[Cite as *State v. Lane*, 2010-Ohio-287.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 98
v.	:	T.C. NO. 2008 CR 389
CAMERON R. LANE	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 29th day of January, 2010.

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ELIZABETH A. ELLIS, Atty. Reg. No.0074332, Assistant Prosecutor, 61 Greene Street, Xenia, Ohio 45385
Attorney for Plaintiff-Appellee

BRANDIN D. MARLOW, Atty. Reg. No. 0076381, 150 N. Limestone Street, Suite 219, Springfield, Ohio 45501
Attorney for Defendant-Appellant

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FROELICH, J.

{¶ 1} Cameron Lane was found guilty by a jury in the Greene County Court of Common Pleas of robbery and abduction, both third degree felonies. The court sentenced him to five years on each count, to be served consecutively for a total of 10 years in prison.

{¶ 2} On appeal, Lane claims that his convictions were based on insufficient evidence

and against the manifest weight of the evidence and that the court failed to properly instruct the jury to disregard testimony regarding his prior convictions. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} The State's testimony at trial established the following facts:

{¶ 4} In August 2007, Lane began living at the home of 81-year-old Oscar Bowen in Xenia, Ohio. Bowen had known Lane throughout Lane's life and had known Lane's grandparents. Bowen had no children of his own, and Lane referred to him as "Dad." Bowen called Lane by his middle name, Ray.

{¶ 5} On the evening of Sunday, March 16, 2008, Lane approached Bowen in the living room and demanded $20 from him. When Bowen did not provide the money, Lane forced Bowen onto his left side on the floor and retrieved the money from Bowen's right front pants pocket. Bowen testified that Lane did not have permission to put his hands in Bowen's pants or to take the $20. Although Lane had given Bowen the money earlier in the day, Bowen testified that the money was his to keep and not Lane's to take. Bowen did not immediately report this incident to the police.

{¶ 6} Another incident occurred around midnight on Wednesday, March 19, 2008, a rainy night. According to Bowen, Lane came into his bedroom while he was sitting on the foot of his bed preparing for bed. Lane told Bowen, "I want 10 dollars. I'm going upstairs. You better have it when I come back." Lane's tone of voice frightened Bowen, and Bowen fled the house by the back door. Bowen was fully dressed, but he did not grab a coat, hat, or umbrella.

{¶ 7} Bowen attempted to leave his property through a six-foot-tall gate in the fence

around his back yard. As Bowen was unlocking the deadbolts on the gate, Lane came out of the house and grabbed Bowen. Bowen yelled, and Lane briefly put his hand over Bowen's mouth. Lane "released his hold," and Bowen left through the gate. After the encounter with Lane at the gate, Bowen had injuries to his left eye and lip. Bowen testified that the injuries were caused by Lane's fingernails.

{¶ 8} Bowen testified that he walked around in the rain for while. Afterward, he got into his car, pulled into the alley, and flashed the headlights at his neighbor's bedroom window so she would come out. The neighbor, Pamela Walker, came out to the car and talked with Bowen, who she also called "Dad." After Bowen explained to her what had happened, Walker brought Bowen into her home and called the police. Walker's testimony differed somewhat from Bowen's concerning how Bowen came into her home;[1] however, she corroborated that Bowen came to her home, wet and bleeding. She further testified that Bowen had then told her about Lane's demand for $10 and the encounter at the gate.

{¶ 9} Xenia Police Officers Margioras and Sanso responded to Walker's residence. The officers took photographs of Bowen's injured face. Bowen informed the officers that he and Lane had argued over $10 and that Lane had followed him out the back door and had tried to prevent him from leaving. According to Officer Margioras, Bowen stated that the gate had

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[1]During her testimony, Walker described coming out to Bowen's car on several occasions during the night of March 19th. The first time, Lane approached and said, "I got him," and Walker returned to her house. The second and third times, Walker sat with Bowen in his car and talked with him about Lane; Walker described Bowen as "terrified" each time she talked with him. After the third time, Walker and her fiancé took Bowen back to his (Bowen's) house. According to Walker, these events preceded Lane's demand for $10 and Bowen's encounter with Lane at the gate. Walker further testified that, after taking Bowen back to his home, she heard a scream and Bowen frantically came to her home; Bowen told Walker

hit his face, causing his injuries. The police went to Bowen's home and conducted a complete search of the residence. They were unable to locate Lane. Nevertheless, Bowen expressed that he was afraid to stay in his house, and he spent the night at Walker's residence.

{¶ 10} Bowen returned to his home the following morning, accompanied by Walker. Lane was there. The three spoke briefly, after which Walker and Bowen left the house and Walker called the police. At Bowen's request, Walker returned to open the door to his home for the police. The police took Lane into custody.

{¶ 11} On June 6, 2008, Lane was indicted for robbery, in violation of R.C. 2911.02(A)(3), based on the events of March 16, 2008, and abduction, in violation of R.C. 2905.02(A)(2), based on the encounter on March 19, 2008.[2] A jury trial was held on October 22 and 23, 2008, during which Bowen, Walker, and three Xenia police officers testified. After deliberations, the jury found Lane guilty of both charges. The court sentenced him accordingly.

{¶ 12} Lane appeals from his convictions, raising three assignments of error.

II

{¶ 13} We begin with Lane's second and third assignments of error. They state:

{¶ 14} "THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUPPORT LANE'S CONVICTION."

{¶ 15} "LANE'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

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that Lane had demanded money and had grabbed him at his fence gate.

[2]The indictment originally listed March 19, 2008, as the date for both offenses. It was subsequently amended to reflect March 16, 2008, for the robbery charge.

{¶ 16} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, Montgomery App. No. 22581, 2009-Ohio-525, at ¶10, citing *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d. 560. A guilty verdict will not be disturbed on appeal unless "reasonable minds could not reach the conclusion reached by the trier-of-fact." Id.

{¶ 17} In contrast, "a weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *Wilson* at ¶12. When evaluating whether a conviction is contrary to the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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." *Thompkins*, 78 Ohio St.3d at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 18} Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. However, we may determine which of several competing inferences suggested by the evidence should be preferred.

Id.

{¶ 19} The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence. *Wilson* at ¶14. A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin,* 20 Ohio App.3d at 175.

{¶ 20} First, Lane claims that the State failed to present sufficient evidence to support his robbery conviction under R.C. 2911.02(A)(3). That statute provides: "No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following: (3) Use or threaten the immediate use of force against another." Lane argues that the State failed to provide sufficient evidence that a theft was attempted or committed and/or that he used force against Bowen.

{¶ 21} Upon review of the transcript, the State presented sufficient evidence, through Bowen's testimony, that Lane committed a theft offense and used force against Bowen in the commission of that offense. Bowen testified that Lane did not have permission to stick his hands into Bowen's pocket, that Lane did not have permission to take $20, and that the money "was mine" and not Lane's to take. Bowen's testimony, if believed, was sufficient to establish that Lane committed the theft of $20 when he took it from Bowen's pocket.

{¶ 22} Although Bowen could not describe how Lane forced him to the floor during the theft, Bowen stated that Lane had caused him to be on the floor. Specifically, Bowen testified:

{¶ 23} "Q And how did he [Lane] ask you for the money?

{¶ 24} "A How did he do it?

{¶ 25} "Q Yes, sir.

{¶ 26} "A He said he wanted money. He – I don't know. It all happened so fast. On my left side.

{¶ 27} "Q Well, when he –

{¶ 28} "A He took the money out of my right pants pocket.

{¶ 29} "Q Okay.

{¶ 30} "A And then I said 'You took the 20 dollars?' He said, 'Yes.' That was the end of it.

{¶ 31} "Q Okay. Oscar, when he first asked you for the money, what did you tell him?

{¶ 32} "A I don't have it.

{¶ 33} "Q Okay. What happened then?

{¶ 34} "A That's when it happened, when I ended up on the floor on my left side.

{¶ 35} "Q And who put you on the floor?

{¶ 36} "A Ray.

{¶ 37} "Q Okay, Do you remember how he did that?

{¶ 38} "A No, it happened so fast I don't remember. All I knew I was on the floor on my left side.

{¶ 39} "***

{¶ 40} "Q It was because of Ray's actions you were on the ground?

{¶ 41} "A Yes.

{¶ 42} "Q You didn't throw yourself on the ground?

{¶ 43} "A No."

{¶ 44} Based on Bowen's testimony, the jury could reasonably find that Lane had forced Bowen onto the floor in order to take the money from him. Thus, the State's evidence was sufficient to support a conviction for robbery.

{¶ 45} Lane next asserts that the State failed to present sufficient evidence of abduction under R.C. 2905.02(A)(2), which states: "No person, without privilege to do so, shall knowingly do any of the following: (2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear[.]" Lane argues that Bowen's testimony did "not reflect Bowen's progress was impeded by Lane's action" and that the State did not present evidence that Bowen's "injury from the gate was caused by any action of Lane rather than from a difficult gate."

{¶ 46} Lane's arguments are belied by the record. Bowen expressly testified that Lane restrained him and made him afraid. He stated:

{¶ 47} "Q Were you able to go anywhere when he [Lane] was holding on to you?

{¶ 48} "A No, it happened so fast, he grabbed me, put his hand over my mouth.

{¶ 49} "Q So you couldn't go anywhere right at that moment?

{¶ 50} "A No. No.

{¶ 51} "Q Were you afraid when that happened?

{¶ 52} "A I was afraid when he grabbed me. I yelled."

{¶ 53} Moreover, Bowen testified that the injuries to his face were caused by Lane's fingernails during their encounter at the fence gate. Lane's conviction for abduction was also based on sufficient evidence.

{¶ 54} Lane further claims that his convictions were against the manifest weight of the

evidence. He asserts that Bowen's poor hearing "calls into serious question" whether Lane's statements to Bowen were actually what Bowen believed them to be. Lane also notes that Bowen's testimony that Lane's fingernails had caused his injuries contradicted Bowen's prior statement to police officers that the fence gate had caused his injuries.

