[Cite as *State v. Black*, 2010-Ohio-660.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92806

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONTA BLACK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-512975

BEFORE: Celebrezze, J., Dyke, P.J., and Jones, J.

RELEASED: February 25, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Thomas A. Rein
940 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
BY: Diane Smilanick
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Donta Black ("appellant"), appeals his conviction for aggravated robbery. After a thorough review of the record and pertinent case law, we affirm.

{¶ 2} On May 7, 2008, after Sharlene Hill ("Hill") dropped her children off at school, she was picked up in a vehicle driven by her niece, Ayron Brown ("Brown"). The two drove around the Cleveland area smoking marijuana with Brown's baby in the car. At some point, the two women went to Brown's home and picked up appellant.[1] They then picked up Lonnell Royal ("Royal"), and the group continued to drive around smoking marijuana.

{¶ 3} Hill testified that appellant kept asking if there was anybody they could "lick." According to Hill, this meant appellant was asking if she knew anybody the group could rob for money. Hill then received a phone call from Irwin Belser ("Belser"). Hill asked Belser for money, and this conversation was overheard by appellant. Hill also testified that appellant likely heard her tell Brown that Belser always carried money with him.

{¶ 4} The group then stopped at Royal's mother's house. According to Hill, Royal went inside the house and came back out carrying something

---

[1] According to appellant's trial testimony, he was dating Ayron's sister, Ashley Brown, and was living with Ashley, Ayron, and their mother, Anna Brown.

wrapped inside a t-shirt. Hill testified that Royal kept saying it was a gun, but she never actually saw a weapon.

{¶ 5} As the group was heading toward Hill's house, the vehicle they were riding in ran out of gas. Hill called Belser,[2] who said he would bring a gas can and take her to get some gas. While the group was waiting for Belser to arrive, appellant and Royal walked away and were not present when Belser arrived to provide assistance. After assisting Hill in putting gas in the vehicle, Belser indicated that he and his friend, Gerald Thomas ("Thomas"), who was with him that day, would follow Hill to her house.

{¶ 6} When Belser and Thomas first arrived at Hill's house, no one was there. The two ran some errands, then Hill called and said she was home and they could come over. After arriving at Hill's house the second time, Belser went inside while Thomas waited in the car. According to Belser, he was sitting at the kitchen table talking to Hill and Brown when Hill excused herself to use the bathroom.

{¶ 7} After Hill had gone to the back of the house, two men unknown to Belser entered the house without knocking. Belser described one of the men as short and stocky and the other as tall and skinny with glasses. Belser informed Hill that she had company, and the two men went to the back of the

---

[2] Hill acknowledged that she and Belser occasionally had sexual relations, and he frequently gave her money.

house. According to Belser, the two men then returned to the front of the house, and he was hit in the face by one of the men and knocked to the ground. He then attempted to crawl to the front door, but only made it to the living room. The men held him on the ground and stopped him from leaving, and the taller man had a gun. The men went through Belser's pockets and took $2,300, which Belser testified was his girlfriend's income tax money. The men then took Belser's wallet and car keys and walked out the front door.

{¶ 8} According to Hill, she was in the bathroom when the robbery took place, but she heard a lot of commotion coming from the front of the house. Hill testified that Brown came running into the bathroom and told her that Belser was being robbed. When Hill opened the bathroom door, she saw Belser on the floor with appellant and Royal standing over him. Hill stated that when the men were finished robbing Belser, appellant came to the back of the house looking for Hill and Brown. Appellant then entered the bathroom and attempted to punch Brown, who ducked, causing appellant to hit the wall. According to Hill, it was after this occurrence that appellant and Royal went out the front door.

{¶ 9} After appellant and Royal left the house, Belser crawled to the front door and raised himself up so that he could see out the screen in the upper portion of the door. Belser saw appellant and Royal force Thomas out

of Belser's car. Belser and Hill both testified that they went into one of the bedrooms and attempted to crawl out a window. Belser was successful in making it out through the window when he saw appellant and Royal drive off in his car.

