

[Cite as *State v. Robinson*, 2015-Ohio-1838.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101850

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MARTEAL ROBINSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-582930-A

**BEFORE:** McCormack, P.J., Stewart, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** May 14, 2015

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant, Marteal Robinson, appeals from his conviction of aggravated robbery and having weapons while under disability. He robbed a Family Dollar Store in Bedford, Ohio. On appeal, he argues the state failed to prove the operability of the gun used in the robbery or a prior conviction required for the disability count. We find no merit to his claims and affirm the judgment of the trial court.

{¶2} Robinson was indicted for two counts of aggravated robbery, with one- and three-year firearm specifications on each count, two counts of kidnapping, also with one- and three-year firearm specifications, and one count of having weapons while under disability.

{¶3} At trial, the state's evidence showed that Robinson, wearing surgical scrubs underneath a clear jacket and a wig under a hat, robbed a Family Dollar Store. He left the store on foot with the money in a store bag. A police officer soon found him in the vicinity and began to chase him. As he fled from the police officer, he shed his clothing and dropped his cell phone. He successfully fled the police, but the police eventually traced the cell phone to him. His DNA was found on some of the items he tossed while running.

#### Testimony of the Store Employees

{¶4} On October 16, 2013, Armon Neal, worked at Family Dollar as a cashier. He testified that, around 9:35 p.m., a short man wearing scrubs inside a raincoat and a wig underneath a white hat walked into the store. The man did not respond when Neal

greeted him. As Neal prepared to close the store, the assistant store manager, Keisha Jackson, came from the back room. When Neal looked up from the cash register, the man pulled out a black gun and Neal heard the gun cock — Neal recognized the sound because he used to go to the gun range with his grandfather. Neal and Jackson both jumped back, terrified. The man made sure Neal and Jackson saw the gun and then used his hand to hide the gun from the surveillance camera. He then told the two employees to take him to the safe in the back room, even though they tried to tell him the safe was in the front. As they walked toward the back, the man told Neal to slow down, saying “ I don’t want to have to kill you.” The three eventually returned to the front, and the man ordered Jackson to open the store’s two safes, one of which took five minutes to open and the other ten. While they were waiting, Neal and Robinson told the customers, who were not aware of what was going on, to leave the store with their goods without payment.

{¶5} As they waited, the man told Neal and Jackson he would share his money if “this comes out right.” Once the safes were opened, the man had Jackson double-bag the money with the store bags. He then tucked the gun inside his pants and walked away with the money in the bag, asking “Am I good, Am I good?” Neal took the question to mean if the police would be called. Neal and Jackson shook their head, indicating they would not call the police. After the man left, Neal immediately called the police.<sup>1</sup> The video tape from the store’s surveillance camera was also played. Subsequent to the playing of

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<sup>1</sup>Neal’s 911 call was played for the jury.

the video, Neal identified Robinson as the robber from a photo lineup. He also identified him in court.

{¶6} Keisha Jackson, the store’s assistant manager, testified that, as she walked to the front to close the store, she saw a man wearing scrubs underneath a clear coat and a wig. When she got to the cash register, she heard a loud “clapping” sound. She turned around to see the man pull a black gun out and point it at her. He tucked the gun under his coat and ordered her and Neal to go to the safe at the back of the store. As they walked to the back, the man kept the gun pointed at her through his coat. Neal was walking a few steps ahead, and the man told him to slow down, saying “My dude, slow down. I don’t want to shoot you.”

{¶7} Because the store’s safes were not at the back, they returned to the front. Jackson asked the man not to hurt Neal or her and told him she would give him whatever he wanted. Back at the front, she positioned herself so that she would be visible to the surveillance camera. She put the codes in the safes — there was a small safe and large safe — while the man continued to point his gun at her through his coat. The man became impatient as the larger safe took a while to open, and Jackson thought the man may shoot them. The man stated he would give Jackson and Neal some money if they did not call the police. When both safes opened, Jackson put all the money, including quarters and dimes, in a Family Dollar plastic bag, and double-bagged it. The man then tucked his gun in the front of his pants, told them not to call the police, and left the store.

Jackson was not able to identify Robinson from the photo lineup but identified Robinson in court as the robber.

#### Testimony of the Police Officers

{¶8} Officer Kevin Webb of the Bedford police department responded to the dispatch call regarding a robbery at the Family Dollar Store. He drove around in his police vehicle in the vicinity of the store looking for the suspect. Approximately a quarter mile from the Family Dollar store, he spotted an individual on foot matching the description — a shorter, black male wearing a white hat and scrubs underneath a white rain coat. As Officer Webb approached the man, the suspect ran up the driveway of a residential home and then through its backyard, dropping a plastic bag. As he ran, the suspect also took off his plastic raincoat and hat and threw them to the ground.

