

[Cite as *State v. Cameron*, 2009-Ohio-6479.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-56
v.	:	(C.P.C. No. 08CR04-3163)
	:	
Christopher Cameron,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 10, 2009

Ron O'Brien, Prosecuting Attorney, *Laura R. Swisher*, and *Kimberly M. Bond*, for appellee.

Giorgianni Law LLC, and *Paul Giorgianni*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Defendant-appellant, Christopher Cameron ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of aggravated robbery. For the following reasons, we affirm.

{¶2} The Franklin County Grand Jury indicted appellant on charges of (1) aggravated robbery for a January 15, 2007 incident at Steak 'n Shake, and (2)

aggravated murder with death penalty specifications and aggravated robbery for an incident involving the death of Abdel Shalash at Stylish Beauty Plus that same day. Appellant moved for separate trials on the Steak 'n Shake and Shalash charges. The trial court denied the motion.

{¶3} At trial, Steak 'n Shake employee Rebecca Armentrout testified as follows. Armentrout was at work on January 15, 2007. Around 5:30 a.m., a car parked near the front door of the restaurant. About ten or 15 minutes later, three young black men exited the car and entered the restaurant. At least one man had his face partially covered. Armentrout saw that two men had shotguns. It was possible that the third man had a weapon, but she did not see it. Armentrout locked herself in the freezer and called the police. When Armentrout exited the freezer, she saw that money had been taken out of a cash register.

{¶4} Anthony Cleary patronized the Steak 'n Shake on the morning of the robbery and testified as follows. Cleary went to Steak 'n Shake around 5:30 a.m. Cleary met his friend Mark Paessun. They were sitting at the back of the restaurant. Cleary had his back to the front door, but he turned around after hearing a commotion. He saw three black men. While two of the men stayed toward the front of the restaurant, one approached Cleary and Paessun. Paessun gave the man money. Eventually, the man walked toward the front of the restaurant. Cleary saw no weapons during the incident.

{¶5} Mark Paessun testified as follows. Paessun confirmed that he met Cleary at Steak 'n Shake around 5:30 a.m. on January 15, 2007. Cleary and Paessun sat "in

the last booth furthest away from the entrance." (Vol. III Tr. 641-42.) Paessun faced the entrance. After ten or 15 minutes, Paessun saw three young black men enter the restaurant. Two men had shotguns. One man had a semiautomatic handgun, and the man pointed that gun at Paessun. The men with the shotguns went to the cash register area, but Paessun was not looking at what they were doing. The man with the handgun approached Paessun and took his money before joining the other robbers. This man was wearing a mask. Paessun did not watch the man after he joined the other robbers. Paessun testified that Exhibit G looked like the handgun that was pointed at him.

{¶6} David Ashford worked at Steak 'n Shake on January 15, 2007, and testified as follows. Around 5:30 a.m., someone held a semiautomatic handgun near Ashford's face. The man had a mask. Ashford was in the kitchen "right beside the front counter." (Vol. III Tr. 666.) The man took Ashford back to the safe. Ashford said he could not open the safe, and he took the robber to a cash register. Ashford saw only two men participate in the crime. On cross-examination, Ashford said that he just saw the one weapon.

{¶7} Ronald Smith was involved in the crimes against Steak 'n Shake and Shalash and testified as follows. Smith pleaded guilty to involuntary manslaughter and three aggravated robberies in a plea bargain with the prosecution in exchange for testifying against appellant. Smith was sentenced to 20 years imprisonment.

{¶8} On January 15, 2007, Smith and appellant went to Steak 'n Shake. Smith guessed that they went to the restaurant around 3:00 or 4:00 a.m. Before going to the restaurant, they went to the home of a man named "Bones" to pick up guns. Appellant,

Smith, and Bones went to the restaurant. They parked in front of the restaurant. Smith had a shotgun. Smith identified appellant's gun as a 9mm Hi-Point. After entering the restaurant, Smith took someone's cell phone. Appellant went to the "front where the counter was." (Vol. IV Tr. 798.) Appellant was getting money from the registers. Smith did not know where Bones went. The robbers left and split up the money. Smith was home by 5:00 a.m. Two and a half hours later, appellant and Smith met up again. They were "just riding around for a while" until they "ran into" Darnell Nelson. (Vol. IV Tr. 801.) The three men drove around for another hour until Nelson purchased a car. The men drove to an auto parts store; Smith was driving Nelson's newly purchased car, and appellant was driving his car with Nelson as a passenger. The newly purchased car broke down near Stylish Beauty Plus. Smith went into the store and, when he came out, the men "rode around for a minute" in appellant's car. (Vol. IV Tr. 806.) Appellant proposed robbing Stylish Beauty Plus, and the others agreed to participate. Smith did not go into the store, but acted as the "driver." (Vol. IV Tr. 809.) Smith parked two lots away from Stylish Beauty Plus. Appellant and Nelson wore masks and went to the store. Appellant used the same weapon that he had at Steak 'n Shake. After the incident, the men went to Smith's house where Nelson said that appellant shot Shalash.

{¶9} Smith admitted that he lied to the police after he was arrested because he "didn't want to tell them what was going on" and because he "knew that [appellant and Nelson] [were] still on the streets and I was locked up." (Vol. IV Tr. 822, 835.) Smith said he eventually told the truth to the prosecution and that he had to testify truthfully in order to uphold his part of the plea bargain.

{¶10} On cross-examination, Smith acknowledged that he lied when he told the police that he did not rob Steak 'n Shake. Defense counsel said, "you'll agree with me, you're a liar. Agree?" Smith said, "[y]es." (Vol. IV Tr. 899.) On re-direct, Smith said he lied to the police, but not to the jury and that there is no doubt in his mind that he robbed the Steak 'n Shake with appellant and Bones. On re-cross examination, Smith said that, when he spoke with the police, he knew he could face the death penalty or life in prison without parole. Smith testified that, when the police asked him if appellant was involved in the robberies, he said, "no." (Vol. IV Tr. 929.)

{¶11} Nelson testified as follows. Nelson pleaded guilty to involuntary manslaughter and aggravated robbery as part of a plea bargain with the prosecution in exchange for testifying against appellant. Nelson was sentenced to 20 years imprisonment. On January 15, 2007, Nelson was driving around with appellant and Smith. The men used two separate cars until one became disabled. While everyone was in appellant's car, Smith proposed robbing Stylish Beauty Plus. The others agreed to participate. Appellant had a black Hi-Point 9mm gun. Appellant and Nelson went into the store while Smith stayed in the car located in another parking lot. Appellant and Nelson wore masks. In the store, appellant grabbed money from the cash register. Shalash brandished a gun. Nelson started "tussling" with Shalash. (Vol. IV Tr. 958.) Shalash's gun fired, and Nelson told appellant to shoot Shalash. Nelson heard appellant's gun fire, and Shalash fell. Nelson and appellant left the store. On cross-examination, Nelson testified that, even though he was a juvenile when he committed the Shalash crime, he could have faced life in prison without parole.

{¶12} Nathaniel Doyle lived near appellant and testified as follows. In January 2007, Doyle found a gun in his house. He had seen appellant with the gun. Doyle gave the gun to the police. Afterward, appellant approached Doyle and inquired about his gun. Doyle identified Exhibit G as the gun he found in his house, and Doyle identified the gun as a "9." (Vol. V Tr. 1173.)

{¶13} Columbus Police Officer David Sicilian responded to the Stylish Beauty Plus incident, and Columbus Police Officer Aaron Dennis responded to the Steak 'n Shake incident. Both officers testified that they worked in precinct 14 on the east side of Columbus on January 15, 2007. Dennis testified that he was dispatched to Steak 'n Shake between 5:30 and 6:00 a.m., and Sicilian testified that he was dispatched to Stylish Beauty Plus around 1:50 p.m.

{¶14} The prosecution rested its case, and defense counsel rested without presenting any evidence. At the close of evidence, defense counsel renewed all previous objections. The trial court did not reconsider its previous decisions, however.

{¶15} During closing argument, defense counsel stated that appellant "had nothing to do with Mr. Shalash's murder and he had nothing to do with Steak 'n Shake." (Vol. VI Tr. 1309.) Counsel argued that "[t]he issue in dispute is whether [appellant] was involved" in the Steak 'n Shake incident. (Vol. VI Tr. 1310.) Counsel said, "I'm not talking much about Steak 'n Shake. Ronald Smith says he was involved. If anybody chooses to believe Ronald Smith, then I don't know what to tell you." (Vol. VI Tr. 1318.) Defense counsel mentioned that Smith originally told police that appellant was not involved in the robberies at Steak 'n Shake or Stylish Beauty Plus, but after his plea

bargain, Smith implicated appellant. He noted that Smith entered a plea bargain to avoid the death penalty or life imprisonment. He said that Smith "never told anybody who Bones is. And for good reason." (Vol. VI Tr. 1320.) He said that Smith admitted that he was a liar and that Smith "believes that he's so convincing that he can pull the wool over people. It was worth it to him to try to sell the cops on his story. * * * He was trying to talk his way out of it. * * * You think he approached you as a jury any different?" (Vol. VI Tr. 1324.) Lastly, counsel attacked Smith's testimony regarding Shalash's death.

{¶16} The jury found appellant guilty of the Steak 'n Shake aggravated robbery. The jury was unable to reach a verdict on the Shalash charges. Appellant appeals, raising three assignments of error:

1. The conviction is contrary to the manifest weight of the evidence.
2. Christopher was denied effective assistance of counsel when his counsel failed to give closing argument regarding the only charge of which Christopher was convicted.
3. The trial court abused its discretion in overruling Christopher's pre-trial motion for separate trial on the only charge of which he was convicted.

{¶17} In his first assignment of error, appellant argues that his aggravated robbery conviction is against the manifest weight of the evidence. We disagree.

{¶18} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. We review the entire record, weigh the evidence and all reasonable

inferences, and consider the credibility of witnesses. Id. Additionally, we 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., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶19} Appellant argues against the credibility of Smith, the only witness to identify him as being involved in the Steak 'n Shake robbery. For instance, appellant contends that Smith's credibility is in doubt due to his favorable plea bargain. It was within the jury's province to accept the testimony that Smith provided in exchange for a plea bargain, however. See *State v. Womack*, 10th Dist. No. 06AP-322, 2006-Ohio-6785, ¶14.

{¶20} Appellant notes that Smith lied to the police and did not implicate appellant when he initially spoke with police. Smith explained why he lied to the police, and Smith testified that he did not lie to the jury. It was within the jury's province to accept Smith's testimony despite his lying to police.

{¶21} Appellant argues that Smith's testimony conflicted with the testimony of other witnesses at Steak 'n Shake. For instance, Smith said appellant had a 9mm handgun and went behind the counter upon entering the restaurant, but Paessun testified that the man with the handgun went to the back of the store and put the gun in his face. Appellant concedes that Ashford corroborates Smith's testimony, however, and the jury was free to accept this corroborated testimony. The evidence also allowed the jury to reconcile Smith and Paessun's testimonies. Smith identified appellant as a participant in the Steak 'n Shake robbery, and Paessun testified that the gun pointed in his face looked like Exhibit G, the gun Doyle linked to appellant. Although Smith did not testify to the interaction between Paessun and appellant, the jury could have concluded that Smith either (1) did not mention the interaction because he was focused on conveying appellant's role in stealing money from Steak 'n Shake, or (2) did not see the interaction because it might have occurred while Smith was stealing someone's cell phone.

{¶22} Appellant also notes the conflicting testimony about how many guns were present. Any discrepancy on whether the other robbers had guns is unrelated to appellant's participation in the robbery, as testimony from both Smith and Paessun linked appellant to a gun. We need not use the unrelated discrepancy to disturb the jury's finding that appellant committed aggravated robbery at Steak 'n Shake. See *Brown* at ¶10.

