

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

State of Ohio

Court of Appeals No. L-12-1341

Appellee

Trial Court No. CR0201201956

v.

Christopher Goodwin

DECISION AND JUDGMENT

Appellant

Decided: May 30, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael D. Bahner and David F. Cooper, Assistant Prosecuting Attorneys,
for appellee.

Clayton M. Gerbitz, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Christopher Goodwin, appeals an October 22, 2012
judgment of conviction after a jury trial in the Lucas County Court of Common Pleas. At

trial, the jury found Goodwin guilty of aggravated robbery, a violation of R.C. 2911.01(A)(1), a first-degree felony, and robbery, a violation of R.C. 2911.02(A)(2), a second-degree felony. For the reasons that follow, we affirm the trial court's judgment.

BACKGROUND

{¶ 2} On April 30, 2012, Roger Grayer went to the Distillery, a bar on Heatherdowns Boulevard in Toledo, Lucas County, Ohio, after playing a round of golf with friends. Grayer, who lives in Adrian, Michigan, became intoxicated and at around 9:30 p.m., he went outside for some fresh air. He sat in the parking lot in his truck and fell asleep.

{¶ 3} Grayer was awoken by being punched in the face. He turned to find a man sitting in the passenger side of his vehicle. The man commanded Grayer to give him his wallet. Grayer thought he recognized him. He believed it was Walter Carter, whom he knew from Adrian. Grayer asked, "Walt, what are you doing?" The man again commanded that Grayer give him his money. He took Grayer's wallet and phone and jumped out of the truck.

{¶ 4} The man ran toward a Cadillac Escalade which was driven by a blonde Caucasian woman. Grayer chased after him, yelling "Walt, what are you doing? This is Roger Grayer." The man jumped into the passenger seat and the Escalade drove away. Grayer went inside the bar to contact the police. He told them that it was Carter who had assaulted and robbed him.

{¶ 5} Grayer was treated at the University of Toledo Medical Center where he received seven stitches to his upper lip. The next morning when he took a shower, he realized that he had two superficial stab wounds on his chest. The wounds were somewhat circular in appearance. Soon after, he discovered a screwdriver and a gray tank top on the floor of the passenger side of his truck. Grayer gave the screwdriver and the tank top to Det. Jeff Clark who had been assigned to investigate the incident.

{¶ 6} Inside Grayer's wallet were several credit cards, about \$300 in cash, including two \$100 bills, and a Sears gift card with \$10 on it. In the hours and days following the robbery, the thieves used those credit cards at a number of stores including multiple Walmart stores, a Circle K convenience shop, Foxx liquor store, and TAS Electronics. Grayer gathered information detailing the credit card use and provided it to Det. Clark.

{¶ 7} Based on Grayer's identification of his assailant, police arrested Carter. However, upon further investigation of the credit card use, Det. Clark dismissed the charges against Carter. He had obtained video surveillance from Walmart and Circle K. With the surveillance footage and other information provided by Walmart's loss prevention department, police identified the suspects as Christopher Goodwin and Lorri Slater.

{¶ 8} On June 6, 2012, police went to Slater's apartment and arrested her on other outstanding warrants. Slater quickly realized that it was the April 30, 2012 robbery that

had led police to her. Slater, a drug addict with prior convictions for theft, prostitution, and drug offenses, cooperated with police and told them what had happened that night.

{¶ 9} Slater claimed that on the evening of April 30, 2012, Goodwin called her on her boyfriend's phone at around 8:30 or 8:45 p.m. wanting "to party." Slater understood this to mean that he wanted her to do drugs with him. He picked her up from her apartment that night around 9:00 p.m. and at around 9:45 or 10:00, they went to the Distillery where Goodwin believed his girlfriend would meet him to give him money for drugs. He soon learned that was not going to happen. They sat in his car, a Cadillac Escalade, doing drugs until about 10:15 p.m. When they ran out of drugs, Goodwin said he needed to get some money. He scoped out the parking lot and saw Grayer sitting in his truck. Slater said that Grayer's head was down and he appeared to be texting, but he was obviously passed out. Goodwin pointed to him, then he put on a hat and sweatshirt, grabbed a screwdriver, and exited the Escalade. Slater stayed in the car and called her ex-boyfriend who lives in California. She estimated that they talked for about 10 minutes. Goodwin then came running toward the vehicle with Grayer chasing after him yelling "Walter, why are you doing this to me?" Goodwin jumped into the vehicle, threw credit cards, a phone, and some money onto the console, and told Slater to run Grayer over. Slater drove away without hitting Grayer.

{¶ 10} They pulled into a Bob Evans parking lot to switch places. Slater said that Goodwin became upset after realizing that he had left the weapon in Grayer's car. He was also upset because when he looked through the cash, he initially saw only \$1 bills.

He then noticed the two \$100 bills. Slater claimed that she got nervous and wanted to go home, but Goodwin hit her on the side of the head and told her she wasn't going anywhere.

{¶ 11} Goodwin and Slater drove around buying drugs from various dealers. They used the cash for their initial drug purchases. They stopped and used the credit card to buy gas and cigarettes at a Circle K. The cash soon ran out. They called the 800 numbers on the credit cards to obtain information about cash advances. Goodwin wanted to find someone who resembled Grayer to get advances. Having no cash to buy more drugs, the two began using the credit cards to buy merchandise to trade for drugs. Slater described that they called dealers and asked what items they needed. They went to multiple Walmart locations, a music store, and a liquor store to make purchases to trade. The next morning they brought a friend, Terry Prentice, with them. Goodwin, Slater, and Prentice went to TAS Electronics where Goodwin had stereo equipment installed in the Escalade. They attempted to make purchases at Dillards and a shoe store, but the transactions were denied. After being up all night, they ended the excursion and Goodwin took Slater home.

{¶ 12} Det. Clark showed Slater still photos from the video surveillance systems at Walmart and Circle K and Slater identified herself and Goodwin in those photos. Clark issued a warrant for Goodwin's arrest. He sent the tank top, screwdriver, and DNA standards from Goodwin, Carter, and Grayer to the Bureau of Criminal Investigations ("BCI") for analysis. He verified that Goodwin co-owned an Escalade and he obtained

phone records for Goodwin's and Slater's boyfriend's phones which would show not only what phone calls were made, but also the location of the cell phones throughout the night. Once Goodwin was arrested and in custody, Clark monitored calls he made from the jail and reviewed letters he sent.

{¶ 13} The BCI analysis of the shirt and screwdriver revealed the presence of DNA, but it did not match Carter's, Goodwin's, or Grayer's. Clark learned from monitoring Goodwin's calls and correspondence that he intended to implicate Vicktron Moore in the robbery. Moore was murdered in late May of 2012. Goodwin's version of events was that Slater and Moore had taken the Escalade and left Goodwin at the home of his friend, James Bates. He encouraged Bates and Slater to provide testimony and information consistent with this account. Upon learning that Goodwin intended to blame the robbery on Moore, Clark requested that BCI determine if the DNA taken from the shirt and screwdriver matched Moore's. It did not.

{¶ 14} At trial, stills from the video surveillance, which pictured Goodwin and Slater, were introduced into evidence. In addition, the TAS employee who assisted Goodwin testified and identified him. Goodwin argued that his use of the stolen credit cards did not establish that he had participated in the robbery. He highlighted the fact that the BCI analysis did not connect him to the crime. And he attacked Slater's credibility. He urged that her drug abuse, criminal history, and the favorable plea agreement she was able to secure for herself by providing information to police rendered her testimony not credible. Goodwin also made much of a recent incident where Slater

allegedly tried to remove an electronic ankle monitor. A community supervision officer discovered a cut in Slater's monitor. Slater told her that she had sliced it with a razor while shaving. At trial, she acknowledged that her explanation was not truthful, but she insisted that she had cut the monitor because it was too tight and she was simply trying to loosen it.

{¶ 15} Goodwin offered Bates' testimony. Bates, a convicted felon with a history of drug abuse, testified that Goodwin and Slater came to his apartment sometime between 9:00 and 11:00 p.m. He claimed that Slater left soon after, taking Goodwin's Escalade. He said that she came back with the cash and credit cards. Bates could not recall for certain that the events he described occurred on April 30, 2012. He said they happened sometime in April. He also wavered as to whether Goodwin had his phone with him at the apartment. This point would have been important given the state's reliance on the transmissions sent from the phone which tracked its location and corroborated Slater's version of the events. Slater denied that she and Goodwin went to Bates' home that evening.

{¶ 16} The jury ultimately returned a verdict finding Goodwin guilty of both aggravated robbery and robbery. The court sentenced him to six years on the aggravated robbery conviction and four years on the robbery conviction. Those sentences merged as allied offenses.

{¶ 17} Goodwin now appeals his conviction and assigns the following errors for our review:

I. THE VERDICT OF THE TRIAL COURT WAS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE.

II. THE CUMULATIVE EFFECT OF INSTRUCTIONAL
ERRORS VIOLATED APPELLANT’S RIGHT TO A FAIR TRIAL.

LAW AND ANALYSIS

I. First Assignment of Error

{¶ 18} In his first assignment of error, Goodwin claims that the trial court verdict was against the manifest weight of the evidence. His argument revolves around essentially five points: (1) that the DNA analysis performed by BCI did not implicate him; (2) that his use of the credit cards did not establish that he participated in robbing Grayer; (3) that Slater’s criminal history of drug abuse, prostitution, and theft, her deceitful explanation of how her ankle monitor was cut, and her bargain with the state in exchange for testifying against Goodwin, rendered her testimony not credible; (4) that testimony from alibi witness James Bates “was not colored with the same personal interest as” Slater’s and should have been afforded greater weight; and (5) that Grayer identified someone else and testified that he had never seen Goodwin before trial.

{¶ 19} When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the jury clearly lost its way in resolving evidentiary conflicts so as to create 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, 678 N.E.2d 541 (1997). We do not view the evidence in a light most favorable to the state. “Instead, we sit as a ‘thirteenth juror’ and scrutinize ‘the factfinder’s resolution of the conflicting testimony.’” *State v. Robinson*, 6th Dist. Lucas No. L–10–1369, 2012–Ohio–6068, ¶ 15, citing *Thompkins* at 388. Reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 20} To convict Goodwin of aggravated robbery under R.C. 2911.01(A)(1), the state was required to prove that Goodwin either attempted or committed a theft offense and that he had a deadly weapon and either displayed the weapon, brandished it, indicated that he possessed it, or used it. For purposes of this statute, a “deadly weapon” is defined as “any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.” R.C. 2923.11(A). To convict him of robbery under R.C. 2911.02(A)(2), the state was required to prove that Goodwin either attempted or committed a theft offense and inflicted, attempted to inflict, or threatened to inflict physical harm on Grayer.

{¶ 21} We will first address Goodwin’s claims with respect to Slater’s and Bates’ testimony. Goodwin’s arguments essentially boil down to credibility determinations. As we explained in *State v. Payne*, 6th Dist. Lucas No. L-13-1024, L-13-1025, 2014-Ohio-1147, ¶ 11:

Although under a manifest-weight standard we consider the credibility of witnesses, we must nonetheless extend special deference to the jury's credibility determinations given that it is the jury who has the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities such as hesitancy, equivocation, and candor.

{¶ 22} The jury had the opportunity to observe Slater's and Bates' testimony. Slater's criminal history, her plea bargain, and the incident involving her dishonesty when confronted with the attempt to remove her ankle bracelet, were all addressed openly. What's more, the court gave specific instructions to the jury that an accomplice's testimony must be viewed with caution and great suspicion. As demonstrated by its verdict, the jury determined that Slater's version of events was credible. Slater's testimony, if believed, supported Goodwin's conviction. The time line and order of events provided by Slater was consistent with the information revealed by both the cell phone transmissions and the video surveillance. She described that Goodwin left the Escalade with a screwdriver and that he later lamented the fact that he had left the screwdriver in Grayer's vehicle. And her version of events was consistent with the information Grayer provided to police.

