

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-204
	:	(C.P.C. No. 10CR-10-6360)
Delmar Jones,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 30, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

*Yeura R. Venters*, Public Defender, and *Allen V. Adair*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Delmar Jones ("appellant"), appeals from a jury verdict convicting him of two counts of robbery, in violation of R.C. 2911.02, both felonies of the second degree. For the following reasons, we affirm.

{¶2} This appeal stems from four robberies which occurred on October 20, 2010. Appellant appeals the jury verdict as to counts one and seven of the indictment, involving two separate victims, Michael Bridges ("Bridges") and William Coles ("Coles").

## I. Count One

{¶3} On October 20, 2010, shortly after midnight, Bridges stopped at Kelly's Market to buy some gum on his way home from visiting his lady friend at a bar. Upon leaving Kelly's Market, appellant approached Bridges' vehicle and asked for a cigarette. Bridges said he did not have a cigarette, and appellant asked him for 50 cents toward the purchase of a cigarette. During this exchange, Bridges was sitting in the driver's seat of his vehicle with the door open, and appellant was in the open door space of the vehicle. Bridges told appellant that he did not have any change.

{¶4} At that point, appellant pulled out what looked to be an authentic pistol. Bridges testified that appellant's specific words may have been "[c]ome up off of all of it," or "something to that nature." (Tr. 108.) Bridges stated that, based upon the neighborhood where he grew up, he took appellant's statement to mean "[c]ome up off your stuff, hand it over." (Tr. 108.) Bridges further testified that, when appellant said these words, "[h]e pulled [the gun] out of his waistband, and he had it like down, if you can say, like in front of his leg, to keep it out of the view of any passerbys [sic], or what have you, at that point in time." (Tr. 109.) Bridges handed appellant his Blackberry, watch, \$4 cash, a pair of sunglasses, and the headphones to the Blackberry. Further, Bridges testified that he never forgets a face, and that appellant has "[t]wo distinctive tattoos under the eyes." (Tr. 110.)

{¶5} Within 15 minutes, Bridges drove back to the bar and used his lady friend's cell phone to report the incident to the police. Two police officers arrived at the bar, and Bridges provided a description of what appellant was wearing. Bridges described appellant as a gentleman around five-ten to six-one, with long dreads, and facial tattoos

up underneath both eyes. Subsequently, the police officers detained someone who turned out to be the wrong person. Then, two or three days after the incident, a detective asked Bridges to come down to headquarters to view a lineup of photos. Bridges testified that he does not forget faces and that it "took two seconds to recognize [appellant] from everybody else." (Tr. 114; 116.) Further, Bridges wrote on the photo lineup that "I'm 100 percent sure this is the suspect in question. No doubt." (Tr. 117.) In addition, Bridges identified the gun used in the robbery as State's Exhibit D. With regard to the gun, Bridges stated:

It's pretty realistic. [Appellant] added some theatrics to it that made it believable. Had he not done that, I probably wouldn't have believed it. When I gave it a good look, it had a cocking motion like a standard pistol would. Okay, maybe he means business.

(Tr. 118.) Further, at trial, Bridges identified appellant as the person who robbed him.

## **II. Count Seven**

{¶6} In the early morning hours of October 20, 2010, at approximately 4:00 a.m., Coles was taking a break from collecting cans at a picnic table across the street from the United Dairy Farmers ("UDF") on the corner of 12th Avenue and High Street. Coles was eating and playing with a laptop when appellant approached him from across the street and asked if he had a light. Coles told appellant that he did not have a light, but appellant asked him again. The second time, Coles answered, "[n]o, I'm sorry, I don't have a light. I don't even smoke." (Tr. 251.) At that point, appellant proceeded back across the street to the other side of 12th Avenue and began walking toward High Street. Coles resumed eating and playing, and when he looked up, he saw appellant at the corner. Appellant held the gun out and said "[g]ive it to me." (Tr. 252.) Coles did not understand appellant's

demand and asked "[w]hat do you mean, '[g]ive it to me?' " (Tr. 252.) Appellant then pointed toward Coles' laptop, and Coles responded that he would not give appellant the laptop because he needed it. Appellant took another step forward and hit Coles twice with the gun, and Coles grabbed him. Coles testified that the second or third time that appellant hit him, he "heard something break, which let [him] know that this wasn't a real gun." (Tr. 252-53.) Coles stated:

I don't know how, I don't know how I did it, but I clamped, and he couldn't get [his hand with the gun] back, and I kept holding onto him. We wrestled and tussled. The laptop ended up going over here on the ground. We ended up over here in the corner on the ground.

(Tr. 253.) During the altercation, appellant ended up on top of Coles trying to get the laptop. At that time, Coles stated that he knew the gun was fake, so he went after appellant and grabbed his back. While holding onto appellant, Coles saw the police coming and yelled, "[h]ey police," but the police did not get there quick enough, and Coles had to let appellant go because he was too tired. (Tr. 254.)

{¶7} Columbus Police Officer Todd Aiello ("Officer Aiello") arrived on the scene, followed by Columbus Police Officer Brady Rich ("Officer Rich"). Officer Aiello was driving southbound on North High Street when he heard someone scream that they needed help on 12th Avenue, right across from UDF. Officer Aiello did a U-turn and went back to find "an older male black gentleman kind of leaned over, out of breath, bleeding from his head," stating that appellant, who was heading eastbound on 12th Avenue and turned northbound on High Street, just robbed him. (Tr. 187-88.) Officer Aiello drove to Pearl Alley and saw a "heavier set male black standing with his back to [Officer Aiello] against the building right next to a dumpster." (Tr. 188.) Officer Aiello ordered him to

come back and he "immediately put his hands up and walked back to [Officer Aiello], and [Officer Aiello] took him into custody." (Tr. 188.) At trial, Officer Aiello identified the gentleman taken into custody as appellant and the other gentleman as Coles. Officer Aiello further stated that there was a discrepancy about whose computer it really was— Coles' or appellant's. However, Coles told Officer Aiello that he owned the computer and identified some music and pictures on the computer. Then, Officer Aiello transported appellant downtown to Columbus police headquarters.

{¶8} Officer Rich also noticed blood on Coles' face, and because Coles was complaining of head injuries, Officer Rich called for a medic. Further, when Officer Rich learned that appellant had a gun, he walked down to where Officer Aiello had first observed appellant prior to detaining him. Then, Officer Rich noticed a dumpster with an open sliding door on the side, looked down, and saw a pistol. Officer Rich testified that it "appeared to be a semiautomatic handgun," laying on top of some black trash bags right at the opening. (Tr. 70.) Officer Rich remained by the dumpster guarding the location where he found the gun.

{¶9} A grand jury indicted appellant on four counts of robbery with repeat violent offender ("RVO") specifications, in violation of R.C. 2911.02, all felonies of the second degree, four counts of robbery, in violation of R.C. 2911.02, all felonies of the third degree, and one count of aggravated robbery, in violation of R.C. 2911.01, a felony of the first degree. Upon application of the state, and for good cause shown, the trial court ordered that a nolle prosequi be entered for counts two, four, six, eight and nine of the indictment. On the 15th, 16th, and 17th days of February, 2011, a jury trial commenced on counts one, three, five, and seven of the indictment, charging appellant with robbery

as a felony of the second degree with respect to four victims: Bridges, Leah Moore ("Moore"), Joseph Aronovsky ("Aronovsky"), and Coles. At the close of the state's case, the trial court granted appellant's Crim.R. 29 motion as to the RVO specifications in counts one, three, and five, but refused to grant appellant's Crim.R. 29 motion with respect to the RVO specification in count seven. In addition, the trial court denied appellant's Crim.R. 29 motion with respect to each count of robbery in counts one, three, five, and seven of the indictment. The jury found appellant guilty of robbery in counts one and seven of the indictment with respect to the robberies committed against Bridges and Coles. However, the jury could not reach a unanimous verdict as to counts three and five of the indictment with respect to the alleged robberies against Moore and Aronovsky. Further, the jury found that the offense "did not involve an attempt to cause serious physical harm to [Coles]." (Tr. 423.)

{¶10} On February 23, 2011, at appellant's sentencing hearing, the prosecution moved to have counts three and five dismissed, and the trial court granted the state's motion. The trial court sentenced appellant to three years of imprisonment for count one and four years of imprisonment for count seven, to be served consecutively, for a total of seven years of imprisonment. We note, however, that the judgment entry, journalized on February 25, 2011, imposed upon appellant a sentence of four years of imprisonment for count one, and three years of imprisonment for count seven, to be served consecutively, yet the total prison time of seven years remains the same.

{¶11} Appellant now appeals his convictions, setting forth the following three assignments of error for our review:

[1.] The evidence was insufficient as a matter of law to support appellant's conviction for robbery, as charged in count one of the indictment, as the state failed to prove he "did recklessly inflict, attempt to inflict, or threaten to inflict physical harm on another."

[2.] With respect [to] count one the trial court erroneously overruled appellant's motions for acquittal pursuant to Criminal Rule 29.

[3.] Appellant's convictions are against the manifest weight of the evidence.

{¶12} Appellant's first assignment of error asserts that the evidence was insufficient to support appellant's conviction for robbery as charged in count one of the indictment because the state failed to prove appellant "did recklessly inflict, attempt to inflict, or threaten to inflict physical harm on another." (See appellant's brief, 8.) Appellant's second assignment of error contends that the trial court erred in overruling his motions for acquittal as to count one of the indictment, pursuant to Crim.R. 29. "Because a Crim.R. 29 motion questions the sufficiency of the evidence, '[w]e apply the same standard of review to Crim.R. 29 motions as we use in reviewing the sufficiency of the evidence.'" *State v. Walburg*, 10th Dist. No. 10AP-1087, 2011-Ohio-4762, ¶11, quoting *State v. Hernandez*, 10th Dist. No. 09AP-125, 2009-Ohio-5128, ¶6. Accordingly, we will consider appellant's first and second assignments of error together.

{¶13} "Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict." *State v. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶36, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing a challenge to the sufficiency of the evidence, an appellate court must determine "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. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by constitutional amendment on other grounds as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102, 1997-Ohio-355.

{¶14} Appellant argues that, as to count one of the indictment, the evidence was insufficient to sustain his conviction for robbery because the mere display of an apparent weapon is not enough for a reasonable trier of fact to have reasonably concluded that appellant "did recklessly inflict, attempt to inflict, or threaten to inflict physical harm on another," while committing a theft offense against Bridges. (See appellant's brief, 10.)

{¶15} We begin by considering whether there was sufficient evidence to sustain appellant's conviction for robbery with regard to Bridges. R.C. 2911.02 defines robbery as follows:

(A) No person, in attempting or committing a theft offense 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;

(2) Inflict, attempt to inflict, or threaten to inflict physical harm on another;

(3) Use or threaten the immediate use of force against another.

{¶16} In his brief, appellant argues that the trial court's assessment of the evidence, with respect to the RVO specifications, and the "mere passive display of a weapon," is equally applicable to the charge of robbery premised upon inflicting, attempting to inflict, or threatening to inflict physical harm on another. (See appellant's

brief, 9; see also R.C. 2911.02(A)(2).) In support of this argument, appellant cites *State v. Eley* (1978), 56 Ohio St.2d 169, for the proposition that, "[w]hile the victim need not actually have suffered physical harm, there must be proof the offender or an accomplice *at least attempted* to do so. (See appellant's brief, 10.) (Emphasis added.) In *Eley* at 170-71, the appellant contended that his conviction for aggravated robbery, based on an "attempt to inflict serious physical harm to another," was against the manifest weight of the evidence because the victim sustained no injury and was merely wrestled to the ground. However, the Supreme Court of Ohio affirmed the appellant's conviction for aggravated robbery stating, in relevant part, that:

The evidence shows that the assailant grabbed at the victim's shirt collar and ripped off his buttons. The victim was tackled on a cement sidewalk and received an injury to both his head and hip. There was also testimony that the attacker weighed more than [the victim] and that the victim was turned on his back during the struggle.

