

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-1050 (C.P.C. No. 10CR-11-6644)
Joey A. Vencill,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on September 27, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Todd W. Barstow*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Joey A. Vencill, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because his convictions are supported by sufficient evidence and are not against the manifest weight of the evidence, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} This case concerns a series of crimes committed on the morning of October 7, 2010 on the west side of Columbus, Ohio. Shortly before 7:00 a.m. that day, Charles Francis drove his green Toyota Avalon to a gas station. He left his keys in the car and went to pay for the gas. When he turned around, he saw a white male get into the car and drive it away.

{¶ 3} About two hours later, Margaret Snodgrass parked her car in the parking lot of a drug store. When she got out of her car, a "young boy with a hood on with it tied around his face" approached her and grabbed her purse. (Tr. 49.) The boy took the purse and ran away. Shortly after that incident, in a nearby shopping center, Dora Scarpitti was returning to her parked car when she was attacked by a young white man who took her purse. (Tr. 26-28.) Jason Tortorici, an eyewitness, saw a green Toyota Avalon drive through the shopping center's parking lot at a high rate of speed. He saw a white male get out of the car and approach Scarpitti. He then saw the woman fall over and the green car speed away.

{¶ 4} Within hours of these events, Columbus Police found Francis's car abandoned on the west side of Columbus. In the car were two women's purses and a number of miscellaneous items. One of those items had appellant's fingerprint on it. Other items in the car were an insurance card with Dora Scarpitti's name on it and a Medicare card that was in Snodgrass's purse when it was stolen.

{¶ 5} A month later, police presented Snodgrass with a photo array of six individuals. She had only seen the face of the person who took her purse, so she attempted to recreate the image in her mind by placing a piece of paper around the pictures to isolate the faces on the pictures. Snodgrass identified the picture of appellant as the person who took her purse.

{¶ 6} As a result of these events, a Franklin County Grand Jury indicted appellant with one count of aggravated robbery in violation of R.C. 2911.01, four counts of robbery in violation of R.C. 2911.02, one count of felonious assault in violation of R.C. 2903.11, and one count of receiving stolen property in violation of R.C. 2913.51. Appellant entered not guilty pleas to the charges and proceeded to a jury trial.

{¶ 7} At trial, the victims testified to the above events. Appellant did not testify, but presented the testimony of a woman who saw the Scarpitti robbery. That woman identified another individual, not appellant, as the person who robbed Scarpitti. The jury found appellant guilty of two counts of robbery for the purses taken from Snodgrass and Scarpitti, and one count of receiving stolen property for his possession of Francis's stolen car. The jury could not reach a verdict on the other charges, and the trial court later dismissed them. The trial court sentenced appellant accordingly.

{¶ 8} Appellant appeals and assigns the following error:

The trial court erred and deprived appellant of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article One, Section Ten of the Ohio Constitution by finding him guilty of robbery and receiving stolen property as those verdicts were not supported by sufficient evidence and were also against the manifest weight of the evidence.

## **II. The Sufficiency and Manifest Weight of the Evidence**

{¶ 9} In his assignment of error, appellant contends that his convictions are not supported by sufficient evidence and are also against the manifest weight of the evidence. 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. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶ 11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's convictions are supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 10} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but 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. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*; *State v. Baatin*, 10th Dist. No. 11AP-286, 2011-Ohio-6294, ¶ 8.

{¶ 11} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the trier of fact's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 12} Appellant claims that his convictions are against the manifest weight of the evidence because Snodgrass's identification of him as the person who took her purse was not credible. Snodgrass was the only person to identify appellant as being involved in the crimes. Appellant's arguments regarding the method Snodgrass used to make her identification do not render the identification so unreliable as to not be credible as a matter of law. *State v. Lee*, 10th Dist. No. 06AP-229, 2006-Ohio-5951, ¶ 14. The jury observed Snodgrass testify and was free to accept or reject her identification. That decision is within the province of the jury. *Id.*

{¶ 13} Moreover, putting aside Snodgrass's identification, other evidence indicates appellant's guilt. All of these offenses occurred on the west side of Columbus within a relatively short time period, and both of the robberies followed the same pattern. Scarpitti and Snodgrass, both older women, testified that a young, white male approached them as they stood near their cars and took their purses. An eyewitness to one of the robberies testified that he saw a white male get out of a green Toyota Avalon, the same kind of car that Francis reported stolen, and assail Scarpitti. Finally, when police found Francis's car, the car contained two purses and items from Scarpitti and Snodgrass' purses. Significantly, police found a document in the car that Scarpitti testified was in her purse when it was stolen, and that piece of paper had appellant's fingerprint on it.

{¶ 14} Considering all this evidence, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice. Appellant's convictions are not against the manifest weight of the evidence. This resolution is also dispositive of appellant's claim that his convictions were not supported by sufficient evidence. *Gravelly* at ¶ 50. Accordingly, we overrule appellant's assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN, P.J., and FRENCH, J., concur.

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