[Cite as *State v. Smith*, 2016-Ohio-5746.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	Case No. 16-CA-10
RAMON R. SMITH	:	
	:	
Defendant-Appellant	:	OPINION

CHARACTER OF PROCEEDING:	Criminal appeal from the Licking County Court of Common Pleas, Case No. 15CR314
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 29, 2016

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
CHRISTOPHER REAMER Licking County Prosecutor 20 South Second Street Newark, OH 43055	ZACHARY MOYER 14 South High Street New Albany, OH 43054

Gwin, J.,

{¶1} Appellant Ramon R. Smith ["Smith"] appeals his convictions and sentences after a jury trial in the Licking County Court of Common Pleas on two counts of Aggravated Robbery, one count of Felonious Assault and one count of Disorderly Conduct.

Facts and Procedural History

{¶2} On May 10, 2015, eighteen-year-old Austin Parmer's parents were out of town. Parmer decided to host a party for his high school baseball team to celebrate the last regular season game. Parmer anticipated that around fifteen individuals would attend and that some of those individuals would bring guests. Stout VanWey and Jacob Kennedy attended the party as friends of Parmer. Word of the party spread on social media and approximately 200 individuals arrived at the Parmer residence during the course of the evening.

{¶3} Prophet Johnson, Markques Wells, Ricc-Quwan Chatmon, Billy Wilson and Smith had arrived at the party together. Johnson is Smith's younger brother. During the course of the evening, Jacob Kennedy, Stout VanWey, Prophet Johnson, Markques Wells, and Smith posed for a picture taken by Emily Ramsey on her cell phone[1]. Smith was wearing a white Mickey Mouse t-shirt, and black "bucket hat" with a Chicago sports team symbol. Additionally, Smith, whose nickname is "Star," has a star tattoo underneath his right eye. Johnson, Wells, Chatmon, Wilson and Smith were not invited to the party by Parmer. They did not attend the same high school as Parmer, VanWey and Kennedy.

[1] State's Exhibit 7.

{¶4} At some point, a large fight broke out inside the garage of the residence that led to Smith's indictment on two counts of aggravated robbery, one count of felonious assault and one count of aggravated riot.

1. Count 1 – aggravated robbery of Austin Parmer.

{¶5} Parmer testified that an African-American male, wearing a white Mickey Mouse t-shirt and having a star tattoo underneath his eye punched him. A short time later, the same individual approached Parmer, brandished a knife and asked for Parmer's wallet. The assailant held the knife to Parmer's chest as Parmer led him to the bedroom where Parmer kept his wallet. Parmer gave the individual $240.00. The individual then left the scene.

{¶6} Parmer was able to identify Smith in a video sent to Ramsey's cell phone by James Neal that was taken during the melee.[2] The video showed the individual with a white Mickey Mouse t-shirt screaming at Parmer as Parmer was lying on the floor of the garage. Parmer also identified Smith from the photograph taken by Emily Ramsey as the person who had demanded money from him. Parmer identified Smith in court as the person who brandished a knife and demanded money from him.

{¶7} Parmer admitted on cross-examination that he did not tell the police his assailant wore a Mickey Mouse t-shirt or that he had a star tattoo. Parmer testified he recalled those details after he had time to calm down.

{¶8} Sixteen-year-old Troyon Webster testified that he knew Parmer, VanWey and Kennedy through various sport related activities. Parmer invited Webster to the party. Webster arrived at the party with his friend D.J. Thacker. Webster testified that he stood

[2] State's Exhibit 21.

on the seat of a riding lawn mower inside the garage as the fight broke out. Webster testified that three individuals had knifes. Webster testified that he observed "Billy" holding a knife with blood on it. Webster also observed Smith brandish a knife and demand money from Parmer. Webster testified that Smith was wearing a Mickey Mouse t-shirt and a "bucket" hat.

2. Count 2 – aggravated robbery of Stout VanWey.

{¶9} Stout VanWey testified that he arrived at the party with Max Krane, Drew Braid, and Nick Wyscarver. During the course of the evening, Billy Wilson, whom VanWey knew, introduced Prophet Johnson, Ricc-Quwan Chatmon and Smith to the group. VanWey identified Johnson, Smith and Jacob Kennedy as being photographed together.

