[Cite as *State v. Roberson*, 2011-Ohio-988.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. REGINALD S. ROBERSON Appellant	C.A. No. 10CA009743 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 07CR074975

DECISION AND JOURNAL ENTRY

Dated: March 7, 2011

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Officer Manuel Brillon responded to a reported abduction. After his commanding officer arrived at the scene, Officer Brillon canvassed the neighborhood, looking for suspicious activity. He observed Reginald Roberson parked alone in a parking lot. When Mr. Roberson began to drive away, Officer Brillon stopped him.. A search of Mr. Roberson's car revealed a gun and a do-rag. A jury convicted Mr. Roberson of two counts of rape, two counts of kidnapping, one count each of gross sexual imposition, aggravated robbery, carrying a concealed weapon, improperly handling a firearm in a motor vehicle, and resisting arrest. In addition, after Mr. Roberson waived his right to a jury trial on the charge of having a weapon under disability, the trial court found him guilty. The trial court sentenced him to 41 years in prison. Mr. Roberson has appealed, arguing that the trial court erred in failing to grant his motion to suppress, that his convictions are not supported by sufficient evidence, and that they are against

the manifest weight of the evidence. We affirm because the trial court did not err by denying his motion to suppress and his convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.

BACKGROUND

{¶2} T.M. was working alone in a bar when a man wearing "grayish" sweatpants came in and sat down next to her. They were the only people in the bar as it was a slow night. She testified that the man asked to speak to the manager about having his band play at the bar. She told him that the manager was not around, and he left without having anything to drink. A short time later, the man came back into the bar and, after he sat down, T.M. noticed a gun in his right hand. He told her to open the cash register, and she did. She testified that he proceeded to carefully remove the money from the register, a little more than one hundred dollars, and put it in his pants pocket.

{¶3} According to T.M., the man took her by the arm and led her to the front of the bar. He fired the gun close to her head to show her he was serious. He took her outside and put a "do-rag" over her head. She testified that the do-rag impeded her vision, but that she could still see. The man walked her to a white car, which was parked one street over from the bar, and forced her to get inside.

{¶4} T.M. testified that the man then drove her around for a while and that it seemed like he was "[t]rying to trick [her]" by going in circles. She repeatedly saw the Lorain water tower and also recognized buildings as being part of a development within a few minutes of the bar. The man got her out of the car and took her into a house. She testified that he led her up a flight of stairs, through a kitchen and a living area, and into a bedroom. T.M. saw a person sleeping on the couch in the living area with the television on. Derryl Moore, a friend of Mr.

Roberson's, testified that he spent the night on the couch in Mr. Roberson's apartment, having fallen asleep watching television.

{¶5} Once they were inside the bedroom, the man told her to undress and then stripped her naked. T.M. testified that the room was dark and that she tried to avoid looking at the man. The man told her to lie down on the bed, and she complied. The man proceeded to touch her and forced her to perform fellatio on him. He then performed cunnilingus on her and attempted to begin vaginal intercourse but was unable to achieve an erection. The man then inserted his finger into her vagina before making her perform fellatio again.

{¶6} According to T.M., the man eventually told her to get her clothes on as he wanted to get her back to the bar before anyone knew she was gone. He put the do-rag back on her head and drove her around. Eventually, he had her get out and walk to the front of the car. He removed the do-rag, telling her to count to sixty before leaving. She testified that she counted to three hundred before looking around. She recognized that she was beside a church near the bar and ran back to the bar.

{¶7} When T.M. entered the bar, police were inside. They took her to be examined by a sexual assault nurse examiner. As they drove away from the bar, she observed a white car stopped by police in the street. She testified that she recognized the car as being the one used in her abduction and remarked on that fact to the officer driving her.

{¶8} Abraham Reynolds, the manager of the bar, testified that he had received a phone call from customers, who told him that T.M. was not there. He hurried down to the bar and looked at the surveillance tape. The tape showed the robbery and the abduction, leading Mr. Reynolds to call the police. When police arrived, he showed them the tape.

{¶9} Officer Manuel Brillon was one of the first officers to arrive on the scene. He viewed the surveillance tape and, after additional officers had arrived at the bar, decided to drive around the area to look for anything suspicious.

{¶10} While canvassing the neighborhood, which he had patrolled for thirty years, Officer Brillon observed a white car sitting in a church parking lot with its lights on. Officer Brillon did a U-turn to investigate. As he approached the parking lot, he observed the white car pulling out and saw that the driver was a black male.

