

[Cite as *State v. Lawshea*, 2015-Ohio-2391.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101895

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ERICK M. LAWSHEA

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-584282-A

BEFORE: E.A. Gallagher, P.J., Boyle, J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 18, 2015

ATTORNEY FOR APPELLANT

John P. Hildebrand, Sr.
John P. Hildebrand Co., L.P.A.
21430 Lorain Road
Fairview Park, Ohio 44126

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Amy Venesile
 Stephanie Anderson
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Erick Lawshea appeals his convictions for aggravated robbery in violation of R.C. 2911.02(A)(1) and robbery in violation of R.C. 2911.01(A)(2). Lawshea contends that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. He also contends that he was denied a right to a fair trial and due process of law due to “poor police investigation,” specifically, the failure of police to investigate whether someone else may have committed the crimes for which he was convicted. Finding no merit to his appeal, we affirm Lawshea’s convictions.

Factual and Procedural Background

{¶2} Lawshea’s convictions arose out of an incident in which Kenneth Lott was robbed at gunpoint while waiting in his car to give a ride to an acquaintance. Lawshea was indicted by the Cuyahoga County Grand Jury on one count of aggravated robbery in violation of R.C. 2911.01(A)(1), a first-degree felony, and one count of robbery in violation of R.C. 2911.02(A)(1), a second-degree felony, both with one- and three-year firearm specifications. Lawshea pled not guilty and a jury trial commenced.

{¶3} The state’s witnesses, which included Lott and several police officers, provided the following account of the incident and subsequent investigation that led to Lawshea’s arrest and convictions.

{¶4} Lott testified that at approximately 9:00 or 10:00 p.m. on January 27, 2014, he was at his apartment when he received a call on his cell phone from a number that he

did not recognize but, when he answered the call, he recognized the voice of the caller as someone he then knew as “E.J.” Lott testified that the caller identified himself as “E.J.” and asked Lott if he would give him a ride to the Speedway on Broadway. Lott testified that he had given “E.J.” a ride in the past and that, because it was a cold night, he “had no problem with doing it,” that “E.J.” was the brother of a friend of his named Shantell and that he later learned that “E.J.” was Lawshea’s nickname.

{¶5} Lott testified that Lawshea asked Lott to pick him up in the rear parking lot of the apartments located at the intersection of Spring Road and Jennings Road and that this request was unusual because “normally” Lawshea “would be at where his sister stayed,” i.e., an apartment that was part of a complex on the Jennings Road side of the intersection. However, Lott nevertheless proceeded to the rear parking lot to pick up Lawshea, as requested.

{¶6} Lott testified that when he arrived at the parking lot, it was very dark. He turned off his vehicle and, a few minutes later, he saw Lawshea coming around the corner of an apartment building. Lott testified that Lawshea opened the front passenger-side door, that the vehicle’s dome light came on and that Lawshea entered the vehicle. Lott looked over as Lawshea entered the vehicle and confirmed it was Lawshea. Lott testified that Lawshea made a movement toward the door, then turned back around toward Lott with a long-barreled revolver in his hand that he pointed at Lott’s abdomen and said, “[G]ive that s*** up. I ain’t f***ing playing. * * * [I]f you make a move, I’m

going to pop your a**.” Lott testified that Lawshea then took the vehicle’s keys out of the ignition and Lott’s cell phone, which had been lying on the dashboard.

{¶7} Lott testified that while Lawshea was threatening him, he looked up and saw a second man wearing black jeans and a red hoodie approaching the driver’s side of the vehicle. The second man opened the front driver-side door and searched Lott’s pockets.

He took Lott’s wallet and \$150 in cash. Lott testified that he did not recognize the man in the red hoodie.

{¶8} Lott testified that after the two men took his belongings, he looked over at Lawshea and said, “I thought you was better than that.” The man in the red hoodie said, “[S]hut the f*** up” and punched Lott in the left side of his jaw. Both men then ran off toward Jennings Road. Lott testified that as a result of the incident, his jaw was “a little red and swollen” and that it ached for a day or two but that he did not seek any medical care or treatment following the incident. Lott identified Lawshea in court as the person he knew as “E.J.” and testified that he was certain Lawshea was, in fact, one of the two people who had robbed him.

