[Cite as *State v. Ripinski*, 2012-Ohio-5111.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-10-1255

Appellee — Trial Court No. CR0200902978

v.

James Ripinski — **DECISION AND JUDGMENT**

Appellant — Decided: November 2, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Scott J. Hoffman, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which found appellant guilty of one count of robbery, in violation of R.C. 2911.02, a felony of the second degree, and sentenced appellant to a seven-year term of incarceration. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, James Ripinski, sets forth the following two assignments of error:

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR INFINDING [SIC] APPELLANT GUILTY OF ROBBERY IN VIOLATION OF R.C. 2911.02(A)(2) BASED UPON THE PROSECUTORS [SIC] STATEMENT OF FACTS WHICH CLEARLY NEGATIVED [SIC] THE REQUIRED ELEMENT OF THREAT OF FORCE.

II. APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHICH CONSTITUTED REVERSIBLE ERROR.

{¶ 3} The following undisputed facts are relevant to this appeal. On June 7, 2008, appellant entered the Huntington National Bank branch on Starr Avenue in East Toledo. Appellant handed an empty bag and a robbery note to the bank teller. The note stated in pertinent part, "This is a robbery. Give me your hundreds, fifties, and twenty dollar bills. No dye pack." The teller, in fear for her safety and fear for the safety of bank customers, complied with appellant's demand. Appellant left the bank with a bag of stolen money. The bank alarm was then sounded.

{¶ 4} Shortly after this bank robbery, the police were dispatched to a property in East Toledo where appellant had been captured on video fleeing from a stolen vehicle. The clothing recovered from the vehicle matched the clothing worn by the bank robber. DNA testing of the clothing recovered from the vehicle matched appellant. In addition,

several eyewitnesses identified appellant from the bank's video of the crime as the perpetrator of the crime.

{¶ 5} On October 16, 2009, appellant was indicted on one count of robbery, in violation of R.C. 2911.02, a felony of the second degree, and one count of receiving stolen property, in violation of R.C. 2913.51, a felony of the fourth degree. Pursuant to a voluntarily negotiated plea agreement, appellant entered a plea of no contest to the robbery charge in exchange for dismissal of the remaining felony charge. Appellant was sentenced to a seven-year term of incarceration. This appeal ensued.

{¶ 6} In the first assignment of error, appellant contends that the trial court abused its discretion in accepting a no contest plea to the robbery charge in a scenario in which the state's recitation of facts included the statement from appellant's note to the teller saying, "This is a robbery. Give me your hundreds, fifties, and twenty dollar bills. No dye pack." It is appellant's position that because the robbery note did not directly state a specific threat of force against the teller or others and there was no evidence that appellant made threatening nonverbal gestures against the teller, it must be construed as negating the threat element of the offense of robbery. We do not concur in this interpretation of this case.

{¶ 7} It is well established in connection with plea agreements and sentencing that, "Since the trial court is not obligated to take testimony after a no contest plea is made, any omission of facts necessary to prove the crime is not fatal to a finding of guilty by the trial court." *State v. Thorpe*, 9 Ohio App.3d 1, 457 N.E.2d 912 (8th Dist.1983). More

importantly, in conjunction with this guiding legal principle, we do not find this case to be a scenario in which the prosecutor's statement of facts contradicted the felony charged in the indictment by negating an essential element of the offense, so as to arguably undermine the plea. On the contrary, the recitation expressly conveyed that the bank teller would have testified that upon receiving an empty bag and a robbery note from appellant demanding money and demanding that no dye pack be included with the money, she experienced fear for her safety and fear for the safety of the bank's customers.

{¶ 8} Taken together, in the context of the recitation by appellee, we find no fatal issue in this case demonstrative that appellee's statement of facts, including reading appellant's robbery note, legally negated the threat element of the robbery offense. There is no compelling, controlling case law directing that the omission of a specific threat of physical harm in a robbery note or that the failure of the perpetrator to physically gesture in an overtly threatening manner operates so as to negate the threat element of an R.C. 2911.02 robbery offense. Given these facts, circumstances and legal parameters, we find no impropriety in the disputed robbery plea. The robbery plea and conviction were valid. We find appellant's first assignment of error not well-taken.

{¶ 9} In the second assignment of error, appellant contends that trial counsel's representation was deficient in allowing appellant to enter into an allegedly defective plea. As such, the propriety of the second assignment of error is prefaced upon the first

assignment of error. Given our rejection of the first assignment of error, appellant's second assignment of error is likewise not well-taken.

{¶ 10} Wherefore, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE