

[Cite as *State v. Franks*, 2005-Ohio-124.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 20374
v.	:	T.C. NO. 02 CR 4776
	:	
RICHARD FRANKS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

OPINION

Rendered on the 14th day of January, 2005.

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WOLFF, J.

{¶ 1} Richard J. Franks appeals from a judgment of the Montgomery County Court of Common Pleas, which convicted him of robbery and sentenced him to three years of imprisonment.

{¶ 2} On January 29, 2003, Franks was indicted for robbery in violation of R.C.

2911.01(A)(1). He pled not guilty by reason of insanity and sought a psychological assessment to determine his competency. While psychological evaluations were pending, Franks changed his plea to guilty. Franks subsequently sought to withdraw his guilty plea. The trial court granted the motion to withdraw the plea because “Franks was under the misunderstanding when he entered his guilty plea that he nonetheless would be examined regarding his sanity at the time of the offense.”

{¶ 3} Franks was found to be competent to stand trial. In February 2004, he was tried by a judge and was found guilty of robbery.

{¶ 4} Franks appeals from his conviction, raising one assignment of error.

{¶ 5} “THE TRIAL COURT ERRED IN THE CONVICTION OF THE DEFENDANT-APPELLANT AS IT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BY NOT CONSIDERING THE DEFENSE OF DURESS.”

{¶ 6} Franks claims that the evidence did not support his conviction and that the court should have accepted his claim that he was coerced into participating in the crime.

{¶ 7} The state’s evidence established the following facts:

{¶ 8} Franks and Joshua Williams went to the Kroger store at 3520 West Seibenthaler around 9:30 on the morning of December 26, 2002. There was a Fifth Third Bank branch inside the Kroger store. The men waited outside the bank counter until it opened at 10:00 a.m., at which point Franks handed a cashier a note that stated, “Give me three thousand cash. No dye packs. No alarms. I will shoot you.” The teller gave Franks approximately \$3,900 from her drawer. This exchange was taped by a security camera.

{¶ 9} The police gave the video tape to the local television news to solicit help in solving the crime. Williams came forward shortly after the tape was broadcast. He told the police that he had been depicted on the news as robbing a bank, but that he had not participated, and he wanted to talk with a detective. Williams spoke with Detective Melvin Hutchison. As a result of that conversation, Franks became a suspect, and Williams was eliminated as a suspect. The bank teller picked Franks out of a photospread. As a result of their investigation, the police also identified and searched the van in which Franks and Williams had been driven by Stacy Patterson to and from the Kroger store on December 26, 2002. They found a \$1,000 money wrapper, a folding knife, and a baseball bat inside the van. Franks was arrested on January 2, 2003.

{¶ 10} Additional investigation revealed that Franks had an account at Fifth Third Bank, but there was a payee on the account, thus Franks was not supposed to be able to access the funds without the payee's approval. The evidence also showed, however, and Franks admitted, that he had successfully withdrawan small amounts from the Fifth Third branch in the Seibenthaler Kroger without the payee's approval in the past. He had approximately \$3,300 in his Fifth Third accounts at the time of the robbery.

{¶ 11} Franks presented a very different version of events. He claimed that he had been using drugs on December 25, 2002, with Williams, Patterson, and someone named "Lester," and had ended up owing them some money. He claimed that he was not allowed to leave because of the debt, and that Williams had called Fifth Third to check the balances of Franks' accounts. Although Franks believed that he owed only about \$20 for the drugs, Williams first told him that he owed \$300, and then, after

calling the bank, that he owed \$3,000. He spent the night at a hotel with Patterson and Williams, who had a gun. Franks stated that Williams and Patterson would not allow him to sleep, forcing him to ingest cocaine to stay awake. In the morning, Williams, Patterson, another woman, and Franks went to the bank. Patterson and Williams were armed with a baseball bat and gun on the way to the bank. Franks asked to be allowed to leave, but the request was denied. Williams then went into the store with Franks, forcing Franks to write the note demanding money and give it to the teller. After they fled to the van, Williams forced Franks to give him the money. They returned to a hotel, where Williams and Patterson took Franks' clothes and papers, but Franks escaped a short time later by jumping over the balcony. After his escape, Franks bought a six-pack of beer and took a cab to the Salvation Army, where he asked staff to call the police. He was hallucinating and paranoid when he arrived. When the police responded, Franks did not mention the alleged robbery or being threatened. Regarding his reason for summoning the police, Franks testified that, "if somethin' was to happen to [him] where he got shot, [he] wanted the police to be able to figure out where [he] was at." The police apparently performed a mental health evaluation and then drove Franks to his mother's house. He was contacted by the police again sometime later, when their investigation led them to believe that he was a suspect.

{¶ 12} On appeal, Franks asserts that his conviction was against the manifest weight of the evidence and that the trial court should have believed his assertion that he had robbed the bank under duress, i.e., he was forced to do so by Williams and Patterson.

{¶ 13} When a conviction is challenged on appeal as being against the manifest

weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717. A judgment should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin*, 20 Ohio App.3d at 175.

{¶ 14} The trial court was presented with diametric versions of the events surrounding the robbery. Based on its assessment of witness credibility, the trial court could have reasonably concluded that Franks had robbed the bank. There are holes in the story, such as the details of what Williams told the police and what happened to the money that was stolen. However, Franks passed the robbery note to the teller, the teller handed the money to him, and he fled the scene. Moreover, the trial court could have reasonably concluded that many aspects of Franks’ story were lacking in credibility. As such, Franks’ conviction was not against the manifest weight of the evidence.

{¶ 15} The assignment of error is overruled.

{¶ 16} The judgment of the trial court will be affirmed.

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FAIN, J. and YOUNG, J., concur.

Copies mailed to:

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Hon. Dennis J. Langer