{¶9} Lott testified that after the men ran off, he headed back to his apartment to call police. He testified that, because Lawshea had taken his keys and others in the building refused to let him in, he had difficulty entering his apartment building. Lott testified that approximately twenty minutes later, he was able to enter the building and use his girlfriend’s cell phone to call police and report the incident. The state introduced a recording of the 911 call during which Lott advised the dispatcher that he had been

robbed by two men — a black male in a black skull cap, black hoodie and black jeans and a black male in a red hoodie. He did not give the dispatcher the names of the perpetrators other than to say that one of them had a sister named Shantell.

{¶10} Lott testified that when the Cleveland police responded, they took him to the scene of the incident, that he told the officers that “C.J.” had called him and asked him for a ride and that “C.J.” then proceeded to rob him. Lott testified that he then showed the officers where Shantell, whom he identified as “C.J.’s” sister, lived. Lott testified that the officers knocked on the door to Shantell’s apartment but there was no response.

{¶11} Lott testified that the following day, he went to the police station and spoke with a detective. During that meeting, Lott realized he had made a mistake when talking with the responding officers and told the detective that it was “E.J.,” not “C.J.,” who had robbed him. Lott stated that when he spoke with police shortly after the incident, he was still “shook up” and “startled from when this happened to me” and that this was the reason for his mistake. Lott testified that while he was at the police station, he gave a statement, was shown a photo array in which he identified Lawshea as one of the men who had robbed him and informed the detective that he was “[a] hundred percent” certain that Lawshea was one of the men who had robbed him.

{¶12} With respect to his relationship with Shantell, Lott testified that he met Shantell through a prior girlfriend, that she was approximately half his age (22 or 23 years old as opposed to Lott’s age of 45), and that he had been over to her house a few times and “helped her out” when she called and needed things like “pampers, food for the kids,

little stuff like that.” Lott testified that, although he was attracted to Shantell, they had never dated and he had never had any type of physical relationship with her. Lott testified that he had known Shantell for “[a] little over a year,” but had not talked with her for several months before the incident. He denied that he had ever touched Shantell inappropriately or had ever had any type of conversation or encounter with Lawshea regarding Shantell.

{¶13} Lott testified that the day after the incident, he went over to Shantell’s apartment seeking information regarding her “so-called brother,” “E.J.” He testified that Shantell told him that “E.J.” was “not her real brother” but a “play friend” and that she did not “know his last name or anything like that.” Lott testified that he told the police about his encounter with Shantell when he spoke with them later that day. However, Lott acknowledged that the audio recording of his statement to police did not contain this information. Lott denied that he ever told Shantell to tell Lawshea that this “isn’t a game of checkers, but a game of chess.”

{¶14} Officer Robert Wagner, a Cleveland patrol officer who responded to the 911 call relating to the incident testified that he and his partner, Officer Bresnahan, met Lott at his apartment and interviewed him. Officer Wagner testified that Lott told the officers that a friend, whom Lott identified as “C.J.,” had called him requesting a ride and that when Lott went to pick him up, “C.J.” opened the passenger-side door, sat down in the car, pointed a gun at him, and demanded that he hand over his money. Officer Wagner testified that Lott told the officers that while the “friend” was pointing a gun at Lott, a

second suspect opened up the driver-side door, punched Lott in the head and started searching his pockets, taking his money and his car keys, before the two men ran off down Spring Road. Officer Wagner testified that Lott described “C.J.” as a black male, 5’ 6”, weighing 150 pounds.

{¶15} Officer Wagner testified that after Lott had explained what had happened, the officers drove him to the scene and verified that his car was in the parking lot at Spring Road. Officer Wagner testified that Lott then showed the officers the apartment where “C.J.’s” sister Shantell lived and where “C.J.” allegedly lived or hung out. According to Officer Wagner, the officers tried to gain access to the building but it was secured and no one would open the doors to let them in. Officer Wagner testified that he and Officer Bresnahan toured the area looking for a gun or suspects that matched the description Lott had provided but found nothing. Officer Wagner testified that he then completed and turned in his report and that the case was thereafter referred to one of the detectives of the Cleveland Police Department.

