

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-3 (C.P.C. No. 10CR-12-7009)
Timothy O. Shedwick,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-20 (C.P.C. No. 10CR-12-7010)
Cory R. Shedwick,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 13, 2012

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

Kirk A. McVay, for appellant Timothy O. Shedwick.

Ross & Midian, LLC, and *W. Martin Midian*, for appellant Cory R. Shedwick.

APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} In these coordinated appeals, defendants-appellants Timothy O. and Cory R. Shedwick appeal from their respective judgments of conviction and sentence

entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm those judgments.

I. Factual and Procedural Background

{¶ 2} On December 2, 2010, a Franklin County Grand Jury indicted Timothy Shedwick with two counts of aggravated burglary in violation of R.C. 2911.11, four counts of aggravated robbery in violation of R.C. 2911.01, eight counts of robbery in violation of R.C. 2911.01, and four counts of kidnapping in violation of R.C. 2905.05. The counts all contained a firearm specification pursuant to R.C. 2941.145, a repeat violent offender specification pursuant to R.C. 2941.149, or both.¹ The indictment also charged Cory Shedwick, Timothy's brother, with the same offenses plus two additional counts of having a weapon while under disability in violation of R.C. 2923.13. The charges arose out of two home invasions that occurred in Columbus, Ohio, in December of 2009. Both Shedwicks entered not guilty pleas to the charges and proceeded to a jury trial.

{¶ 3} By the time of the second trial,² however, Timothy Shedwick only faced two charges: one count of aggravated burglary and one count of aggravated robbery. Those charges arose from one home invasion that occurred on December 26, 2009. Cory Shedwick faced four charges: two counts of aggravated burglary and two counts of aggravated robbery. Those charges arose from the December 26 home invasion and another one that occurred on December 5, 2009.

{¶ 4} The Shedwicks were tried together. At the trial, one victim from each of the robberies testified about the home invasions. Rodolfo Vazquez Mendoza was a victim of a home invasion on December 5, 2009. He testified that while he was asleep, two women and three African-American men entered the apartment where he lived with three other people. The intruders woke him up and forced him and the other occupants to the floor. The intruders took money, both U.S. dollars and Mexican pesos, and an ipod. Geronimo Encarnacion, who lived less than a mile from Mendoza, was a victim of a similar home invasion on December 26, 2009. Encarnacion testified that early in the morning of

¹ The indictment charged the Shedwicks' other brother, David, with the same offenses. This court has already affirmed David's convictions of these offenses. *State v. Shedwick*, 10th Dist. No. 11AP-709, 2012-Ohio-2270.

² A previous trial ended in a mistrial, as the jury was unable to reach a verdict.

the 26, three African-American men and two white women broke into his house where he lived with four other people. The intruders forced Encarnacion and the other occupants to the floor and searched the house. They took money, cell phones, a television, and keys to two SUVs. Neither victim could identify any of the intruders involved in the robberies.

{¶ 5} More significantly, Angela and Alyssa Weant also testified. Angela Weant was the mastermind of these home invasions. She testified that before the home invasions, she was a prostitute working the Hispanic community. From time-to-time, she would take the wallets of her customers. At some point, however, she decided to just go into the mens' homes and steal money from them. She picked homes where Mexicans lived because she believed they would have lots of cash on hand because they did not use banks and they would not talk to the police for fear of being deported. (Tr. 254-55.) On December 5, 2009, she asked one of her drug dealers, David Shedwick, and another woman, only known as "Tasha," to join her in her first home invasion. David Shedwick brought along his brother, Cory Shedwick. Angela picked the first home because she had been there the night before. The two women knocked on the door and when someone inside opened the door, all four entered the apartment. The four went through the home and took money and jewelry. Angela testified that her sister, Alyssa, and Timothy Shedwick were not involved with this home invasion.

{¶ 6} Angela testified that she and the Shedwick brothers robbed a number of homes that December until their last robbery on December 26, 2009. In addition to Cory and David Shedwick, Timothy Shedwick and Angela's sister, Alyssa, took part in the December 26, 2009 robbery. That robbery followed the same pattern as the December 5 robbery, although this time they forced open a back door of the house. They went through the house and took money, cell phones, and a television. They also took the keys to two SUVs. Angela and Alyssa took the SUVs and, later that same day, began to drive home in them. On their way, however, police stopped Alyssa for driving a stolen vehicle. Police questioned Alyssa. She told them that her sister, Angela, and the three Shedwick brothers were involved in at least two home invasions. Police arrested Angela shortly thereafter. Angela also admitted to all of the home invasions and told the police about the involvement of the Shedwick brothers and Alyssa.

{¶ 7} As a result, the Weant sisters and the Shedwick brothers were all indicted for multiple offenses arising from these home invasions. Both Weant sisters entered into plea agreements with the State before the Shedwicks' trial. The sisters each agreed to plead guilty to one count of aggravated burglary and to testify truthfully against any of their co-defendants in exchange for the State's recommendations that they receive a seven-year prison term and that they receive judicial release after six of those years.