{¶ 10} Hill then located a cell phone and contacted 911. Hill informed the operator that her friend had been robbed; Belser could also be heard giving information to Hill on the tape.[3] Hill initially told the police that she did not know the men who robbed Belser, but she later provided a statement to the police identifying appellant and Royal as the men who took part in the robbery. Hill also told the police that appellant and Royal gave Brown $300 from the robbery, and Brown split the money with Hill. Hill testified that she thought she was given the money to keep quiet.[4]

{¶ 11} After appellant was arrested, he was placed in a lineup to see if Belser could identify him. According to the testimony of Detective Arthur Echols with the Cleveland Police Department, who conducted the lineup, the lineup was not performed under ordinary circumstances. Detective Echols testified that a lineup is ordinarily conducted so that the victim is behind one-way glass and cannot be seen by the suspect. The jail where appellant

---

[3] The 911 tape was played for the jury.

[4] Hill and Brown were later indicted for their role in the robbery.

was being held did not have this setup so the lineup was conducted in such a way that appellant was able to see Belser during the lineup.

{¶ 12} According to Detective Echols, Belser kept indicating that appellant looked familiar. Detective Echols testified that when Belser came up to the window and was recognized by appellant, appellant "became extremely agitated waving his arms." It was at this point that Belser started acting nervous and indicated that he could not identify anyone in the lineup. After returning home, Belser left a message for Detective Echols stating that he recognized appellant in the lineup as one of the men who robbed him.

{¶ 13} Appellant was indicted on two counts of aggravated robbery, both with one- and three-year gun specifications. The first count was based on appellant's alleged robbery of Belser; the second was for the alleged robbery of Thomas. Appellant pled not guilty, and the matter proceeded to a jury trial. The jury found him guilty of aggravated robbery[5] with respect to Belser, but not guilty of the gun specifications and not guilty of the aggravated robbery of Thomas. Appellant was sentenced to three years in prison with five years of postrelease control on his release from incarceration. This appeal followed.

---

[5] This count was a first degree felony.

{¶ 14} Appellant presents four assignments of error for our review.[6] He first argues that his conviction was based on insufficient evidence and that his conviction was against the manifest weight of the evidence. In his third assignment of error, he argues that the trial court erred by allowing Detective Echols to give inappropriate testimony. He finally argues that he was denied the effective assistance of counsel.

Law and Analysis

Sufficiency and Manifest Weight

{¶ 15} Since appellant's first two assignments of error are interrelated, they will be analyzed together. Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson* (1955), 162 Ohio St. 486, 486, 124 N.E.2d 148. A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 72 L.Ed.2d 652, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 16} Where there is substantial evidence upon which the trier of fact has based its verdict, a reviewing court abuses its discretion in substituting its judgment for that of the trier of fact as to the weight and sufficiency of the evidence. *State v. Nicely* (1988), 39 Ohio St.3d 147, 156, 529 N.E.2d 1236.

---

[6] Appellant's four assignments of error are included in appendix A of this Opinion.

{¶ 17} The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. On review, the appellate court must determine, after viewing the evidence in a light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492; *Jackson v. Virginia*, supra.

{¶ 18} Sufficiency of the evidence is subjected to a different standard than is manifest weight of the evidence. Article IV, Section 3(B)(3) of the Ohio Constitution authorizes appellate courts to assess the weight of the evidence independently of the fact finder. Thus, when a claim is assigned concerning the manifest weight of the evidence, an appellate court "has the authority and duty to weigh the evidence and to determine whether the findings of *** the trier of facts were so against the weight of the evidence as to require a reversal and a remanding of the case for retrial." *State ex rel. Squire v. Cleveland* (1948), 150 Ohio St. 303, 345, 82 N.E.2d 709.