{¶9} Officer Webb pursued him on foot but at one point lost sight of him. Another officer radioed that he spotted the suspect somewhere in the area but was unable to apprehend him. Officer Webb retrieved the plastic bag, which contained bills and rolled coins. Underneath the bag was a cell phone, which the police subsequently traced to Robinson. An Uncle Mike's brand holster for a hand gun was also discovered on the ground. The gun described by the victims as being used in the robbery was not found.

{¶10} Curtiss Jones, a supervisor of the Trace Evidence Department of the County Medical Examiner's Office, and Marissa Esterline, a DNA analysis from the County Regional Forensic Science Laboratory, provided testimony regarding the DNA analysis of the items collected by the police. Robinson was the source of DNA from the holster; he

could not be excluded as a contributor to DNA from the wig; and he was excluded as the source of DNA of swabs from the hat. A cell phone company employee testified that the cell phone retrieved from the scene belonged to Robinson.

#### Defendant's Alibi

{¶11} Joanna Cregan, a friend of Robinson, provided an alibi for him. She testified that on October 15, 2013, she picked up Robinson and brought him to her house.

Cregan was going through depression around that time, and Robinson talked to her about her emotional issues. They also watched movies that day. He stayed at her house until the evening of October 16. She did not know the exact time he left, other than describing it as “very dark” outside. She dropped him off where she had picked him up the day before, somewhere on the east side of Cleveland. She could not identify the specific location.

{¶12} The jury found Robinson guilty of all five counts and the gun specifications.

Robinson received a total prison term of ten years.<sup>2</sup>

{¶13} On appeal, Robinson raises three assignments of error, which we address out of order for ease of discussion. They state:

1. The appellant was denied effective assistance of counsel in violation of the Ohio and United States Constitution.

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<sup>2</sup>The trial court merged the kidnapping counts with the aggravated robbery counts, and the state elected to proceed on the aggravated robbery counts (Counts 1 and 2). The trial court also merged the gun specifications counts and imposed three years on the gun specifications, to be served consecutive to seven years for aggravated robbery on Count 1. The court also imposed a concurrent seven-year term on Count 2. The court, in addition, imposed a concurrent two-year term on Count 5.

2. There was insufficient evidence with respect to the having weapons while under disability count, the gun specifications accompanying the aggravated robbery counts and the gun specifications accompanying both kidnapping counts.

3. The jury's verdict, with respect to the having weapons while under disability count, the gun specifications accompanying the aggravated robbery counts and the gun specifications accompanying both kidnapping counts were against the manifest weight of the evidence.

### Sufficiency and Manifest Weight Claims

{¶14} Robinson's sufficiency and "manifest weight" claims both focus on the gun offenses. He claims his conviction of having weapons while under disability and the gun specifications are not supported by sufficient evidence and are against the manifest weight of the evidence.

{¶15} When assessing a challenge of sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "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." *Id.*

{¶16} While the test for sufficiency of the evidence requires a determination whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).



“The court, 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 reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”

*Id.* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). When reviewing a manifest weight claim, we are mindful that “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The jury is free to believe all, some, or none of the testimony of each witness appearing before it. *State v. Ellis*, 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18.

{¶17} With these standards of review in mind, we now consider Robinson’s claims regarding his conviction of the gun charges.

#### Having Weapons While Under Disability

{¶18} To show that Robinson was under disability pursuant to R.C. 2923.13, which defines the offense of having weapons while under disability, the state introduced exhibit No. 41, which was a notarized 2007 judgment entry of Cuyahoga C.P. No. CR-07-499561, which reflected defendant Martean Robinson pleaded guilty to a felony offense of drug possession and received a one-year prison term. The state also submitted exhibit Nos. 42 and 43, which were Robinson’s county jail fingerprints cards in Case No. CR-07-499561 and the instant case, respectively. In addition, Deputy Don Andree,

trained in fingerprints comparison, testified that he compared the two sets of fingerprints and they were from the same person.

{¶19} Robinson argues on appeal that the fingerprint cards only showed that the fingerprints belonged to a “Marteal Robinson”; he argues that in order to prove a prior disabling offense, the state was required to fingerprint him at trial and have those fingerprints compared by an expert with the fingerprints on the fingerprints card in Case No. CR-07-499561.

{¶20} Robinson’s argument is wholly without merit. The record reflects appellant Marteal Robinson has a birth date of July 4, 1983, which matches the birth date indicated in the fingerprints card in Case No. CR-07-499561. There is no issue of mistaken identity in this case. The state presented sufficient evidence showing Robinson had a prior disabling offense to support his conviction under R.C. 2923.13 and the conviction is not against the manifest weight of the evidence.