{¶16} Robert Beveridge, an officer with the Cleveland Police Department testified that when he reported to work the morning of January 28, 2014, he reviewed the police reports from the night before. He testified that after reviewing Officer Wagner’s report, he decided to go to the apartment complex to see if he could track down Shantell. He testified that he spoke with representatives from the apartment’s maintenance department and that they identified the apartment where Shantell lived. Officer Beveridge testified that he went to the apartment and spoke with Shantell, asked her if she had any brothers

and that she gave him three names, none of which was Lawshea. He testified that he then asked Shantell if she knew anyone named “Erick” and that she told him she did not. When asked if she knew a “C.J.,” Officer Beveridge testified that Shantell told him that a man named Clifton Fuller, who went by the nickname “C.J.,” used to live in the apartment complex. She denied knowing anything about a robbery occurring in the area.

{¶17} After speaking with Shantell, Officer Beveridge returned to his patrol car, ran Shantell’s name through the police department’s report management system database and found several police reports Shantell had made in the past. Officer Beveridge testified that he reviewed the reports and that one of the reports, relating to a prior burglary, listed Erick Lawshea (whom Shantell had at that time identified as her brother) as one of the witnesses. Officer Beveridge testified that while he was in his police vehicle outside the apartment building, Lott walked up to the vehicle. He testified that he spoke to Lott regarding the incident and that when he asked Lott what he knew about “C.J.,” Lott informed him that there had been a mistake in the report, i.e., that the suspect was named “E.J.” or “Erick,” not “C.J.”

{¶18} Detective Cynthia Moore, a detective in the Cleveland Police Department’s major crimes unit, was assigned the case for follow up. She testified that she investigates crimes with “low solvability,” i.e., those with little or no suspect information, and that she received the report prepared by Officer Wagner along with a supplemental report prepared by Officer Beveridge detailing the officers’ activities on the case. She testified that based on the investigation he had performed, Officer Beveridge had

identified Lawshea as a suspect and had included Lawshea's personal information in his supplemental report. She testified that after reviewing the reports, she contacted Lott and arranged to meet with him later that day. Detective Moore testified that prior to meeting with Lott, she compiled a photo array for him to review in which she included a photograph of Lawshea along with five other men.

{¶19} Detective Moore testified that when she met with Lott later that day, he explained to her what had happened. Detective Chris Hamrick as a blind administrator presented the photo array to Lott. Detectives Moore and Hamrick testified that Lott selected the photo of Lawshea from the array and indicated with "100 percent certainty" that the individual he had identified was one of the men involved in the robbery.

{¶20} Detective Moore testified that she went to the apartment complex several times in an effort to interview Shantell but was never able to speak with her and that ultimately a security guard informed her that Shantell had been evicted. Detective Moore testified that she did not investigate Clifton Fuller, the name Shantell had purportedly given Officer Beveridge as the identity of "C.J.," because Lott was certain that the perpetrator was "E.J." and that "E.J." was Lawshea, Shantell's brother. No other suspects were ever identified in connection with the robbery.

{¶21} Lawshea was arrested on April 5, 2014. Neither the gun used in the robbery nor any of the items taken from Lott was ever recovered. No physical evidence was introduced linking Lawshea to the crime.

{¶22} At the close of the state's case, Lawshea moved for acquittal pursuant to Crim.R. 29. The trial court denied the motion.

{¶23} One witness, Lawshea's sister Shantell, testified on behalf of the defense. Shantell testified that she met Lott through a friend when she lived in the Jennings Commons apartment complex on Spring Road in Cleveland. She testified that she and Lott were friends, that she had invited Lott to her apartment six or seven times between August 2013 and January 2014 and that they would talk, watch television and smoke marijuana together. She testified that Lott had asked her out but that she had declined to go out with him because he was significantly older than she.

{¶24} Shantell testified that on one occasion in January 2014, she was smoking marijuana, watching television, and talking with Lott at her apartment when Lott touched her vagina. She testified that she got upset, told Lott to stop and that they had "a couple of words back and forth" before Lott left. She testified that she told Lawshea about the incident and that approximately a week later, Lawshea confronted Lott about it. Shantell testified that she heard Lawshea and Lott "going at it," "talking loud," and "tussling" in the hallway outside her apartment. Shantell testified that she opened her apartment door and got "in between it." She testified that her brother then entered her apartment and Lott left through the front door of the complex.

{¶25} Shantell testified that approximately a week later, Lott stopped her as she was walking to the store and asked her if she had seen Lawshea. Shantell testified that she responded that she had not seen him. She testified that Lott then told her "when you

see your brother, tell him I said this is not a game of checkers, this is chess” and drove off in his car. On cross-examination, Shantell testified that she could not state whether this encounter occurred before or after the January 27, 2014 incident in which Lott was robbed. Shantell testified that she had not spoken with Lott since that encounter.

{¶26} With respect to her activities on the evening Lott was robbed, Shantell testified that she was at home that evening but that Lawshea was not there and that she did not know where Lawshea was or what he did that evening.

{¶27} Shantell testified that at or around the time of the incident, a police officer knocked on her apartment door and asked if she knew anyone named “C.J.” She testified that she told the officer she knew a “C.J.” and that he lived in another apartment building behind her apartment building. She denied that she identified “C.J.” as Clifton Fuller or that the officer ever asked her if she “had a brother or anything of that nature.”

{¶28} Shantell testified that two or three days later, eight or nine police officers came to her apartment at approximately 1:00 a.m., while she was home with her children.

She testified that she saw “guns in my face” and that an officer told her to stay in the front living room while the officers searched her apartment. She testified that she complied with the officer’s request and that when the officers came back to her living room, one of them asked her whether she knew anyone named “C.J.” and if she knew where he was. Shantell testified that she told the officer the same thing she had told the officer who had previously questioned her, i.e., that “C.J.” lived in an apartment on the other side of her apartment building. She testified that the officer then asked her whether

she had a brother. She testified that she replied that she had four brothers and named them, including Lawshea, for the officers. She testified that after she told the police officers her brothers' names, they left.¹

{¶29} At the conclusion of the defense's case, Lawshea renewed his Crim.R. 29 motion for acquittal. The trial court denied the motion.

{¶30} The jury returned guilty verdicts on both counts as well as the firearm specifications. The robbery count was merged with the aggravated robbery count for sentencing. The trial court then sentenced Lawshea to a total of eight years in prison — three years on the firearm specifications and five years on the aggravated robbery charge — and a five-year period of postrelease control. The trial court also ordered that Lawshea pay Lott \$590 in restitution.

{¶31} This appeal followed. Lawshea has raised the following three assignments of error for review:

ASSIGNMENT OF ERROR I:

The trial court erred in denying defendant-appellant's motion for acquittal when the evidence is not sufficient to support conviction.

ASSIGNMENT OF ERROR II:

Defendant was denied his right to a fair trial and his right to due process due to poor police investigation into another person originally named as the perpetrator.

¹In response to this testimony, the state offered rebuttal testimony from Detective Moore in which she testified that several days before the January 27, 2014 robbery, Shantell's brother Deshawn Lawshea was arrested by the Cleveland Police Department's Intelligence Unit and Task Force at Shantell's apartment and that multiple officers would have been involved in that arrest.

ASSIGNMENT OF ERROR III:

The verdict of the jury, finding Erick M. Lawshea guilty of aggravated robbery and robbery, is against the manifest weight of the evidence.

Law and Analysis

Sufficiency and Manifest Weight of the Evidence

{¶32} In his first and third assignments of error, Lawshea contends that the trial court erred in denying his Crim.R. 29 motion for acquittal and that his convictions for aggravated robbery and robbery were against the manifest weight of the evidence. Although they involve different standards of review, because they involve interrelated issues, the same arguments, and a review of the same evidence, we address Lawshea's first and third assignments of error together.

{¶33} A Crim.R. 29(A) motion for acquittal tests the sufficiency of the evidence. *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 13. Crim.R. 29 mandates that the trial court issue a judgment of acquittal where the state's evidence is insufficient to sustain a conviction for an offense. *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134, ¶ 21. Accordingly, we review a trial court's denial of a defendant's motion for acquittal using the same standard we apply when reviewing a sufficiency-of-the-evidence claim. *Id.* at ¶ 21-23 ("Crim.R. 29(A) and sufficiency of evidence review require the same analysis."), citing *Cleveland v. Pate*, 8th Dist. Cuyahoga No. 99321, 2013-Ohio-5571, citing *State v. Mitchell*, 8th Dist. Cuyahoga No. 95095, 2011-Ohio-1241.

