

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112311
 v. :
 :
 EMMANUEL C. SALAKO, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 7, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-667328-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Natalie M. Laszcz, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, *for appellant*.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Defendant-appellant, Emmanuel C. Salako, appeals from the trial court's judgment entry of conviction entered after a jury trial. For the reasons that follow, this court affirms his convictions.

I. Procedural Background

{¶ 2} In February 2022, Salako was named in a 17-count indictment charging him with offenses that occurred on two different days in December 2021. Regarding offenses that allegedly occurred on December 28, 2021, the state claimed that Salako robbed D.C. of his AR-15 assault rifle and then threatened him to prevent him from reporting the robbery. As a result, he was charged with aggravated robbery, a violation of R.C. 2911.01(A)(1) (Count 1); robbery, a violation of R.C. 2911.02(A)(1) (Count 2); robbery, a violation of R.C. 2911.02(A)(2) (Count 3); robbery, a violation of R.C. 2911.02(A)(3) (Count 4); grand theft, a violation of R.C. 2913.02(A)(1) (Count 5); intimidation of a crime victim or witness, a violation of R.C. 2921.04(B)(1) (Count 6); having weapons while under disability, a violation of R.C. 2923.13(A)(2) (Count 7); and having weapons while under disability, a violation of R.C. 2923.13(A)(3) (Count 8).

{¶ 3} Regarding the offenses that allegedly occurred on December 31, 2021, the state claimed that Salako robbed A.F. of money and then assaulted him with a firearm. As a result, he was charged with aggravated robbery, a violation of R.C. 2911.01(A)(1) (Count 9); aggravated robbery, a violation of R.C. 2911.01(A)(3) (Count 10); felonious assault, a violation of R.C. 2903.11(A)(2) (Count 11); robbery, a violation of R.C. 2911.02(A)(1) (Count 12); robbery, a violation of R.C. 2911.02(A)(2) (Count 13); robbery, a violation of R.C. 2911.02(A)(3) (Count 14); having weapons while under disability, a violation of R.C. 2923.13(A)(2) (Count 15);

having weapons while under disability, a violation of R.C. 2923.13(A)(3) (Count 16); and theft, a violation of R.C. 2913.02 (A)(1) (Count 17).

{¶ 4} A majority of the offenses carried one-year, 18-month, and three-year firearm specifications; notices of prior convictions; and repeat violent offender specifications. Salako executed a limited jury trial waiver as to specific counts and specifications contained in the indictment. The remaining counts were tried to a jury, where the following evidence was presented.¹

II. Jury Trial

A. December 28, 2021 Encounter

{¶ 5} D.C. testified that on December 28, 2021, he was driving to work at Q's Gas Station on West 44th Street and Clark Avenue when he passed Salako, who was driving in the opposition direction. He stated that he knew Salako by his street name "E" and that he met Salako through their mutual friend Dawn Marie. D.C. stated that he stopped his car after E beeped his car horn and called out "Dookie" — D.C.'s street name. During the encounter, D.C. noticed Salako staring into his backseat where D.C. had placed his AR-15 firearm. According to D.C., Salako brandished a black 9 mm firearm and said to D.C. "let me get that" — meaning the AR-15. According to D.C., Salako then had him retrieve the rifle's clip from the glove

¹ After Salako chose to have the court consider certain counts and specifications, the trial court renumbered the counts the jury would consider so that the counts were identified sequentially. Hereinafter, this court will refer to the counts in the indictment as they were renumbered.

box. D.C. stated that after Salako had both the firearm and the clip, he told D.C. to leave.

{¶ 6} D.C. stated that he then went to work but, while he was working, a female came in and told him “[y]ou better not say nothing. [Salako’s] right here in the car with me, or it will get ugly for you.” (Tr. 358.) He testified that he did not call the police because he was worried and scared about what might happen because Salako had his firearm.

B. December 31, 2021 Encounter

{¶ 7} D.C. testified that on December 31, 2021, he saw Salako seated in the passenger seat of a truck that drove through Q’s parking lot. He stated that when he saw Salako, he ran from the station to a nearby house and hid behind a truck. D.C. testified that he saw Salako get out of the truck carrying his AR-15 rifle.

