

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHRISTOPHER JONES

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case Nos. 2014 CA 00039 and
2014 CA 00051

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2013 CR 01968

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 23, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
STARK COUNTY PROSECUTOR
KATHLEEN O. TATARSKY
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, Ohio 44702

MATTHEW PETIT
116 Cleveland Avenue, NW
808 Courtyard Center
Canton, Ohio 44702

Wise, J.

{¶1} Appellant Christopher Jones appeals his conviction and sentence entered in the Stark County Court of Common Pleas on one count of aggravated robbery, with a firearm specification.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On December 11, 2013 at around 3:40 pm, two males entered the Bank of Magnolia branch on Cleveland Avenue in Stark County, Ohio wearing black masks, gloves and dark clothing, including hoodies and what looked like boots. One of the men carried a handgun.

{¶4} The manager, Michele Aukamp, was on the telephone at the time, saw the two males, yelled "fuck, fuck, fuck" and threw the phone down. She stated she knew then that they were getting robbed.

{¶5} One male jumped over the top of the bank counter and instructed the bank teller, Melissa Scott, to go to her station. He grabbed the arm of Aukamp and instructed her to "stand here." She did as instructed and stood there with her arms up.

{¶6} The two tellers opened their drawers where the cash was located. The male who had jumped over the counter started taking money out of the drawers and shoving it in his pockets, yelling, "where's the money, where's the big money, give me your money." He told teller Jennifer Drew he wanted no "dye packs." At one point, he asked for help from his partner, saying "help me out bro." At another point, when he bent down to collect money that had fallen on the floor, Aukamp was able to see the

color of his skin, noting that he was African American, and also that he was wearing blue plaid boxer shorts.

{¶7} Travis M. Boyd, the Bank's Senior Vice President, was in his office facing the lobby. He saw the two robbers run in the front door, one jumped over the counter and the other stood where the customers would be. That man in the customer line had a handgun, metallic color, gray, which looked like an automatic or semiautomatic pistol. When Boyd came out of his office, he was instructed by the robbers to put his hands up on the counter on a shelf. Boyd did as instructed and witnessed the robber behind the counter opening cupboards, drawers and windows looking for cash.

{¶8} After collecting the cash, the robbers left through the front door. The robbery was captured on the Bank's video system.

{¶9} The cash taken by the robbers was embedded with red dye packs. These red dye packs are equipped with a radioactive triggering device. Once the money is taken past a certain triggering device, the dye packs explode and cover the money, and any clothing or skin that it comes in contact with, with a heavy red powder coating. Cash stained with red dye was found outside the bank.

{¶10} After the robbers left through the front door, Boyd grabbed his car keys, got in his car and followed a white Toyota Camry with California plates traveling at a very high rate of speed in the vicinity of the Bank. He followed the car to Dueber Avenue and phoned the Sheriff's office to report the robbery and his pursuit. He followed the Camry until he got to the Route 30 eastbound ramp and saw a Stark County Sheriff's car behind him. Boyd saw two males in the car; the driver was a black male. Boyd pulled over and let the Sheriff's car take over.

{¶11} With lights and sirens on, several sheriff's deputies and members of the Canton police department took over the chase. Deputy Craig Kennedy started following the white Camry and saw it turn southbound on Cherry Avenue towards Sherrick Road and Highland Park Apartments. Canton Police Officer Scott Dendinger and Deputy Kennedy were directed to a vacant house that was located next to the home of Appellant's great-grandmother, Susie M. Jordan.

{¶12} Dendinger noticed fresh footprints in the snow starting at the Camry, through the backyard of the vacant house and up to the porch of the home owned by Ms. Jordan. Dendinger and Kennedy knocked on the door, and it was answered by Jones. He was wearing dark blue sweatpants and a white t-shirt. The pants matched a description given to dispatch by the bank employees. Kennedy noticed that Appellant was out of breath and when asked why, he replied that he had a heart condition.

{¶13} Deputy Shane Simek and Dendinger participated in the search of Ms. Jordan's home. The search was concentrated in the front room where Ms. Jordan indicated Appellant had been. The officers observed a dark colored sweatshirt hoodie and a dollar bill sticking out from under a chair. On closer inspection, they found a pile of money under the cushion of the chair.