{¶10} After the fight broke out, VanWey was punched in the face. He got up and attempted to find his brother to leave the party when his car keys were knocked from his hand. As he attempted to find them, VanWey observed Smith hit Jacob Kennedy in the face with a 2 x 4 board, knocking Kennedy unconscious.

{¶11} Upon retrieving his car keys, VanWey proceeded to walk toward where he had parked his car. VanWey testified he observed Johnson kicking Wyscarver in the head. After punching Johnson, VanWey testified that Smith, who was wearing a white Mickey Mouse t-shirt, a "bucket" hat and having a star tattoo under his right eye held a knife to his chest demanding money. VanWey stated he had no money and Smith left the area.

{¶12} Drew Braid testified that as he was walking down the driveway with VanWey they observed Wyscarver being assaulted and attempted to assist him. As Braid

attempted to get into the car, Chatmon confronted him with a knife. Braid testified that Smith, who was wearing a white Mickey Mouse t-shirt and had a tattoo on the right side of his face, then struck him in the face.

{¶13} Nick Wyscarver testified that Chatmon held a knife to his face and demanded that Wyscarver give him everything he had. Further, Wyscarver testified he was kneed in the face multiple times by Prophet Johnson.

3. Count 3 – felonious assault of Jacob Kennedy.

{¶14} Kennedy testified that he did not know Smith; however, he was photographed with him earlier in the evening. Kennedy testified that he saw Smith, who was wearing a white Mickey Mouse t-shirt throwing punches. Kennedy testified that at some point, he was struck in the mouth. He was unable to identify whom or what hit him. As a result of the blow, Kennedy lost a tooth, three of his upper teeth were pushed back and his bottom lip required stiches. Kennedy testified he is still undergoing treatment and may require additional surgery.

{¶15} VanWey observed Smith hit Jacob Kennedy in the face with a 2 x 4 board, knocking Kennedy unconscious. Nick Wyscarver testified that he witnessed Smith hit Kennedy in the face with a 2 x 4 board.

4. Count 4 – aggravated riot.

{¶16} The jury found Smith guilty of the lesser-included offense of disorderly conduct, a minor misdemeanor.

5. The investigation.

{¶17} Shortly after midnight on May 10, 2015, Deputy Theresa Holmes was called on a possible stabbing on Martinsburg Road. Holmes arrived to a chaotic scene of

multiple cars leaving; kids, beer cans and broken furniture. Holmes and a second deputy entered the home looking for possible victims or suspects. Holmes located Parmer and other juveniles hiding inside a lower level bathroom. Parmer was very shaken up. Holmes also found two other males with head injuries.

{¶18} Deputy Holmes testified that she found a knife at the scene and placed it into an evidence tube. Deputy Holmes testified that State's Exhibit 22 was the knife she collected from the scene on the night of May 10, 2015.

{¶19} Given the nature of the call and the large numbers of people reported on scene, other law enforcement also responded. Sergeant Jeff Hartford responded in his cruiser from downtown Newark and was running at "priority" rate of speed. Deputy Elliot was approximately 100 yards in front of Hartford's cruiser and heading to the scene. As Hartford was heading northbound on Martinsburg Road he observed a vehicle crest a hill traveling southbound in the northbound lane at a high rate of speed. The southbound vehicle nearly struck Elliot's vehicle head-on. Hartford tried to position his cruiser to stop the southbound vehicle but it traveled onto the shoulder and continued southbound. Hartford turned on the vehicle but could not keep pace despite traveling 90 miles per hour. Hartford continued to try to locate the vehicle. He found it wrecked in a field having left the roadway while trying to negotiate an S-curve. Smith, Billy Wilson, and Marques Wells were injured and remained with the vehicle. Johnson and Chatmon fled from the vehicle. Due to his injuries, Smith was transported to Licking Memorial Hospital by ambulance.

{¶20} Sergeant Harford testified that he returned to the scene of the party later because someone at the residence had found a knife in the lawn of the home. Sergeant

Hartford testified that State's Exhibit 23 was the knife that he collected from the scene on May 17, 2015.

{¶21} Around 1:00 a.m., Detective Mark Brown from the Licking County Sheriff's Office was called in to conduct further investigation. Brown traveled to Licking Memorial Hospital to begin interviewing individuals believed to be associated with the incident.

{¶22} Brown had a description of the clothing Smith had been wearing earlier. Brown did not find a Mickey Mouse shirt, a knife, or any money with the items he collected from Smith.

{¶23} Smith acknowledged having arrived with a group of four other males. Smith was questioned regarding allegations that individuals at the party had been robbed, stabbed, and struck by a 2 x 4 board. Smith denied any knowledge. Smith told Detective Brown that he had been struck with the 2 x 4.

{¶24} On May 14, 2015, Detective Brown again spoke with Smith. During the course of the second interview, Smith cried and stated that telling the truth would not keep him from going to prison.

{¶25} Detective Brown testified that State's Exhibit 24 was a knife that he recovered from the owner of the white Honda that Smith was injured in on May 10, 2015. Detective Brown also testified that he sent the three knives to for DNA testing. No DNA was recovered from any of the knives.

Assignments of Error

{¶26} Smith raises two assignments of error,

{¶27} "I. TRIAL COURT DID ERR BY ALLOWING THE VIDEO TO BE ENTERED AS EVIDENCE.

{¶28} "II. THE TRIAL COURT DID ERR WHEN IT ENTERED JUDGMENT AGAINST THE DEFENDANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION AND WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶29} In his first assignment of error, Smith argues that the video recovered from Emily Ramsey's cell phone that depicted parts of the fight inside Parmer's garage on the night in question was improperly admitted into evidence. Specifically, Smith contends the State failed to properly authenticate the video evidence because the video is not the original recording.

{¶30} Emily Ramsey testified that she did not record the video evidence recovered from her cell phone and marked as State's Exhibit 21. Rather, James Neal sent Ramsey the video. It is unknown whether Neal is the person who recorded the cell phone video as the events were occurring on May 10, 2015.

{¶31} Generally, the admission or exclusion of relevant evidence rests within the sound discretion of the trial court, and its decision to admit or exclude that evidence will not be disturbed absent an abuse of that discretion. *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343(1987), paragraph two of the syllabus

{¶32} Evid.R. 901(A) states:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

{¶33} Evid.R. R 1002 Requirement of original states,

> To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio.

{¶34} The Rules of Evidence go on to provide that "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Evid.R. 1003.

{¶35} Photographic evidence, including videotapes, can be admitted under a "pictorial testimony" theory or a "silent witness" theory. *Midland Steel Prods. Co. v. U.A.W. Local* 486, 61 Ohio St.3d 121, 129–130 (1991). Under the pictorial testimony theory, evidence is admissible "when a sponsoring witness can testify that it is a fair and accurate representation of the subject matter, based on that witness' personal observation." Id. at 129. The person who took the photograph or video need not testify as long as the witness who does testify verifies that it is a "fair and accurate depiction." *State v. Freeze*, 12th Dist. Butler No. CA2011–11–209, 2012–Ohio–5840, ¶ 66.

{¶36} In the case at bar, the cell phone video did not depict either the aggravated robberies or the felonious assault; rather, the video was used to show the chaotic scene and to identify Smith and show what clothing he was wearing at the time. Parmer testified that the video was a fair and accurate representation of events that occurred in his garage on May 10, 2015. (1T. at 138-139; 144). In addition the photograph taken by Ramsey at the party and marked State's Exhibit 7 corroborated that Smith was wearing a white Mickey Mouse t-shirt and has a star tattoo underneath his right eye.

{¶37} Under the facts of this case, the state met its Evid.R. 901 burden. The video was admissible evidence with the weight to be afforded it being a matter for the jury.

{¶38} Smith's first assignment of error is overruled.

II.

{¶39} In this assignment of error, Smith contends that his convictions are not supported by sufficient evidence and are also against the manifest weight of the evidence. Specifically, Smith argues that the state failed to produce any physical evidence linking Smith to any of the three knives that were recovered, failed to produce the money allegedly taken in the aggravated robberies and failed to establish that any of the knives recovered were used in the commission of those crimes. *See*, Appellant's Brief at 10.

{¶40} Our review of the constitutional sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), which requires a court of appeals to determine whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id.; see also *McDaniel v. Brown*, 558 U.S. 120, 130 S.Ct. 665, 673, 175 L.Ed.2d 582(2010) (reaffirming this standard); *State v. Fry*, 125 Ohio St.3d 163, 926 N.E.2d 1239, 2010–Ohio–1017, ¶146; *State v. Clay*, 187 Ohio App.3d 633, 933 N.E.2d 296, 2010–Ohio–2720, ¶68.

{¶41} Weight of the evidence addresses the evidence's effect of inducing belief. *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing

the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue, which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief." Id. at 387, 678 N.E.2d 541, *quoting* Black's Law Dictionary (6th Ed. 1990) at 1594.

{¶42} When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "'thirteenth juror'" and disagrees with the fact finder's resolution of the conflicting testimony. Id. at 387, 678 N.E.2d 541, *quoting Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). However, an appellate court may not merely substitute its view for that of the jury, but must find that "'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.'" *State v. Thompkins, supra*, 78 Ohio St.3d at 387, *quoting State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720–721 (1st Dist. 1983). Accordingly, reversal on manifest weight grounds is reserved for "'the exceptional case in which the evidence weighs heavily against the conviction.'" Id.

> "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts.
>
> * * *
>
> "If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with

> the verdict and judgment, most favorable to sustaining the verdict and judgment."

Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting* 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶43} Smith was convicted of two counts of aggravated robbery in violation of R.C. 2911.01(A)(1):

> (A) No 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:
>
> (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[.]

{¶44} In the case at bar, Parmer testified that Smith held a knife to his chest and demanded money from Parmer. Troyon Webster observed Smith brandish a knife and demand money from Parmer.

{¶45} VanWey testified that Smith, who was wearing a white Mickey Mouse t-shirt, a "bucket" hat and having a star tattoo under his right eye held a knife to his chest demanding money.

{¶46} Viewing the evidence in the case at bar in a light most favorable to the prosecution, we conclude that a reasonable person could have found beyond a reasonable doubt that Smith committed an aggravated robbery against both Parmer and VanWey.

{¶47} We hold, therefore, that the state met its burden of production regarding each element of the crimes of aggravated robbery and, accordingly, there was sufficient evidence to support Smith's convictions.

{¶48} Smith was also convicted of felonious assault. R.C. 2903.11(A) sets forth the pertinent elements of felonious assault and states as follows:

> (A) No person shall do either of the following:
>
> (1) Cause serious physical harm to another or another's unborn;
>
> (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

{¶49} Serious physical harm to persons is defined in R.C. 2901.01 and means any of the following:

> (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
>
> (b) Any physical harm that carries a substantial risk of death;
>
> (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
>
> (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
>
> (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

> R.C. 2923.11(A) defines a deadly weapon as, "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon."

{¶50} In the case at bar, VanWey observed Smith hit Jacob Kennedy in the face with a 2 x 4 board, knocking Kennedy unconscious. Nick Wyscarver testified that he witnessed Smith hit Kennedy in the face with a 2 x 4 board. Kennedy testified that he lost a tooth, had several teeth pushed back, required stiches and may require surgery in the future. A 2 x 4 board has been found to be a deadly weapon. *See*, *State v. Holmes,* 3rd Dist. Hancock No. 5-15-06, 2015-Ohio-5050, 53 N.E.2d 833, ¶43, n. 2 (citing cases).

{¶51} Viewing the evidence in the case at bar in a light most favorable to the prosecution, we conclude that a reasonable person could have found beyond a reasonable doubt that Smith committed the crime of felonious assault.

{¶52} We hold, therefore, that the state met its burden of production regarding each element of the crime of felonious assault and, accordingly, there was sufficient evidence to support Smith's conviction.

{¶53} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence, upon which the fact finder could base his or her judgment. *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA–5758, 1982 WL 2911(Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction*, 54 Ohio St.2d 279, 376 N.E.2d 578(1978). The Ohio Supreme Court has emphasized: "'[I]n determining whether

the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *.'" *Eastley v. Volkman,* 132 Ohio St.3d 328, 334, 972 N.E. 2d 517, 2012-Ohio-2179, *quoting Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting* 5 Ohio Jurisprudence 3d, Appellate Review, Section 603, at 191–192 (1978). Furthermore, it is well established that the trial court is in the best position to determine the credibility of witnesses. *See, e.g., In re Brown*, 9th Dist. No. 21004, 2002–Ohio–3405, ¶ 9, *citing State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212(1967).

{¶54} Ultimately, "the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact 'unless it is patently apparent that the fact finder lost its way.'" *State v. Pallai*, 7th Dist. Mahoning No. 07 MA 198, 2008-Ohio-6635, ¶31, *quoting State v. Woullard*, 158 Ohio App.3d 31, 2004-Ohio-3395, 813 N.E.2d 964 (2nd Dist. 2004), ¶ 81. In other words, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. Mahoning No. 99 CA 149, 2002-Ohio-1152, at ¶ 13, *citing State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125(7th Dist. 1999).

{¶55} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212(1967), paragraph one of the syllabus; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶118. *Accord, Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 86

L.Ed. 680 (1942); *Marshall v. Lonberger*, 459 U.S. 422, 434, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983).

{¶56} The jury as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the jury may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Craig*, 10th Dist. Franklin No. 99AP-739, 1999 WL 29752 (Mar 23, 2000) *citing State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 WL 284714 (May 28, 1996). Indeed, the jury need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver,* 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶21, *citing State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964); *State v. Burke,* 10th Dist. Franklin No. 02AP-1238, 2003-Ohio-2889, *citing State v. Caldwell*, 79 Ohio App.3d 667, 607 N.E.2d 1096 (4th Dist. 1992). Although the evidence may have been circumstantial, we note that circumstantial evidence has the same probative value as direct evidence. *State v. Jenks,* 61 Ohio St.3d 259, 272, 574 N.E.2d 492 (1991), paragraph one of the syllabus, *superseded by State constitutional amendment on other grounds as stated in State v. Smith, 80 Ohio St.3d 89, 102 at n.4, 684 N.E.2d 668 (1997).*

{¶57} In the case at bar, the jury heard the witnesses, viewed the video and photographic evidence and heard Smith's arguments concerning the lack of physical evidence tying him to the commission of any of the crimes.

{¶58} We find that this is not an "'exceptional case in which the evidence weighs heavily against the conviction.'" *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678

N.E.2d 541 (1997), *quoting Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. The jury neither lost his way nor created a miscarriage of justice in convicting Smith of the charges.

{¶59} Based upon the foregoing and the entire record in this matter, we find Smith's convictions are not against the sufficiency or the manifest weight of the evidence. To the contrary, the jury appears to have fairly and impartially decided the matters before them. The jury as a trier of fact can reach different conclusions concerning the credibility of the testimony of the state's witnesses and Smith and his arguments. This court will not disturb the jury's finding so long as competent evidence was present to support it. *State v. Walker*, 55 Ohio St.2d 208, 378 N.E.2d 1049 (1978). The jury heard the witnesses, evaluated the evidence, and was convinced of Smith's guilt.

{¶60} Finally, upon careful consideration of the record in its entirety, we find that there is substantial evidence presented which if believed, proves all the elements of the crimes of two counts of aggravated robbery and one count of felonious assault beyond a reasonable doubt.[3]

{¶61} Smith's second assignment of error is overruled.

[3] Smith did not challenge his conviction for disorderly conduct in his second assignment of error.

{¶62} The judgment of the Licking County Court of Common Pleas is affirmed.

By Gwin, J.,

Farmer, P.J., and

Baldwin, J., concur