{¶34} A challenge to the sufficiency of the evidence supporting a conviction requires a determination of whether the state has met its burden of production at trial. *State v. Hunter*, 8th Dist. Cuyahoga No. 86048, 2006-Ohio-20, ¶ 41, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541(1997). When reviewing sufficiency of the evidence, an appellate court must 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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. In a sufficiency inquiry, an appellate court does not assess whether the state’s evidence is to be believed but whether, if believed, the evidence admitted at trial supported the conviction. *State v. Starks*, 8th Dist. Cuyahoga No. 91682, 2009-Ohio-3375, ¶ 25, citing *Thompkins, supra; Jenks* at paragraph two of the syllabus.

{¶35} In contrast to a challenge based on sufficiency of the evidence, a manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion at trial. *State v. Whitsett*, 8th Dist. Cuyahoga No. 101182, 2014-Ohio-4933, ¶ 26, citing *Thompkins* at 387; *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13. When considering an appellant’s claim that a conviction is against the manifest weight of the evidence, the court of appeals sits as a “thirteenth juror” and may disagree “with the factfinder’s resolution of conflicting testimony.” *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct.

2211, 72 L.Ed.2d 652 (1982). Weight of the evidence “addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing *Thompkins* at 386-387. “In other words, a reviewing court asks whose evidence is more persuasive — the state’s or the defendant’s?” *Wilson* at ¶ 25.

{¶36} The reviewing court must examine the entire record, weigh the evidence and all reasonable inferences, consider the witnesses’ credibility and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In conducting such a review, this court remains mindful that the credibility of the witnesses and the weight to be given the evidence are primarily for the trier of fact to assess. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses’ manner, demeanor, gestures and voice inflections, in determining whether the proffered testimony is credible. *State v. Holloway*, 8th Dist. Cuyahoga No. 101289, 2015-Ohio-1015, ¶ 42, citing *State v. Kurtz*, 8th Dist. Cuyahoga No. 99103, 2013-Ohio-2999, ¶ 26. Reversal on manifest weight grounds is reserved for the ““exceptional case in which the evidence weighs heavily against the conviction.”” *Thompkins* at 387, quoting *Martin, supra*.

{¶37} Following a thorough review of the record, we find that the evidence presented, when viewed in the light most favorable to the state, was sufficient to support Lawshea’s convictions and that his convictions likewise were not against the manifest weight of the evidence.

{¶38} Lawshea was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1) and robbery in violation of R.C. 2911.02(A)(2). R.C. 2911.01(A)(1), aggravated robbery, provides, in relevant part:

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[.]

{¶39} R.C. 2911.02(A)(2), robbery, provides, in relevant part:

No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall * * * [i]nfllict, attempt to infllict, or threaten to infllict physical harm on another[.]

{¶40} Lawshea first argues that his convictions should be overturned because “due to the contradictory testimony of the victim,” the state failed to meet its burden of establishing beyond a reasonable doubt that Lawshea was one of the perpetrators who committed the robbery. We disagree.

{¶41} The state presented sufficient evidence to support Lawshea’s convictions based on Lott’s testimony alone. Lott testified that he recognized Lawshea’s voice when Lawshea called him and asked him for a ride the evening of the incident. Lott further testified that Lawshea identified himself as “E.J.,” whom Lott knew to be Shantell’s brother, during the call. Lott testified that when he drove to the spot where “E.J.” told Lott to meet him, Lawshea opened the car door and entered the car. Lott testified that the vehicle’s dome light illuminated Lawshea’s face such that he was able to confirm that it was Lawshea who entered the vehicle and that Lawshea then proceeded to rob him at gunpoint.

