

[Cite as *State v. Brown*, 2015-Ohio-1163.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 26219
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2013-CR-3383
v.	:	
	:	(Criminal Appeal from
ANTHONY D. BROWN	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

.....

OPINION

Rendered on the 27th day of March, 2015.

.....

MATHIAS H. HECK, JR., by MICHELE D. PHIPPS, Atty. Reg. No. 0069829, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

BRADLEY S. BALDWIN, Atty. Reg. No. 0070186, 854 East Franklin Street, Dayton, Ohio 45459
Attorney for Defendant-Appellant

.....

FAIN, J.

{¶ 1} Defendant-appellant Anthony Brown appeals from his conviction for Murder,

Aggravated Burglary, Aggravated Robbery, Kidnapping, Felonious Assault and Having a Weapon While Under a Disability. Brown contends that the trial court erred by denying his motion to suppress evidence. He further claims that the State did not present evidence sufficient to sustain the conviction, and that the conviction is against the manifest weight of the evidence.

{¶ 2} We conclude that the trial court did not err in denying the motion to suppress evidence, because the police had probable cause to arrest Brown. We further conclude that there is evidence in the record, upon which a reasonable juror could rely, that supports the conviction, and the conviction is not against the manifest weight of the evidence. Accordingly, the judgment of the trial court is Affirmed.

I. The Crime

{¶ 3} On October 26, 2013, Allen Lindeman was shot to death at a residence located at 1422 Leo Street in Dayton. Video surveillance tapes were obtained by police from an adjacent house, which was equipped with four infrared cameras. Cameras 1 and 3 caught images of the assailants. One tape shows the arrival of a vehicle in an alley behind 1422 Leo Street. The footage shows the vehicle come to a stop, and three individuals exiting the car. One passenger, later identified as Brown, obtains a belt from the car, which he places into belt loops on his pants. Brown and the other passenger then walk out of sight down an adjacent alley, while the driver gets back into the car. Shortly thereafter, the two return into view and walk back to the car. Brown is observable leaning into the driver's door holding a handgun. He and the other passenger, again, walk out of sight in the same direction they had originally gone.

{¶ 4} Over the next few minutes, the tape from camera 1 shows the car drive away. A moment later, the driver walks into the camera field, and then back out of range. A few moments later, the car returns to its original parking spot. Less than three minutes later, the other two individuals are observable, moving rapidly, returning to the car. Once they get in, the car leaves the alley.

{¶ 5} The tape from camera 3 shows a portion of the intersecting alley and shows Brown and the other passenger walking toward a road with their backs to the camera. Both individuals have their jacket hoods pulled up over their heads. Approximately two minutes later, the camera shows the individuals running back toward the alley and the camera.

{¶ 6} Dayton Police Detective David House was assigned to the case. The video surveillance footage was reviewed by the investigative team headed by House. Another Detective, Tom Cope, recognized the vehicle in the footage as a 1997 Honda Accord. Detective Ryan Halburnt received a tip from a confidential informant that the Honda could be found in the parking lot of the DeSoto Bass apartment complex. The informant informed Halburnt that the Accord was driven by Rodriguez Henderson. A photograph of Rodriguez Henderson was pulled and compared to the video surveillance footage. After comparing the photograph to the footage, the investigating officers concluded that Rodriguez Henderson was the driver of the Honda during the time of the offense.

{¶ 7} On October 29, Halburnt and Detective Bell went to DeSoto Bass, where they located the suspected vehicle. On October 30, the investigative team set up

surveillance at DeSoto Bass. The police ran the license plate of the vehicle, and found that it was registered to a female with the last name of Henderson. After observing the vehicle for almost six hours, the detectives decided to have the vehicle towed. As uniformed officers began the process of having the car towed, an officer, Sergeant Blommel, advised that he had observed three individuals in the apartment complex and that he “recognized one of the individuals wearing what appeared to be the same clothing or similar clothing as to one of the suspects in the surveillance video.” Tr., Suppression Hrg., p. 16. The uniformed officers made contact with Brown, whom they cuffed and detained in the back of a cruiser. Detective House then made contact with Brown, and asked him his name. Brown identified himself as “Tony Brown.” Brown was transferred to the detective section and placed in an interview room. Brown was advised of his rights. He made no inculpatory statements during the interview, but his clothing was taken into evidence. The interview lasted less than an hour before Brown invoked his Miranda rights. The detectives then asked if he would submit to a DNA test, but Brown refused. The detectives terminated the interview, and Brown was then formally arrested.

II. The Course of Proceedings

{¶ 8} Brown was indicted on three counts of Murder with firearm specifications, two counts of Aggravated Burglary with firearm specifications, two counts of Aggravated Robbery with firearm specifications, two counts of Kidnapping with firearm specifications, two counts of Felonious Assault with firearm specifications, and three counts of Having Weapons While Under a Disability. He moved to suppress evidence. Following a hearing, the motion was denied. Following trial, Brown was found guilty on all charges.

He was sentenced to a prison term of 25 years to life. Brown appeals.

III. There Was Probable Cause for Brown's Arrest

{¶ 9} Brown's First Assignment of Error states as follows:

APPELLANT'S MOTION TO SUPPRESS WAS IMPROPERLY OVERRULED BECAUSE APPELLANT WAS ARRESTED WITHOUT PROBABLE CAUSE.

{¶ 10} Brown contends that the trial court should have granted his motion to suppress. In support, he argues that he was arrested without a warrant, despite the fact that the police had no probable cause to make an arrest.

{¶ 11} In ruling on a motion to suppress, "the trial court assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994), citing *State v. Clay*, 34 Ohio St.2d 250, 298 N.E.2d 137 (1973). Thus, when reviewing a motion to suppress, we must accept the trial court's findings of fact, if they are supported by competent, credible evidence. *State v. Love*, 2d Dist. Montgomery No. 23902, 2011-Ohio-1287. We must conduct a de novo review of the trial court's decision and determine whether the facts, as found by the trial court, meet the appropriate legal standard. *State v. Jones*, 183 Ohio App.3d 839, 2009-Ohio-4606, 919 N.E.2d 252, ¶ 14 (2d Dist.); *State v. Love* at ¶ 19. With this standard in mind, we turn to the issue of probable cause.

{¶ 12} } The Supreme Court of Ohio has recognized that a warrantless arrest based upon probable cause and occurring in a public place does not, in general, violate

the Fourth Amendment. *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶ 66. Whether there is probable cause to arrest depends “upon whether, at the moment the arrest was made * * * the facts and circumstances within [the arresting officers’] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.” *Adams v. Williams*, 407 U.S. 143, 148, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), citing *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). The existence of probable cause is determined by looking at the totality of the circumstances. See *Illinois v. Gates*, 462 U.S. 213, 230–232, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

{¶ 13} A review of the surveillance video reveals that the suspect with the handgun was wearing unique clothing. The hooded jacket was dark, with a distinctive pattern of crossed hammers with a ribbon running around them. The jacket also had some light-colored trim on the shoulders and the bottom border. The suspect had on black tennis shoes that had all white soles and a white border. The video also showed that the back pockets of the suspect’s jeans had a pattern, and each had a large black button. There was also a black patch at the belt-line of the jeans on the back, right side. The video also clearly showed the haircut of the suspect. It also showed side and front views of his face. The video showed the size and build of the suspect.

{¶ 14} When Brown was observed by the police, he was wearing a jacket, jeans, and shoes that appear to be an identical match for that worn by the suspect in the video. The clothing also fit Brown the same as it did the suspect. Brown’s haircut was identical to the suspect, and his face appears to be the same. House testified that he was certain

that Brown was the offender seen in the video. House testified, at the suppression hearing, that he viewed the video numerous times. He further testified that Brown had the same haircut, the same build and size, and that the clothing was identical and fit Brown the same as the offender in the video.

{¶ 15} We conclude that the similarities between the suspect in the video and Brown's appearance when stopped by the police, were sufficient to establish probable cause that Brown was the person in the video and that he committed the offenses. Thus, we conclude that the trial court did not err in overruling the motion to suppress.

Accordingly, the First Assignment of Error is overruled.

**IV. Brown's Conviction Is Supported by Sufficient Evidence,
and Is Not Against the Manifest Weight of the Evidence**

{¶ 16} Brown's Second and Third Assignments of Error are as follows:

APPELLANT'S CONVICTIONS WERE BASED UPON
INSUFFICIENT EVIDENCE PRESENTED AT TRIAL.

APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST
WEIGHT OF THE EVIDENCE.

{¶ 17} Brown contends that the State did not present evidence sufficient to sustain his conviction. He further argues that the conviction is against the manifest weight of the evidence.

{¶ 18} "[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). However, when conducting a manifest weight

analysis, an appellate court “review[s] 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Id.* at 387.

{¶ 19} Brown’s argument rests upon the fact that the eyewitnesses to the crime described his “hoodie” as dark blue, rather than black, and that they were not able to identify him from a photo array. He also notes that the State did not produce any DNA or fingerprint evidence from the vehicle, and that the gun was not recovered.

{¶ 20} We note that the eyewitnesses testified that the offenders had their hoods pulled up on their heads at the time of the offense. Furthermore, while one eyewitness did describe Brown’s jacket as dark blue, rather than black, this raises a question of credibility for the jury to determine. We conclude that a description by a person who had a few quick glimpses of a person who is pointing a gun at them is not inherently unreliable simply because they recalled that the jacket was dark blue rather than black – colors that are often difficult to distinguish.

{¶ 21} As noted above, the jury was able to view the surveillance video. They also were able to view Brown’s clothes taken from him the day of the arrest, as well as the pictures of him wearing the clothes. The jacket, shoes, and jeans, as described above, have some distinct details which match the details in the video. The jacket and jeans appear to fit Brown in the same loose manner as on the video. Furthermore, the jury heard House testify that he reviewed the video more than 75 times. He testified that Brown had the same mannerisms, hair, complexion, size, clothing and build as the

person in the video.

{¶ 22} Detective House testified that, as part of his investigation, he checked the jail telephone records to determine whether Brown made any calls from the jail. House found, and listened to, recordings of the calls. The first call, made the same day he was arrested, was from Brown to his mother. In that call, Brown stated, “[i]t’s over,” and then told his mother he was in jail for robbery and murder. Brown further stated that the police had told him, “they wouldn’t a never [sic] known it was me if I hadn’t had on the same clothes.” During that same call, Brown spoke to another person named Dee Dee. When Dee Dee asked him who was with him, Brown supplied two names. These damaging admissions, together with the identification evidence, are sufficient evidence to permit a reasonable jury to conclude, beyond reasonable doubt, that Brown was one of the perpetrators of the offenses.

{¶ 23} We conclude that there is sufficient evidence upon which the jury could reasonably rely in finding that Brown was the offender. We further conclude that this is not the exceptional case where a jury lost its way in evaluating the evidence.

{¶ 24} The Second and Third Assignments of Error are overruled.

V. Conclusion

{¶ 25} All of Brown’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

.....

HALL and WELBAUM, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Michele D. Phipps

Bradley S. Baldwin
Hon. Michael Tucker