

WELBAUM, J.

{¶ 1} Defendant-appellant, Jacob D. Bowlin, appeals from his conviction in the Montgomery County Court of Common Pleas after a jury found him guilty of aggravated robbery and assault. Bowlin challenges the legal sufficiency of the evidence presented at trial and contends that the jury's verdict was against the manifest weight of the evidence. Bowlin also alleges that his trial counsel provided ineffective assistance. For the reasons outlined below, Bowlin's conviction will be affirmed.

Facts and Course of Proceedings

{¶ 2} On July 18, 2013, Bowlin was indicted for one count of aggravated robbery in violation of R.C. 2911.01(B), a felony of the first degree; and one count of assault in violation of R.C. 2903.13(A) and (C)(3), a felony of the fourth degree.¹ The charges stemmed from Bowlin's alleged actions during an altercation between himself and two law enforcement officers as they attempted to arrest him pursuant to an arrest warrant. It was alleged that in an effort to resist arrest, Bowlin attempted to remove a gun from one of the officers' holsters and punched the other officer in the head twice.

{¶ 3} Bowlin pled not guilty to both charges and the matter proceeded to a three-day jury trial. The only testimony presented at trial was from the two officers involved in the altercation, Deputy Andrew Siefring of the United States Marshal Service and Detective Joey Myers of the Dayton Police Department.

{¶ 4} Both officers testified that on June 10, 2013, they went to an apartment

¹ Effective September 29, 2013, division (C)(3) of R.C. 2903.13 is now codified under division (C)(5) of the statute.

located on Lakebend Avenue in Dayton, Ohio, to arrest Bowlin in their capacity as officers of the Southern Ohio Fugitive Apprehension Strike Team Task Force (“SOFAST”), a program in which officers track fugitives on the run and effectuate their arrest. To that end, the officers testified that they approached the apartment dressed in uniform, knocked on the door, announced their presence, and identified themselves as law enforcement officers. Thereafter, a woman identified as Maria Hicks answered the door and the officers told her they were there to arrest Jacob Bowlin. The officers then testified that they saw Hicks glance toward a man standing in the apartment, whom both officers recognized as Bowlin.

{¶ 5} When the officers advised Bowlin that he was under arrest, Siefring testified that Bowlin said “I’m not Jacob, I’m Virgil.” Trial Trans. Vol. II (Feb. 26, 2014), p. 141. However, when Bowlin realized the officers were not fooled by his comment, Bowlin said “Okay. All right. You got me. I just want to get a shirt first.” *Id.* at 142. During this time, both officers testified that they observed Bowlin looking around the apartment. Specifically, Siefring testified that Bowlin was looking at the door and windows, which in his experience, indicated Bowlin might try to flee.

{¶ 6} Both officers then testified that they were going to allow Bowlin to get a shirt, but advised him that they needed to handcuff him first. In response, the officers testified that Bowlin reached his arms out in front of him to be cuffed, but the officers explained that they needed to cuff his hands from behind. To facilitate this, Myers testified that he positioned himself behind and to the right of Bowlin, while Siefring stood facing Bowlin.

{¶ 7} As Myers attempted to grab Bowlin’s forearm to cuff him, the officers testified that Bowlin flailed his arms and spun away. After Bowlin spun away, Myers grabbed

Bowlin's upper torso using a "bear hug" motion as Bowlin twisted and attempted to break free from his hold. Meanwhile, Siefring testified that he tried to grab hold of Bowlin's arms, but Bowlin continued swinging his arms to prevent the officers from handcuffing him. As the struggle continued, the officers testified that they attempted to get Bowlin on the ground, with Myers attempting to pull Bowlin back and Siefring trying to control his arms.

{¶ 8} At this point, Siefring, who was still facing Bowlin, testified that he saw Bowlin look down at the gun in Siefring's holster. According to Siefring, "as soon as [Bowlin] took a look at the gun he went down straight for it." *Id.* at 150. Siefring then testified that Bowlin "broke free * * * just enough to where he could lunge forward at that point in time and go for my weapon." *Id.* Siefring further testified that he could feel Bowlin "pulling back and forth, up and down several times" on the butt of Siefring's gun using both of his hands. *Id.* at 151-152. Siefring indicated that he was eventually able to spin away and break Bowlin's grip on the gun. He explained that Bowlin was unable to remove the gun from his holster due to a retention feature that prohibited its release unless a thumb latch was triggered. Myers testified that he did not see Bowlin go for Siefring's gun because he was positioned behind Bowlin during the struggle.