{¶11} Officer Brillon stopped the car and, following procedure, reported the stop to the dispatcher. When he approached the driver's window, the driver asked why he had stopped him. Officer Brillon responded that there had been an abduction and he was checking the area. He asked the driver for his license from which he identified him as Mr. Roberson.

{¶12} Officer Jacob Morris arrived at the traffic stop to back up Officer Brillon and took up a position at the right-rear bumper of the car. He testified that it was regular procedure to have two officers at a stop at that time of night for safety.

{¶13} Officer Brillon testified that, because his portable radio had been giving him trouble, he decided to use the radio in his patrol car to run Mr. Roberson's license. According to Officer Morris, after Officer Brillon walked away from the car, Mr. Roberson looked over his shoulder towards Officer Brillon and produced a metallic object from the right side of the seat. Officer Morris believed this to be a gun and signaled to Officer Brillon. Officer Morris testified that he saw Mr. Roberson place the object beneath the driver's seat.

{¶14} Officer Morris and Officer Miguel Salgado, who had arrived at the scene, walked to the driver's side door of the car, and Officer Morris asked Mr. Roberson to step out. According to Officer Morris, Mr. Roberson refused, asking what he had done. Officer Morris

repeated the order, and Mr. Roberson responded that he had to go to the bathroom. Officer Morris repeated his order a third time, and Mr. Roberson did not respond. Officer Morris decided that Mr. Roberson was unlikely to comply with the order and might even try to run, so he opened the door and grabbed Mr. Roberson's arm. Mr. Roberson then exited the car, and the two officers escorted him to its rear. Officer Morris testified that he saw a red do-rag in Mr. Roberson's hand as he exited the car.

{¶15} Officer Brillon testified that, as Officers Morris and Salgado led Mr. Roberson to the back of the car, he observed a do-rag in Mr. Roberson's hand. According to Officer Brillon, a call came in from the officers still at the bar asking if the officers had observed a do-rag in the vehicle or Mr. Roberson's possession. Officer Brillon testified that, after Mr. Roberson's arrest, he made sure to place the do-rag in an evidence bag.

{¶16} After Officer Salgado frisked Mr. Roberson for weapons, Officer Morris returned to the front of the car and looked under the driver's seat. He observed a gun and had Mr. Roberson arrested for carrying a concealed weapon. Officer Salgado searched Mr. Roberson and discovered one hundred and sixty dollars in Mr. Roberson's pocket. The money "appeared to be shoved in."

{¶17} According to Officer Morris, he attempted to place Mr. Roberson in the back of his cruiser, but Mr. Roberson resisted and "spun around." Officer Morris stated that he took Mr. Roberson to the ground in case he was trying to escape. With Officer Salgado's assistance, Officer Morris put Mr. Roberson in the back of the cruiser and took him to the county jail.

{¶18} The day after the incident, Detective Edward Bermudez brought a photo array to T.M.'s home and asked if she recognized any of the men as being the one who abducted her. Detective Bermudez testified that she seemed timid and uncomfortable, but that she carefully

looked over the photo array before selecting a picture. She did not select Mr. Roberson's picture.

{¶19} Michael Roberts of the Bureau of Criminal Identification and Investigation testified that he test-fired the revolver recovered from Mr. Roberson's car in accordance with Bureau protocols. Based on his experience and training, he determined that a spent casing found inside the revolver had been fired by that gun. He also testified that, even if the bullet fired in the bar had been found, it would have been unlikely that he would have been able to match it to the gun. According to Mr. Roberts, the bullet was such a small caliber that, upon hitting an object, it would have likely disfigured, rendering it useless for ballistics comparison.

{¶20} Martin Lewis, a forensic scientist in the trace evidence section of the Bureau, testified that he examined the gunshot residue kits collected from Mr. Roberson and found evidence of gunshot primer on the sample from his right hand. The sample from Mr. Roberson's left hand was negative.

{¶21} Stacy Violi, a forensic scientist with the Bureau, testified that she tested the do-rag obtained from Mr. Roberson during the search of his car for DNA. The results of the tests indicated that there was DNA from three individuals on the do-rag. She testified that her tests revealed that Mr. Roberson and T.M., along with an unknown third individual, were the sources of the DNA on the do-rag.