#### Gun Specifications

{¶21} Robinson was found guilty of both the one-year and three-year gun specifications under R.C. 2941.141 and 2941.145, respectively. The former requires the state to prove that the defendant “had a firearm on or about the offender’s person or under the offender’s control while committing the offense”; the latter requires the state to prove that, in addition, the defendant “displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.”

{¶22} Moreover, “firearm” is defined in R.C. 2923.11(B) as a “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.” R.C. 2923.11(B)(1).

{¶23} The statute goes on to state that

[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.

R.C. 2923.11(B)(2).

{¶24} In addition, we note that

[a] firearm enhancement specification can be proven beyond a reasonable doubt by circumstantial evidence. In determining whether an individual was in possession of a firearm and whether the firearm was operable or capable of being readily rendered operable at the time of the offense, the trier of fact may consider all relevant facts and circumstances surrounding the crime, which include any implicit threat made by the individual in control of the firearm.

*Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), at syllabus.

{¶25} Where no shots are fired and the firearm is not recovered, such as in the instant case, circumstantial evidence, including the representations and actions of the person in possession of the gun, are of crucial importance, when we evaluate the evidence of a firearm’s operability. *State v. Fulton*, 8th Dist. Cuyahoga No. 96156, 2011-Ohio-4259, ¶ 34, citing *State v. Ware*, 9th Dist. Summit No. 22919, 2006-Ohio-2693, ¶ 13.

{¶26} Here, the gun used in the robbery was never recovered. As such, the state could not perform any lab tests to determine whether the gun was operable. Instead, the state relied on the testimony from the two store employees to show that Robinson displayed an operable gun and used it to facilitate the robbery. Both employees testified they heard a noise from the gun, which was described by the cashier as “cocking” and by the assistant manager as a loud clapping sound. They both saw Robinson pull a black gun out, and the assistant manager testified that the gun was pointed at her throughout the entire incident. When Robinson had the employees take him to the back of the store, he threatened to shoot the cashier when he felt the cashier was moving too fast.

{¶27} Robinson’s words and actions during the robbery, as testified to by the witnesses, implied that his gun was operable. As such, the state presented sufficient, albeit circumstantial, evidence upon which a reasonable jury could find the gun used in the robbery was operable. *See also State v. Jackson*, 11th Dist. Lake No. 2012-L-061, 2013-Ohio-4846 (the testimony of victims constituted circumstantial evidence to show the gun was operable because defendant threatened to shoot the victims if they did not tell him where the money was located); *State v. Woodson*, 8th Dist. Cuyahoga No. 96538, 2012-Ohio-172 (the gun’s operability was supported by the testimony from the victims that defendant pointed gun at them, told them to get down, and threatened to kill them); *In re Wallace*, 5th Dist. Stark No. 2007CA00156, 2008-Ohio-1389 (the operability of the firearm could be inferred from appellant’s actions of sticking a gun in the victim’s face

and demanding her purse). Robinson's sufficiency challenge regarding the gun specifications fails.

{¶28} As for the manifest weight challenge, the credibility of the state's witnesses is a matter for the jury. Having reviewed the record, we do not find the jury, in finding Robinson guilty of the gun specifications, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.

{¶29} The second and third assignments of error are overruled. We now turn to Robinson's claim that his trial counsel provided constitutionally ineffective assistance.

#### Ineffective Assistance of Counsel

{¶30} To prevail on an ineffective-assistance-of-counsel claim, Robinson must demonstrate (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Counsel's performance will not be deemed ineffective unless the performance is proven to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. *State v. Iacona*, 93 Ohio St.3d 83, 105, 752 N.E.2d 937 (2001).

{¶31} Robinson claims four instances of ineffective assistance of counsel. All four relate to the state's evidence regarding his prior disabling offense.

{¶32} To show his prior disabling offense, the state introduced as exhibits (1) a notarized judgment entry showing Martean Robinson was convicted of a felony drug

offense in Case No. CR-07-499561 in 2007, (2) a fingerprints card in Case No. CR-07-499561 showing the name Marteal Robinson with a birthday of July 4, 1983, and (3) a fingerprints card in the instant case also showing the name Marteal Robinson with a birthday of July 4, 1983. In addition, the state had Deputy Andree testified regarding these fingerprints cards. He testified about the manner in which the fingerprints cards were collected in the county jail and testified that the fingerprints in the two cards were the same.

{¶33} Robinson maintains his trial counsel should have taken the prosecutor to task for failing to show that the Marteal Robinson in Case No. CR-07-499561 was the Marteal Robinson on trial. He claims four instances of ineffective assistance: (1) the prosecutor asked leading questions when examining Deputy Andree without objections from counsel; (2) the prosecutor did not qualify Deputy Andree as an expert in fingerprint comparison and counsel failed to object, (3) counsel failed to sufficiently cross-examine Deputy Andree about his qualification in fingerprint comparison and reliability of his opinion; and (4) counsel failed to argue in his Crim.R. 29 motion that the state was required to fingerprint Robinson in court and compare the fingerprints with the fingerprint card in Case No. CR-07-499561.

{¶34} We have already disposed of the last contention and will now address, in turn, the claims regarding improper leading questions and Andree's testimony about his comparison of the fingerprints in the two cards.

{¶35} “A leading question suggests an answer or instructs a witness ‘how to answer or puts into his mouth words to be echoed back.’” *Proctor v. Kewpee, Inc.*, 3d Dist. Allen No. 1-08-03, 2008-Ohio-5197, ¶ 26, quoting *State v. D’Ambrosio*, 67 Ohio St.3d 185, 190, 616 N.E.2d 909 (1993). Evid.R. 611(C) provides that leading questions should not be used on direct examination of a witness “except as may be necessary to develop the witness’ testimony.” The exception of Evid.R. 611(C) “‘is quite broad and places the limits upon the use of leading questions on direct examination within the sound discretion of the trial court.’” *State v. Flowers*, 8th Dist. Cuyahoga No. 91684, 2009-Ohio-4876, ¶ 28, quoting *State v. Lewis*, 4 Ohio App.3d 275, 278, 448 N.E.2d 487 (3d Dist.1982).

{¶36} Robinson claims his trial counsel should have objected when the prosecutor asked Deputy Andree the following two questions:

[Prosecutor:]           And are you able to tell if the fingerprints taken from his old Case 499561 and the fingerprints taken for this new Case 582930 are the same set of fingerprints?

[Deputy Andree:]       I did do a comparison before coming to Court and they are indeed from the same person.

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[Prosecutor:]           So the Defendant in this current case is the same Defendant from the previous case, Case No. 499561, correct?

[Deputy Andree:]       That’s correct.

{¶37} Having reviewed the exchange in context, we do not find the first question leading. As to the second question, the phrasing was arguably leading, but it appears to

be more the result of the prosecutor trying to move the examination along than to influence the witness's testimony or to supply him with an answer. *Flowers* at ¶ 23.

{¶38} Regarding Deputy Andree's testimony about the fingerprints cards, he testified he has worked for 11 years in the county's Scientific Identification Unit, a department responsible for identifications of individuals coming through the county jail. He received initial training in fingerprint classification and comparison at the Ohio Peace Officers Training Academy, and he had attended additional classes at the Cleveland Police Department and the County Medical Examiner's Office. In addition to his qualification, Deputy Andree also provided testimony about how fingerprints cards are collected and processed in the county jail and how fingerprints are compared. He testified he examined the two fingerprints cards and they were from the same person.

{¶39} Robinson is correct that expert testimony is necessary for fingerprint comparisons. *State v. Hartman*, 93 Ohio St.3d 274, 284, 754 N.E.2d 1150 (2001). However, neither special education nor certification is necessary to confer expert status upon a witness; Evid.R. 702(B) provides that a witness may qualify as an expert by reason of his or her specialized knowledge, skill, experience, training, or education. *Hartman* at 285. "The individual offered as an expert need not have complete knowledge of the field in question, as long as the knowledge he or she possesses will aid the trier of fact in performing its fact-finding function." *Id.* The record before us shows that Deputy Andree possessed knowledge on fingerprints that would aid the jury and therefore



qualified as an expert in this matter. Robinson's counsel could not be faulted for not challenging the deputy's qualifications to testify about the fingerprints cards.

{¶40} In any event, the state produced overwhelming evidence showing Robinson's prior disabling offense: the 2007 judgment entry convicting Martean Robinson of a felony drug offense in Case No. CR-07-499561, the fingerprint card in Case No. CR-07-499561 belonging to Martean Robinson (born July 4, 1983), and fingerprint card belonging to Martean Robinson (born July 4, 1983) in the instant case. Robinson's claim of mistaken identity defies logic and common sense. There is simply no reasonable probability that the outcome of the trial would have been different if his trial counsel challenged the state's evidence on the four occasions. The first assignment is without merit.

{¶41} Judgment affirmed.

It is ordered 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and  
SEAN C. GALLAGHER, J., CONCUR