

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2002-A-0067
ERNEST MAURICE BOLES,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2002 CR 90.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Jon T. Field, 4366 Main Avenue, P.O. Box 1276, Ashtabula, OH 44005-1276 (For Defendant-Appellant).

DONALD R. FORD, P.J.

{¶1} Appellant, Ernest Maurice Boles, appeals the July 23, 2002 judgment entry of the Ashtabula County Court of Common Pleas, in which he was convicted of one count of robbery and sentenced.

{¶2} On April 4, 2002, appellant was indicted by the Ashtabula County Grand Jury for robbery, in violation of R.C. 2911.02(A)(2), a felony of the second degree. At

appellant's arraignment on April 12, 2002, he entered a plea of not guilty to the charge. A jury trial commenced on June 11, 2002, and concluded on June 13, 2002, with a verdict of guilty.

{¶3} The following evidence was elicited from the transcript of the proceedings. Kathy Farah ("Mrs. Farah") took the stand and related that she and her husband, Mamad "Mike" Farah ("Mr. Farah"), own a small convenience store called BB's Mini-Mart in Ashtabula, Ohio. On March 25, 2002, at approximately 1:45 p.m., while Mrs. Farah was taking the store's cigarette inventory, a male subject, who was later identified as appellant, approached her with a stick and tried to hit her. Mrs. Farah backed up toward the cash register as appellant was waving the stick because she was concerned about her safety. Appellant tried to open the cash register, but was not successful, so appellant indicated with the stick for Mrs. Farah to open the cash register. At first, when Mrs. Farah saw the stick, she thought that somebody was playing a joke on her, but she "looked up and [she] saw his face was covered with a bandana." She then began calling her husband's name and screaming. Before Mr. Farah came out of the back office, Mrs. Farah took the stick from appellant after a struggle.

{¶4} Mrs. Farah testified that she hit appellant with the stick, and Mr. Farah struck appellant with a two liter bottle of Sprite. As appellant exited the store, he slid on the ice, and Mrs. Farah slid behind him. Mrs. Farah returned to the store and called 9-1-1. She described the man who had tried to rob her as a black man with a bandana and hood. As a result of the scuffle, Mrs. Farah's fingers became bruised.

{¶5} Meanwhile, Mr. Farah, who had no shoes on, began chasing appellant down Center Street. Thereafter, Mr. Farah quit running and returned to the store to wait

for the police. Mr. Farah saw appellant's coat as he was pursuing appellant. Mr. Farah also noticed appellant was wearing red tennis shoes.

{¶6} Patrolman Thomas P. Clemens, Jr. ("Patrolman Clemens") of the Ashtabula City Police Department was dispatched to the scene of the hold-up. He was advised that the suspect was seen near the Route 20 overpass. As Patrolman Clemens was walking toward the overpass, he observed footprints in the snow and followed them. Based on the long strides, Patrolman Clemens concluded that the person who made the footprints was running. He also stated that the prints looked like they belonged to a tennis shoe and not a boot. The tracks led to the address of 4102 Cleveland Avenue, which is a home that contains apartments.

{¶7} Patrolman Clemens along with several other officers started knocking on the first floor apartments. Patrolman Clemens made contact with a family in the first floor apartment, but nobody fit the description of the suspect that they were tracking. The officers then knocked on a second apartment door, which belonged to a Hispanic individual. The third door that Patrolman Clemens knocked on belonged to Lauren Delehanty ("Delehanty"), appellant's girlfriend.

{¶8} The apartment door opened, and appellant was standing at the door in the nude. He informed Patrolman Clemens that he was naked because he was getting out of the shower. However, Patrolman Clemens observed that appellant was "not wet at all." Patrolman Clemens also noticed that appellant was "very, very nervous and moving around, yelling, angry that it seemed that we would interrupt his evening or afternoon." Patrolman Clemens proceeded back to the first floor apartment to interview the occupants as to whether they had seen anything. While he was questioning them,

Detective Robert James Pouska, Sr. ("Detective Pouska") called him to Delehanty's apartment to identify the sole prints of the red shoes he found there. Patrolman Clemens testified that the shoes were wet, and that the pattern on the sole of the shoes matched the print in the snow.

{¶9} Delehanty testified that she was the lessee of the apartment. She stated on the afternoon of March 25, 2002, she woke up around 1:00 p.m. At around 1:30 p.m., Delehanty went to take a bath, and appellant told her he was leaving to get money from his father. She indicated that when she finished her bath, at approximately 2:00 p.m., appellant was sitting on the couch listening to music. She noticed that the jogging pants he had on were wet in spots. All of a sudden, appellant "turned off the music and ran into the bathroom and said not to answer the door." When Delehanty asked why she should not answer the door, appellant told her it was because he was in a fight.

{¶10} Delehanty then ran to the door when she realized that it was the police.¹ On her way to the door, she saw appellant take the jogging pants off and throw them into her closet. She was asked whether appellant owned a pair of red tennis shoes, and she admitted that he did. They were near the door, and she observed that they were wet. Detective Pouska presented Delehanty with a consent to search her apartment, which she voluntarily signed. The police conducted the search. She related that the red tennis shoes that were near the door when the police arrived were found in her underwear drawer. She found this odd since she went to her underwear drawer after she got out of the tub, and there were no red shoes in it at that time.

1. When Delehanty was first questioned by the police, she denied that appellant had ever left the apartment. She stated that she was protecting him because he had been in a fight. However, when she realized that they were investigating a robbery, she testified that she "told them the truth."

