

[Cite as *State v. Bland*, 2015-Ohio-2388.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101631

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CLAUDIUS W. BLAND

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579080-A

BEFORE: Keough, P.J., E.T. Gallagher, J., and Boyle, J.

RELEASED AND JOURNALIZED: June 18, 2015

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant Claudius Bland (“Bland”) appeals from his convictions and sentence for burglary, theft, and abduction. Finding no merit to the appeal, we affirm.

I. Background

{¶2} A Cuyahoga County Grand Jury indicted Bland on one count each of aggravated burglary, burglary, kidnapping, abduction, and petty theft. All of the counts except the theft count carried one- and three-year firearm specifications.

{¶3} The victim, Larry Whitner, testified at trial that in June 2013, he was living in Euclid with his then-girlfriend Janai Bynum, an exotic dancer and prostitute who used and sold marijuana. He testified that on June 20, 2013, at approximately 9:20 p.m., he returned home from work, walked inside his house, and was forced to the ground at gunpoint by two men wearing black ski masks. Whitner said the men told him they were looking for Janai because she had stolen some marijuana, and asked him where the marijuana was. He testified further that one of the men, who was wearing wheat-colored Timberland boots and a mask with only an opening for his eyes, sat on his back, holding a gun to the back of his head, while the other man loaded Whitner’s flat-screen TV and Xbox, and Janai’s Louis Vuitton bag, into a car that was parked in the driveway.

{¶4} As he lay on the ground, Whitner heard the car backing out of the driveway and then heard the car hit the side of the house. The male who was holding a gun to Whitner's head said, "Damn, he's messing my car up," and left.

{¶5} Whitner waited for a few minutes and then called the police. Euclid police officer Jose Alcantara, who responded to the scene, testified that he observed blue paint scrapings along the side of the house by the driveway, and shattered vehicle parts and the housing for a side view mirror on the ground. Euclid police detective Phil Tschetter also responded to the scene and collected the shattered parts and the side view mirror housing as evidence. Tschetter also lifted four palm prints from the back of the TV stand; he subsequently matched these prints to Bland.

{¶6} Three days later, at 10:20 p.m. on the evening of June 23, 2013, Officer Alcantara was on patrol in an unmarked car when a vehicle playing loud music approached him from behind. Officer Alcantara testified that he slowed down, and activated his lights and siren after the vehicle passed him, but instead of slowing down, the vehicle accelerated. It turned into an alley, and a black male jumped out of the passenger side of the car and ran away. The vehicle kept going, making several turns before coming to a stop in a driveway.

{¶7} Officer Alcantara testified that he pulled behind the car and then saw a light-skinned black male get out of the driver's side of the car and run away. He said that he got a good look at the male's face because the lights of his car were on, he was only eight or nine feet away when the male jumped out of the car, and there were no

obstructions to his view. Officer Alcantara observed that the vehicle, a blue Chevy Impala, had extensive damage to its right side and was missing its side view mirror.

{¶8} The Euclid police department impounded the vehicle and after investigation, learned that the car belonged to Tai Fears. Upon searching Fears's Facebook page, Detective Tschetter saw a picture of her in a romantic pose with a light-skinned black male. He showed the picture to Officer Alcantara, who identified the male as the same male he had seen running from the driver's side of the blue Chevy Impala.

{¶9} Detective Tschetter then searched the car and found a black ski mask tucked under the driver's seat, a silver handgun, and mail addressed to Bland at the same address used by Fears. A DNA analyst with the Bureau of Criminal Investigation found Bland's DNA on the ski mask, but not on the gun. Whitner identified the mask and gun found in the car as the mask worn and the gun used by the male who held him at gunpoint. At trial, he also identified a pair of wheat-colored Timberland boots taken from Bland at the time of his arrest as those worn by one of the burglars.

{¶10} Detective Tschetter testified that he examined the car and compared it to the evidence collected outside Whitner's home on June 20, 2013. He determined that the side view mirror housing found at Whitner's home "fit like a puzzle piece" with the car impounded by the police, and the broken mirror pieces "lined up" with the side view mirror housing.