{¶23} Appellant impeaches Smith with his testimony that he and appellant went to Bones' home to pick up guns. Appellant contends that if the 9mm gun belonged to

him, as the prosecution alleged at trial, it is unlikely that they would have picked it up from Bones' home. The jury did not lose its way in convicting appellant in spite of this evidence. Where appellant obtained the gun is inconsequential to the ultimate issue of appellant participating in the Steak 'n Shake robbery. And, because the evidence linked appellant to the 9mm gun, it was reasonable for the jury to accept the prosecution's theory that the gun belonged to appellant.

{¶24} Appellant notes that Smith testified that the robbery occurred around 3:00 or 4:00 a.m., but the other witnesses and police established that the robbery occurred between 5:30 and 5:45 a.m. This discrepancy did not show that Smith was lying because he acknowledged that he was guessing the time of the robbery. Smith's guess on the timing of the robbery did not undermine his testimony because he unequivocally testified to appellant's involvement in the robbery.

{¶25} Appellant argues that Smith's testimony on the Shalash incident lacked credibility and that the jury's inability to reach a verdict on the Shalash incident proves that the jury doubted Smith as to that incident. It was within the jury's province to believe Smith's testimony on the Steak 'n Shake robbery, even if it discounted Smith's testimony on the Shalash incident. See *State v. Stewart*, 10th Dist. No. 08AP-33, 2009-Ohio-1547, ¶23 (holding that a jury is free to believe only some of a witness' testimony).

{¶26} In the final analysis, the trier of fact is in the best position to determine witness credibility. *State v. Carson*, 10th Dist. No. 05AP-13, 2006-Ohio-2440, ¶15. The jury accepted evidence proving that appellant committed the Steak 'n Shake aggravated robbery, and appellant has not demonstrated a basis for disturbing the jury's

conclusions. See *Brown* at ¶10. Accordingly, we hold that appellant's conviction is not against the manifest weight of the evidence, and we overrule appellant's first assignment of error.

{¶27} In his second assignment of error, appellant argues that defense counsel rendered ineffective assistance. We disagree.

{¶28} Appellant argues that, when defense counsel gave closing argument, he focused on the Shalash incident and not the Steak 'n Shake incident. Appellant argues that defense counsel denied him the right to a closing argument on the Steak 'n Shake incident, and that this entitles him to an automatic reversal. Appellant relies on *Columbus v. Woodrick* (1976), 48 Ohio App.2d 274, and its progeny.

{¶29} In *Woodrick*, this court held that "[t]he failure of a court to allow defense counsel in a criminal trial to present a closing argument is reversible error, in the absence of a plain showing that there was an intentional waiver of the right." *Id.* at syllabus. *Woodrick* applied *Herring v. New York* (1975), 422 U.S. 853, 95 S.Ct. 2550, which reversed a defendant's conviction after a court did not allow closing argument. According to *Herring*, a court infringes upon a defendant's Sixth Amendment right to assistance of counsel when it does not provide an opportunity for closing argument. *Id.* at 856-65, 95 S.Ct. at 2552-57.

{¶30} *Woodrick* and *Herring* concerned courts denying defendants the opportunity to provide closing argument. The cases and their progeny are inapplicable because the trial court did not deny appellant an opportunity to provide closing argument. Instead, defense counsel gave a closing argument, but appellant challenges

what defense counsel said during that argument. Defense counsel's decisions concerning closing argument are reviewed for ineffective assistance under *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052 ("*Strickland I*"). See *State v. Smith*, 89 Ohio St.3d 323, 334, 2000-Ohio-166. Under this standard, the defendant must first show that counsel's performance was outside the range of professionally competent assistance and, therefore, deficient. *Strickland I* at 687, 104 S.Ct. at 2064. Second, the defendant must show that counsel's deficient performance resulted in prejudice to the defense and deprived the defendant of a fair trial. *Id.* A defendant establishes prejudice if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S.Ct. at 2068. This court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689, 104 S.Ct. at 2065, citing *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158, 164.

{¶31} The substance of closing argument falls within the realm of trial strategy. *State v. Ruiz* (June 24, 1999), 8th Dist. No. 73645; *State v. Sharpless* (Dec. 18, 1998), 11th Dist. No. 97-P-0065. Cf. *Smith* at 334 (concluding that defense counsel's decision to forgo closing argument during the guilt phase of a death penalty case was acceptable trial strategy). Appellant contends that he overcomes the presumption that defense counsel's performance during closing argument constituted sound trial strategy.

