[Cite as *State v. Jenkins*, 2015-Ohio-3360.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	Case No. 2014CA00180
	:	
JOHNATHAN MICHAEL JENKINS	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2014CR0245
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	August 17. 2015

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
JOHN D. FERRERO, JR. STARK CO. PROSECUTOR KATHLEEN O. TATARSKY 110 Central Plaza S., Ste. 510 Canton, OH 44702-1413	JACOB T. WILL 116 Cleveland Ave. NW - Ste. 808 Canton, OH 44702

Delaney, J.

{¶1} Appellant Johnathan M. Jenkins appeals from the August 21, 2014 judgment entry of conviction and sentence of the Stark County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose on February 21, 2013 at the Family Dollar Store located at 383 West Tuscarawas Street, Canton. The store manager came in around 7:30 a.m., alone, to prepare the store to open. She unlocked the front doors promptly at 8:00 a.m. and helped several customers waiting outside. In a few minutes she was alone again in the store. She stepped a short distance away from the register to the other end of the counter and began tagging clothes.

{¶3} A man entered the store wearing a black hoodie with the hood up and his face somewhat obscured. The store manager said hello and he did not respond. She became alarmed as he came toward the counter with his hand in his pocket. The manager attempted to step toward the register because the panic button was nearby, but before she could do so the man came up behind her and said "Give me the money."

{¶4} At first the manager was confused and did not immediately act; the man said "Give me the money or I'll hurt you real bad." He partly withdrew a knife from his pocket and showed it to the manager, who immediately opened the register. The man grabbed the bills from the till and told her to dump the change into a bag. The store manager shook as she poured the till into a plastic shopping bag, spilling some of the change.

{¶5} The man transferred the plastic bag of change from his left hand to his right and placed his left hand on the counter as he jumped up and over it. The store manager watched him run through the parking lot and pressed the panic button and called 911. She also immediately wrote down the man's physical description: a younger black male in his twenties or thirties wearing a blue down vest over a black hoodie. The store manager did not get a good look at the robber's face but did note his bright red tennis shoes which left footprints on the counter.

{¶6} Police arrived very quickly and canvassed the area for anyone matching the description. No suspect was found. The store manager provided the store's surveillance video which showed the man behind the counter, grabbing the money, and jumping over the counter. The knife is not visible on the video.

{¶7} The store manager showed police where the robber placed his hand on the countertop. Detectives found a palm print on the counter with the fingertips pointing out, indicating the hand was in the position of the man in the video going over the counter. The palm print and footprints were photographed and the latent palm print was lifted from the countertop.

{¶8} No suspect was developed for over a year. Eventually, detectives focused their investigation on appellant and obtained a palm print exemplar from him. Appellant's exemplar and the latent printed lifted from the Family Dollar Store were submitted to the Bureau of Criminal Investigation (B.C.I.). for comparison.

{¶9} The prints were first examined by Michelle Snyder, a forensic scientist at B.C.I. The following stipulation was read to the jury: "* * * Michelle Snyder is the forensic scientist with [B.C.I.] who did the first forensic comparison in this case and is

now on leave pending disciplinary investigation. [B.C.I.] refused to answer defense counsel's subpoena regarding the nature of that disciplinary investigation." (T. 250).

{¶10} A different forensic scientist at B.C.I., Sara Pivovar, testified as appellee's expert witness in examination of latent prints. Pivovar testified her review of the prints was not influenced in any way by Snyder's review of the same prints. Pivovar determined the palm print obtained from the Family Dollar Store contained enough detail to make a comparison, and compared the print with the known exemplar from appellant. Pivovar concluded the prints matched. She meticulously performed the comparison for the jury at trial, explaining her methodology. Pivovar further testified every comparison conclusion is verified by a second examiner; in this case, her conclusions were verified by a third forensic scientist, Robin Lab.

{¶11} After identifying appellant as the suspect in this case, police asked the store manager if she would be willing to look at a photo lineup. The store manager told police too much time had gone by and she would not be able to recognize the man's face. No photo lineup was created.

{¶12} Appellant was charged by indictment with one count of aggravated robbery pursuant to R.C. 2911.01(A)(1), a felony of the first degree. Appellant entered a plea of not guilty and the case proceeded to trial by jury. Appellant moved for judgment of acquittal pursuant to Crim.R. 29(A) at the close of appellee's evidence and at the close of all of the evidence; the motions were overruled. Appellant did not present any evidence. Appellant was found guilty as charged and the trial court sentenced him to a prison term of 8 years consecutive to his prison term on an unrelated case.

{¶13} Appellant now appeals from the judgment entry of his conviction and sentence.