{¶11} Tai Fears testified that Bland is her boyfriend and she was living with him in June 2013. She admitted that she owned the blue Chevy Impala impounded by the

police, and that she had given the police varying accounts of how her car was damaged in order to deceive them. She testified that Bland drove her car on June 20, 2013, and subsequently told her that he had damaged it when he backed out of a driveway. She also admitted that she called the Euclid police around 10:30 p.m. on June 23, 2013, to report that her car had been stolen.

{¶12} Bland testified in his defense that on the night of June 20, 2013, he drove Fears's car to Janai's house to visit Kirby, one of Janai's "friends," and that he had been to Janai's house on eight or nine other occasions for that purpose. He said that when he pulled into the driveway, he saw a male wearing a mask and holding a gun. Bland said that he immediately put the car in reverse and sped out of the driveway, scraping the side of the car along the side of the house. Bland denied that he was driving the Chevy Impala on June 23, 2013, when it was stopped by the Euclid police.

{¶13} The jury subsequently found Bland guilty of burglary, abduction, and theft, and not guilty of aggravated burglary, kidnapping, and the firearm specifications. At sentencing, the state agreed that all counts merged as allied offenses, and elected to proceed on the burglary count. The trial court sentenced Bland to four years imprisonment.

II. Analysis

{¶14} In his single assignment of error, Bland contends that his convictions were against the manifest weight of the evidence.

{¶15} A manifest weight challenge questions whether the state met its burden of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. A reviewing court “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.” *State v. Thompkins*, 78 Ohio St.3d 380, 388, 678 N.E.2d 541 (1997). A conviction should be reversed as against the manifest weight of the evidence only in the most “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶16} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding the credibility of witnesses and the weight of the testimony are primarily for the trier of fact. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact 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.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. The jury may take note of any inconsistencies and resolve them accordingly, “believ[ing] all, part, or none of a witness’s testimony.” *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

{¶17} As Bland acknowledges, the state’s circumstantial case against him was “simple.” Indeed, the state presented evidence that the victim’s home was burglarized on June 20, 2013, by two men, one of whom was wearing a black ski mask and wheat-colored Timberland boots and carrying a silver handgun. During the course of the burglary, the perpetrators’ car scraped against the side of Whitner’s house, leaving behind blue paint scrapings, vehicle parts, and the housing for a side view mirror. Upon hearing the noise, the burglar holding Whitner at gunpoint immediately left the scene. The police arrived and collected paint chips, fragments from the broken mirror, and the side view mirror housing.

{¶18} Three days later, Officer Alcantara stopped a car for a noise violation; the driver of the car abandoned the car and ran away. The police identified the man fleeing the scene as Bland, and determined that the car belonged to his girlfriend. The car had damage to its right side, and the police subsequently matched the paint scrapings left on Whitner’s home and the side view mirror found among the debris at Whitner’s home to the abandoned car. Inside the car, police found a black ski mask and a gun, both of which were identified by the victim as items used during the burglary. Bland’s DNA was found on the mask, and his palm prints were found in the victim’s home on the TV stand from which the TV had been stolen. Bland was wearing wheat-colored Timberland boots when he was arrested.

{¶19} Despite this substantial evidence that Bland was one of the two men involved in the burglary, Bland contends that the evidence in this case was “so lacking”

that his conviction is against the manifest weight of the evidence. He first takes issue with Whitner's identification of the ski mask that was found in the Chevy Impala as the mask worn by one of the burglars. Bland contends that Whitner's identification was meaningless because he identified the mask solely on the fact that it had only an eyehole, and conceded there was nothing else unique about the mask that would allow him to identify it as the mask worn by one of the burglars. Bland also disputes the significance of Whitner's identification of the gun found in the car as the gun used in the burglary because his identification was not based on the fact that he saw the gun, but solely on the fact that it ejected bullets, which is a feature common to semi-automatic pistols.¹ Bland argues further that Whitner's identification of the gun was meaningless because the DNA found on the gun linked it to another individual. Likewise, Bland contends that the fact he was wearing Timberland boots when he was arrested is insignificant because he was arrested some four months after the burglary and, as even Whitner conceded at trial, wheat-colored Timberland boots are very popular and worn by many young men.

