

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1263

Appellee

Trial Court No. CR0200803657

v.

Carlandus Brown

DECISION AND JUDGMENT

Appellant

Decided: January 14, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Charles S. Rowell, Jr., for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Carlandus Brown, appeals from his convictions entered by the Lucas County Court of Common Pleas in the above-captioned case. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} Appellant was indicted on one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), and two counts of felonious assault, in violation of R.C. 2903.11(A)(2). Each count included an attendant firearm specification.

{¶ 3} The matter went to trial before a judge, beginning August 12, 2009, and ending August 13, 2009. At trial, the following evidence was adduced.

{¶ 4} Toledo Police Sergeant Thomas P. Morelli testified that in the early morning hours of November 2, 2008, while on patrol in a marked police vehicle, he heard several shots being fired in the area of an after-hours motorcycle club. Morelli notified dispatch about the gunfire, and then proceeded to the location of the motorcycle club. As he approached the club, Morelli observed two cars -- one, a bright orange Caprice and the other, a dark Lumina -- speeding away from him. Morelli notified dispatch concerning the fleeing cars, then, without his lights and siren activated, began to catch up with them. He testified that he saw both vehicles run a red light and then pull up next to one another on a one-way street.

{¶ 5} Once Morelli caught up to the two cars, he was able to get their license plate numbers. The Caprice, which appeared to Morelli to have only one person inside, turned left on the one-way street; the dark Lumina, which appeared to Morelli to have two people in it, turned right, going the wrong way. Morelli, together with Sergeant Joseph A. Niemiec, who was traveling in a separate vehicle, began to chase the orange Caprice, this time with lights and sirens activated. The high-speed chase ended when the

Caprice eventually jumped over a curb and into a yard. The driver of the Caprice fled the scene on foot.

{¶ 6} Morelli proceeded to search for the driver of the Caprice for 15 or 20 minutes, before returning to his car. Upon doing so, Morelli was passed by the dark Lumina. He pulled out behind the Lumina and followed it. After confirming that the license plate on the Lumina was the same plate that he had seen earlier, he initiated a traffic stop and took the occupants of the vehicle into custody. The driver of the vehicle was appellant, and his passenger was witness Terry McCamery.

{¶ 7} Toledo Police Sergeant Joseph Niemiec testified that after the Caprice jumped the curb and came to a stop, he saw the driver get out of the car, pause for a moment, look back, then take off running through nearby side yards. He further stated that another officer who arrived on the scene pointed to the area of the sidewalk where the driver had paused and indicated a handgun lying on the sidewalk.

{¶ 8} Toledo Police Officer Jeffrey L. Scott testified that while he was responding to Morelli's report of gunfire, he was flagged down by Joseph Belcher, the victim in this case, who was screaming that he had been shot. When Scott asked Belcher what happened, Belcher told Scott that somebody had just shot him and stolen his car.

{¶ 9} Appellant's brother, Quincy D. Brown, who is a co-defendant in the case, also testified at the trial, undisputedly with the hope of securing a favorable plea agreement for himself. His testimony was as follows. On the night in question, he, appellant, and Terry McCamery were together drinking. At one point, they were in the

area of the subject motorcycle club, when Quincy noticed victim Belcher and decided in his own mind that he was going to "stick him up." Quincy stated that he had a gun on his person and, in fact, acknowledged that the gun that he was carrying was the same 9mm handgun that was later found at the scene where the Caprice had come to a stop following the police chase.

{¶ 10} According to Quincy, the incident began when he was riding in the dark Lumina, which was being driven by appellant. Quincy stated that while appellant did not initially know what Quincy was going to do, it became apparent when Quincy -- who had been riding in the car with a gun in his lap -- announced that he was going to "get" Belcher and instructed appellant to stop the Lumina next to Belcher's car. Appellant did as he was told. Quincy exited the car, pointed the gun at Belcher's car and fired once, hitting Belcher in both legs. Belcher took off in the Caprice, and Quincy returned to the Lumina. Appellant followed the Caprice around the corner. By the time the Lumina reached the Caprice, Quincy stated, Belcher had exited the car and fled. Belcher's sister, who had also been riding in the car when the shot was fired, was permitted to leave. Quincy took the Caprice and drove away. Appellant followed behind him, in the Lumina. When the police spotted the two vehicles and gave chase, Quincy fled. He eventually bailed out of the Caprice and, after dropping his gun, took off on foot and hid.

{¶ 11} At trial, Quincy was questioned about a notarized statement that Quincy had earlier executed. The statement read:

{¶ 12} "I, Quincy Brown, would like to confirm that Carlandus Brown did not commit any crime nor was he involved in any crimes. He is being unlawfully held. I do not know anything about a robbery or shooting. I was not involved in those crimes nor did I commit any crime." (Misspellings corrected.)

{¶ 13} At trial, Quincy testified that he wrote the statement to help appellant out with respect to a parole hearing, but that the statement was not true.