{¶ 8} The jury found Timothy and Cory Shedwick guilty of all counts and the attendant specifications. The trial court sentenced both Shedwicks accordingly.

{¶ 9} Appellant, Timothy Shedwick, appeals in case No. 12AP-3 and assigns the following errors:

[1]. THE TRIAL COURT ERRED, DEPRIVING DEFENDANT-APPELLANT OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WHEN IT DENIED APPELLANT'S CRIM.R. 29 MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT WHEN THE WEIGHT AND SUFFICIENCY OF THE EVIDENCE WOULD NOT SUPPORT THE CONVICTIONS.

[2.] APPELLANT WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WHEN HIS COUNSEL (1) PERMITTED THE INTRODUCTION OF EVIDENCE OF UNCHARGED OTHER ALLEGED BAD ACTS OF APPELLANT, AND (2) PERMITTED, WITH OBJECTION, THE TESTIMONY OF A POLICE OFFICER TO THE HEARSAY DESCRIPTIONS OF THE PERPETRATORS OF THE CRIME IN VIOLATION OF APPELLANT'S SIXTH AMENDMENT RIGHT TO CONFRONTATION.

{¶ 10} Appellant, Cory Shedwick, appeals in case No. 12AP-20 and assigns one error:

Mr. Shedwick's convictions are against the manifest weight of the evidence.

II. The Sufficiency and Manifest Weight of the Evidence

{¶ 11} Timothy Shedwick's first assignment of error and Cory Shedwick's only assignment of error both address the evidentiary support for their convictions. Therefore, we address them together.

{¶ 12} Timothy first contends that his convictions are not supported by sufficient evidence. We disagree.

{¶ 13} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law. *Id.*

{¶ 14} In determining whether the evidence is legally sufficient to support a conviction, " '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 15} In this inquiry, appellate courts do not assess whether the state's evidence is to be believed, but whether, if believed, the evidence admitted at trial supports the conviction. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified truthfully and determines if that testimony satisfies each element of the crime.").

{¶ 16} Timothy argues that there is insufficient evidence to establish his participation in the December 26th home invasion. We disagree. As Timothy concedes, the Weant sisters both testified that he was involved in that home invasion. This testimony, if believed, is sufficient to conclude that Timothy participated in the

December 26 home invasion. *State v. Hunter*, 10th Dist. No. 10AP-599, 2011-Ohio-1337, ¶ 31-32, quoting *State v. Mills*, 62 Ohio St.3d 357, 368 (1992) (noting that the Supreme Court of Ohio has concluded that " 'accomplice testimony alone can sustain conviction.' "). Accordingly, his convictions arising from that home invasion are supported by sufficient evidence.

{¶ 17} The Shedwicks both contend that their convictions were against the manifest weight of the evidence. Again, we disagree.

{¶ 18} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *Thompkins* at 387. Although there may be sufficient evidence to support a judgment, a court may nevertheless conclude that a judgment is against the manifest weight of the evidence. *Id.*

{¶ 19} When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

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

2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 21} Cory Shedwick argues that his convictions are against the manifest weight of the evidence because he did not match the victims' description of the intruders. Specifically, Mendoza testified that he saw two of the people who robbed his home and that they were close in height to that of trial counsel. When trial counsel stood up next to Cory Shedwick, Mendoza admitted that trial counsel was taller than Shedwick. (Tr. 49.) Encarnacion testified similarly. (Tr. 69.) It is not clear from the record how significant the height difference was between counsel and Shedwick. The jury observed the difference in height between Cory Shedwick and his counsel and may have discounted the difference if it was not significant. Additionally, both victims were forced to the ground during the robberies and may not have been able to properly assess the height of the men. *State v. Day*, 2d Dist. No. 07-CA-139, 2009-Ohio-56, ¶ 18. The victims' descriptions regarding the height of the intruders do not make Cory Shedwick's convictions against the manifest weight of the evidence, especially in light of the Weant sisters' testimony indicating Cory's involvement in the offenses.

{¶ 22} Timothy Shedwick argues that the Weant sisters could not accurately perceive or recall the events in question because of their drug use. The jury was made aware of the sisters' extensive drug use and obviously chose to believe their testimony. This is within the province of the jury, and we cannot say that the jury clearly lost its way in making this determination. *State v. Petty*, 10th Dist. No. 11AP-716, 2012-Ohio-2989, ¶ 41 (drug use of witnesses does not make convictions against manifest weight of the evidence).

