

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-140719
	:	TRIAL NO. B-1403538(A)
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TABARI ROBERTS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

While on patrol in the early morning hours of February 4, 2012, deputy sheriff S. Thomas Hickey attempted to stop a vehicle for speeding. The vehicle sped away and the deputy gave pursuit. The vehicle eventually stopped, but the driver fled on foot. Deputies discovered several bags of marijuana plainly visible throughout the vehicle. They also found an inoperable handgun and a baggie containing cocaine. Law enforcement testimony indicated that the amount of marijuana and its packaging indicated it was not likely intended for personal use. Deputies also found a casino loyalty card in the car in the name of defendant-appellant Tabari Roberts. Deputies obtained a photograph of Roberts, and Hickey identified Roberts as the man who fled from the vehicle.

At trial, the state presented testimony, without objection, about the gun that had been found in the car. When the state later attempted to have the gun admitted, Roberts objected. The trial court refused to allow the gun to be admitted. Roberts later sought a mistrial based on the attempt to have the gun admitted, but the trial court denied the motion. In his defense, Roberts presented his and his girlfriend's testimony. Both said that he had been with her at the time of the chase.

In his first two assignments of error, Roberts argues that his conviction for trafficking in marijuana was either based upon insufficient evidence or was contrary to the manifest weight of the evidence. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). A sufficiency-of-evidence claim argues a total failure of proof as to at least one of those elements. *State v. Jenks*, 61 Ohio St.3d 259, 612 N.E.2d 492 (1991). In addressing a manifest-weight-of-the-evidence challenge, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, 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. *See Thompkins* at 387.

Roberts was identified as fleeing from deputies in a vehicle that had his identification in it. The vehicle had several bags of marijuana in it. The fact that the jury chose to believe the deputy rather than Roberts and his girlfriend does not make the conviction improper. Matters as to the credibility of evidence are for the trier of fact to decide. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116. This is particularly true regarding the evaluation of witness testimony. *State v. Williams*, 1st Dist. Hamilton Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶ 45, citing *Bryan*, and *State v. Russ*, 1st Dist. Hamilton No. C-050797, 2006-Ohio-6824, ¶ 23. We overrule his first two assignments of error.

Roberts argues in his third assignment of error that the state engaged in prosecutorial misconduct when it attempted to have the gun admitted into evidence. The test for whether prosecutorial misconduct mandates reversal is whether the actions were improper, and, if so, whether they prejudicially affected the substantial rights of the accused. *See State v. Bey*, 85 Ohio St.3d 487, 493, 709 N.E.2d 484

(1999). The central element of a prosecutorial-misconduct analysis is “whether the conduct complained of deprived the defendant of a fair trial.” *State v. Fears*, 86 Ohio St.3d 329, 332, 715 N.E.2d 136 (1999), citing *State v. Apanovitch*, 33 Ohio St.3d 19, 24, 514 N.E.2d 394 (1987).

The premise of Roberts’s argument is that the jury *might* have seen the gun before the objection to its admission was sustained. But the jury already knew that a gun had been found in the car. The fact that the jury might have seen the gun when the state attempted to admit it was not sufficient to deprive Roberts of a fair trial. We overrule his third assignment of error.

In his final assignment of error, Roberts claims that the trial court improperly ordered him to pay the costs of transcript preparation for this appeal. But the record reflects that the state paid those costs. Since Roberts has not been assessed the costs about which he complains, we overrule his fourth assignment of error.

Having considered and overruled all assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON, P.J., CUNNINGHAM and MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on November 4, 2015  
per order of the court \_\_\_\_\_.

Presiding Judge