MOTION TO SUPPRESS

{¶22} Mr. Roberson's first assignment of error is that the trial court incorrectly denied his motion to suppress. A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, at ¶8. Generally, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible

evidence." *Id.* But see *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶14 (Dickinson, J., concurring). The reviewing court "must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Burnside*, 2003-Ohio-5372, at ¶8.

REASONABLE SUSPICION

{¶23} Mr. Roberson has argued that Officer Brillon lacked reasonable suspicion that justified stopping his car because he was legally parked in a church parking lot and committed no traffic violations after pulling out of the lot. "A police officer may stop a car if he has a reasonable, articulable suspicion that a person in the car is or has engaged in criminal activity." *State v. Kodman*, 9th Dist. No. 06CA0100-M, 2007-Ohio-5605, at ¶3). "[He] must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "[I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22 (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

{¶24} The police officer's "objective and particularized suspicion that criminal activity was afoot must be based on the entire picture-a totality of the surrounding circumstances." *State v. Andrews*, 57 Ohio St. 3d 86, 87 (1991); see *State v. Bobo*, 37 Ohio St. 3d 177, 178, (1988). "[The] circumstances are to be viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *Andrews*, 57 Ohio St. 3d at 87-88. "A court reviewing the officer's actions must give due weight to his experience and training and view the evidence as it would be understood by those in law enforcement." *Id.* at 88.

{¶25} The trial court found Officer Brillon's testimony credible that he had viewed the surveillance tape from the bar and determined that the suspect was a black male in light colored sweatpants. It further found credible that, while canvassing the neighborhood, Officer Brillon observed a solitary car in a church parking lot at 2:25 A.M. with its lights on, which was unusual. When he performed a U-turn to investigate, Officer Brillon saw the car exiting the parking lot and observed that the driver was a black male. He then performed another U-turn and stopped the car.

{¶26} Mr. Roberson has attempted to distinguish *State v. Bobo*, 37 Ohio St. 3d 177 (1988), from this case, arguing that, unlike Mr. Bobo, he had not been parked in an area "noted for the number of drug transactions which occurred there." *Bobo*, 37 Ohio St. 3d 177, 179 (1988). While it is true that the area in *Bobo* was a high drug area, an area's drug traffic is not the only factor in evaluating the totality of the circumstances.

{¶27} In *Bobo*, the Ohio Supreme Court determined seven factors justified the officers' reasonable suspicion for stopping and searching the car: the high crime nature of the location, the time of night, the officer having twenty years of experience, the officer's knowledge of how drug crimes occurred in the area, Mr. Bobo's actions, the officer's experience recovering weapons after an individual made movements similar to Mr. Bobo's, and the officers being out of their vehicles and away from protection. *State v. Bobo*, 37 Ohio St. 3d at 179.

{¶28} While the area around the church parking lot has not been described as a high crime area, it was in the immediate vicinity of an apparent kidnapping. The stop occurred at 2:25 in the morning, approximately two hours after the abduction. Officer Brillon had thirty years of experience and had patrolled the neighborhood for his entire career. In fact, he often used the church parking lot to write his reports. The car's presence was "very unusual." Further,

when he returned to investigate, the car was driving away, but he did observe that the driver was a black male.

{¶29} While the factors above would likely support stopping Mr. Roberson, they are not the only factors to consider. In determining whether a stop or seizure is reasonable, there must be a balancing between the government interest promoted by the search and the individual's constitutionally protected interests. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). In this case, the government interest went beyond the state's interest of preventing criminal conduct to the interest of protecting life. A woman had been abducted at gun point and a shot had been fired. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (quoting *Mincey v. Arizona*, 437 U.S. 385, 392 (1978)). A recent kidnapping certainly creates an emergency situation, which is a factor when considering the totality of the circumstances.

{¶30} Officer Brillon did not pull over a random car driving through the neighborhood. It was a car parked, with its lights on, in an unusual location given the time of night. It was in the immediate vicinity of an abduction and only began driving away after Officer Brillon drove past in his marked cruiser. As far as Officer Brillon knew, T.M. was missing and being held by the kidnapper, presenting an emergency situation. Once Officer Brillon observed that the driver met a preliminary description of the man he had seen in the video, given the totality of the circumstances, Officer Brillon had reasonable suspicion that the driver was engaged in specific criminal activity, which justified the stop.

