tipster had said. The tipster's credibility was instead given weight by the subsequent, corroborating facts Detective Brown's investigation developed. Though that evidence was circumstantial, it was sufficient, in and of itself, to permit the jury to convict.

{¶ 81} Admission of Detective Brown's testimony concerning the tip he received reasonably explained why he proceeded as he did, and was not unduly prejudicial to Bridgeman. Therefore, I would overrule the third assignment of error and affirm his conviction.

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