{¶ 9} After Siefring broke Bowlin's grip on the gun, Bowlin fell backward on top of Myers. Siefring testified that he then observed Bowlin punch Myers two times in the back of the head. Myers also testified that after Bowlin fell backward on top of him, he felt "a fist, two strikes to the back of my head one after another." Trial Trans. Vol. II (Feb. 26, 2014), p. 219. Myers claimed the punches came from the right side and landed on the back right side of his head. Myers then testified that he eventually rolled Bowlin over

to one side giving Siefring the opportunity to deploy his taser, which allowed the officers to gain control over Bowlin and complete the arrest. Other than a bandage and antibiotic cream for a minor scratch on his hand, Myers testified that he did not require any medical attention as a result of the altercation.

{¶ 10} After hearing the officers' testimony, the jury found Bowlin guilty of both aggravated robbery and assault. The trial court then sentenced Bowlin to an aggregate prison term of seven years. Bowlin now appeals from his conviction, raising two assignments of error for our review.

First Assignment of Error

{¶ 11} Bowlin's First Assignment of Error is as follows:

THE JURY VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND THE EVIDENCE PRESENTED WAS INSUFFICIENT, AS A MATTER OF LAW, TO PROVE THE APPELLANT'S GUILT BEYOND A REASONABLE DOUBT.

{¶ 12} Under his First Assignment of Error, Bowlin challenges the legal sufficiency and manifest weight of the evidence. Bowlin contends that the evidence failed to demonstrate that he knowingly attempted to remove a gun from Siefring's holster because Siefring did not specifically testify that he saw Bowlin attempt to remove the gun, but only that he felt the gun being pulled. Bowlin also contends that the evidence did not demonstrate that he knowingly attempted to cause physical harm to Myers, because the officers' account of how he punched Myers in the back of the head was, according to Bowlin, physically impossible.

{¶ 13} “A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law.” *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). “When reviewing a claim as to sufficiency of evidence, the relevant inquiry is whether any rational factfinder viewing the evidence in a light most favorable to the state could have found the essential elements of the crime proven beyond a reasonable doubt.” (Citations omitted.) *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997). “The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact.” (Citations omitted.) *Id.*

{¶ 14} In contrast, “[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive.” (Citation omitted.) *Wilson* at ¶ 12. When evaluating whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness 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, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). “The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence.” *State v. Adams*, 2d Dist. Greene Nos. 2013 CA 61, 2013 CA 62, 2014-Ohio-3432, ¶ 24, citing *Wilson* at ¶ 14.

{¶ 15} “The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve.” *State v. Hammad*, 2d Dist. Montgomery No. 26057, 2014-Ohio-3638, ¶ 13, citing *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder’s decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997). “This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the factfinder lost its way.” (Citation omitted.) *State v. Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510, *4 (Oct. 24, 1997).

{¶ 16} “Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency.” (Citation omitted.) *State v. McCrary*, 10th Dist. Franklin No. 10AP-881, 2011-Ohio-3161, ¶ 11. As a result, “a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.” (Citations omitted.) *State v. Braxton*, 10th Dist. Franklin No. 04AP-725, 2005-Ohio-2198, ¶ 15.

{¶ 17} As noted above, Bowlin was convicted for aggravated robbery under R.C. 2911.01(B), which provides that:

No person, without privilege to do so, shall knowingly remove or attempt to remove a deadly weapon from the person of a law enforcement officer, or shall knowingly deprive or attempt to deprive a law enforcement officer of a

deadly weapon, when both of the following apply:

- (1) The law enforcement officer, at the time of removal, attempted removal, deprivation, or attempted deprivation, is acting within the course and scope of the officer's duties;
- (2) The offender knows or has reasonable cause to know that the law enforcement officer is a law enforcement officer.