{¶ 23} Both of the Shedwicks argue that their convictions were against the manifest weight of the evidence because the Weant sisters received benefits in exchange for their testimony as the result of a plea agreement they reached with the State. We disagree. The jury was repeatedly made aware of the plea bargain and the benefits the Weant sisters received as a result of the agreement. *See* (Tr. 194, 213, 230-31) (Alyssa); (Tr. 294-96) (Angela). The jury was free to believe or disbelieve their testimony in light of the plea bargain and to determine the weight of their testimony. *State v. Womack*, 10th Dist. No. 06AP-322, 2006-Ohio-6785, ¶ 14; *State v. Rankin*, 10th Dist. No. 10AP-1118,

2011-Ohio-5131, ¶ 30. The jury obviously chose to believe their testimony that the Shedwicks were involved in the robberies. That determination was within the jury's province. Cory's arguments do not render their testimony so unreliable as to be not credible as a matter of law. *See State v. Timmons*, 10th Dist. No. 04AP-840, 2005-Ohio-3991, ¶ 12.

{¶ 24} Timothy Shedwick's convictions are supported by sufficient evidence, and the Shedwicks' convictions are not against the manifest weight of the evidence. Accordingly, Timothy's first assignment of error and Cory's lone assignment of error are overruled.

III. Ineffective Assistance of Counsel

{¶ 25} Timothy Shedwick contends in his second assignment of error that he received ineffective assistance of trial counsel. We disagree.

{¶ 26} To establish a claim of ineffective assistance of counsel, an appellant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced him. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to make either showing defeats a claim of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989), quoting *Strickland* at 697. ("[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.").

{¶ 27} In order to show counsel's performance was deficient, an appellant must prove that counsel's performance fell below an objective standard of reasonable representation. *Jackson* at ¶ 133. The appellant must overcome the strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. *Strickland* at 689. To show prejudice, the appellant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶ 204.

{¶ 28} Timothy Shedwick first contends that his trial counsel was ineffective for failing to object to inadmissible hearsay testimony from a police officer used to bolster the credibility of the Weant sisters' testimony. *State v. Nichols*, 116 Ohio App.3d 759 (10th

Dist.1996). The testimony Timothy complains of are vague height and weight descriptions of two of the men involved in one of the robberies from the victims of that robbery. The police officer who took those descriptions repeated them to the jury. Assuming that trial counsel was deficient for not objecting to this testimony, Timothy cannot prove that the result would have been different had trial counsel objected to the testimony. Timothy argues that these descriptions bolstered the Weant sisters' testimony identifying him as one of the perpetrators of the robbery. We note that the victims gave these descriptions the morning of the robbery.

{¶ 29} Timothy cites to the *Nichols* case to support his argument. However, the descriptions involved in the *Nichols* case were made one year after the event. *See State v. McKenna*, 10th Dist. No. 03AP-177, 2003-Ohio-5997, ¶ 19 (distinguishing *Nichols* for same reason); *State v. Brown*, 7th Dist. No. 96 C.A. 64 (Mar. 26, 1999) (same). Additionally, the descriptions in the case at bar were very vague and did not include descriptions for all three of the men involved. In light of the timing and the vague nature of the descriptions at issue, we cannot say that there is a reasonable probability that, but for trial counsel's failure to object to these descriptions, the result of this trial would have been different.

{¶ 30} Timothy Shedwick also contends that his trial counsel was ineffective for failing to object to testimony indicating his involvement in other uncharged crimes. Specifically, the Weant sisters testified about his involvement in other home invasions for which he was not charged. Timothy argues that such testimony was not admissible because it was not relevant and did not tend to prove any proper purpose under Evid.R. 404(B). We disagree.

{¶ 31} 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." "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 utilized to commit both the offense at issue and the other crimes.'" *State v. Tipton*, 10th Dist. No. 04AP-1314, 2006-Ohio-2066, ¶ 28, citing *State v. Shedrick*, 61 Ohio St.3d 331, 337 (1991), and *State v. Lowe*, 69 Ohio St.3d 527 (1994), syllabus ("To be admissible to prove identity through a

certain *modus operandi*, other-acts evidence must be related to and share common features with the crime in question.").

{¶ 32} Here, the uncharged crime about which the Weant sisters testified was another home invasion that occurred a month before the December 26 crime at issue here. This earlier robbery occurred under circumstances similar to the December 26 robbery and involved most of the same perpetrators. Both robberies targeted Hispanic men inside their homes in the same area of the city. In light of the similarity of the two home invasions, the sisters' testimony was admissible under Evid.R. 404(B) to prove a similar scheme, plan, or system. *State v. Wilson*, 10th Dist. No. 10AP-251, 2011-Ohio-430, ¶ 16-20 (evidence of similar robberies would have been admissible under rule). The testimony also was relevant and not unfairly prejudicial. Evid.R. 403. Therefore, counsel was not ineffective for failing to object to it. *State v. Graggs*, 10th Dist. No. 09AP-339, 2009-Ohio-5975, ¶ 36 (no ineffective assistance of counsel for failing to object to testimony that was properly admitted).

{¶ 33} Timothy Shedwick has not demonstrated the ineffective assistance of trial counsel. Accordingly, we overrule his second assignment of error.

{¶ 34} In conclusion, we overrule Timothy Shedwick's two assignments of error and Cory Shedwick's lone assignment of error. Accordingly, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

TYACK and CONNOR, JJ., concur.