From that evidence a jury could reasonably conclude, beyond a reasonable doubt, that the assailant [a]ttempted to inflict whatever harm was necessary to incapacitate [the victim]. Furthermore, a jury could reasonably find that the attacker would not have stopped short of serious physical harm had the victim failed to let go of the money bag. \* \* \*

Id. at 172.

{¶17} Here, in response to appellant's argument, the state argued that a rational trier of fact, construing the evidence in a light most favorable to the state, could reasonably conclude that appellant's display of the gun, along with his theatrics in pretending to do a "cocking motion" with the gun, was a threat of physical harm to Bridges. (See appellee's brief, 6.) Further, the state argued that a reasonable fact finder could conclude that appellant's purpose in pretending to cock the gun was to convey to

Bridges that (1) the gun was real, and (2) appellant was willing to use the gun for an elicited purpose. (See appellee's brief, 6.)

{¶18} In support of its argument, the state relied upon *State v. Evans*, 122 Ohio St.3d 381, 2009-Ohio-2974, quoting our decision in *State v. Harris*, 10th Dist. No. 07AP-137, 2008-Ohio-27. In *Evans* at ¶23, quoting *Harris* at ¶14, the Supreme Court of Ohio stated:

Robbery as defined in [R.C. 2911.02(A)(2)] requires the state to prove a threat to inflict physical harm. However, "the threat of physical harm need not be explicit; rather, an implied threat of physical harm is sufficient to support a conviction under R.C. 2911.02(A)(2)." One cannot display, brandish, indicate possession of, or use a deadly weapon in the context of committing a theft offense without conveying an implied threat to inflict physical harm. It is the very act of displaying, brandishing, indicating possession, or using the weapon that constitutes the threat to inflict harm because it intimidates the victim into complying with the command to relinquish property without consent.

(Internal citations omitted.) In *Evans*, the appellant approached the victim from behind and declared, "I've got a gun"; however, when fighting with the appellant, the victim never saw a gun. *Id.* at ¶2. The trial court, in *Evans*, found that the state did not present sufficient evidence to prove the appellant had a weapon, but still found the appellant guilty of robbery as a lesser-included offense of aggravated robbery. *Id.* at ¶4.

{¶19} In the case before us, Bridges testified that, during the course of the robbery, appellant "pulled out what looked to be an authentic pistol." (Tr. 108.) Further, Bridges testified that appellant pulled the gun out of his waistband and held it down in front of his leg to keep it out of the view of anyone passing by. (Tr. 109.) However, Bridges was still in view of the gun. (Tr. 109.) At trial, Bridges identified the gun used in the robbery as

State's Exhibit D, and stated, "[i]t's pretty realistic. [Appellant] added some theatrics to it that made it believable. \* \* \* When I gave it a good look, it had a cocking motion like a standard pistol would. Okay, maybe he means business." (Tr. 118.) Then, in response to a question regarding whether Bridges thought the gun was real, he replied:

I am not going to do forensics on a gun while I'm being robbed. Of course I'm going to cooperate. I have a son. I don't have time to chance anything. Whether it be a water pistol or a real nine-millimeter, it doesn't matter to me. My goal in life at this point is to live the next day to be able to take care of my boy. That's that. I wasn't going to try to dissect it right in the middle of it. Had it been real and had I agitated him, that might be the last day I might have to see my son.

(Tr. 132-33.) Bridges testified that appellant stated "I'm not playing," and cocked the gun back, and Bridges thought "[t]his is real, pretty much," and told appellant "[g]o ahead, go for it." (Tr. 137.)

{¶20} In his testimony, Bridges clearly indicated that, after viewing the gun, he cooperated with appellant because he wanted to live until the next day in order to take care of his son. (Tr. 132-33.) Further, Bridges believed that, had the gun been real and he agitated appellant, that could have been the last day he saw his son. (Tr. 132-33.) Finally, Bridges testified that the gun looked authentic. As such, viewing the evidence in a light most favorable to the prosecution, we believe that the issue of whether appellant's actions constituted a threat to inflict physical harm on Bridges, pursuant to R.C. 2911.02(A)(2), was a question for the jury to decide and further that any reasonable trier of fact could have found that, pursuant to R.C. 2911.02(A)(2), appellant's actions of displaying the gun and pretending to cock the gun conveyed a threat of physical harm on Bridges.

{¶21} For the foregoing reasons, we conclude that appellant's conviction for robbery, as to count one of the indictment, is supported by sufficient evidence.

{¶22} Appellant's first and second assignments of error are overruled.

{¶23} In his third assignment of error, appellant argues that his convictions for robbery are against the manifest weight of the evidence.

{¶24} "While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief." *Cassell* at ¶38, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, citing *Thompkins* at 386. "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 factfinder's resolution of the conflicting testimony." *Thompkins* at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 2220. "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." *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. This discretionary authority "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶25} With respect to *Bridges*, appellant argues that his robbery conviction, pursuant to R.C. 2911.02(A)(2), was against the manifest weight of the evidence because: (1) the state failed to prove the physical harm element set forth in R.C.

2911.02(A)(2); (2) Bridges did not describe the tattoos under the eyes of the person he encountered as being Chinese or Japanese characters; (3) the gun produced as an exhibit could not be cocked; and (4) appellant denied committing the robbery and was able to present at least a partial alibi through the testimony of Shameka Phillips ("Phillips"). (See appellant's brief, 11-12.)

{¶26} The state contends that appellant's arguments are without merit because the jury reasonably concluded that: (1) appellant's display of the gun constituted a threat of physical harm; (2) Bridges' failure to describe appellant's tattoos as being Chinese or Japanese characters did nothing to undermine his identification of appellant as the robber; (3) although the gun appellant displayed had no cocking mechanism, the jury could have believed Bridges' testimony that appellant made a cocking motion with the gun; and (4) Phillips could not provide an alibi for appellant, nor was appellant's denial of the Bridges' robbery believable.

{¶27} First, we address appellant's argument that his conviction was against the manifest weight of the evidence because the state failed to prove the physical harm element set forth in R.C. 2911.02(A)(2). Pursuant to R.C. 2911.02(A)(2), "[n]o person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following: \* \* \* [i]nfllict, attempt to infllict, or threaten to infllict physical harm on another." In the present matter, after hearing all of the evidence, the jury concluded that, pursuant to R.C. 2911.02(A)(2), appellant threatened to infllict physical harm on Bridges. As previously stated, the record reflects Bridges' testimony that, after viewing the gun, Bridges cooperated with appellant because he wanted to live until the next day in order to take care of his son. (Tr. 132-33.) Bridges also testified that,

had the gun been real and he agitated appellant, that could have been the last day he saw his son. (Tr. 132-33.) Further, Bridges testified that appellant "pulled out what looked to be an authentic pistol." (Tr. 108.) Based upon the testimony of Bridges, the jury could reasonably conclude that appellant threatened to inflict physical harm upon Bridges. Bridges believed that the gun could be real and felt that, if he did not cooperate with appellant, he could lose his life and never see his son again. Therefore, based upon the foregoing, we cannot conclude that the jury clearly lost its way in believing Bridges' testimony and finding appellant guilty of robbery.

{¶28} Second, we address appellant's argument that his conviction was against the manifest weight of the evidence because Bridges did not describe the tattoos under the eyes of the person he encountered as being Chinese or Japanese characters. The record indicates that Bridges never forgets a face. (Tr. 109.) Further, Bridges testified that appellant had "[t]wo distinctive tattoos under the eyes," and that the tattoos will "always make you stick out in a crowd." (Tr. 110.) Further, Bridges stated that, within a window of 15 minutes, he reported the robbery to the police and described appellant as a "gentleman around five-ten to six-one, long dreads, facial tattoos up underneath both eyes." (Tr. 112; 119.) Finally, Bridges stated that it took him "two seconds to recognize [appellant] from everybody else" in the photo lineup, and that, above his signature, he wrote "I'm 100 percent sure this is the suspect in question. No doubt." (Tr. 116-17.) Based upon Bridges' testimony, the jury could reasonably conclude that Bridges correctly identified appellant without describing the tattoos under appellant's eyes as being Chinese or Japanese characters. First, Bridges correctly stated that appellant had two distinctive tattoos under his eyes. Second, Bridges described appellant to the police

within 15 minutes of the robbery. Third, Bridges took two seconds to identify appellant in the photo lineup and indicated that he was 100 percent sure appellant was the suspect in question for the robbery. Finally, appellant was in the courtroom during the trial and, as such, the jury had the opportunity to view appellant and weigh Bridges' description of appellant against what they were seeing firsthand. Therefore, based upon the foregoing, we cannot conclude that the jury clearly lost its way in believing Bridges' testimony and finding appellant guilty of robbery.

{¶29} Third, we address appellant's argument that his conviction was against the manifest weight of the evidence because the gun produced as an exhibit could not be cocked. According to the record, Bridges testified: "It's pretty realistic. [Appellant] added some theatrics to it that made it believable. \* \* \* When I gave it a good look, it had a cocking motion like a standard pistol would. Okay, maybe he means business." (Tr. 118.) Based upon Bridges' testimony, the jury could reasonably conclude that appellant pretended to cock the gun by using "theatrics," even if the gun did not actually have a cocking mechanism. Therefore, based upon the foregoing, and for the reasons we stated in discussing assignments of error one and two, we cannot conclude that the jury clearly lost its way in believing Bridges' testimony and finding appellant guilty of robbery.

{¶30} Finally, we address appellant's argument that his conviction was against the manifest weight of the evidence because appellant denied committing the robbery and was able to present at least a partial alibi through the testimony of Shameka Phillips. "[A]lthough an appellate court must act as a 'thirteenth juror' when considering whether the manifest weight of the evidence requires reversal, it must give great deference to the fact finder's determination of the witnesses' credibility." *State v. Spires*, 10th Dist. No.

10AP-861, 2011-Ohio-3312, ¶18. Further, "[w]hen reasonable minds can differ on the state of the evidence, the issue is for the jury." *State v. Johnson* (Feb. 8, 1991), 10th Dist. No. 90AP-216.

{¶31} Here, Phillips' testimony revealed that on October 19 and 20, 2010, she spoke off and on with appellant on the telephone "[f]rom like 9:45 to 2:00 o'clock." (Tr. 308.) Phillips indicated that she and appellant were on the telephone because she was telling him about the ultrasound appointment of their unborn child and that she was experiencing a lot of pain. (Tr. 309.) Also, according to Phillips, the conversations lasted "a good 30 minutes," each time they talked. (Tr. 311.) Further, Phillips testified that when she was talking with appellant, he was at home with his mother. (Tr. 311.) However, in response to a question regarding how Phillips knew that appellant was at his mother's house during their phone conversations, Phillips agreed that appellant was talking on a cell phone and that she only knew because appellant said so. (Tr. 312.) Finally, Phillips admitted that a cell phone can really be anywhere in the world. (Tr. 312.)

{¶32} In *State v. Platt*, 10th Dist. No. 03AP-1148, 2005-Ohio-705, ¶23, we stated that "[a] jury, as finder of fact, may believe all, part, or none of a witness's testimony." In the present matter, the jury obviously did not believe Phillips' testimony regarding appellant's whereabouts during the commissions of the robberies. Based upon Phillips' testimony, the jury could reasonably conclude that, because Phillips and appellant only spoke to each other on cell phones, Phillips did not really know appellant's actual whereabouts from 9:45 p.m. on October 19, 2010 to 2:00 a.m. on October 20, 2010. Further, the conviction is not against the manifest weight of the evidence just because appellant denied committing the robbery. Appellant testified that he was at his girlfriend

Nichole's house during the time Bridges was robbed at Kelly's Market. (Tr. 321.) Further, appellant testified that he never saw Bridges before. (Tr. 321.) However, based upon Bridges' detailed testimony regarding appellant's physical description and the robbery itself, the jury could reasonably conclude that appellant's denial of the crime was not truthful. Further, the jury could reasonably infer that appellant was not being truthful regarding being at Nichole's house during the commission of the robbery because Nichole did not come to court and testify on appellant's behalf.

{¶33} Therefore, based upon the foregoing, we cannot conclude that the jury clearly lost its way in disbelieving Phillips' and appellant's testimony regarding appellant's whereabouts during the commission of the crime against Bridges and finding appellant guilty of robbery.

{¶34} We now address whether appellant's conviction for robbery with respect to Coles is against the manifest weight of the evidence. Appellant argues that his robbery conviction, pursuant to R.C. 2911.02(A)(2), was against the manifest weight of the evidence because "[a] nighttime campus area can scavenger might well chose [sic] to carry a BB gun for security and might well have come across a stolen, then discarded laptop he was willing to trade for drugs." (See appellant's brief, 12.) Essentially, appellant has asked this court to weigh the credibility of Coles' testimony against the credibility of appellant's testimony with regard to the events that transpired on October 20, 2010.

{¶35} The state contends that appellant's arguments are without merit because a jury could properly choose to believe Coles' testimony over appellant's testimony in finding appellant guilty of robbery. (See appellee's brief, 9.)

{¶36} As stated above, "although an appellate court must act as a 'thirteenth juror' when considering whether the manifest weight of the evidence requires reversal, it must give great deference to the fact finder's determination of the witnesses' credibility." *Spires* at ¶18. In the present matter, Coles testified that, at approximately 4:00 a.m. on October 20, 2010, appellant approached him twice while he was sitting at a picnic table across from UDF and asked him for a light. (Tr. 247.) After the second time, appellant pulled out a gun and demanded Coles' laptop computer. (Tr. 251-52.) Further, Coles testified that when he told appellant that he could not have the laptop, appellant hit him in the head with the gun two or three times before they began wrestling and tussling on the ground. (Tr. 252-53.) At some point, Coles heard something break in the gun and realized that it was not real. During the altercation, Coles saw a police car driving by and shouted for help, but the police did not get there quickly enough, and Coles had to let appellant go because he was too tired from the struggle. (Tr. 254.)

{¶37} However, appellant testified that he was sitting at the picnic table across from UDF snorting cocaine when Coles approached with his bicycle. (Tr. 323.) Coles sat down at the table with appellant and asked him for the cans of beer appellant had. (Tr. 323-25.) Appellant began crushing the cocaine with his cell phone in order to snort it. (Tr. 324.) Coles then pulled out his laptop and asked appellant if he knew of somebody who wanted to buy a laptop. (Tr. 325.) Appellant asked, "[f]or what," and Coles said, "[f]or some of that." (Tr. 325.) Appellant testified that he gave Coles .5 of the cocaine, and Coles put it in his mouth. (Tr. 325.) Appellant told Coles that he cannot put powder in his mouth because he will mess it up. (Tr. 325.) Coles attempted to give the cocaine back to appellant, but appellant told him "no" because it was messed up and diluted. (Tr. 326.)

Then Coles attempted to take the laptop back from appellant. (Tr. 326.) However, appellant told Coles, "[w]hen you messed it up, you bought it." (Tr. 326.) After drinking a few beers, appellant put the powder back in the bag, grabbed the cord, grabbed the laptop, and began to leave. (Tr. 327.)

{¶38} At that time, appellant testified that Coles pulled a gun out of his bag, and this is "when all the commotion started because he pointed the gun at me, like now you give me everything." (Tr. 327.) Appellant stated that he was the one that called for the police driving down High Street. (Tr. 327.) After yelling "[p]olice," appellant lunged for Coles and got a hold of the gun. (Tr. 327.) Appellant stated that he beat Coles up and hit him with the gun. (Tr. 328.) In addition, appellant testified that there was never a time that he and Coles hit the ground. (Tr. 328.) Appellant indicated that when the police arrived, he dropped the gun on the corner of Pearl Alley and 12th Avenue, threw the drugs, left one full beer can in the alley, and put the empty cans back in the box. (Tr. 328-29.) Further, appellant testified that, when the police stopped him, he never tried to run. (Tr. 329.) Finally, appellant stated that there was a discrepancy regarding ownership of the laptop in that appellant told the police it was his laptop, and Coles said that he owned the laptop. (Tr. 330.) Appellant also told the police that it "wasn't [his] gun," and that appellant took the gun from Coles. (Tr. 331.)

{¶39} The jury also heard testimony from Officers Aiello and Rich regarding this incident. Officer Aiello indicated that, when he arrived on the scene, he found "an older male black gentleman kind of leaned over, out of breath, bleeding from his head," who stated that appellant just robbed him. (Tr. 187-88.) Also, Officer Aiello stated that he saw appellant standing with his back against the building right next to a dumpster. (Tr. 188.)

{¶40} Additionally, Officer Rich testified that, when he learned there was a gun, he walked down to where Officer Aiello had first observed appellant prior to detaining him. (Tr. 69.) Officer Rich noticed a dumpster with an open sliding door on the side, looked down, and saw a pistol. (Tr. 70.) Upon locating the gun, Officer Rich remained with it and later transported it to the Columbus property room and submitted it as evidence. (Tr. 70; 79.)

{¶41} At trial, the state produced the gun that Officer Rich found in the dumpster as Exhibit D. Officer Rich identified the gun and described it as having a broken trigger guard with a black hair stuck where it had been broken and a little bit of blood. (Tr. 81-83.) Further, Officer Rich agreed that the hair on the gun seemed to be at least the same color as Coles' hair. (Tr. 83.) Further, Coles indicated that the gun was broken in the way he expected it to be and that he also saw some hair, blood and tissue on it. (Tr. 262.)

{¶42} After reviewing the evidence presented at trial, we find no reason to overturn the jury's determination as to Coles' credibility. The jury could reasonably have believed Coles' rendition of the robbery instead of appellant's. Although appellant states that Coles traded him the laptop computer for cocaine, there was no evidence that appellant disclosed this fact to the police when claiming the laptop as his own. Further, Officer Rich testified that he found the gun in the dumpster but, according to appellant, he dropped the gun on the corner of Pearl Alley and 12th Avenue. In addition, if the jury believed Bridges' testimony, as well as Bridges' and Officer Rich's testimony regarding the identification of the gun as State's Exhibit D, it is very reasonable for the jury to conclude that appellant, in fact, owned the gun and used it to rob and beat Coles because of the timeline of events on October 20, 2010. Therefore, based upon the foregoing, we cannot conclude that the

jury clearly lost its way in believing Coles' testimony over appellant's testimony regarding the details of the robbery and finding appellant guilty of robbery.

{¶43} For all these reasons, we conclude that appellant's convictions for robbery were not against the manifest weight of the evidence.

{¶44} Appellant's third assignment of error is overruled.

{¶45} For the foregoing reasons, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

*Judgment affirmed.*

KLATT and SADLER, JJ., concur.

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