Appellant relies on *Commonwealth v. Sparks* (1988), 372 Pa.Super. 463, 468, where the court held that counsel rendered ineffective assistance by not making a closing argument. Aside from *Sparks* having a conclusion contrary to the Supreme Court of Ohio's decision in *Smith*, *Sparks* is inapposite because, here, defense counsel made a closing argument on appellant's behalf. Appellant also relies on *State v. Smiley* (Oct. 28, 1999), 8th Dist. No. 72026, but we find *Smiley* inapplicable, too. In *Smiley*, the court concluded that defense counsel rendered ineffective assistance by making a closing argument that adopted a prosecution witness' testimony that conflicted with the defendant's testimony. The facts in *Smiley* are unrelated to appellant.

{¶32} Appellant argues that defense counsel ignored the Steak 'n Shake charge during closing argument and that no conceivable strategy justifies this conduct. We do not agree with appellant's characterization of the closing argument. Defense counsel argued to the jury that appellant was not involved in the Steak 'n Shake incident, and counsel paid considerable attention to challenging Smith, a crucial witness for the Steak 'n Shake prosecution. Counsel mentioned that Smith admitted that he was a liar and that Smith engaged in a favorable plea bargain in exchange for his testimony. Defense counsel also noted that Smith did not implicate appellant when he originally spoke with police.

{¶33} We conclude that defense counsel's closing argument on the Steak 'n Shake incident was within the realm of sound trial strategy and that defense counsel was not deficient. Accordingly, defense counsel did not render ineffective assistance, and we overrule appellant's second assignment of error.

{¶34} In his third assignment of error, appellant argues that the trial court abused its discretion by denying his motion to sever the joint trial on the Steak 'n Shake and Shalash incidents. We disagree.

{¶35} The law favors joining multiple offenses in a single trial. *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, ¶28. Crim.R. 14 empowers a trial court to sever the trial of multiple offenses if the defendant demonstrates prejudice. *Id.* at ¶29. The state can negate the defendant's claims of prejudice in two ways. *Id.* at ¶30. First, if evidence of one offense could have been introduced under Evid.R. 404(B) at the trial of the other offense, no prejudice could have resulted from joinder. *Id.* Evid.R. 404(B) permits evidence of "other crimes, wrongs, or acts * * * as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Second, prejudice is refuted if the evidence of the offenses joined at trial is simple and direct. *Brinkley* at ¶30. These two tests are disjunctive and need not be satisfied together to negate a claim of prejudicial joinder. See *State v. Mills* (1992), 62 Ohio St.3d 357, 362.

{¶36} We need not reverse a trial court's denial of a motion to sever absent an abuse of discretion. *Brinkley* at ¶29. An abuse of discretion connotes more than an error of law or judgment; it implies a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶37} Plaintiff-appellee, the state of Ohio ("appellee"), argues that appellant forfeited all but plain error on the joinder issue. A defendant forfeits a joinder issue by not renewing an objection to joinder at the close of the prosecution's case or at the

conclusion of all evidence at trial. *State v. Burks*, 10th Dist. No. 07AP-553, 2008-Ohio-2463, ¶50. Appellant's renewed objection to joinder was weak; at the close of evidence, appellant generally renewed all previous objections, but appellant did not specify that joinder prejudiced him. In any event, we shall review the joinder issue under the abuse of discretion standard.