{¶ 19} The United States Supreme Court recognized the distinction in considering a claim based upon the manifest weight of the evidence as opposed to sufficiency of that evidence. The Court held in *Tibbs v. Florida*, supra, that, unlike a reversal based upon the insufficiency of the evidence, an

appellate court's disagreement with the jurors' weighing of the evidence does not require special deference accorded verdicts of acquittal, i.e., invocation of the double jeopardy clause as a bar to relitigation. Id. at 43. Upon application of the standards enunciated in *Tibbs*, the court in *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, has set forth the proper test to be utilized when addressing the issue of manifest weight of the evidence. The *Martin* court stated:

{¶ 20} "The court, reviewing 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 720.

{¶ 21} Appellant was convicted of aggravated robbery in violation of R.C. 2911.01(A), which provides that "[n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

{¶ 22} "(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]"

{¶ 23} Based on our review of the testimony and evidence presented at trial, we cannot find that appellant's conviction was based on insufficient

evidence. The state presented the testimony of Hill, Belser, and two detectives with the Cleveland Police Department. This testimony showed that appellant was looking for someone to rob on May 7, 2008 and that appellant heard Hill asking Belser for money. Belser testified at trial that he was positive that appellant was one of the two men who forced him to the ground and took his money, wallet, and car keys. The testimony also showed that Royal, who assisted appellant in the robbery, used a gun during the commission of the crime. The testimony of Detectives Barrow and Echols revealed that, although Hill said she did not know who the robbers were on the day of the event, she and Brown unequivocally identified appellant and Royal when they arrived at the police department to provide an official statement. Viewing this evidence in a light most favorable to the prosecution, we cannot find that appellant's conviction was based on insufficient evidence.

{¶ 24} Appellant relies on several theories to argue that his conviction was based on insufficient evidence and was against the manifest weight of the evidence. He first relies on Belser's inability to identify him in a lineup and the fact that Belser had a relationship with Hill to argue that Belser's testimony was unreliable. This argument is unpersuasive. Belser's trial testimony did not differ in any significant way from the information he provided to the police on the date of the incident. Although Belser was

unable to identify appellant in a lineup, this could be attributed to his anxiety once he realized that appellant would be able to see him as the lineup progressed. In fact, Belser later called Detective Echols and indicated that appellant was one of the men who robbed him. Likewise, Belser testified at trial that he no longer has a relationship with Hill due to his realization that she played a significant role in the robbery.

{¶ 25} Appellant also argues that Hill's testimony was not credible and should not have been relied upon by the jury. Hill was eventually indicted for her role in the robbery. In exchange for her testimony against appellant, she received a favorable plea deal. Appellant relies on this fact, along with Hill's testimony that she was high on the day in question and the fact that she indicated to the 911 operator that she could not identify the robbers, to argue that his conviction should be overturned.

{¶ 26} The fact that Hill received a favorable plea deal was known to the jury. In fact, appellant's trial counsel rigorously cross-examined Hill about her plea deal, her drug usage, and the fact that she lied to the police when the robbery was initially reported. Hill never denied her role in this robbery, nor did she deny using marijuana. When questioned about why she lied to the police about knowing the robbers' identity, Hill testified that she was high at the time and was afraid of what would happen if she told the truth because "street rules" mandate keeping quiet about such things.

{¶ 27} The jury had an opportunity to hear all of the trial testimony and consider any inconsistencies. The jury was also able to weigh the credibility of the witnesses. Viewing the evidence presented in a light most favorable to the prosecution, we cannot find that appellant's conviction was based on insufficient evidence. Considering any inconsistencies and weighing the credibility of the witnesses, we likewise cannot find that there was a manifest miscarriage of justice warranting a reversal of appellant's conviction. Our decision is further bolstered by the jury's obvious consideration of the facts presented, as evidenced by its verdict finding appellant guilty of only one count of aggravated robbery and not guilty on the second count and all gun specifications. Appellant's first and second assignments of error are overruled.

Detective Echols's Testimony

{¶ 28} In his third assignment of error, appellant argues that the trial court improperly allowed Detective Echols to testify about the veracity of other witnesses. Appellant specifically relies on two statements made by Detective Echols at trial. The first statement appellant challenges was Detective Echols's testimony that appellant's statement was not consistent with those provided by Hill, Brown, and Belser. Appellant also argues that the trial court committed reversible error when it allowed Detective Echols to testify that he had no evidence that the Browns[7] wanted to frame appellant.

{¶ 29} We note at the outset that appellant's trial counsel made no objection to this testimony, so it must be reviewed using a plain error standard of review. To constitute plain error, the error must be obvious on the record, palpable, and fundamental, so that it should have been apparent to the trial court without objection. See *State v. Tichon* (1995), 102 Ohio App.3d 758, 767, 658 N.E.2d 16. Moreover, plain error does not exist unless the appellant establishes that the outcome of the trial clearly would have been different but for the trial court's allegedly improper actions. *State v. Waddell*, 75 Ohio St.3d 163, 166, 1996-Ohio-100, 661 N.E.2d 1043. Notice of plain error is to be taken with utmost caution, under exceptional

[7] Ayron, Ashley, and Anna Brown.

circumstances, and only to prevent a manifest miscarriage of justice. *State v. Phillips*, 74 Ohio St.3d 72, 83, 1995-Ohio-171, 656 N.E.2d 643.

{¶ 30} In support of his argument, appellant relies on *State v. Boston* (1989), 46 Ohio St.3d 108, 545 N.E.2d 1220 (overruled on other grounds). In *Boston*, a doctor was permitted to testify that a child-victim did not fantasize stories she told to her mother about sexual abuse by the defendant. Id. at 128. The Court held that an expert may not testify to the veracity of a child declarant. Id.

{¶ 31} It is undisputed that a police officer may not testify to a witness's veracity. See *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, ¶122. In this case, however, appellant mischaracterizes Detective Echols's testimony. At trial, the state asked Detective Echols: "When you compared the statements that [appellant] gave you and compare it to the statements from Ayron Brown, Irwin Belser, and Sharlene Hill, is his statement consistent?" Detective Echols testified that appellant's statement was inconsistent with those offered by other witnesses.

{¶ 32} This testimony in no way indicates Detective Echols's opinion with regard to the truthfulness of the statements. He merely made a factual statement that, in comparing appellant's statements to those made by other witnesses, the statements were inconsistent. We find no error with this testimony. See *State v. Smith*, Butler App. No. CA2004-02-039,

2005-Ohio-63, ¶17 ("we do not find error in the psychologist's testimony that the children she evaluated were consistent in what they reported verbally and what they demonstrated to the psychologist").

{¶ 33} This court considered a comparable argument in *In re W.P.*, Cuyahoga App. No. 84114, 2004-Ohio-6627. In that case, this court found no error with a psychologist's testimony that, based on certain factors, she did not question the victim's truthfulness. Id. at ¶13. In making this determination, this court relied on the fact that the victim testified at trial and that the expert merely stated that she did not question the victim's truthfulness. Id. The court specifically held that "[w]ith the victim's testimony, the juvenile court was able to ascertain the credibility of the victim; whereas, in *Boston*, there was no independent indicia of reliability save for the expert witness who vouched for the child victim. Because of this, *Boston* is distinguishable." Id.

{¶ 34} In this case, Detective Echols did not testify as to another witness's veracity. He simply noted that there were inconsistencies between the statements offered by other witnesses and the story offered by appellant. As such, *Boston* is inapplicable.

{¶ 35} The following exchange also took place on the record:

{¶ 36} "Q. Is there any reason from Donta's own words that the Browns want to frame him?

{¶ 37} "A. No.

{¶ 38} "Q. Do we have any evidence of that?

{¶ 39} "A. No.

{¶ 40} "Q. So through the course of your investigation, have you ever suspected that the Browns were looking to frame him?

{¶ 41} "A. No.

{¶ 42} "Q. Through the course of your investigation, did you ever discover any evidence that Ms. Hill was looking to frame Donta?

{¶ 43} "A. No."

{¶ 44} During this testimony, Detective Echols did not provide his opinion with regard to whether any witnesses were telling the truth. He merely made factual statements that he had no evidence to support the theory that appellant was framed. Since this was a factual statement based upon Detective Echols's investigation, we cannot find that the trial court committed plain error in admitting this testimony.

{¶ 45} Even if we were to find that this testimony was improperly admitted, such an error on the part of the trial court would be harmless at best. Any error will be deemed harmless if it did not affect the accused's substantial rights. Otherwise stated, the accused has a constitutional guarantee to a trial free from prejudicial error, not necessarily one free of all error. Before constitutional error can be considered harmless, we must be

able to "declare a belief that it was harmless beyond a reasonable doubt." *Chapman v. California* (1967), 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705. Where there is no reasonable possibility that the unlawful testimony contributed to a conviction, the error is harmless and therefore will not be grounds for reversal. *State v. Lytle* (1976), 48 Ohio St.2d 391, 358 N.E.2d 623, paragraph 3 of the syllabus, vacated on other grounds in (1978), 438 U.S. 910, 98 S.Ct. 3135, 57 L.Ed.2d 1154.

{¶ 46} Both Hill and Belser testified that appellant was one of the two individuals involved in the robbery on May 7, 2008. Hill testified that appellant was looking for someone to rob that day and knew that Belser had money. Belser testified he was absolutely certain that appellant was one of the two men who robbed him and that the other man was holding a gun during the event. Hill testified that she saw appellant taking part in the robbery when she looked out the bathroom door and that appellant shared part of the robbery money with Brown. Based on this testimony, the jury could find appellant guilty regardless of any testimony elicited from Detective Echols, and we cannot find that Detective Echols's testimony contributed to appellant's conviction. Appellant's third assignment of error is overruled.

Ineffective Assistance of Counsel

{¶ 47} In his fourth and final assignment of error, appellant claims he was denied the effective assistance of counsel as guaranteed by the Ohio and

United States Constitutions. In order to substantiate a claim of ineffective assistance of counsel, the appellant is required to demonstrate that: 1) the performance of defense counsel was seriously flawed and deficient; and 2) the result of appellant's trial or legal proceeding would have been different had defense counsel provided proper representation. *Strickland v. Washington* (1984), 466 U.S. 668, 102 S.Ct. 2211, 72 L.Ed.2d 652; *State v. Brooks* (1986), 25 Ohio St.3d 144, 495 N.E.2d 407.

{¶ 48} In reviewing a claim of ineffective assistance of counsel, it *must* be presumed that a properly licensed attorney executes his legal duty in an ethical and competent manner. *State v. Smith* (1985), 17 Ohio St.3d 98, 477 N.E.2d 1128; *Vaughn v. Maxwell* (1965), 2 Ohio St.2d 299, 209 N.E.2d 164.

{¶ 49} The Ohio Supreme Court held in *State v. Bradley* (1989), 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373, that, "'[w]hen considering an allegation of ineffective assistance of counsel, a two-step process is usually employed. First, there must be a determination as to whether there has been a substantial violation of any of defense counsel's essential duties to his client. Next, and analytically separate from the question of whether the defendant's Sixth Amendment rights were violated, there must be a determination as to whether the defense was prejudiced by counsel's ineffectiveness.' *State v. Lytle* (1976), 48 Ohio St.2d 391, 396-397, 2 O.O.3d 495, 498, 358 N.E.2d 623, 627, vacated in part on other grounds (1978), 438 U.S. 910, 98 S.Ct. 3135, 57

L.Ed.2d 1154. This standard is essentially the same as the one enunciated by the United States Supreme Court in *Strickland v. Washington* (1984), 466 U.S. 668 * * *."

{¶ 50} "Even assuming that counsel's performance was ineffective, this is not sufficient to warrant reversal of a conviction. 'An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. Cf. *United States v. Morrison*, 449 U.S. 361, 364-365 [101 S.Ct. 665, 667-68, 66 L.Ed.2d 564] (1981).' *Strickland*, supra, 466 U.S. at 691, 104 S.Ct. at 2066. To warrant reversal, '[t]he defendant must show that 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.' *Strickland*, supra, at 694, 104 S.Ct. at 2068. In adopting this standard, it is important to note that the court specifically rejected lesser standards for demonstrating prejudice." *Bradley* at 142.

{¶ 51} "Accordingly, to show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." Id. at 143.

{¶ 52} Appellant argues that he was denied the effective assistance of counsel because his trial counsel failed to object to the testimony appellant alleged was improper in his third assignment of error. This argument lacks merit. As discussed above, Detective Echols did not give his opinion with regard to whether a witness was truthful — he provided only factual statements based on his investigation.

{¶ 53} It is entirely reasonable that appellant's trial attorney made a conscious decision not to object to Detective Echols's testimony as a part of his trial strategy. An attorney's trial tactics, even if questionable, do not constitute ineffective assistance of counsel. *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶116. In addition, "[t]he failure to object to error, alone, is not enough to sustain a claim of ineffective assistance of counsel. To prevail on such a claim, a defendant must first show that there was a substantial violation of any of defense counsel's essential duties to his client and, second, that he was materially prejudiced by counsel's ineffectiveness." *State v. Holloway* (1988), 38 Ohio St.3d 239, 244, 527 N.E.2d 831.

{¶ 54} Appellant is unable to show that his trial attorney violated any of his essential duties to appellant in failing to object to the allegedly improper testimony. Regardless, in order to substantiate a claim of ineffective assistance of counsel, appellant must prove that he would not have been convicted but for his trial counsel's alleged errors. Appellant has failed to meet this burden. As previously discussed, any error in allowing Detective Echols to make the alleged

improper statements was harmless. Likewise, there was ample evidence — namely, the testimony of Hill and Belser identifying appellant as one of the robbers — to find appellant guilty of aggravated robbery without considering the testimony of Detective Echols. Since appellant has failed to show that he would not have been convicted had his attorney objected to Detective Echols's testimony, appellant's fourth assignment of error is overruled.

Conclusion

{¶ 55} After hearing the testimony of Hill, Belser, Detective Barrow, and Detective Echols, the jury did not lose its way in finding appellant guilty of aggravated robbery. In addition, there was no manifest miscarriage of justice in this case to warrant a reversal of appellant's conviction.

{¶ 56} Detective Echols did not provide his opinion with regard to the veracity of another witness. Regardless, even if he did provide questionable testimony, such error was harmless, and we do not find that it would rise to the level of plain error. Because we find no problem with the elicited testimony, we cannot find that trial counsel's failure to object to this testimony constituted ineffective assistance of counsel. Likewise, any decision not to object falls within the ambit of reasonable trial strategy and will not be challenged by this court. Based on this analysis, appellant's assignments of error are overruled.

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 conviction 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.

FRANK D. CELEBREZZE, JR., JUDGE

ANN DYKE, P.J., and
LARRY A. JONES, J., CONCUR

APPENDIX A

I. The state failed to present sufficient evidence that Appellant committed this crime.

II. Appellant's conviction is against the manifest weight of the evidence.

III. Appellant was denied a fair trial by the police officer's improper comments while testifying.

IV. Appellant was denied effective assistance of counsel as guaranteed by Section 10, Article I, of the Ohio Constitution and the Sixth and Fourteenth Amendments to the United States Constitution when defense counsel failed to object to the assistant prosecutor's questions to Detective Echols regarding his opinion of the truthfulness of the state's witness compared with appellant.