{¶ 23} It is apparent from the jury's verdict that it did not find Bates' testimony to be credible and it was within the province of the jury to make that determination. Although Bates had no personal interest insofar as he was not implicated in the crime, he,

too, had a criminal history and he and Goodwin were good friends. The correspondence Bates received from Goodwin provided instructions for testifying. The jury could reasonably have concluded that Bates was more interested in helping a friend than telling the truth.

{¶ 24} With respect to Goodwin's other arguments, it is true that the DNA analysis did not prove his participation in the robbery, but neither did it exclude it. Brenda Gerardi, the BCI lab manager, testified that the items were merely swabbed for DNA since it was unknown how those items were handled by the perpetrator. She explained that the absence of DNA is not an indication that a particular individual was not at the scene and did not touch the items. It is also worth noting that the DNA taken from the items matched none of the three standards submitted, including Grayer's. It also did not match Moore's. So while the presence of Goodwin's DNA may have been a strong indication that he handled the shirt and screwdriver, Gerardi's testimony indicated that the converse is not true.

{¶ 25} We next address Goodwin's argument that the use of the credit cards, alone, did not establish that he participated in the robbery. When he testified at trial, Det. Clark agreed that he would not have pursued charges against Goodwin if the only evidence against him had been that Goodwin used the credit cards. But the state presented evidence beyond Goodwin's use of the cards. In addition to Slater's testimony, the state presented evidence obtained from the cell phone carriers. From that evidence,

the state was able to establish the location of Goodwin's cell phone during the course of the night by the signals his phone transmitted to various towers spread across the city. Slater's explanation of events was consistent with that pattern of signals, as was the video evidence and store receipts. The state also had copies of letters and recordings of phone calls in which Goodwin instructed witnesses as to how to best explain the events of April 30, 2012, encouraging Slater to implicate Moore in the robbery.

{¶ 26} Finally, Grayer's misidentification of the witness presented yet another conflict for the jury to resolve. Evidence presented at trial indicated that Goodwin and Carter were similar to one another in age, stature, and facial features, and dissimilar to Moore. Also, given that Grayer was intoxicated and was abruptly awoken by a blow to his face, the jury could have reasonably concluded that his confusion was understandable.

{¶ 27} We find no error in the jury's resolution of the conflicting evidence. Goodwin's first assignment of error is not well-taken.

II. Second Assignment of Error

{¶ 28} In his second assignment of error, Goodwin claims that the trial court delivered two improper jury instructions and made remarks to the jury that served to minimize the significance of the results of the DNA analysis. We first address the jury instructions at issue.

{¶ 29} Goodwin claims that the court erred in its instruction as to what constitutes a "deadly weapon" for purposes of R.C. 2911.01(A). He claims that the court added the

phrase “in this case” and in doing so, it directed the jury to find that the screwdriver was used as a deadly weapon, thereby satisfying an element of the offense.

{¶ 30} Goodwin failed to object to this instruction in the trial court and has, therefore, waived any error relating to the instruction. *State v. Allen*, 6th Dist. Wood No. WD-11-012, 2012-Ohio-3989, ¶ 14 (“A failure to timely object to jury instructions waives all except plain error.”). We will nevertheless consider the merits of his argument.

{¶ 31} The language about which Goodwin complains is contained within the pattern instructions set forth in Ohio Jury Instructions, section 511.01(A)6. It provides:

CAPABILITY OF DEADLY WEAPON. A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon, or it was possessed, carried, or used *in this case* as a weapon. These are questions of fact for you to decide. (Emphasis added.)

{¶ 32} The court’s instruction to the jury mirrored the pattern instruction exactly. The fact that an instruction was taken directly from OJI is not proof that it is *ipso facto* correct. *Minnis v. Cornelius*, 11th Dist. Lake No. 99-L-118, 2000 WL 1371064, * 3 (Sept. 22, 2000). Courts must still ensure that the pattern instruction is a correct enunciation of substantive law. *Id.*