{¶38} Appellant argued in the trial court that a separate trial was needed on the Steak 'n Shake robbery. Appellant claimed that, with a separate trial, the jury on the Steak 'n Shake robbery would have had no opportunity to draw improper inferences of guilt from the Shalash incident because that evidence would have been inadmissible. Appellant also asserted that a single trial risked the jury confusing the evidence regarding the two incidents. Appellee argues that it negated appellant's claims of prejudice because Evid.R. 404(B) would have allowed evidence of the Shalash incident at a separate trial for the Steak 'n Shake robbery. Appellant's identity as a perpetrator was at issue at trial and, under Evid.R. 404(B), "other crimes, wrongs, or acts" may be introduced to establish the identity of a perpetrator by showing that he has committed similar crimes and that an identifiable scheme, plan or system was used in the commission of the charged offense. *State v. Smith* (1990), 49 Ohio St.3d 137, 141. See also *State v. Tipton*, 10th Dist. No. 04AP-1314, 2006-Ohio-2066, ¶28 (recognizing that evidence of crimes may be introduced to prove identity if the defendant committed similar crimes within a period of time reasonably near to the offense on trial, and that a similar scheme, plan or system was used to commit both the offense at issue and the other crimes).

{¶39} Appellant highlights differences between the Steak 'n Shake and Shalash incidents to counteract Evid.R. 404(B). According to appellant, the Steak 'n Shake robbery appeared planned well in advance, but the Shalash incident came on a whim after Nelson's car broke down near Stylish Beauty Plus. Additionally, appellant notes that, in the Shalash incident, the perpetrators parked the getaway car at a distance from Stylish Beauty Plus, but with the Steak 'n Shake robbery the perpetrators parked at the restaurant. Admissibility under Evid.R. 404(B) "is not adversely affected simply because the other [crimes] differed in some details." (Bracketed material sic.) *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, ¶72, quoting *State v. Jamison* (1990), 49 Ohio St.3d 182, 187. Here, links between the Steak 'n Shake and Shalash incidents arguably show a similar, identifiable scheme. Both incidents involved multiple perpetrators targeting businesses, and disguises were used during the incidents. A 9mm handgun was used during both incidents, and the prosecution linked appellant to that handgun. Sicilian and Dennis, both of precinct 14 on the east side of Columbus, established that the Steak 'n Shake and Shalash incidents are geographically linked. The evidence also established a temporal link. Witnesses testified that the Steak 'n Shake crime occurred around 5:30 a.m. on January 15, 2007. Smith testified that appellant met him around 7:30 a.m. that day before the Shalash incident. Given these similarities, we conclude that the prosecution arguably could have introduced evidence of the Shalash incident in a separate trial of the Steak 'n Shake robbery under Evid.R. 404(B).

{¶40} We also conclude that prejudice from joinder is negated because the evidence was simple and direct, a factor that independently favors joinder under Evid.R. 404(B). Evidence is simple and direct if the jury is capable of segregating the proof required for each offense. *Mills* at 362. The rule seeks to prevent juries from combining the evidence to convict the defendant, instead of carefully considering the proof offered for each separate offense. *Id.* See also *State v. Strickland* (Oct. 13, 1994), 10th Dist. No. 93APA10-1445 ("*Strickland II*") (recognizing that evidence is simple and direct if it "prevent[s] the trier of fact from confusing the offenses or from improperly considering the cumulated evidence of all the crimes as to each crime"). See also *Tipton* at ¶31 (concluding that evidence was simple and direct because the defendant's offenses were not "so complex that the jury would have difficulty separating the proof required for each offense").

{¶41} The prosecution's evidence about the two charges was not confusing or difficult to separate. When Smith testified to appellant's role in the Steak 'n Shake and Shalash incidents, he did not blur the events, but gave a chronological account as to appellant's involvement in the separate incidents. Likewise, other witnesses to the Steak 'n Shake incident offered a separate account as to appellant's role in that incident, and Nelson offered a separate account as to appellant's role in the Shalash incident. To be sure, the prosecution provided evidence to connect appellant to both incidents. The testimony from the witnesses to each incident allowed the jury to consider the separate incidents in segregation without cumulating the evidence, however. See *Tipton* at ¶31. The jury coming to a different result on the Steak 'n

Shake incident and the Shalash incident also demonstrates that it was able to segregate the evidence between the two incidents. See *Strickland II*. Accordingly, appellant's prejudicial joinder claims are negated, and we conclude that the trial court did not abuse its discretion in denying appellant's severance motion. Therefore, we overrule appellant's third assignment of error.

{¶42} In summary, we overrule appellant's three assignments of error. Consequently, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.