{¶ 18} The testimony provided by Siefring indicates that Bowlin attempted to remove the gun from Siefring's holster while the officers were trying to place him under arrest. Specifically, Siefring testified that Bowlin lunged at the gun in his holster and held the butt of his gun with both of his hands. He also testified that he felt Bowlin pull up and down on the gun while it was in his holster. The fact that Siefring failed to specifically testify that he saw Bowlin attempt to remove the gun from his holster is of no consequence, as his testimony as a whole clearly indicates that Bowlin attempted to take his gun.

{¶ 19} Both Siefring and Myers also testified that they were acting in the course and scope of their duties as SOFAST officers while they were attempting to arrest Bowlin. In addition, the officers' testimony indicates that Bowlin knew they were law enforcement officers, as they both testified they were dressed in uniform, identified themselves as law enforcement officers, and advised Bowlin that they were at the apartment to place him under arrest.

{¶ 20} Bowlin was also convicted of assault under R.C. 2903.13(A), which provides that: "No person shall knowingly cause or attempt to cause physical harm to another[.]" Section (C)(5) of the statute states that: "If the victim of the offense is a peace

officer * * * while in the performance of their official duties, assault is a felony of the fourth degree.” R.C. 2903.13(C)(5). A “peace officer” includes “deputy marshals” and members “of the organized police department of any municipal corporation.” R.C. 2903.13(D); R.C. 2935.01(B).

{¶ 21} Here, the record is clear that Siefring and Myers were “peace officers” as that term is defined by R.C. 2903.13(D) and R.C. 2935.01(B) acting in the performance of their official duties during the altercation with Bowlin. In addition, both Siefring and Myers testified that Bowlin punched Myers in the head twice while Bowlin was struggling to resist arrest. Bowlin takes issue with the fact that the officers testified that he punched Myers in the back of the head after falling backward on top of him, as he claims it would have been physically impossible for him to have punched Myers in that manner given his position. However, Myers gave the following testimony regarding his positioning:

I had a hold of him; however, I wasn't laying [sic] flat on my back with my head against the floor. Obviously, I was arced in a cradle position where my upper back and shoulders and head were off of it as I was holding him and wrestling around with him. At that point, I felt a fist, two strikes to the back of my head one after another.

* * *

I was off just a little bit not directly behind his head.

Trial Trans. Vol. II (Feb. 26, 2014), p. 219-220.

{¶ 22} The decision as to what extent to credit the officers' testimony was “within the peculiar competence of the factfinder, who has seen and heard the witness.” *Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 at *4. In this case, the jury

clearly found Siefring and Myers's account of the altercation credible. We will not substitute our judgment for that of the jury's on the issue of credibility.

{¶ 23} For the foregoing reasons, we conclude that Bowlin's aggravated robbery and assault convictions were not against the manifest weight of the evidence and were necessarily supported by sufficient evidence. Therefore, Bowlin's First Assignment of Error is overruled.

Second Assignment of Error

{¶ 24} Bowlin's Second Assignment of Error is as follows:

APPELLANT'S TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE, RESULTING IN PREJUDICE TO THE APPELLANT.

{¶ 25} Under his Second Assignment of Error, Bowlin contends that his trial counsel was ineffective in completely failing to question either officer regarding the mechanics of the assault or request a demonstration as to how Bowlin could have punched Myers in the back of the head given their respective positions.

{¶ 26} To reverse a conviction based on ineffective assistance of trial counsel, it must be demonstrated that trial counsel's representation fell below an objective standard of reasonableness, and that the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), paragraph two of the syllabus. A reviewing court "must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. "Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy

cannot form the basis of a finding of ineffective assistance of counsel.” *State v. Rucker*, 2d Dist. Montgomery No. 24340, 2012-Ohio-4860, ¶ 58, citing *State v. Cook*, 65 Ohio St.3d 516, 524-525, 605 N.E.2d 70 (1992).

{¶ 27} In this case, the record belies Bowlin’s claim that his counsel completely failed to inquire about the mechanics of the assault on Myers, as his counsel cross-examined Siefring in the following manner:

DEFENSE: [V]ery shortly thereafter the two of them fall backwards towards the direction of the hallway * * *, and it’s when Bowlin is laying on top of Myers that you said you saw these punches?

SIEFRING: Yes, sir.

DEFENSE: So he’s just like, doing this, kind of thing? (Waves arms)

SIEFRING: Yeah, he—with his right hand is reaching back, hitting Detective Myers in the back of the head.