{¶42} Although Lott mistakenly told responding police officers that it was “C.J.,” rather than “E.J.,” who robbed him, he was unwavering that “Shantell’s brother” was one of the perpetrators. Without hesitation, Lott identified Lawshea from the photo array Detective Hamrick showed him the day after the incident as one of the persons who had robbed him. He again identified Lawshea as one of the perpetrators in court during his trial testimony. Both during his identification of Lawshea in the photo array and his in-court identification of Lawshea, Lott indicated that he was “[a] hundred percent” certain that Lawshea was one of the men who had robbed him. Although Lott mistakenly related Lawshea’s nickname, there is nothing in the record that suggests that he was mistaken about who it was who robbed him at gunpoint.

{¶43} Lawshea also argues that there was insufficient evidence for the jury to find (1) that Lawshea, in attempting or committing a theft offense, had “a dangerous ordnance

on or about the offender's person or under the offender's control," as required for an aggravated robbery conviction under R.C. 2911.01(A)(2), and (2) that Lawshea, in attempting or committing a theft offense, "[i]nflict[ed], attempt[ed] to inflict, or threaten[ed] to inflict physical harm" on Lott, as required for a robbery conviction under R.C. 2911.02(A)(1).

{¶44} As an initial matter, we note that possession of "a dangerous ordnance on or about the offender's person or under the offender's control" is an element of R.C. 2911.01(A)(2), not R.C. 2911.01(A)(1). Lawshea, however, was charged and convicted under R.C. 2911.01(A)(1), which requires proof that a defendant in attempting or committing a theft offense, had "a deadly weapon on or about the offender's person or under the offender's control and either display[ed] the weapon, brandish[ed] it, indicate[d] that the offender possesse[d] it, or use[d] it[.]" Lott's testimony was sufficient to satisfy the deadly weapon and physical harm elements of these offenses.

{¶45} Lott testified that after Lawshea entered the vehicle, he turned and pulled out a long-barreled revolver, pointing it at Lott's abdomen. Lott testified that Lawshea demanded that Lott "give that s*** up" and threatened Lott that if he failed to do so, "I'm going to pop your a**." The record reflects that this was part of a sequence of events that enabled Lawshea and his accomplice to steal from Lott. Lott testified that while Lawshea pointed a gun at him and took his cell phone and keys, another man in a red hoodie entered the vehicle from the driver's side, stole Lott's wallet and money from his pockets and punched him in the jaw. Lott's testimony, if believed, was sufficient to

establish all the essential elements of the offenses with which Lawshea was charged. Accordingly, viewing the evidence in a light most favorable to the state, a rational jury could have determined beyond a reasonable doubt that Lawshea was guilty of robbery and aggravated robbery. Lawshea's first assignment of error is overruled.

{¶46} We find no merit to Lawshea's assertion that the jury's verdicts were against the manifest weight of the evidence. There are admittedly a number of inconsistencies among the witnesses' testimony in this case. However, a conviction is not against the manifest weight of the evidence solely because the jury heard inconsistent or contradictory testimony. *State v. Wade*, 8th Dist. Cuyahoga No. 90029, 2008-Ohio-4574, ¶ 38, citing *State v. Asberry*, 10th Dist. Franklin No. 04AP-1113, 2005-Ohio-4547, ¶ 11; *see also State v. Mann*, 10th Dist. Franklin No. 10AP-1131, 2011-Ohio-5286, ¶ 37 (“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.”), quoting *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 Ohio App. LEXIS 2245, *7 (May 28, 1996). The decision whether, and to what extent, to believe the testimony of a particular witness is “within the peculiar competence of the factfinder, who has seen and heard the witness.” *State v. Johnson*, 8th Dist. Cuyahoga No. 99822, 2014-Ohio-494, ¶ 54.

{¶47} “Even where discrepancies exist, eyewitness identification testimony alone is sufficient to support a conviction so long as a reasonable juror could find the

eyewitness testimony to be credible.” *State v. Robinson*, 8th Dist. Cuyahoga No. 100126, 2014-Ohio-1624, ¶ 12, quoting *Johnson* at ¶ 52; *State v. Jordan*, 10th Dist. Franklin No. 04AP-827, 2005-Ohio-3790, ¶ 14. ““The reliability of properly admitted eyewitness identification, like the credibility of the other parts of the prosecution’s case is a matter for the jury.” *State v. Roper*, 9th Dist. Summit No. 20836, 2002-Ohio-7321, ¶ 55, quoting *Foster v. California*, 394 U.S. 440, 443, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969).

{¶48} This case came down to the credibility of Lott. The jury was presented with reasons to question Lott’s credibility, such as the fact that he originally told the responding officers that a person named “C.J.” had robbed him and the fact that Lott had allegedly been involved in a altercation with Lawshea following a falling out with Lawshea’s sister. But, as detailed above, the jury was also given reasons to believe his testimony, including the fact that he allegedly knew and recognized the person who robbed him and was “100 percent certain” of his identification of Lawshea when he saw Lawshea’s photograph during the photo array and again when testifying at trial.

{¶49} Based on our review of the entire record in this case, weighing the strength and credibility of the evidence presented and the inferences to be reasonably drawn therefrom, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice that Lawshea’s convictions were against the manifest weight of the evidence. Accordingly, Lawshea’s third assignment of error is overruled.

Police Investigation

{¶50} In his second assignment of error, Lawshea challenges the thoroughness of the investigation by police into the identity of the alleged perpetrators of the incident. Lawshea claims that he was denied due process and a fair trial because the police never attempted to locate “C.J.” “to determine how much he may have looked like the person who committed the crime” and did not include a photo of “C.J.” (or Clifton Fuller) in the photo array the police presented to Lott. Based on two magazine articles purportedly addressing the “unreliable nature of eyewitness testimony,” Lawshea contends that because of the number of “mistaken eyewitnesses,” the Cleveland police “should have overturned every stone and investigated every possible lead” in the case, including those relating to “C.J.,” to ensure that they “[got] it right.”

{¶51} Lawshea cites no legal authority in support of his proposition that a defendant is denied due process of law or a fair trial where the police fail to undertake a thorough investigation. For this reason alone we could overrule his assignment of error. App.R.12(A)(2); App.R. 16(A)(7); *see also State v. Dragan*, 5th Dist. Stark No. CA-4433, 1977 Ohio App. LEXIS 9573, *4-5 (May 18, 1977) (rejecting defendant’s argument that he was denied due process and a fair trial because of the alleged failure of the Canton Police Department to promptly investigate the alleged crime based on his claim that if defendant had been immediately contacted and questioned he would have been able to demonstrate an alibi); *State v. Barrow*, 8th Dist. Cuyahoga No. 97920, 2012-Ohio-5058, ¶ 36 (“[t]he right to due process is not violated when investigators fail to use a particular investigatory tool”), quoting *State v. Martin*, 10th Dist. No. 06AP-301,

2007-Ohio-232, ¶ 15, citing *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988); *State v. Weiser*, 10th Dist. Franklin No. 03AP-95, 2003-Ohio-7034, ¶ 33 (“There is no due process requirement for the police to conduct an investigation in a certain manner.”); *Athens v. Gilliland*, 4th Dist. Athens No. 02CA4, 2002-Ohio-4347, ¶ 5 (“sloppy police work” does not “violate a defendant’s due process rights”).

{¶52} Further, Lawshea has not established that the police investigation in this case was not sufficiently thorough or that Lawshea was prejudiced as a result of the officers’ failure to follow up on leads relating to “C.J.” This is not a case in which the suspect was unknown to the victim. Lott told police that he knew and recognized Lawshea. Lott unequivocally identified Lawshea in the photo array as one of the men who had robbed him. As Detective Moore explained, she did not continue to pursue leads relating to “C.J.” because she had a “hundred percent positive identification * * * from the victim” that Lawshea was the person whom Lott had previously mistakenly referred to as “C.J.” See *State v. Adair*, 10th Dist. Franklin No. 86AP-23, 1986 Ohio App. LEXIS 9204, *14-15 (Nov. 18, 1986) (police did not err in failing to investigate brother of the man who pled guilty as a potential accomplice where there was no evidence brother was involved in the crime). To the extent Lawshea contends there were deficiencies in the police investigation in this case or in Lott’s identification of Lawshea, he had an opportunity to question the officers and Lott regarding those issues and to point out those deficiencies to the jury during his cross-examination of those witnesses. Lawshea’s second assignment of error lacks merit and is overruled.

{¶53} The trial court's judgment is affirmed.

It is ordered that appellee recover from 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 convictions 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA A. BLACKMON, J., CONCUR