

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 12AP-595
	:	(C.P.C. No. 11CR-4155)
Hubert Smith,	:	
	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on July 23, 2013

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

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Hubert Smith is appealing from his conviction of a charge of aggravated robbery. He assigns a single error for our consideration:

THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF AGGRAVATED ROBBERY AS THAT VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 2} In determining whether a verdict is against the manifest weight of the evidence, this court acts as a "thirteenth juror." This role allows the court to weigh the

evidence in order to determine whether 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. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). However, the power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, i.e., when "the evidence weighs heavily against the conviction." *Thompkins* at 387, quoting *Martin* at 175.

{¶ 3} An appellate court acting in its role as "thirteenth juror" also must keep in mind the trier of fact's superior, first-hand position in judging the demeanor and credibility of witnesses. "On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of facts." *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. A court of appeals cannot reverse a jury verdict on manifest-weight grounds unless all three appellate judges concur. *Thompkins* at 389.

{¶ 4} With this legal backdrop, we turn to the facts presented at trial.

{¶ 5} On October 24, 2010, a Zettler Hardware store was robbed. The robber was armed with a knife and took cash from the cash register. The robber fled into a nearby residential neighborhood.

{¶ 6} A store employee followed the robber, who was wearing a mask. Eventually the robber got away, but not before removing his mask. The store employee saw the robber from a distance of as much as 100 yards and testified Hubert Smith was the robber.

{¶ 7} Members of the Columbus Division of Police responded to a report of a robbery and collected fingerprints and palm prints from the front door of the hardware store. The prints were analyzed and testimony was presented at trial that the fingerprints matched the fingerprints of Hubert Smith. This evidence had greater impact because Smith had denied to police that he was ever at the store.

{¶ 8} The jury had more than sufficient evidence before it to establish that an aggravated robbery occurred and that Hubert Smith was the robber. The testimony of the store employee was, in and of itself, sufficient to prove Smith was the robber. That testimony was supported by the fingerprint analysis and the problem of Smith's denial of being at the store.

{¶ 9} The verdict was also not against the manifest weight of the evidence. The fact of an armed robbery was clear. The weight of the evidence clearly indicated that Smith was the robber.

{¶ 10} The single assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and O'GRADY, J., concur.
