[Cite as *In re Boggess*, 2005-Ohio-6527.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

In the Matter of:	:	Case No. 05CA9
	:	**Released: December 6, 2005.**
Bradley Boggess,	:	
	:	DECISION AND
Adjudicated	:	JUDGMENT ENTRY
Delinquent Child.	:	

APPEARANCES:

William D. Conley, Gallipolis, Ohio, for Appellant.

Thomas S. Moulton, Jr., Assistant Prosecuting Attorney, Gallipolis, Ohio, for Appellee.

McFarland, J.:

{¶1} Bradley Boggess appeals the judgment of the Gallia County Court of Common Pleas, Juvenile Division, adjudicating him a delinquent child for committing an act that would constitute robbery if committed by an adult. Boggess contends that the trial court's judgment is not supported by sufficient evidence and is contrary to the manifest weight of the evidence. We find that the record contains some competent, credible evidence going to each element of robbery. Additionally, after reviewing the entire record, we cannot say that the trier of fact lost its way and created a manifest miscarriage of justice. Accordingly, we overrule Boggess's assignments of error and affirm the judgment of the trial court.

I.

{¶2} On January 26, 2005, Boggess and his friend, Deanna Doss, walked to downtown Gallipolis. During the walk, Boggess asked Doss to switch jackets with him. Doss let Boggess wear her boyfriend's green Carhart jacket, and she put on Boggess's blue and white jacket.

{¶3} As Nadine Schneider walked along Second Avenue in Gallipolis with her groceries, a male teenager in a dark hooded jacket ran up to her, grabbed her purse, jerked her arm back, and kept running. An eyewitness to the purse snatching, Charlie McBrayer, told police in a written statement that the assailant was wearing a green Carhart jacket.

{¶4} Gallipolis Police Officer Joe Barrett discovered Boggess and Doss on Spruce Street between First and Second Avenues, just around the corner from the robbery. Boggess was holding a green Carhart jacket. Doss was wearing Boggess's blue and white jacket and holding the stolen black purse. Boggess told Officer Barrett that he and Doss found the purse. Officer Barrett noticed that the strap on the purse was broken.

{¶5} Police filed a complaint against Boggess, alleging that he is a delinquent child because, while committing or attempting to commit a theft offense, he used or threatened the immediate use of force, in violation of R.C. 2911.02(A)(3).

{¶6} Boggess denied any involvement in the offense, and the case proceeded to trial. At trial, Doss testified that she switched jackets with Boggess because he suggested it. As they walked downtown, they passed an "old lady," and Boggess commented that he wanted to steal the woman's purse. Boggess then turned around and ran back. Doss heard the woman scream. When she turned around, Boggess was not in sight. She saw the elderly woman and another man standing on the sidewalk. Doss heard Boggess yelling for her as he ran through yards and jumped over a fence.

{¶7} When Doss met up with Boggess, he had the black purse under the green Carhart jacket. The two went into the library, where Boggess went through the purse and removed the things he wanted. As he did so, he handed the items to Doss for her to put into the pockets of the jacket she was wearing, Boggess's blue and white jacket. Boggess took off the Carhart jacket and carried it. He told Doss to hold the purse as they exited the library.

{¶8} Mrs. Schneider testified that she did not get a good look at the person who took her purse, but that there was no question in her mind that it was a male. She estimated that the person was 5'8" tall. Mrs. Schneider also testified that the strap on her purse was not broken prior to the purse snatching.

{¶9} Boggess called the investigating officer on the case, Detective Jeff Boyer, to testify. In the course of Det. Boyer's testimony, Boggess had Det.

Boyer read the eyewitness statement of Mr. McBrayer. In his statement, Mr. McBrayer described the robber as a "younger boy" wearing a green Carhart jacket. Mr. McBrayer also wrote that he chased the boy but could not catch him.

{¶10} Boggess and his mother, Patricia Boggess, testified that Boggess has a heart condition that prevents him from running. The heart condition causes dizziness when Boggess physically exerts himself. Boggess has had the condition since birth. Activities such as going up stairs can cause symptoms. However, Boggess admitted that he only learned that he had this condition about a year prior to the trial, after he passed out in gym class. Boggess also admitted that he was hiking through the snow and over a big hill with Doss on the day of the robbery.

{¶11} Boggess testified that Doss led him on a walk through downtown. During their walk, Doss left him for approximately fifteen minutes. After she returned, she "found" the purse in an alley that she led him past. Boggess also testified that switching jackets was Doss's idea, and that he never put on Doss's jacket.

{¶12} Prior to announcing its decision, the court noted that Boggess and Doss do not bear any resemblance to one another. Additionally, the court noted that both Mrs. Schneider and Mr. McBrayer described the robber as a

male. The court found Boggess to be a delinquent child as alleged in the complaint, and sentenced him to the Ohio Department of Youth Services for six months. The court suspended the sentence and ordered Boggess to serve ten days detention at the Scioto County Juvenile Detention Center and six months probation.

{¶13} Boggess appeals, asserting the following assignments of error:

{¶14} "I. THE TRIAL COURT ERRED TO THE SUBSTANTIAL PREJUDICE OF APPELLANT BY FINDING APPELLANT TO BE A DELINQUENT CHILD BY WAY OF COMMITTING A ROBBERY, AS SAID VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶15} II. THE TRIAL COURT ERRED TO THE SUBSTANTIAL PREJUDICE OF APPELLANT BY FINDING APPELLANT TO BE A DELINQUENT CHILD BY WAY OF COMMITTING A ROBBERY, AS THE VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II.

{¶16} In his assignments of error, Boggess argues that the trial court's judgment is not supported by sufficient evidence and that it is against the manifest weight of the evidence.

{¶17} A trial court may adjudicate a juvenile as a delinquent child when the evidence demonstrates, beyond a reasonable doubt, that the child committed an act that would constitute a crime if committed by an adult. R.C. 2151.35(A); Juv.R. 29(E). Thus, when reviewing claims involving the sufficiency of the evidence and the manifest weight of the evidence within

the juvenile context, we apply the same standards of review applicable to criminal convictions. *In re Watson* (1989), 47 Ohio St.3d 86, 91.

A.

{¶18} In his first assignment of error, Boggess contends that the record does not contain sufficient evidence to support his robbery conviction. The Ohio Supreme Court clearly outlined the role of an appellate court presented with a sufficiency of evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus: "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." See, also, *Jackson v. Virginia* (1979), 443 U.S. 307, 319.

{¶19} This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Rather, this test "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw

reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. Accordingly, the weight given to the evidence and the credibility of witnesses are issues primarily for the trier of fact. *State v. Thomas* (1982), 70 Ohio St.2d 79, 79-80; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Whether the evidence supporting a defendant's conviction is direct or circumstantial does not bear on our determination. "Circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof." *Jenks*, 61 Ohio St.3d 259 at paragraph one of the syllabus.

{¶20} Pursuant to R.C. 2911.02(A), a person commits robbery when he, "in attempting or committing a theft offense * * * or in fleeing immediately after such attempt or offense, [uses] or threaten[s] the immediate use of force against another." Boggess contends that, even if he took Mrs. Schneider's purse, the state did not present any evidence that he used or threatened to use force in doing so.

{¶21} The test for the force or threat of force element in a robbery prosecution is objective. *State v. Bush* (1997), 119 Ohio App.3d 146, 150; *State v. Habtemariam* (1995) 103 Ohio App.3d 425, 429. The element is satisfied if the accused's conduct "in reason and common experience is

likely to induce a person to part with property against his will and temporarily suspend his power to exercise his will by virtue of the influence of the terror impressed." *State v. Davis* (1983), 6 Ohio St.3d 91, paragraph one of the syllabus.

{¶22} In purse snatching cases, the evidence is sufficient to show that defendant exerted force toward victim, so as to support conviction for robbery, when it shows that the accused physically exerted enough force upon the victim's arm so as to remove the purse from her involuntarily. See *State v. Johnson* (1988) 61 Ohio App.3d 203, 205; *State v. Steinbach*, Stark App. No. 2004CA00079, 2004-Ohio-6821, at ¶20. The court may consider the physical size and demeanor of a defendant, the likelihood of injury resulting from defendant's actions, and the vulnerability of a particular victim in determining whether a defendant threatened the immediate use of force. *State v. Carter* (1985), 29 Ohio App.3d 148, 150-151. In particular, the act of snatching a purse from the physical possession of an elderly victim generally constitutes sufficient use of force to uphold a conviction for robbery. Id.; *In re Lee* (March 1, 1999), Stark App. No. 98-CA-0250.

{¶23} Here, the witnesses at trial repeatedly referred to Mrs. Schneider as an elderly woman, and Mrs. Schneider testified that she has been retired for thirteen years. Mrs. Schneider testified that her assailant

jerked her purse off of her arm. Additionally, Mrs. Schneider testified that the strap on her purse was intact prior to the robbery. The strap was broken when police recovered the purse from Boggess and Doss. Viewing this evidence in the light most favorable to the state, especially given Mrs. Schneider's age and the fact that Boggess exerted enough physical force to break her purse strap, we find that a rational trier of fact could have found the essential element of force proven beyond a reasonable doubt. Accordingly, we overrule Boggess's first assignment of error.

B.

{¶24} In his second assignment of error, Boggess contends that his conviction is contrary to the manifest weight of the evidence. Even when a verdict is supported by sufficient evidence, an appellate court may nevertheless conclude that the verdict is against the manifest weight of the evidence because the test under the manifest weight standard is much broader than that for sufficiency of the evidence. *State v. Banks* (1992), 78 Ohio App.3d 206, 214; *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶25} In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the 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 granted. *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-71; *Martin*, 20 Ohio App.3d at 175. "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. Eskridge* (1988), 38 Ohio St.3d 56, paragraph two of the syllabus.

{¶26} Here, Boggess contends that his conviction is contrary to the manifest weight of the evidence because the evidence and reasonable inferences drawn from it weigh against a finding that Boggess was the person who took Mrs. Schneider's purse. Specifically, Boggess argues that Mrs. Schneider's description of her assailant does not match him, because Mrs. Schneider estimated that the person was 5'8" tall and could run very fast. Boggess notes that he is only 5'4" tall and that he cannot run fast due to his heart condition. Boggess also contends that because his heart condition restricts his physical activity, Doss's testimony that she saw him running and jumping over a fence is not credible. Additionally, Boggess notes that all of the stolen items were in Doss's possession, not his, when they were approached by police. Finally, Boggess contends that Doss's

statement that she saw a man standing next to Mrs. Schneider conflicts with Mr. McBrayer's statement that he chased the assailant.

{¶27} After reviewing the entire record and weighing all the evidence and reasonable inferences from it, we cannot say that the trier of fact clearly lost its way and created such a manifest miscarriage of justice that a new trial must be granted. Mrs. Schneider's estimate of her assailant's height is only off of Boggess's actual height by four inches. Both Mrs. Schneider and Mr. McBrayer described the assailant as a young male. Mr. McBrayer identified both the color and the designer of the jacket found on Boggess. Additionally, the court noted that Boggess and Doss do not resemble each other physically, and that it did not think it would be possible for someone to confuse the two, regardless of what they were wearing. Finally, we note that Boggess's testimony that he cannot engage in any physical activity is suspect, given that he admitted doing other strenuous activities, such as hiking over a hill in the snow, on the day of the robbery.

{¶28} Because our review of the evidence does not reveal that the trial court lost its way and created a manifest miscarriage of justice, we find that the trial court's finding that Bogess is delinquent is not contrary to the manifest weight of the evidence. Accordingly, we overrule Boggess's second assignment of error.

{¶29} Having overruled both of Boggess's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 for the Rules of Appellate Procedure.
Exceptions.

Harsha, J. and Kline, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.