{¶14} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶15} "I. THE DEFENDANT'S CONVICITON FOR ONE COUNT OF AGGRAVATED ROBBERY WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

ANALYSIS

{¶16} In his sole assignment of error, appellant argues his conviction upon one count of aggravated robbery is against the manifest weight and sufficiency of the evidence. We disagree.

{¶17} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, “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.” We disagree on both counts.

{¶18} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the “thirteenth juror,” and after “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 overturned and a new trial ordered.” *State v. Thompkins*, supra, 78 Ohio St.3d at 387. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶19} Appellant was found guilty of one count of aggravated robbery pursuant to R.C. 2911.01(A)(1), which states: "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 * * * [h]ave 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." Appellant challenges his conviction on two grounds: first, he argues appellee did not establish his identity as the robber of Family Dollar, and second, he argues the evidence did not prove the use of a deadly weapon during the robbery.

{¶20} Appellant challenges the methodology described by appellee's expert witness in latent fingerprint examination. In its role as the sole judge of the weight of the evidence and the credibility of witnesses, a jury may accept all, part, or none of the testimony offered by any witness, including an expert witness. *State v. Jobe*, 12th Dist. Clermont No. CA97-10-083, 1998 WL 391260, *4 (July 13, 1998). The jury could

reasonably find the investigation of Snyder is irrelevant because there is no evidence of the nature of the investigation. Further, the jury could reasonably rely upon Pivovar's testimony and her in-court demonstration of her comparison of the prints.

{¶21} Assuming the jury found Pivovar credible, the confirmation of the palm print as appellant's sufficiently established his identity as the perpetrator. The latent palm positively identified as appellant's is, "under the circumstances of this case, alone sufficient evidence tending to prove that appellant was at the scene of the crime and was responsible for its commission." *State v. Palmer*, 10th Dist. Franklin No. 87AP-21, 1987 WL 17809, *2 (Sept. 29, 1987), appeal dismissed, 72 Ohio St.3d 1536, 650 N.E.2d 477 (1995).

{¶22} The palm print alone is enough to establish the element of identity in this case. In *State v. Miller*, 49 Ohio St.2d 198, 361 N.E.2d 419 (1977), syllabus, the Ohio Supreme Court observed that “The crucial issue is whether attendant circumstances, such as the location of the accused's alleged fingerprint, the character of the premises where the print was found, and the accessibility of the general public to the object on which the print was impressed are sufficient to justify the trier of fact to conclude not only that the accused was at the scene of the crime when it was committed, but also that the accused was the criminal agent.” In this case, appellee's evidence established the print was made by an intruder behind the counter near the register as opposed to in the usual customers' position on the other side. The manager cleaned the area thoroughly the night before and the store had only been open for a very short time that morning. The palm print was near the footprints left by the robber's tennis shoes. The palm print was clear enough that Pivovar was able to describe her comparison to

appellant's known prints in great detail. "[F]ingerprints corresponding to those of the accused are sufficient proof of his identity to sustain his conviction, where the circumstances show that such prints, found at the scene of the crime, could only have been impressed at the time of the commission of the crime." *State v. Miller,* supra, at syllabus.

{¶23} Appellant further argues the jury should have rejected the store manager's testimony about the knife because one of the investigating officers did not recall the manager reporting she was threatened. We have previously held that "inconsistencies in the testimony of witnesses do not render a conviction against the manifest weight of the evidence. The finder of fact may take note of the inconsistencies and resolve or discount them accordingly. It is equally well settled the issue of credibility is primarily a matter for the trier of fact to determine since the trier of fact is in the best position to judge the credibility of witnesses and the weight to be given the evidence." *State v. Wooten,* 5th Dist. No.2008CA103, 2009–Ohio–1863, ¶ 95. The jury could reasonably rely upon the store manager's testimony.

{¶24} Appellant's aggravated robbery conviction is supported by sufficient evidence. When the store manager hesitated, the offender displayed a weapon he held in his jacket pocket. The store manager conceded that she did not observe the blade, and the knife was not visible from the angle of the videotape, but the store manager recognized the object as a knife. Therefore, the jury reasonably could have found there was a knife. *State v. Coots*, 2015-Ohio-126, 27 N.E.3d 47, 58, ¶ 38 (2nd Dist.).

{¶25} Appellee's evidence established appellant robbed the Family Dollar Store on February 21, 2013, despite the store manager's inability to identify the perpetrator.

Appellee's palm print evidence convincingly demonstrated the robber was the person who left the palm print on the counter and appellant was identified as the source of that palm print. Viewing the evidence in the light most favorable to appellee, the evidence supports appellant's conviction for aggravated robbery. We find no evidence the jury lost its way in considering the evidence and created a manifest miscarriage of justice.

CONCLUSION

{¶26} Appellant's sole assignment of error is overruled and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J. and

Gwin, P.J.

Baldwin, J., concur.