{¶ 14} Lumina passenger McCamery -- who is not a co-defendant in the case -- testified that on the night in question, he, appellant and Quincy had been out drinking. McCamery stated that he rode in the back seat, while appellant drove the car and Quincy occupied the front passenger seat. As they were driving, they approached an "old school orange car with big silver rims on it." Quincy said "something," and the Lumina stopped less than ten feet from the orange car. Quincy exited the Lumina, pointed his gun, tried to take the other car, and shot a fellow. The orange car pulled away, Quincy returned to the Lumina, and they followed the orange car and cut it off, running the orange car off the road. The orange car swerved, and the "fellow" got out of the car. Quincy pointed the gun at the orange car's female passenger, told her she was cool, and allowed her to get out of the car. Quincy got in the car and took off. He and appellant followed Quincy in the Lumina for a short distance, before he and appellant drove to appellant's grandmother's house.

{¶ 15} McCamery further testified that after staying at appellant's grandmother's house "for a minute or two," he and appellant returned to the Lumina and went back out

to look for Quincy. Soon after, police pulled over the Lumina and apprehended appellant and McCamery.

{¶ 16} Victim Belcher testified that the November 2, 2008 incident occurred when "a guy" approached his car window with a gun and said, "You know what it is." Belcher stated that he leaned over and was shot. He stated that he pulled away in his car, after which a "black car" came and cut him off, causing him to hit and go up onto a curb. At that point, Belcher fled his vehicle.

{¶ 17} Appellant, himself, testified, and denied any involvement in the incident, whatsoever.

{¶ 18} After hearing all of the evidence, the trial court convicted appellant as charged. Appellant was sentenced to serve three years in prison for the aggravated robbery, with an additional sentence of three years, to be served consecutively, for the firearm specification. For the first count of felonious assault, appellant was sentenced to serve four years in prison; this sentence was ordered to be served consecutively to the sentences imposed for the aggravated robbery and for the firearm specification. For the second count of felonious assault, appellant was sentenced to serve an additional four years in prison; this sentence was ordered to be served concurrently with the sentence for the first count of felonious assault.

{¶ 19} Appellant timely filed an appeal of the trial court's decision, raising the following as his sole assignment of error:

{¶ 20} I. "The verdict was unsupported by and against the manifest weight of the evidence."

{¶ 21} Appellant argues in his assignment of error that his convictions were against the weight of the evidence. In support of this position, appellant points to testimony by co-defendant Quincy Brown, wherein Brown testified that appellant did not initially know what Quincy was going to do. He also urges this court to consider Quincy's signed, notarized statement stating that appellant had nothing to do with the charged crimes. Finally, appellant points to testimony by witness Terry McCamery, where McCamery admits that: (1) he was initially concerned that he could be charged in the case; (2) he had been drinking and sitting in the back seat of the car listening to music at the time the crime was committed; and (3) he has mental issues for which he is receiving treatment.

{¶ 22} The law is well settled that "[i]n determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences and determine 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. Martin* (1983), 20 Ohio App.3d 172, 175. "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other.'" *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387 (Emphasis sic.)

{¶ 23} Determinations concerning witness credibility, conflicting testimony, and evidence weight remain primarily for the trier of fact. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶ 24} An appellate court will not reverse a judgment in a bench trial as being against the manifest weight of the evidence where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Billman*, 7th Dist. No. 09--MO-10, 2010-Ohio-4852, 175, ¶ 14, citing *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59.

{¶ 25} Here, the court convicted appellant of: (1) a single count of aggravated robbery, in violation of R.C. 2911.01(A)(1), a felony of the first degree, with a gun specification; and (2) two counts of felonious assault, in violation of R.C. 2903.11(A)(2), also with attendant gun specifications.

{¶ 26} R.C. 2911.01(A)(1), which establishes the crime of aggravated robbery, pertinently provides:

{¶ 27} "(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

{¶ 28} "(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]"

{¶ 29} R.C. 2903.11(A)(2), which establishes the crime of felonious assault, relevantly states:

{¶ 30} "(A) No person shall knowingly do either of the following:

{¶ 31} "* * *

{¶ 32} "(2) Cause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance."

{¶ 33} R.C. 2923.03, addressing complicity, relevantly states:

{¶ 34} "(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

{¶ 35} "* * *

{¶ 36} "(2) Aid or abet another in committing the offense;

{¶ 37} "(3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code."

{¶ 38} In the instant case, abundant evidence demonstrated that assailant Quincy Brown shot victim Joseph Belcher, and then robbed him of his car. In addition, there was ample evidence to show that as Belcher tried to pull away, the car that was driven by appellant deliberately attempted to cut Belcher off, forcing him to drive up over the curb and allowing Quincy to take the victim's car. Finally, the evidence was undisputed that, at the time of the offenses, Belcher's car had, in addition to Belcher, a second, female, occupant.

{¶ 39} After reviewing the entire record, and weighing the evidence and all reasonable inferences, we find that the trial court reasonably concluded from substantial evidence that the state proved its case against appellant beyond a reasonable doubt. See, *Billman*, supra; *Eskridge*, supra.

{¶ 40} For all of the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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