[Cite as *State v. Johnson*, 2015-Ohio-1689.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO	C.A. No. 13CA010496
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JOHN P. JOHNSON	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 11CR083800

DECISION AND JOURNAL ENTRY

Dated: May 4, 2015

SCHAFER, Judge.

{¶1} Defendant-Appellant, John Johnson, appeals the judgment of the Lorain County Court of Common Pleas convicting him of aggravated robbery and sentencing him to a 10-year prison term. On appeal, Johnson argues that his conviction was neither supported by sufficient evidence nor consistent with the manifest weight of the evidence. For the reasons that follow, we affirm the trial court's judgment.

I.

{¶2} Johnson was indicted with one count of aggravated robbery in violation of R.C. 2911.01(A)(1) and one count of robbery in violation of R.C. 2911.01(A)(2). The indictment arose from an incident at a Dollar General Store in Elyria, Ohio. Around 4:00 p.m. that day, a man, brandishing a firearm and wearing nylon over his head, forced an employee, Nikita Bonner, to hand over the money secured in the store's safe and cash register. After taking the money, the man fled the scene in a black four-door car with license plate FCU 3505. Lorain County Sheriff

Deputy Charles Crausaz reported to the scene shortly after the robbery occurred and interviewed Ms. Bonner. At the time, Ms. Bonner was emotional and quite upset and although she was able to provide a basic description of the suspect, she was unable to relate much detail. However, Ms. Bonner did tell Deputy Crausaz that the perpetrator had distinctive facial hair.

{¶3} Investigating police officers discovered that the car matching the above description was a rental belonging to Enterprise Rent-A-Car. After further follow-up with Enterprise, it was learned that the car was rented out to Kathleen Gray approximately one week before the robbery. Police then contacted Ms. Gray the day after the robbery. At the time, Ms. Gray was romantically involved with Johnson's brother and she explained that she rented the car at Johnson's request and turned it over to him several days previously. This information was consistent with Elyria Police Officer Todd Straub's observation of Johnson driving the black car around the Wilkes Villa housing development for several days before the robbery. Ms. Gray indicated that Johnson agreed to return the car to her the day before the Dollar General robbery. However, she told police that the car was not returned to her as agreed upon and that she was unaware of its whereabouts on the day of the robbery.

{¶4} After the interview with Ms. Gray, a warrant was issued for Johnson's arrest. He was eventually arrested in Elyria and the black getaway car was recovered in Cleveland, which is where some of Johnson's family lives. Subsequently, police interviewed Ms. Bonner again about the robbery and asked her to view a photo array lineup that contained six pictures, one of which was a picture of Johnson. Within seconds of viewing the lineup, Ms. Bonner identified Johnson's picture as the one showing the man who committed the Dollar General robbery. She also indicated that she was 95 percent certain in her identification.

{¶5} Johnson waived his right to a jury trial and this matter proceeded to a bench trial. Ms. Bonner testified that although the perpetrator's face had nylon over it, she was still able to make out his facial features, including his eyes and distinctive facial hair. Based on her observations during the incident, she identified Johnson as the person who robbed the Dollar General store. Ms. Bonner and other store employees also testified to the black car fleeing the scene and the investigating officers further testified to the connection between the black car, Ms. Gray, and Johnson.

{¶6} In his defense, Johnson offered his own testimony and the testimony of his sister, Ashley Brown. Ms. Brown said that Johnson arrived at her residence on Belle Avenue around 9:00 a.m. on the day of the robbery. She said that Johnson was there to babysit her children and that he did not have a car when he arrived. Johnson testified and denied committing the robbery. He asserted that on the morning of the robbery, he dropped the rental car off at Ms. Gray's residence in Wilkes Villa before walking to Ms. Brown's residence. And, rather than returning the keys to his brother who resided with Ms. Gray, Johnson placed the keys in the front visor before leaving the car unattended and unlocked. On cross-examination, Johnson admitted that he knew of no other person who could confirm his version of events and that he did not turn himself into police even though he knew that there was an outstanding arrest warrant for him.

{¶7} After receiving the evidence, the trial court found Johnson guilty of both counts alleged in the indictment. However, it merged the robbery count with the aggravated robbery count and sentenced Johnson to a 10-year prison term.

{¶8} Johnson filed this timely appeal, presenting two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> APPELLANT'S RIGHTS UNDER ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION AND THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WERE VIOLATED AND HE WAS IMPROPERLY DENIED A CRIM.R. 29 ACQUITTAL WHEN THE CONVICTION WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

ASSIGNMENT OF ERROR II

> THE VERDICT FINDING APPELLANT GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE UPON WHICH A TRIER OF FACT COULD REASONABLY CONCLUDE THAT THE ELEMENTS OF THE OFFENSE HAD BEEN PROVEN BEYOND A REASONABLE DOUBT.

{¶9} Because both assignments of error implicate similar issues, we elect to address them together. In his first assignment of error, Johnson contends that his conviction is not supported by sufficient evidence. Specifically, he argues that the State failed to offer sufficient evidence to prove that he was indeed the perpetrator of the aggravated robbery. Meanwhile, in Johnson's second assignment of error, he contends that his conviction is against the manifest weight of the evidence. We disagree on both points.

{¶10} A sufficiency challenge of a criminal conviction presents a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In carrying out this review, our "function * * * is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. After such an examination and taking the evidence in the light most favorable to the prosecution, we must decide whether "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.* Although we conduct de novo review when

considering a sufficiency of the evidence challenge, "we neither resolve evidence conflicts nor assess the credibility of witnesses, as both are functions reserved for the trier of fact." *State v. Jones*, 1st Dist. Hamilton Nos. C-120570, 120571, 2013-Ohio-4775, ¶ 33.

{¶11} A sufficiency challenge is legally distinct from a manifest weight challenge. *Thompkins* at 387. Accordingly, when applying the manifest weight standard, we are required to consider the whole 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." *State v. Otten*, 33 Ohio App.3d 339, 340 (9th Dist.1986). Courts are cautioned to only reverse a conviction on manifest weight grounds "in exceptional cases," *State v. Carson*, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at 340, where the evidence "weighs heavily against the conviction," *Thompkins* at 387.

{¶12} This matter implicates Johnson's conviction for aggravated robbery under R.C. 2911.01(A)(1). This provision relevantly provides that "[n]o person, in * * * committing a theft offense * * * shall * * * [h]ave 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[.]" Johnson does not challenge the sufficiency of the evidence for any single element of the offense defined in R.C. 2911.01(A)(1). Rather, he merely argues that there was insufficient evidence to prove the identity of the perpetrator since the State purportedly offered only Ms. Bonner's eyewitness identification to prove the aggravated robbery.

{¶13} Johnson is correct in pointing out that identity of the perpetrator is an essential element that must be proved beyond a reasonable doubt. *See State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, ¶ 44-53 (analyzing whether there was sufficient evidence to show that the

defendant was the person who committed the charged crimes). But, he fails to demonstrate how the State failed to offer sufficient evidence showing that he was the perpetrator of the aggravated robbery. At trial, Ms. Bonner directly identified Johnson as the person who robbed the Dollar General on the day in question, which alone is sufficient evidence to support Johnson's conviction. *See State v. Mock*, 187 Ohio App.3d 599, 2010-Ohio-2747, ¶ 41 (7th Dist.) ("The testimony of a single witness, if believed by the trier of fact, is sufficient to support a conviction."), citing *State v. Cunningham*, 105 Ohio St.3d 197, 2004-Ohio-7007, ¶ 51-57; *accord United States v. Henderson*, 626 F.3d 326, 341 (6th Cir.2010) (stating that an "implicit attack on witness credibility is simply a challenge to 'the quality of the government's evidence and not the sufficiency of the evidence' "), quoting *United States v. Graham*, 622 F.3d 445, 449 (6th Cir.2010). Moreover, contrary to Johnson's argument, the State offered more evidence than just Ms. Bonner's identification to prove that Johnson committed the aggravated robbery. In addition to her direct testimony, circumstantial evidence connected Johnson to the crime scene. *See State v. Tate*, 140 Ohio St.3d 442, 2014-Ohio-3667, ¶ 15 ("Like any fact, the state can prove the identity of the accused by circumstantial or direct evidence."). The testimony offered at trial established that a black car fled the crime scene and that that black car was originally rented by Ms. Gray and used by Johnson before the robbery. In light of this proof, we find that the State offered sufficient evidence to prove beyond a reasonable doubt that Johnson was the person who committed the aggravated robbery.

{¶14} Having failed on his sufficiency argument, Johnson then turns to a manifest weight challenge on the same grounds. But Ms. Bonner's testimony and the circumstantial evidence tying Johnson to the crime scene similarly show that Johnson's conviction is not against the manifest weight of the evidence. Ms. Bonner testified that she was able to see the

perpetrator's eyes and distinctive facial hair during the robbery, that she was 95 percent certain in her identification during the photo array and 100 percent at trial, and that she was able to identify Johnson's picture in the photo array within seconds. Based on the nature of her testimony and the corroborating evidence connecting the black car and Johnson to the crime scene, the trial court was entitled to believe Ms. Bonner's identification and we see no reason in the record to second-guess its determination of credibility. *See State v. Townsend*, 9th Dist. Summit No. 27316, 2015-Ohio-1124, ¶ 9 (finding that conviction was not against manifest weight of the evidence where witness testified he was 99 percent certain in his identification of the defendant).

{¶15} Further, the mere fact that Johnson offered his own self-serving contradictory testimony does not support a reversal on manifest weight grounds since the trier of fact " 'is free to believe all, part, or none of the testimony of each witness.' " *State v. Cross*, 9th Dist. Summit No. 25487, 2011-Ohio-3250, ¶ 35, quoting *Prince v. Jordan*, 9th Dist. Lorain No. 04CA008423, 2004-Ohio-7184, ¶ 35; *see also State v. Feliciano*, 9th Dist. Lorain No. 09CA009595, 2010-Ohio-2809, ¶ 50 (" 'The jury did not lose its way simply because it chose to believe the State's version of events, which it had a right to do.' "), quoting *State v. Morten*, 2d Dist. Montgomery No. 23103, 2010-Ohio-117, ¶ 28. Indeed, after reviewing the record, we find that it was reasonable for the trial court to disbelieve Johnson's testimony. It strains credulity to claim that Johnson would leave the rental car unattended and unlocked in the Wilkes Villa development with the keys placed in the front visor, especially since Johnson offered no independent verification of this fact. *See State v. Polverini*, 11th Dist. Jefferson No. 11 JE 26, 2013-Ohio-865, ¶ 20 (finding that conviction was not against the manifest weight of the evidence and that the jury could disbelieve the defendant's testimony where it was not confirmed by other evidence

in the record). Moreover, the trial court was entitled to place weight on Johnson's admitted avoidance of the police even though he knew there was an outstanding arrest warrant for him. *See State v. Eaton*, 19 Ohio St.2d 145 (1969), paragraph six of the syllabus ("Flight from justice, and its analogous conduct, may be indicative of a consciousness of guilt."), *overruled in part on other grounds*, 408 U.S. 935 (1972) (vacating death sentence aspect of the trial court judgment, but not the conviction).

{¶16} Consequently, our review of the record reveals that Johnson's aggravated robbery conviction is both supported by sufficient evidence and not against the manifest weight of the evidence. Accordingly, we overrule both of Johnson's assignments of error.

III.

{¶17} Since both of the assignments of error are overruled, we affirm the judgment of the Lorain County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JULIE SCHAFER
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

KREIG J. BRUSNAHAN, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.