

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 13CA010473

Appellee

v.

ANTONINA PEVNEV

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 10CR081468

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

HENSAL, Presiding Judge.

{¶1} Antonina Pevnev appeals her convictions for robbery, tampering with evidence, failure to comply with an order or signal of a police officer, obstructing official business, and theft in the Lorain County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} Yasmin Ahmad, a loss prevention officer for the Kohl’s store in Avon, testified that she was watching the store’s surveillance cameras on September 11, 2010, when she noticed Ms. Pevnev “double-selecting” items, a practice sometimes employed by shoplifters. She began watching Ms. Pevnev more closely and suspected that she hid items in her purse while she was in the changing room. She was not able to collect enough information about the missing items, however, to stop Ms. Pevnev when Ms. Pevnev left the store.

{¶3} According to Ms. Ahmad, when Ms. Pevnev returned to the store the next day, she began watching her again because of her suspicious conduct. After it appeared that some of the items that Ms. Pevnev brought into a changing room were no longer in her cart when she exited the changing room, and the size of her purse appeared larger, Ms. Ahmad decided to stop her outside the store. Ms. Ahmad testified that she approached Ms. Pevnev in the parking lot, pulled out her badge, and told Ms. Pevnev that she was with Kohl's loss prevention and that Ms. Pevnev needed to return to the store. Instead, Ms. Pevnev balled up her fists and hit Ms. Ahmad in the side, causing it to sting. As Ms. Pevnev left the parking lot in a black minivan, Ms. Ahmad called the police department and told the dispatcher the direction the minivan was travelling.

{¶4} Officer Gary Krejci testified that, when he learned about the theft, he was close to the area where the minivan was heading. He pulled into the median of a road that he thought the suspect would use and shortly thereafter noticed a black minivan that had been heading in his direction make a quick U-turn. He began following the minivan and activated his lights and sirens. As he caught up to the minivan, it suddenly veered into a Burger King parking lot and began circling around the restaurant at a significant rate of speed. He followed the minivan twice around the restaurant before it went back out onto the road. As he continued to pursue it, he saw clothes being tossed out the passenger side window. Shortly thereafter, he and other officers converged on the minivan, and they arrested the driver, Ms. Pevnev. Workers at the Burger King later found Kohl's clothes outside the restaurant. According to Ms. Ahmad, the recovered clothing matched the list of items she suspected that Ms. Pevnev had stolen.

{¶5} The Grand Jury indicted Ms. Pevnev for robbery, tampering with evidence, failure to comply with an order or signal of a police officer, obstructing official business, and theft. A

jury found her guilty of the offenses, and the trial court sentenced her to three years of community control. Ms. Pevnev has appealed her convictions, assigning as error they are against the manifest weight of the evidence.

II.

ASSIGNMENT OF ERROR

THE GUILTY VERDICTS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF MS. PEVNEV'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO STATE CONSTITUTION.

{¶6} Ms. Pevnev argues that her convictions are against the manifest weight of the evidence. To determine whether a conviction is 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 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 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). The appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases. *Otten* at 340.

{¶7} Ms. Pevnev argues that the Kohl's security video did not show that her purse increased in size between when she entered and exited the changing room. She also argues that her purse was too small to hold the number of items that the State alleged she stole. She also

denies striking Ms. Ahmad. Ms. Pevnev further argues that she had a legitimate explanation for circling the Burger King restaurant and tossing the clothes out of her minivan window.

{¶8} Ms. Pevnev testified that a few days before the incident, she was driving on the interstate when the engine of her minivan overheated. While she was pulled over trying to cool the engine off, a man approached her, offering to help. She denied his assistance, but in the course of trying to get him to leave, revealed the cul-de-sac where she lived. She was eventually able to resume driving. She exited the interstate, but a short time later the minivan overheated again. As she was stopped on the side of the road, a woman approached her and demanded her money, threatening her with a homemade knife. When Ms. Pevnev looked around, she saw a black car stopped behind her van. Behind the wheel of the car was the man who had approached her earlier. After Ms. Pevnev gave the woman the cash in her purse, the woman warned her not to go to the police because they knew where she lived.