{¶ 55} There may or may not have been inconsistent testimony, but the jury had the opportunity to see and hear all the testimony and, in particular, Bowen's testimony and to judge his credibility. The jury was entitled to believe Bowen's statements that Lane had forcibly taken $20 from him on March 16. We cannot say that the jury "lost its way" when it convicted Lane of robbery.

{¶ 56} As for the abduction on March 19, the jury was entitled to believe or disbelieve Bowen's testimony that Lane had restrained and frightened him. Moreover, the abduction charge was supported by admissions by Lane. Detective Ellen Board testified that she had spoken with Lane after his arrest. During their conversation, Lane told her that he had "grabbed Oscar around the upper part of his body" and that "there was some type of struggle." Board testified: "[Lane] said that he never did hit Oscar but that the only thing in the way was the gate and the fence. So that is the only way that he would have had received any injuries would have been from the gate or the fence." Lane explained that he was trying to get Bowen inside the house because it was cold. Nevertheless, Lane admitted to grabbing and restraining Bowen and to Bowen's receiving injuries during that encounter. Lane's conviction for abduction was not against the manifest weight of the evidence.

{¶ 57} The second and third assignments of error are overruled.

III

{¶ 58} Lane's first assignment of error states:

{¶ 59} "THE COURT DEPRIVED LANE OF HIS DUE PROCESS RIGHT TO A FAIR TRIAL WHEN ITS [SIC] FAILED TO INSTRUCT THE JURY TO DISREGARD TESTIMONY REGARDING LANE'S PRIOR CONVICTIONS."

{¶ 60} In his first assignment of error, Lane claims that he was denied a fair trial, because the court failed to properly instruct the jury to disregard testimony by Detective Board about Lane's prior convictions.

{¶ 61} Evid.R. 404(B) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶ 62} "The courts in Ohio have long recognized that evidence of other crimes, wrongs or bad acts carries the potential for the most virulent kind of prejudice for the accused." *State v. Tisdale*, Montgomery App. No. 19346, 2003-Ohio-4209, at ¶47, citing *State v. Lewis* (Feb. 1, 1990), Greene App. No. 88-CA-91. However, an inadmissible statement regarding a defendant's prior convictions is not necessarily prejudicial, particularly when the court promptly admonishes the jury to disregard the improper evidence. See *State v. Durr* (1991), 58 Ohio St.3d 86, 95; *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, at ¶225.

{¶ 63} During her direct examination, Detective Board stated that, as part of her investigation, she had looked up Lane's history and had seen that he had prior convictions. Defense counsel objected to this testimony. The court sustained the objection and told the jury to "disregard."

{¶ 64} Although not mentioned by Lane, Walker also referred during her testimony to Lane's being incarcerated. During her direct examination, the prosecutor asked her to clarify her earlier testimony that she had dated Lane. Walker responded: "At the time I was dating him, he was in the penitentiary. When he got out, I was already with someone else." Before Walker completed this answer, defense counsel objected. The court sustained the objection, stating: "Sustained. The Court [sic] will disregard the comment regarding where he was at the time." During cross-examination, defense counsel asked Walker when her relationship with Lane had ended. Walker again mentioned Lane's prior prison sentence, answering, "*** about a month before he got ready to get out of the penitentiary." Defense counsel again objected. The court instructed the jury "to disregard that statement about the penitentiary."

{¶ 65} We find no basis to conclude that Lane was denied a fair trial. The court sustained each of the objections to testimony alluding to Lane's prior convictions or incarceration, and stated that such testimony should be disregarded. Prior to the presentation of evidence, the court had instructed the jury that, "[s]hould the Court strike any statement and tell you to disregard it, it must be treated as though you never heard it." The trial court also gave a general instruction before the jury's deliberations reminding the jury not to consider any statement it had been told to disregard. The jury can be presumed to have followed the court's instructions, including instructions to disregard testimony. *State v. Zuern* (1987), 32 Ohio St.3d 56, 62.

{¶ 66} Furthermore, Lane didn't object to any instructions the court gave or object that the court should have given any instructions the court didn't give. Failure to object waives any error concerning those matters for purposes of appeal. Crim.R. 30(A). Plain error may

nevertheless be noticed if a manifest injustice is demonstrated. Crim.R. 52(B); *State v. Herrera*, Ottawa App. No. OT-05-039, 2006-Ohio-3053. In order to find a manifest miscarriage of justice, it must appear from the record as a whole that but for the error, the outcome of the trial clearly would have been otherwise. *State v. Long* (1978), 53 Ohio St.2d 91. No plain error is demonstrated relative to any instructions the court gave or didn't give.

{¶ 67} Lane's first assignment of error is overruled.

IV

{¶ 68} The judgment of the trial court will be affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Elizabeth A. Ellis
Brandin D. Marlow
Hon. J. Timothy Campbell