{¶11} Detective Joseph Cellitti (“Detective Cellitti”) took the stand and related that there were no other black males in the apartment. Detective Cellitti also testified that he located wet socks, a bandana, and a hooded black jacket. He stated that they were wet and cold. The socks and bandana were inside one of the pockets of the jacket. Delehanty also identified the bandana and the sleeveless vest jacket at the trial as the ones appellant owned.² She was able to identify the vest because of the rips on the left-hand side.

{¶12} Detective Alan Altonen (“Detective Altonen”) took the stand and related that on the day of the robbery, Captain Phillip Varckette (“Captain Varckette”) requested that he take the bandana to BB’s Mini-Mart to see if it looked familiar to Mr. Farah and Mrs. Farah. They indicated that it “looked familiar to [them].” Detective Altonen also noticed that Mr. Farah and Mrs. Farah were shaken, worried and scared. At the close of the state’s case-in-chief, appellant moved for a Crim.R. 29(A) acquittal, which was overruled.

{¶13} Melissa Henton (“Henton”), the mother of appellant’s child, took the stand in his defense. She related that after appellant was arrested, he would call her and she would then call Delehanty in a three-way call. Appellant and Delehanty would converse and she would listen. Delehanty was upset with appellant every time he called, and according to Henton, Delehanty threatened appellant and told him that he was “going down.”

{¶14} Appellant took the stand in his own defense. He stated that he tried to call his father on the day in question. He could not reach him, so he left the apartment to locate him. When he did not see his father’s truck, he hitched a ride to BB’s Mini-Mart.

2. The vest was found in the snow by Captain Varckette as he was tracking the footprints in the snow.

He explained that he did not want to go into the store because of a prior incident involving him that occurred there in 2000. Appellant just wanted someone to go into the store and buy him some cigarettes. Unable to find someone to go in, appellant entered the store and saw Mrs. Farah. Appellant claims that Mrs. Farah “pulled out the stick.” According to appellant, she swung it at him so he backed up. When Mrs. Farah called for Mr. Farah, and appellant saw him coming, he took off running. He stated that he ran because he was nervous and scared since he had previously been accused of robbery.³

{¶15} Appellant admitted that after the police arrived at Delehanty’s apartment, he hid one pair of clothes, the coat, and the shoes because they were the only things that looked obvious that he had been outside. He testified that he did not put the socks in his jacket pocket. He acknowledged that he told police that he had not left the apartment because he was scared. He also denied taking a stick into BB’s Mini-Mart. Appellant further stated that he did not wear a bandana into BB’s Mini-Mart on the day in question. Appellant renewed his Crim.R. 29(A) motion for acquittal, which was again overruled.

{¶16} The jury returned a verdict of guilty to the robbery charge. A sentencing hearing was held on July 22, 2002. In an entry dated July 23, 2002, the trial court sentenced appellant to a term of five years in prison. Appellant timely filed the instant appeal and now presents a single assignment of error for our review:

{¶17} “The verdict of the jury was against the manifest weight of the evidence and the trial court erred to the prejudice of [appellant] when it accepted the jury’s verdict of guilty.”

3. The transcript revealed that appellant never relayed this information to the police when they arrived at Delehanty’s apartment.

{¶18} In his lone assignment of error, appellant argues that his conviction was against the manifest weight of the evidence.

{¶19} A judgment of a trial court should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. When reviewing a claim that a verdict was against the manifest weight of the evidence, an appellate court must review the entire record, weigh both the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that a new trial must be ordered. *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See, also, *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082, 1994 WL 738452, at 5.

{¶20} The role of the appellate court is to engage in a limited weighing of the evidence introduced at trial in order to determine whether the state appropriately carried its burden of persuasion. *Thompkins* at 390. The reviewing court must defer to the factual findings of the trier of fact as to the weight to be given the evidence and the credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶21} In the instant matter, the jury convicted appellant of robbery in violation of R.C. 2911.02(A)(2), which states that “[n]o person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall *** [i]nflict, attempt to inflict, or threaten to inflict physical harm on another [.]”

{¶22} The jury was presented with evidence consisting of: (1) the testimony of Mrs. Farah that an African American individual wearing a bandana entered BB's Mini-Mart waving a stick demanding money from the cash register and that after a scuffle, she retrieved the stick; (2) Mr. Farah's testimony that he pursued the man who was wearing a coat and red tennis shoes; (3) the testimony of the officers that followed the footprints in the snow which led to Delehanty's apartment where appellant was and the wet clothes and shoes found there; (4) the testimony of Mr. Farah and Mrs. Farah identifying the bandana that was found in Delehanty's apartment; (5) the testimony from Delehanty and appellant that he, in fact, did leave the apartment at the time that the robbery occurred and that he was at BB's Mini-Mart that day; and (6) Delehanty's testimony that appellant told her not to answer the door when the police arrived and her identification of the sleeveless vest that was found in the snow on the way to her apartment as belonging to appellant.

{¶23} After reviewing the entire record, it is our view that the verdict is not against the manifest weight of the evidence. The state presented a significant amount of credible evidence to prove that appellant committed the robbery.

{¶24} Here, the jury, as the trier of fact, chose not to believe appellant's theory of the case, which was that he was at BB's Mini-Mart that afternoon to obtain cigarettes and that Mrs. Farah waved the stick at him so he ran out of the store. The credibility of each witness was a critical issue for the jury to decide, and this court will not disturb those findings on appeal. Therefore, we cannot conclude that the jury lost its way in convicting appellant for robbery or that the jury created such a manifest miscarriage of justice that appellant's conviction must be reversed and a new trial ordered.

{¶25} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Ashtabula County Court of Common Pleas is affirmed.

Judgment affirmed.

DIANE V. GRENDELL and CYNTHIA WESTCOTT RICE, JJ., concur.