{¶9} Ms. Pevnev testified that she eventually got home and her daughter convinced her to go to the police. She went to a police station to report the robbery, but an officer told her that he could not help her because it had occurred in another jurisdiction. When she went to the other city to report the crime, a clerk told her that she had to go back to the first police station because it was, in fact, the proper jurisdiction. At that point, Ms. Pevnev gave up and returned home. Ms. Pevnev's daughter corroborated what happened at the police stations.

{¶10} According to Ms. Pevnev, a couple of nights later, she was returning from a trip to the grocery store, when the woman who robbed her confronted her in her driveway and asked for more money. When Ms. Pevnev claimed not to have any, the woman asked her where she shopped. Ms. Pevnev went through a list of stores, and, when she mentioned Kohl's, the woman stopped her. The woman told her that she wanted clothes for a four-year-old girl and that she

wanted Ms. Pevnev to steal them for her, not buy them. Ms. Pevnev agreed to get the clothes and then meet the woman in the parking lot of the Burger King restaurant near the Kohl's. Ms. Pevnev suggested the Burger King lot because it is near a police station. Ms. Pevnev explained that, when she was in college, she helped foil a purse snatcher by obtaining his license plate. Accordingly, she planned to get the license plate of the man and woman's car in the Burger King parking lot and then bring that information to the police station.

{¶11} Ms. Pevnev testified that she did not want to steal any clothes, so she had her daughter go to Kohl's to buy some. Her daughter corroborated that she bought children's clothes for her mother to take to the robbers. Ms. Pevnev put the clothes in her minivan. She also thought that the couple might be watching her movements, so she went to Kohl's on September 11, hoping to obtain their license plate number sooner. After shopping for a while, she did not see the man or woman, so she put her cart on hold and went home. The next day she thought she would try the same thing before heading to the Burger King parking lot. According to Ms. Pevnev, she shopped for a while and tried on some items in the changing room, but eventually left everything at the store. She explained that the reason her cart was not as full when she left the changing area was because she had placed some of the items on a clothing rack that was inside it. A surveillance video shows a Kohl's employee removing a full rack of clothes from the changing room area a few minutes after Ms. Pevnev entered it.

{¶12} Ms. Pevnev claimed that she left the Kohl's parking lot without incident. She denied that Ms. Ahmad approached her in the parking lot, let alone that she hit Ms. Ahmad. Ms. Pevnev testified that, when she started driving, she thought she had time to get gas for the minivan before the rendezvous at Burger King. As she drove toward the gas station, however, she realized that she should not take any chances and just proceed to the restaurant. That is why

she made a U-turn in front of Officer Krejci. When she got to the parking lot, she began circling the restaurant looking for the man and woman. She made one pass through the parking lot looking for the black car and another pass looking inside the windows of the restaurant for the couple. She denied that she was driving excessively fast. Ms. Pevnev testified that, when she did not see the man or woman, she wanted to at least let them know that she had kept her end of their bargain, so she threw some of the clothes her daughter had purchased out of the window of her van in case they arrived later. She then continued driving. It was around this time that she realized Officer Krejci was behind her. Since she had wanted to contact the police, she tried to get his attention by throwing more clothes out of the van. She did not understand why the officers proceeded to arrest her at gunpoint.

{¶13} The jury was in the best position to view the witnesses and assess their credibility. *State v. Bulls*, 9th Dist. Summit No. 27029, 2015-Ohio-276, ¶ 24. It was also free to believe all, part, or none of the testimony. *Id.* We note that, despite the fact that Ms. Pevnev thought it was “really great” that Officer Krejci was following her and inundated him with questions after he arrested her, she made no mention of the man and woman who had been stalking her or her planned rendezvous with them at Burger King during the more than an hour she was with him while he transported her to the station and processed her. *See State v. Brown*, 9th Dist. Wayne No. 11CA0054, 2013-Ohio-2945, ¶ 58 (explaining that a defendant who makes a voluntary statement to police may be cross-examined about important issues that were omitted from the statement). Upon review of the record, we conclude that the jury did not lose its way when it found Ms. Pevnev guilty of the offenses. Ms. Pevnev’s assignment of error is overruled.

III.

{¶14} Ms. Pevnev's convictions are not against the manifest weight of the evidence.

The judgment of the Lorain County Court of Common Pleas is 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(C). 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.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
SCHAFFER, J.
CONCUR,

APPEARANCES:

MATTHEW H. KISHMAN, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.