{¶ 8} D.C. testified that he then saw A.F. drive into the parking lot. He stated that he anonymously called 911 after A.F. told him that Salako had robbed him. The 911 call was played for the jury. D.C. testified that he called anonymously because he was scared that Salako would retaliate. He admitted that he did not report the earlier robbery because he was fearful.

{¶ 9} During D.C.’s testimony, the state played surveillance-video footage that Detective Dymphna O’Neill had obtained from the Salvation Army located across the street from Q’s Gas Station that captured the interaction between Salako and A.F. D.C. identified (1) himself in the video as the person running away when Salako entered the parking lot, (2) A.F. as the person driving the Mustang, and (3)

Salako as the person exiting the truck carrying the AR-15 and approaching A.F.'s vehicle.

{¶ 10} D.C. testified that he decided to report that Salako robbed him after A.F. reported the robbery to him. During his interview at the police station, he identified Salako in a photo as the person who robbed him on December 28, 2021, and as the person whom he saw exiting the vehicle with the AR-15 on December 31, 2021, at Q's Gas Station. D.C. told the jury that following the robberies, Salako contacted D.C. asking for A.F.'s phone number.

{¶ 11} A.F. testified that he was working at Q's Gas Station on December 31, 2021. He stated that after he drove into the parking lot and parked his car, a silver Chevy SUV parked ahead of his car and a man, later identified as Salako, exited the truck carrying an AR-15 rifle. A.F. testified that Salako pointed the firearm at his face and asked, "[W]here is Dookie? Where is Dookie?" (Tr. 424.) A.F. testified that after he told Salako that he did not know where D.C. was, Salako robbed him of \$300 and struck him in the head with the AR-15 rifle while stating, "[Y]ou're lucky that I didn't kill you." (Tr. 425.) During A.F.'s testimony, the state played the surveillance video footage and A.F. identified himself in the video.

{¶ 12} A.F. testified that at the time of the robbery, he did not know Salako's name but had seen him once before in the neighborhood. According to A.F., after the robbery, D.C. sent him information from Salako's social media account, which he provided to Cleveland police officer Todd Esson.

{¶ 13} A.F. testified that he was shown a photo lineup later at the police station. Although he stated that he believed he identified his assailant, he admitted that the photo array did not indicate that he made an identification. Nevertheless, during his testimony, A.F. identified Salako as the person who robbed and assaulted him.

{¶ 14} A.F. also testified that he received a phone call from Salako a few days after the robbery offering to pay him \$2,000 not to report the robbery or testify. A.F. stated that he made Salako a counteroffer of \$5,000, which Salako agreed to pay. He admitted that he accepted Salako's bribe of \$5,000. A.F. testified that he felt remorse for taking the money and that Salako asked him for the money back once he realized that charges were already filed against him. A.F. admitted that he did not give the money back to Salako.

{¶ 15} Officer Esson testified that on December 31, 2021, he responded to Q's Gas Station on West 44th Street and Clark Avenue in Cleveland regarding an armed robbery. He said that he located A.F. inside the gas station, who told him that a black male carrying an assault rifle approached him in the parking lot, robbed him of \$300, and then struck him in the head with the firearm. Officer Esson testified that he observed bruising and a red mark on the victim's left cheek. According to the officer, A.F. told him that he had seen the suspect in the store on a prior occasion but did not know his name.

{¶ 16} Officer Esson testified that he left the gas station after taking the report but returned after receiving a call that A.F. had additional information about

the identity of the suspect. He stated that A.F. showed him a Facebook account for “Emmanuel S Class.” Officer Esson testified that based on the information contained on the Facebook account, he learned that the person’s real name was “Emmanuel Salako.” On cross-examination, Officer Esson stated that A.F. told him that he received Salako’s identifying information from “Dookie” but that A.F. was able to identify Salako by the picture on Facebook as the person who robbed and assaulted him.

{¶ 17} Detective O’Neill testified that she was assigned to investigate the armed robbery involving A.F. and then the subsequent allegation that Salako had robbed D.C. of his AR-15 days earlier. She testified that D.C. provided a receipt, which she verified, showing that D.C. purchased the firearm on December 3, 2021, from Atwell Police Safety and Fire in Painesville, Ohio.

{¶ 18} Regarding identifying the suspect, Detective O’Neill obtained the surveillance video and received information that A.F. had provided social media photographs of Salako. She stated that because A.F. had seen the suspect only once before, she created a six-pack photo array by using the state’s OHLEG’s Lineup Wizard.² Detective O’Neill testified that five days after the robbery, A.F. was shown the array by using the blind administrator procedure but that he was unable to identify the person who robbed him from the photo array.

² “OHLEG” is an acronym for Ohio Law Enforcement Gateway. It is an electronic information network that allows Ohio law enforcement agencies to share criminal justice data.

{¶ 19} Detective O’Neill also provided testimony about A.F.’s disclosure that he had accepted a bribe from Salako. She stated that she and Detective Maser met with A.F. at the county jail, where he disclosed that he accepted a bribe. She stated that at the time of disclosure, transactional immunity had not been offered to A.F.

{¶ 20} The jury found Salako not guilty of all counts pertaining to the robbery of D.C. (Counts 1, 2, 3, 4, and 5), but guilty of the counts associated with the robbery of A.F. (Counts 9, 10, 11, 12, 13, 14, and 17, as renumbered), and intimidation of D.C. as a crime victim (Count 6). The jury also found Salako guilty of all attendant one- and three-year firearm specifications contained in Counts 6, 9, 10, 11, 12, 13, and 14. The trial court subsequently found Salako not guilty of all counts and specifications it considered.

{¶ 21} Following merger, applying the Reagan Tokes Law, and stacking firearm specifications, the trial court sentenced Salako to a stated minimum term of 13 years with a maximum term of 15 years in prison. He now appeals, raising three assignments of error.

III. Sufficiency of the Evidence

{¶ 22} In his first assignment of error, Salako raises a sufficiency-of-the-evidence challenge. The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Cottingham*, 8th Dist. Cuyahoga No. 109100, 2020-Ohio-4220, ¶ 32. An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if

believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). 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.*

{¶ 23} Salako contends that the state presented insufficient evidence to support “all of his convictions” but does not argue each conviction individually. Rather, he generally maintains, without citation to any authority supporting his arguments, that the evidence was insufficient because A.F. did not know Salako's real name or positively identify Salako in the photo lineup as the person who robbed him and the surveillance video evidence was inconclusive and inadequate to remedy these deficiencies in the evidence. We disagree.

{¶ 24} Salako was convicted of intimidation, aggravated robbery, and felonious assault; however, A.F. was the victim of only two of the convictions — aggravated robbery and felonious assault. At trial, A.F. identified Salako as the person who robbed him of \$300 and struck him with a firearm outside Q's Gas Station. The fact that A.F. did not officially identify Salako in a photo lineup prior to trial or know him by his real name is not fatal to the state's case. A.F. testified that he saw Salako months prior and knew him by his street name “E.” *See, e.g., State v. Hayes*, 8th Dist. Cuyahoga No. 104818, 2017-Ohio-7716 (identification of defendant based on prior encounters and street name is sufficient). Any challenge to A.F.'s credibility or the results of his photo-array identification are more

appropriate for a weight-of-the-evidence challenge. Accordingly, the state presented sufficient evidence to support Salako's convictions. His first assignment of error is overruled.

IV. Manifest Weight of the Evidence

{¶ 25} “Weight of the evidence concerns ‘the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. * * * Weight is not a question of mathematics, but depends on its effect in inducing belief.’” *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. In a manifest-weight analysis, the reviewing court sits as a “thirteenth juror” and reviews “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 [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 *id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). The discretionary power to grant a new trial should be exercised only in exceptional cases where the evidence weighs heavily against the conviction. *Thompkins* at 386.

{¶ 26} Salako contends in his second assignment of error that his convictions are against the manifest weight of the evidence because (1) D.C. provided incredible testimony motivated by bias; and (2) A.F. lacked credibility, thereby providing suspect testimony. We disagree.

{¶ 27} At the outset, we note that Salako’s counsel brought any vendettas, questionable testimony, and self-serving motivations to the jury’s attention. “The jury was free to believe all, part, or none of the testimony of each witness.” *State v. Colvin*, 10th Dist. Franklin No. 04AP-421, 2005-Ohio-1448, ¶ 34. Accordingly, the jury was able to assess what weight, if any, it would attribute to both D.C.’s and A.F.’s testimony.

{¶ 28} Salako asserts that D.C. was motivated to provide untruthful testimony and blame him for the robbery of A.F. because of jealousy over a mutual love interest and a prior altercation. Although Salako’s counsel cross-examined D.C. about his romantic relationship with Dawn Marie, D.C. rebuffed any insinuation that it affected his relationship with Salako or that it motivated him to blame Salako for the robbery and assault against A.F. It was within the province of the jury to determine whether D.C.’s explanation and testimony was credible.

{¶ 29} Salako also maintains that the jury clearly did not believe D.C.’s testimony because the jury acquitted him of all offenses involving the alleged robbery of D.C. Accordingly, he contends that the jury lost its way in believing D.C.’s testimony as it pertained to the crimes committed against A.F. We disagree. Even without D.C.’s testimony, the jury heard A.F.’s account of the robbery and assault and saw the events unfold through surveillance video evidence. Although the video evidence did not capture clear views of the faces to make conclusive identifications, the encounters and chain of events corroborated D.C.’s and A.F.’s testimony, which

would have allowed the jury to reasonably conclude that the person in the video was Salako.

{¶ 30} Salako challenges A.F.'s testimony as incredible because (1) A.F. was serving a prison sentence at the time of trial and (2) he accepted a bribe from Salako to not testify. This court has repeatedly held that "simply because a witness is in prison or has a criminal history does not mean that the witness's testimony cannot be relied upon to convict a defendant." *State v. Muhammad*, 8th Dist. Cuyahoga No. 104111, 2016-Ohio-8322, ¶ 22. Regarding the bribe, the jury considered the circumstances surrounding the bribe, including the offer, counteroffer, A.F.'s initial denial and then subsequent disclosure of accepting the bribe, and the state granting A.F. transactional immunity. Accordingly, the jury was able to assess the credibility of A.F. in light of his criminal record and the context of the bribe.

{¶ 31} Salako's final challenge to A.F.'s testimony asserts that A.F.'s identification was equivocal. The record does not support this argument. A.F. identified Salako in court as the person who robbed and assaulted him. A.F.'s failure to make an unequivocal, affirmative identification of Salako in the photo lineup does not render his in-court identification invalid. The jury was fully apprised of the fact that A.F.'s in-court identification conflicted with his previous failure to identify Salako in the photo array, and defense counsel took advantage of the opportunity to explore the issue on cross-examination, thus removing any prejudice to the Salako caused by the in-court identification. *See, e.g., State v. Freeman*, 8th Dist. Cuyahoga No. 36969, 1978 Ohio App. LEXIS 9806 (Feb. 23, 1978) (witness's in-court

identification permitted even though no pretrial identification was made because the defendant was not prejudiced where inconsistency was brought to the attention of the jury). Accordingly, this is not the exceptional case where the jury clearly lost its way and created such a manifest miscarriage of justice that requires this court to reverse Salako's convictions and order a new trial. His second assignment of error is overruled.

V. Reagan Tokes Law

{¶ 32} Salako contends in his final assignment of error that the trial court erred when it sentenced him to an indefinite sentence under S.B. 201, commonly referred to as the Reagan Tokes Law, because the law is unconstitutional under the United States and Ohio constitutions because it violates due process, the separation-of-powers doctrine, and the right to trial by jury.

{¶ 33} Recently, the Ohio Supreme Court rejected the arguments Salako raises challenging the constitutionality of the Reagan Tokes Law. *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535. The court held that the Reagan Tokes Law is not facially vague or unconstitutional because (1) it provides that offenders receive a hearing before the Department of Rehabilitation and Correction ("DRC") may extend their prison sentence beyond the minimum but within the maximum term imposed by the trial court, (2) the right to a jury trial is not implicated since no determination by the DRC at the hearing changes the sentence range prescribed by the legislature and imposed by the trial court, and (3) the authority it gives the DRC to extend an offender's prison sentence beyond the minimum but within the

maximum range imposed by the trial court does not exceed the power given to the executive branch of the government and does not interfere with the trial court's discretion when sentencing the offender. *Id.* at ¶ 25, 28, 40. Accordingly, based on the authority of *Hacker*, this court summarily overrules Salako's challenges to the Reagan Tokes Law and his assignment of error.

{¶ 34} Judgment 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and
EILEEN T. GALLAGHER, J., CONCUR