{¶14} Deputy Simek also inspected the white Toyota Camry, which turned out to be a rental vehicle that had been reported stolen. Inside the Camry, the officers found a pile of money covered in red dye and a dark blue jacket.

{¶15} Appellant was arrested and taken to the County jail for booking. The clothes he was wearing were collected and included a pair of plaid boxer shorts identified by Aukamp as the boxer shorts she saw one of the robbers wearing. The dark

blue sweatpants Appellant was wearing contained a red pinkish type dye in the inside pocket.

{¶16} On January 14, 2014, Appellant Christopher Jones was indicted on one count of Aggravated Robbery, in violation of R.C. §2911.01, a felony of the first degree, along with one Firearm Specification, in violation of R.C. §2941.145, and a Repeat Violent Offender Specification, pursuant to R.C. §2941.149.

{¶17} The charges stemmed from the robbery of the Bank of Magnolia on December 11, 2013, by two robbers wearing masks and one carrying a handgun.

{¶18} On March 6, 2014, a jury trial commenced on the above-referenced counts. Appellant waived his right to counsel, both orally and in writing, and elected to represent himself during the trial. The jury members were instructed that Appellant had the right to represent himself, and the members should not hold his pro se representation against him. Prior to trial, the State dismissed the Repeat Violent Offender Specification.

{¶19} The State called nine witnesses, including four employees or former employees of the Bank of Magnolia and four law enforcement officers. The State also called Jones' 94 year old great-grandmother, Susie M. Jordan.

{¶20} Ms. Jordan testified as follows:

[STATE]: Back in ... On December 11, 2013 did he [Appellant] come to your house in the afternoon?

[JORDAN]: Is that the day he done that stupid shit?

[STATE]: Well, it is the day that the police came to your house.

[JORDAN]: Oh yeah, right. Oh, boy. Never forget that one. And I hadn't seen him anymore until the fool ran in my house after he done went out doing something he had no business doing.

And I didn't know nothing because if I had known it, he never would have got his damn ass in my house. (T. at 201-203).

{¶21} Appellant called one witness, a Stark County Deputy Sheriff.

{¶22} In addition to witness testimony, the Bank's videotape of the robbery was played for the jury. During deliberations, the jury played the video again.

{¶23} At the close of all evidence, the jury was instructed on both aggravated robbery and the lesser included offense of robbery

{¶24} Following deliberations, the jury returned a verdict of guilty to the charge of Aggravated Robbery and the Firearm Specification.

{¶25} The trial court sentenced Appellant to ten (10) years in prison on the Aggravated Robbery, and three (3) years on the Firearm Specification. The sentences were imposed consecutively for a total period of incarceration of thirteen (13) years.

{¶26} Appellant now appeals, raising the following assignment of error for review:

ASSIGNMENT OF ERROR

{¶27} "I. THE APPELLANT'S CONVICTION FOR ONE COUNT OF AGGRAVATED ROBBERY IN VIOLATION OF R.C. 2911.01 AND THE ATTENDANT FIREARM SPECIFICATION WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I.

{¶28} Appellant, in his sole Assignment of Error, argues his convictions were against the manifest weight and sufficiency of the evidence. We disagree.

{¶29} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and “in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in 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.’ ” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997–Ohio–52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983).

{¶30} An appellate court's function when reviewing the sufficiency of the evidence is to determine 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. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶31} Appellant was charged with Aggravated Robbery, pursuant to R.C. 2911.01(A)(1), which provides:

{¶32} “(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

{¶33} “(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;”

{¶34} Upon review of the testimony and the evidence presented at trial, we find Appellant's conviction for aggravated robbery was not against the manifest weight nor sufficiency of the evidence.

{¶35} Appellant argues that the facts that his DNA was not positively identified in the getaway vehicle and his tennis shoes did not match the teller's description of the robber's boots supports his argument that he was a victim of misidentification in this case.

{¶36} Upon review, we find that the State presented sufficient evidence in this matter to support the conviction. Here, the getaway car was followed from the bank robbery, directly to where it was found abandoned near Appellant's great-grandmother's house. Fresh tracks in the snow led the officer's to Ms. Jordan's house, where they were greeted by Appellant. Appellant was wearing boxer shorts matching the description provided by one of the bank tellers. Appellant's sweatpants contained traces of red dye in one of the pockets. Money from the robber was located under the cushions of Ms. Jordan's chair.