EXTENSION OF THE STOP

{¶31} Mr. Roberson has argued in the alternative that, even if the stop was valid, Officer Brillon detained him longer than necessary. He has argued that the "traffic stop may not last longer than is necessary to resolve the issue that led to the original stop . . ." and has pointed to the decisions in *State v. Ramos*, 2d Dist. No. 2002 CA 111, 2003-Ohio-6535, and *State v. Koueviakoe*, 4th Dist. No. 03CA18, 2004-Ohio-1994.

{¶32} Both *Ramos* and *Koueviakoe* involved stops initiated for traffic violations. In both cases, the officers detained the vehicles in excess of twenty minutes to allow drug sniffing dogs to arrive. In *Ramos*, the state trooper declared on tape that he suspected the passengers in the vehicle to be committing some crime, but did not know what precisely. In *Koueviakoe*, the Court concluded that the nervousness and slight discrepancies in stories told by the vehicle occupants, along with a smell of air fragrance, were "not specific and articulable facts that support a reasonable suspicion that [the] vehicle contained drugs." *Id*. at ¶25. In both cases, the Court determined that the officer had resolved the initial purpose of the stop prior to the arrival of the drug sniffing dogs, making the detention unreasonable.

{¶33} Mr. Roberson has not argued that Officer Brillon detained him for a time period consistent with *Ramos* or *Koueviakoe* and the record does not indicate that the stop lasted for more than a few minutes before Officer Morris observed Mr. Roberson's movements. Instead, he has argued that Officer Brillon improperly extended the traffic stop by asking for his driver's license and running a check on it. According to Mr. Roberson, it was unreasonable for Officer Brillon to do this as "he saw that Mr. Roberson was alone in his car, and there was nothing to indicate that the car or Mr. Roberson [was] engaged in illegal activity."

{¶34} As discussed above, Officer Brillon made a legal stop to investigate possible criminal activity associated with a robbery and kidnapping. The record does not support Mr. Roberson's claim that there was nothing to indicate illegal activity once Officer Brillon spoke to him. Unlike in *Ramos* and *Koueviakoe*, Officer Brillon testified to facts that supported reasonable suspicion of Mr. Roberson's commission of specific crimes. The trial court found Officer Brillon's testimony credible that, when he approached Mr. Roberson's car, he observed that Mr. Roberson was wearing pants similar in color and type to the pants worn by the man in the surveillance video. Officer Brillon also testified that, when he told Mr. Roberson there had been an abduction down the street, Mr. Roberson responded, "[Y]ou don't see her." Further, unlike *Ramos* and *Koueviakoe*, Officer Brillon's purpose for initiating the stop was not terminated prior to his asking for Mr. Roberson's driver's license. He initiated the stop to investigate a kidnapping, and it would be unreasonable to presume, given the other factors known to Officer Brillon, that the investigation would end merely because he did not observe T.M. in the passenger compartment of the car.

{¶35} Section 2921.29(A) of the Ohio Revised Code provides that "[n]o person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects . . . [t]he person is committing, has committed, or is about to commit a criminal offense." Given that Officer Brillon had reasonable suspicion to stop Mr. Roberson, that Mr. Roberson's appearance and statements gave Officer Brillon additional facts to support his suspicion, and that the stop occurred on a public street, Officer Brillon was within the authority granted by Section 2921.29(A) to request Mr. Roberson identify himself.

{¶36} The length of time taken by Officer Brillon to run Mr. Roberson's license does not matter because it was only a few seconds after Officer Brillon walked away from the car that Mr. Roberson made the movements observed by Officer Morris. Accordingly, Officer Brillon's check of Mr. Roberson's license was part of a diligent investigation on his part and not an improper extension of the stop.

THE SEARCH

{¶37} Finally, Mr. Roberson has argued that, even if the stop was legal and Mr. Roberson was not impermissibly detained, the officers did not have a basis for searching his car. He has also argued that Officer Morris failed to describe the object he saw or to characterize Mr. Roberson's actions as furtive or dangerous. The trial court found that Officer Morris's observations did not specifically indicate that the object he saw in Mr. Roberson's hand was a weapon.

{¶38} "So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose." *State v. Bobo*, 37 Ohio St. 3d 177, 180 (1988) (quoting Adams v. Williams, 407 U.S. 143, 146 (1972)). For the reasons discussed above, the stop was justified. Further, upon approaching the car, Officer Brillon observed that the driver was wearing similar pants to the man he had seen in the video robbing the bar and abducting T.M. He had also heard the gunshot in the video. Additionally, Mr. Roberson had referred to the abduction victim as "her."

{¶39} While the forgoing facts alone might have been enough to support a weapons search based upon the reasonable suspicion that Mr. Roberson was armed, the search did not occur until Officer Morris observed Mr. Roberson pulling an object from his right side, looking

at it, and placing it under his seat. While Mr. Roberson has argued that furtive movements alone are not enough to justify a search, the search was not based on Officer Morris's observations alone, but also on the circumstances surrounding the initial stop. The officers had reason to believe that Mr. Roberson was armed. As in *Bobo*, the officers were out of their vehicles and away from protection. The totality of the circumstances, including Mr. Roberson bending down to place something beneath his seat, justified the officers' searching the car to provide for their own safety.

{¶40} Officer Brillon's stop of Mr. Roberson was reasonable under the totality of the circumstances, and requesting Mr. Roberson's driver's license did not unconstitutionally extend the stop. The subsequent search of the car was supported by reasonable suspicion that Mr. Roberson possessed a gun and was justified to provide for the officers' safety. Accordingly, Mr. Roberson's first assignment of error is overruled.

SUFFICIENCY OF THE EVIDENCE

{¶41} In his second assignment of error, Mr. Roberson has argued that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. Sufficiency of the evidence claims are reviewed de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. Viewing the evidence in the light most favorable to the prosecution, this Court must determine whether the evidence could have convinced the average finder of fact beyond a reasonable doubt of Mr. Roberson's guilt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶42} A jury convicted Mr. Roberson of violating Sections 2907.02(A)(2) and 2907.05(A)(1) of the Ohio Revised Code by committing rape and gross sexual imposition. Section 2907.02(A)(2) of the Ohio Revised Code provides that "[n]o person shall engage in

sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." Section 2907.05(A)(1) provides that "[n]o person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when . . . [t]he offender purposely compels the other person, or one of the other persons, to submit by force or threat of force."

{¶43} T.M. testified that her abductor forced her to strip naked and perform fellatio on him, performed cunnilingus on her, and inserted his finger into her vagina. Mr. Roberson was found in possession of a do-rag that had DNA on it consistent with T.M.'s, and his apartment fit T.M.'s description of the apartment where the assault took place. Viewing the evidence in a light most favorable to the State, it was sufficient to prove beyond a reasonable doubt that Mr. Roberson forced T.M. to submit to the sexual conduct and contact. His convictions for gross sexual imposition and both counts of rape are supported by sufficient evidence.

{¶44} The jury also convicted Mr. Roberson of violating Section 2911.01(A)(1) of the Ohio Revised Code by committing aggravated robbery. Section 2911.01(A)(1) provides that "[n]o 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."

{¶45} T.M. testified that the man who abducted her also brandished a gun at her and took the money from the cash register. The surveillance video shows those events. According to T.M., the robber shot the gun to show her he meant business. The video tape recorded the sound of a gunshot. The gun found in Mr. Roberson's car had one spent cartridge in it, and gunshot

residue tests of the gun and Mr. Roberson's right hand came back positive. Finally, Mr. Roberson was found to have one hundred and sixty dollars "shoved in" his pocket when he was arrested. Viewing the evidence in the light most favorable to the State, it was sufficient to prove that Mr. Roberson committed aggravated robbery.

{¶46} The jury convicted Mr. Roberson of violating Sections 2905.01(A)(2) and (4) of the Ohio Revised Code. Section 2905.01(A)(2) provides that "[n]o person, by force, threat, or deception . . . shall remove another from the place where the other person is found or restrain the liberty of the other person . . . [t]o facilitate the commission of any felony or flight thereafter." Section 2905.01(A)(4) provides that "[n]o person, by force, threat, or deception . . . shall remove another from the place where the other person is found or restrain the liberty of the other person . . . [t]o engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will."

{¶47} T.M testified that a man came into the bar, forced her to give over the contents of the cash register at gun point, and then forced her to go outside and get into his car. The surveillance video supported T.M.'s testimony. As mentioned above, T.M. testified that her abductor raped her. Further, Mr. Roberson was arrested in the area of the bar after T.M.'s abductor released her with money consistent with the amount stolen from the bar, a gun, and a do-rag containing DNA consistent with T.M.'s. Viewing the evidence in the light most favorable to the State, Mr. Roberson's convictions for kidnapping are supported by sufficient evidence.

{¶48} The jury also convicted Mr. Roberson of violating Sections 2923.16(B) and 2923.12(A)(2) of the Ohio Revised Code by improperly handling a firearm in a motor vehicle and by carrying a concealed weapon. Section 2923.12(A)(2) provides that "[n]o person shall

knowingly carry or have, concealed on the person's person or concealed ready at hand . . . [a] handgun . . . ." Section 2923.16(B) provides that "[n]o person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle." Officer Morris testified that he found a revolver under the driver's seat of Mr. Roberson's car. Testing done at the Bureau of Crime Identification and Investigation proved the gun to be operable. Viewing the evidence in the light most favorable to the State, Mr. Roberson's convictions for carrying a concealed weapon and improperly handling a firearm in a motor vehicle are supported by sufficient evidence.

{¶49} The jury convicted Mr. Roberson of violating Section 2921.33(A) of the Ohio Revised Code by resisting arrest. Section 2921.33(A) provides that "[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another." Officer Morris testified that Mr. Roberson resisted entering the police cruiser and that he spun around when Officer Morris continued to try to place him in the back seat. Viewing the evidence in the light most favorable to the State, Mr. Roberson's conviction for resisting arrest is supported by sufficient evidence.

{¶50} The jury also convicted Mr. Roberson of two gun specifications for each count of rape and kidnapping, as well as for gross sexual imposition, improperly handling firearms in a motor vehicle, and aggravated robbery. The jury also convicted him of a sexual motivation specification on both counts of kidnapping. The trial court convicted Mr. Roberson of having weapons while under disability. As mentioned above, the testing at the Bureau proved the gun to be operable. The video corroborated T.M.'s testimony that the robber had a gun and shot it. Mr. Roberson's convictions for having a gun under disability and the gun specifications are not against the manifest weight of the evidence.

MANIFEST WEIGHT

{¶51} Mr. Roberson, in his second assignment of error, has argued that his convictions are against the manifest weight of the evidence. When a defendant argues that his convictions are against the manifest weight of the evidence, this Court "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶52} Mr. Roberson has not specifically argued that his convictions for having a gun under disability, improperly handling a firearm in a vehicle, carrying a concealed weapon, and resisting arrest are against the manifest weight of the evidence. As mentioned above, officers found a loaded gun in Mr. Roberson's car under the driver's seat. The Bureau of Criminal Identification and Investigation tested the gun and found it to be operable. Further, Officer Morris testified that Mr. Roberson resisted being placed in the police cruiser after his arrest. This Court cannot say that the jury or the trial court lost its way in convicting Mr. Roberson of carrying a concealed weapon, improperly handling a firearm, resisting arrest, and having a gun under disability.

{¶53} Mr. Roberson has not disputed that someone robbed the bar at gun point, kidnapped T.M., and raped her. He has only argued that the jury's finding that he was the person who committed the crimes is against the manifest weight of the evidence. He has based his argument on four assertions: (1) T.M. identified a different individual from the photo array and never identified Mr. Roberson as the man from the bar at trial; (2) no forensic evidence was recovered from the physical examination of T.M.; (3) "[a] search of Mr. Roberson's alleged

residence similarly revealed no forensic evidence to connect him to the crimes;" and (4) the car Mr. Roberson was driving contained no forensic evidence showing that T.M. had been inside it.

{¶54} T.M. did not select Mr. Roberson from the photo array. T.M. testified, however, that the man she selected looked familiar to her, but that she has also been a bartender for nearly ten years and had seen many different people during that time. She also repeatedly testified that she avoided looking at her abductor, that she cried throughout the ordeal, and that the rape happened in a dark room. Further, Detective Bermudez testified that he did not use Mr. Roberson's booking photograph in the photo array he showed T.M., opting to use his picture from the Bureau of Motor Vehicles, which had been taken several months earlier. He explained that Mr. Roberson's posture and head position in his booking picture made a non-suggestive photo array with that picture nearly impossible. He also testified that Mr. Roberson looked different in his license photo than he did at the time of the arrest.

{¶55} The jury was shown the photo array and the booking photograph. Mr. Roberson's lawyer brought T.M.'s incorrect identification to the jury's attention, but the jury was not required to believe that this demonstrated Mr. Roberson's innocence. The jury was entitled to believe T.M.'s explanations of why she did not identify Mr. Roberson as her attacker as well as the other evidence linking him to the crime.