DEFENSE: On the back of the head?

SIEFRING: Yes, sir.

DEFENSE: So Myers has his—what, turned or something?

SIEFRING: I mean he’s laying [sic] on his back with Jacob on top of him. His—Jacob’s back is on Detective Myers’ chest.

DEFENSE: Yeah.

SIEFRING: And he’s got him in kind of a bear hold like that with his leg wrapped around him.

DEFENSE: Yeah.

SIEFRING: And, you now [sic], Jacob's arms are still—they're not—like I said, he didn't have him down here to where he's pinned and can't move at all. You know. He had him higher to where, you know, you can still swing.

DEFENSE: And he was hitting him in the back of the head?

SIEFRING: He wasn't getting hit in the face. It was more, you know.

Trial Trans. Vol. II (Feb. 26, 2014), p. 199-200.

{¶ 28} Following Siefring's testimony, the State clarified how the punches occurred through Myers's testimony on direct examination:

STATE: So going back to the Defendant, you and the Defendant on the ground still and you said you were trying to get different grips on his upper body to control him, what happens from there?

MYERS: At that point, I had a hold of him; however, I wasn't laying [sic] flat on my back with my head against the floor. Obviously, I was arced in a cradle position where my upper back and shoulders and head were off of it as I was holding him and wrestling around with him. At that point, I felt a fist, two strikes to the back of my head one after another.

STATE: If I'm again, the Defendant. According to my body, where would your head have been? I know that's kind of a weird question. If you're behind me—

MYERS: Yes.

STATE: --and you've got a hold of my body this way, in the manner you described, where in relation to my head is your head?

MYERS: It's off to your right if you're standing right there?

STATE: Over here?

MYERS: Yes.

STATE: Is it behind my head or off to the right?

MYERS: I was off just a little bit not directly behind his head.

STATE: Okay. And so that was where your head would've been as you're kind of in that cradle hold like you described?

MYERS: Yes.

STATE: Okay. And the punches, did you see the fist?

MYERS: No, I did not.

STATE: Okay. Do you know what side it came from?

MYERS: The right side.

STATE: The right side. So am I demonstrating it correctly? They're coming this way?

MYERS: That is correct.

STATE: Okay. How many punches did you feel?

MYERS: I felt two.

Id. at 219-220.

{¶ 29} After Myers's explanation on direct examination, Bowlin's trial counsel then asked Myers the following questions:

DEFENSE: Okay. And so he's laying [sic] on top of you. Maybe not his

head right in front of your head but he's definitely on top of you. You might be more to the right or more to the left and that's where you said these punches happened?

MYERS: Yes.

DEFENSE: But you still have your arms around him?

MYERS: I have my arms around him. I had them up underneath like his chest area because I remember, as Siefring testified to, it was a bear hug but it was a high bear hug. I didn't have, like I said, I didn't have his arms pinned at all. So if the question is, were his arms pinned? No they were not.

Id. at 237.

{¶ 30} Based on the record, it is clear that Bowlin's trial counsel did not completely fail to question the officers about the mechanics of the assault and how Bowlin was able to punch Myers in the back of the head. Not only did Bowlin's trial counsel ask both officers about the punches, but at one point, counsel provided a demonstration by waving his arms. While Bowlin's counsel did not question Myers at length about how the punches occurred, we cannot rule out the possibility that this was trial strategy, an insufficient basis to support an ineffective assistance claim. See *State v. Hill*, 2d Dist. Greene No. 2004 CA 79, 2005-Ohio-3176, ¶ 13, citing *Strickland*, 466 U.S. 668 at 689, 104 S.Ct. 2052, 80 L.Ed.2d 674. Given that Myers's testimony on direct examination explained in detail how Bowlin was able to punch him in the back of the head while they were on the ground, it is possible that Bowlin's counsel did not want to further engrain the details of the punches in the minds of the jurors.

{¶ 31} In light of the foregoing, Bowlin has failed to demonstrate that his trial counsel provided deficient representation; therefore, his ineffective assistance claim must fail. Accordingly, Bowlin's Second Assignment of Error is overruled.

Conclusion

{¶ 32} Having overruled both assignments of error raised by Bowlin, the judgment of the trial court is affirmed.

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FROELICH, P.J. and DONOVAN, J., concur.

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