{¶37} The jury was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. “While the jury may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence”. *State v. Craig* (Mar. 23, 2000), Franklin App. No. 99AP–739, citing *State v.*

Nivens (May 28, 1996), Franklin App. No. 95APA09–1236. Indeed, the jurors need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver*, Franklin App. No. 02AP–604, 2003–Ohio–958, at ¶ 21, citing *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548; *State v. Burke*, Franklin App. No. 02AP1238, 2003–Ohio–2889, citing *State v. Caldwell* (1992), 79 Ohio App.3d 667, 607 N.E.2d 1096. The jury is able to observe the witnesses testify and can evaluate body language, voice inflection, and facial expressions. These are valuable tools for assessing credibility; tools that are not available to an appellate court working from the record alone. As such, a jury's assessment of credibility is entitled to considerable deference. See *Thompkins*, *supra* at 390.

{¶38} Appellant was also charged with firearm specifications in violation of R.C. §2941.145 which states the following:

{¶39} “(A) Imposition of a three-year mandatory prison term upon an offender under division (B)(1)(a) of section 2929.14 of the Revised Code is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.”

{¶40} R.C. §2923.11(B)(1) defines “firearm” as “any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. ‘Firearm’ includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.”

{¶41} Appellant asserts the State failed to prove the firearm existed and/or was operable during the robbery.

{¶42} Upon review, we find sufficient circumstantial evidence was presented at trial as to the operability of the firearm.

{¶43} Pursuant to R.C. §2923.11(B)(2), “[w]hen determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.” Thus, in determining whether a firearm was operable or could have been rendered operable at the time of the offense, the trier of fact is permitted to consider all relevant facts and circumstances surrounding the crime, including any implicit threats made by the individual controlling the firearm. *State v. Thompkins, supra*, paragraph one of the syllabus. *See also, State v. Murphy* (1990), 49 Ohio St.3d 206, 551 N.E. 932.

{¶44} As noted by the Ohio Supreme Court in *Thompkins, supra* “it should be abundantly clear that where an individual brandishes a gun and implicitly but not expressly threatens to discharge the firearm at the time of the offense, the threat can be sufficient to satisfy the state's burden of proving that the firearm was operable or capable of being readily rendered operable.” *Id.* at 384, 678 N.E.2d 541; *State v. Reynolds*, 79 Ohio St.3d 158, 1997–Ohio–304. The trier of fact may rely upon circumstantial evidence, “including, but not limited to, the representations and actions of the individual exercising control over the firearm.” R.C. §2923.11(B)(2). The State can rely upon “all of the surrounding facts and circumstances in establishing whether a

firearm was used in the commission of a felony.” *State v. Thompkins*, 78 Ohio St.3d 380, 1997–Ohio–52.

{¶45} Here, the State introduced the video surveillance of the robbery which shows one of the robbers waving a gun at the tellers upon entering the bank. The State also presented the testimony of Travis Boyd, the bank manager, who gave a detailed account of the weapon he observed on the person of one of the bank robbers. Mr. Boyd testified:

Q: The second man, you said you saw him with a gun. With a long gun, handgun, what kind of gun?

A: It was a handgun.

Q.: Okay. And where did you see him with this hand gun?

A: Where I was, he was standing at the edge of the teller line and I was facing him, and he had his hand in his pocket, he opened up his -- I believe he opened up his pocket so I could see the gun to make sure that he knew -- that I knew he had a gun” (T. at 125-126).

Q: And, just from your own sight from what you saw, can you give a description of the gun?

A: I’m no gun expert, I don’t know. I know it was a handgun. I didn’t want to find out what type of gun it was. But identified a gun, a handgun.

Q: Black?

A: It was a metallic color, gray. You know, I didn’t see a revolver chamber like that.

Q: So it looked like an automatic or semiautomatic pistol?

A: Correct. Yeah.

Q: And the way he was acting, did you feel it was a real gun?

A: Yes.

Q: So you felt threatened by the situation?

A: Absolutely. (T. at 129-130).

{¶46} Based upon the above, we find the jury was entitled to believe the evidence regarding the firearm and its operability; therefore, the jury did not lose its way in convicting Appellant on the gun specification

{¶47} Appellant's sole Assignment of Error is overruled.

{¶48} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

JWW/d 0306