{¶56} Mr. Roberson has essentially argued that the absence of his DNA or fingerprints on T.M., the absence of evidence at his residence, and the absence of T.M.'s DNA or fingerprints in his car necessarily outweighs all the other evidence presented at his trial. We cannot say that the jury lost its way in convicting Mr. Roberson without DNA matches from T.M. or from his residence.

{¶57} Mr. Roberson's assertion that no forensic evidence was recovered from T.M.'s physical exam is not dispositive. The analysis of the samples taken during the exam revealed the presence of amylase. According to the expert testimony of the Bureau employees, amylase is most commonly found in saliva, but is present in other bodily fluids. Mr. Roberson's lawyer, through his cross examination, made the jury aware that no DNA from the physical exam linked Mr. Roberson to T.M's assault.

{¶58} Mr. Roberson has argued that the fact that no evidence was found at his "alleged" residence is demonstrative of his innocence. This Court notes that his "alleged" residence contained a phone bill addressed to him and that two friends of Mr. Roberson, Kenneth Dawson and Mr. Moore, testified that Mr. Roberson lived in the apartment. As far as the search, the warrant obtained by Detective Bermudez allowed a very limited search of the residence. The officers were only allowed to walk through the apartment and take photographs.

{¶59} While the officers did not obtain DNA or similar evidence, T.M. looked at the pictures during the trial and testified that the apartment bore a strong resemblance to the one where she was taken during her abduction. Additionally, the apartment lay-out matched the diagram drawn by T.M. before Detective Bermudez found Mr. Roberson's address. Further, the residence was near the development T.M. testified she had recognized. Particularly when there was no attempt to collect forensic evidence at the residence, the jury did not have to conclude that the failure to introduce forensic evidence at trial demonstrated that Mr. Roberson was not the man who robbed, kidnapped, and raped T.M.

{¶60} Finally, Mr. Roberson has argued that there was no forensic evidence that T.M. had been inside his vehicle. When he exited his vehicle, however, Mr. Roberson carried a do-rag

with him. Testing at the Bureau of Crime Identification and Investigation revealed three DNA profiles on the do-rag of which two were consistent with Mr. Roberson and T.M.

{¶61} Mr. Roberson has not disputed any part of T.M.'s account. The jury was entitled to believe the evidence of the video tape and T.M.'s testimony that someone robbed the bar at gunpoint and kidnapped T.M. While T.M. did identify a man other than Mr. Roberson in the photo array, his counsel made the jury aware of the issue, allowing the jury to judge the credibility of T.M.'s testimony accordingly. At trial, T.M. testified that a man raped her. She did not identify Mr. Roberson as the man, but nothing in the record called her testimony of the events into question. Accordingly, this Court cannot say that the jury lost its way in finding that T.M. was the victim of rape, kidnapping, and aggravated robbery.

{¶62} The issue is whether jury's finding that Mr. Roberson was the man who committed those crimes is against the manifest weight of the evidence. Officer Brillon saw Mr. Roberson's car parked in a parking lot a short distance from the bar. T.M. returned to the bar approximately the same time that Officer Brillon stopped Mr. Roberson. Officers Brillon and Morris testified that Mr. Roberson exited the car with a do-rag, which was found to contain DNA matching T.M.'s. Officer Morris testified that he found a gun under Mr. Roberson's seat. Gun residue tests of the gun and Mr. Roberson's right hand came back positive for gun primer, which would be consistent with the gunshot heard on the video tape and T.M.'s testimony that the robber held the gun in his right hand. Further, when the detectives determined where Mr. Roberson lived, his apartment was similar to how T.M. described the apartment where she was raped. This Court cannot say that the jury lost its way in finding that Mr. Roberson was the man who robbed the bar and kidnapped and raped T.M. Mr. Roberson's second assignment of error is overruled.

CONCLUSION

{¶63} The trial court did not err in denying Mr. Roberson's motion to suppress as the initial stop was supported by reasonable suspicion, the stop was not unreasonable in length, and the search of the car was supported by reasonable suspicion and justified to protect the officers' safety. Mr. Roberson's convictions are supported by sufficient evidence and not against the manifest weight of the evidence. The judgments of the Lorain County Common Pleas Court are affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, attorney at law, for appellant.

DENNIS P. WILL, prosecuting attorney, and BILLIE JO BELCHER, assistant prosecuting attorney, for appellee.