{¶ 33} We find that the instruction given by the court was correct and that it did not, as Goodwin claims, direct the jury to find that the screwdriver is a deadly weapon. Like other Ohio courts, we have held that a screwdriver can constitute a “deadly weapon.” *State v. Brown*, 6th Dist. Wood No. WD-09-058, 2010-Ohio-1698, ¶ 14, citing *State v. Umphries*, 4th Dist. Ross No. 02CA2662, 2003-Ohio-599, ¶ 8. The manner of use of the instrument is what is determinative. *State v. Harris*, 10th Dist. Franklin No. 89AP-1342, 1990 WL 129256 (Sept. 4, 1990), citing *State v. Deboe*, 62 Ohio App.2d 192, 406 N.E.2d 536 (6th Dist.1977). Accordingly, it was the duty of the jury to determine whether *in this particular case* the screwdriver was being used as a weapon. The instruction was correct and did not direct the jury to reach any particular conclusion.

{¶ 34} Goodwin also argues that it was error to instruct the jury as follows:

The unexplained possession of recently stolen property can give rise to a permissible inference from which you, the jury, may conclude beyond a reasonable doubt that Christopher Goodwin is responsible for the taking of the property.

{¶ 35} Goodwin argues that the instruction was not warranted because he provided an explanation for his possession of Grayer’s credit cards and money—that Slater brought the cash and credit cards to him after being out alone with Goodwin’s car.

{¶ 36} The trial court is required to provide the jury with all instructions that are relevant and necessary in order for it to weigh the evidence and discharge its duty as fact finder. *State v. Comen*, 50 Ohio St.3d 206, 553 N.E.2d 640 (1990), paragraph two of the

syllabus. In criminal cases “if the requested instructions contain a correct, pertinent statement of the law and are appropriate to the facts, they must be included, at least in substance, in the court’s charge to the jury.” *State v. Nelson*, 36 Ohio St.2d 79, 303 N.E.2d 865 (1973), paragraph one of syllabus, *overruled on other grounds*.

{¶ 37} The proposition of law set forth in the jury instruction is correct. Ohio has long held that the “unexplained possession by a defendant of recently stolen property may give rise to a permissive inference from which a jury may conclude, beyond a reasonable doubt, that the accused is guilty of the theft.” *See, e.g., State v. McAllister*, 53 Ohio App.2d 176, 181, 372 N.E.2d 1341 (8th Dist.1977), paragraph three of the syllabus. *See also State v. Simon*, 6th Dist. Huron No. H-04-026, 2005-Ohio-3208, ¶ 13-14.

{¶ 38} As to Goodwin’s insistence that he provided an explanation negating the inference described in the instruction, courts have rejected this argument. *See, e.g., State v. Rose*, 4th Dist. Ross. No. 1123, 1985 WL 8350 * 2 (Sept. 16, 1985), quoting *Barnes v. U.S.*, 412 U.S. 837, 845, 93 S.Ct. 2357, 37 L.E.2d 380 (1973) (“[T]he mere fact that there is some evidence tending to explain a defendant’s possession consistent with innocence does not bar instructing the jury on the inference. The jury must weigh the explanation to determine whether it is ‘satisfactory’.”). We find no error in the trial court’s instruction.

{¶ 39} Finally, Goodwin takes issue with the court’s admonition to the jury that they should watch shows like CSI and NCIS with caution because they are not necessarily accurate reflections of scientific procedures and legal proceedings. He reminded jurors that those shows are fictional and that they may ignore or distort many of

the procedures that take place in real cases in real courtrooms. Goodwin argues that the instruction could have lessened for the jury the significance of the results of the DNA analysis which failed to link Goodwin to the robbery.

{¶ 40} Again, Goodwin waived this alleged error by failing to object to it. In any event, we see nothing improper with this admonition. There was no slant or bias to the instruction. The court merely sought to caution the jury against relying on fictional crime shows to educate them as to scientific principles that were being explained to them in court.

{¶ 41} The giving of jury instructions is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *State v. Gott*, 6th Dist. Lucas No. 11-1086, 2011-Ohio-3608, ¶ 14. Because we find no abuse of discretion in the trial court's instructions, there is no merit to Goodwin's second assignment of error.

CONCLUSION

{¶ 42} We find Goodwin's two assignments of error not well-taken and affirm the October 22, 2012 judgment of the Lucas County Court of Common Pleas. Appellant is ordered to pay 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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