{¶20} Bland also argues that Officer Alcantara's identification of him is problematic because it was made at night, in a few seconds, while the person he identified was running away from him. He further contends that the Facebook identification was too suggestive because he was the only male in the Facebook picture shown to Officer Alcantara. Finally, Bland argues that the palm print evidence is insignificant because it

¹Whitner testified at trial that the male sitting on his back cocked his gun, ejecting a bullet, and said, "That bullet is for Janai." When he cocked it again and another bullet fell out, he said, "And that bullet is for you."

established only that he had been in Whitner's home — not when he had been there — and he testified that he had been in Whitner's home previously to visit Janai's "friends."

{¶21} Bland's arguments are without merit. Although circumstantial, the evidence demonstrated that he was indeed one of the burglars at Whitner's home on June 20, 2013.

{¶22} The evidence established that the blue Chevy Impala impounded by the Euclid police belonged to Bland's girlfriend, and that during the burglary, upon hearing the noise of the car scraping the side of the house as it backed out of the driveway, the burglar sitting on Whitner's back said, "Damn, he's messing my car up," and immediately left. Fears admitted that Bland used her car on June 20, 2013, and that he told her the car was damaged as it was backing out of a driveway. The evidence also established that Officer Alcantara stopped the Chevy Impala on June 23, 2013, at approximately 10:20 p.m.; the driver of the car ran away; and only a few minutes later, Fears called the Euclid police department to report that her car had been stolen. The only possible inferences from this evidence are that Bland and the other burglar used Fears's car on June 20 during the burglary, and that Fears called the police on June 23 to report her car stolen in order to protect Bland because she knew he had abandoned the car that had been used and damaged during the burglary.

{¶23} With respect to Officer Alcantara's identification of Bland from the photograph on Fears's Facebook page, Officer Alcantara testified that upon seeing the picture of Bland from Fears's Facebook page, he was "100 percent certain" that Bland

was the driver who ran away because he got a good look at the fleeing male: he had pulled in the driveway behind the Chevy Impala, his car lights were shining on it, and nothing was obstructing his view. Although Bland takes issue with the identification, the jury was free to believe or disbelieve Officer Alcantara's testimony.

{¶24} With respect to the palm prints, Detective Tschetter testified that on June 20, 2013, he observed a "dust void" on the TV stand in the living room where the TV and Xbox had been located before they were removed, and that he lifted palm prints from the table directly behind where the base of the TV would have been before it was removed. Thus, despite Bland's argument otherwise, there was evidence from which the jury could infer that Bland's palm prints in Whitner's home were made as recently as June 20, 2013, when he helped steal the TV and Xbox from the TV stand, instead of, as Bland testified, from almost a year earlier when he charged his phone while visiting one of Janai's "friends." The inference is even more reasonable in light of Whitner's testimony that when he got home and was forced to the ground by the gunman, the TV, Xbox, and Louis Vuitton bag had already been moved from the living room to the kitchen floor.

{¶25} Likewise, the jury could reasonably infer that the ski mask and gun found in Fears's car were used during the burglary, and that Bland was the individual wearing Timberland boots during the burglary. Even discounting Whitner's identification of the mask, the evidence demonstrated it was found in a car owned by Bland's girlfriend that was the same color as the paint scrapings left on the side of Whitner's house and abandoned by Bland only three days after the burglary, and his DNA was found on the

mask. Although Bland's DNA was not found on the gun, Detective Tschetter testified that it is common for guns to be passed among individuals, and Whitner testified that he remembered the gun. Finally, although Bland was not arrested until October, some four months after the burglary, in light of all the other evidence linking him to the burglary, the jury could reasonably infer that Bland was indeed the burglar who was wearing wheat-colored Timberland boots during the burglary in June.

{¶26} This is not the exceptional case where the evidence weighs heavily against the conviction and the jury lost its way in convicting Bland. The assignment of error is overruled, and the judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR