

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

State of Ohio

Court of Appeals No. L-14-1145

Appellee

Trial Court No. CR0201203075

v.

Deitrekk Boone

DECISION AND JUDGMENT

Appellant

Decided: July 22, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, Brenda J. Majdalani and Louis E. Kountouris, Assistant Prosecuting Attorneys, for appellee.

Patricia Horner, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a June 12, 2014 judgment of the Lucas County Court of Common Pleas, which found appellant guilty of one count of aggravated murder and one count of aggravated robbery, both with firearms specifications, in violation of R.C.

2903.01(B) and (F), 2911.01(A)(1), and 2941.145, respectively, both first degree felonies. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Deitrekk Boone, sets forth the following three assignments of error:

I. Appellant's conviction was based on insufficient evidence and violated his constitutional due process rights.

II. Appellant's conviction was against the manifest weight of the evidence.

III. The trial court erred in denying the motion to suppress.

{¶ 3} The following undisputed facts are relevant to the issues raised on appeal. In November 2012, a group comprised of five men devised a conspiracy scheme to target, plan, and conduct an armed robbery of a suspected local drug dealer working out of an auto body shop located on Warehouse Drive, in an industrial section of Toledo.

{¶ 4} With respect to specific portions of the scheme, members Chad Brown and Matthew Managhan were primarily engaged in the background planning for the crime. Group member Jason Kuhns was primarily engaged in preparation for the execution of the crime. Kuhns was assisted in this task by his roommate, Deitrekk Boone, the appellant in the instant case. Appellant subsequently recruited his friend, Devontae Harris, the final member of the group, to join and participate in the crime.

{¶ 5} During the early morning hours of November 19, 2012, appellant, Kuhns, and Harris drove to the designated Warehouse Drive location. They concealed themselves behind a dumpster, lying in wait for their intended robbery target.

{¶ 6} When the victim, Joseph Lengel, arrived to open up his nearby fitness business for the day, he was tragically mistaken for the actual target. Appellant came out of hiding and approached the victim. A struggle ensued. The victim, a physically fit gym owner, defended himself. Appellant fired two shots from a .38 caliber revolver at the victim. When appellant's shots failed to strike the victim, Harris ran up to the victim and fired a shotgun directly into the victim's chest. The victim was killed. The .38 caliber revolver fired by appellant in the course of this incident was supplied for the robbery by Managhan.

{¶ 7} Upon killing the victim, appellant and his accomplices fled the scene in a white pickup truck. The truck was furnished for the robbery by Brown. The truck was later recovered. It had been abandoned and set on fire in close proximity to appellant's Beecham Street residence in central Toledo.

{¶ 8} The subsequent police investigation into the murder discovered that surrounding businesses surveillance systems showed that the subject truck was located at the scene at the time of the crime. Evidence retrieved from the truck led the police to Brown. During the course of the investigation, Brown furnished the police information implicating the other group members who participated in the crime. This ultimately enabled the police to locate and investigate the other members.

{¶ 9} Following his initial interview at the police station, appellant absconded to Houston, Texas. Appellant utilized an alias name and successfully evaded capture for over a year, but was ultimately captured. During the subsequent interrogation, appellant eventually conceded to selling an IPAD that was stolen from the victim in the course of the robbery and murder.

{¶ 10} At the conclusion of the investigation, the prosecution of the responsible individuals commenced. All members except appellant entered into voluntary plea agreements. On December 14, 2012, appellant was indicted on one count of aggravated murder and one count of aggravated robbery, both with firearms specifications, in violation of R.C. 2903.01 (B) and (F) and R.C. 2911.01(A)(1), respectively, both felonies of the first degree.

{¶ 11} On June 9, 2014, appellant filed a motion to suppress. It was heard on June 10, 2014. It was denied. Appellant waived his right to a jury trial. The matter proceeded to a bench trial. On June 12, 2014, appellant was found guilty of the charges. Appellant was sentenced to a 30-year term of incarceration on the murder conviction and an 8-year term of incarceration on the robbery conviction, ordered to be served consecutively. This appeal ensued.

{¶ 12} In the first assignment of error, appellant claims that his conviction was based on insufficient evidence. The standard for determining whether there is sufficient evidence in support of a disputed conviction is whether the evidence admitted at trial, “if believed, would convince the average mind of defendant’s guilt beyond a reasonable

doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Therefore, “[t]he verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact.” *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997), citing *Jenks* at paragraph two of the syllabus. The court must view the evidence in the light most favorable to the prosecution. *Jenks, supra*.

{¶ 13} This court has carefully reviewed the record of evidence in this matter in order to determine if it contains evidence sufficient to enable a rational trier-of-fact to find appellant guilty beyond a reasonable doubt. We find that the record unambiguously establishes the propriety of the disputed guilty verdict.

{¶ 14} Notably, the prosecution presented consistent testimony from appellant’s co-defendants, roommate, and investigating officers all reflecting appellant’s guilt. In conjunction with the testimonial evidence, retrieved video surveillance from area businesses corroborated witness testimony regarding when the pickup truck used in the crimes arrived at the scene and also showed the ensuing struggle between the victim and appellant.

{¶ 15} In addition, a bottle of “Assured” brand aspirin that was recovered from inside the truck indisputably linked the truck to the crimes. The box for the aspirin was recovered at the crime scene. It was in perfect condition. The specific expiration date

and lot number on the bottle from the truck and the box from the scene of the murder were a match. Further, papers possessing unique markings that were recovered from the truck following the crimes matched the same unique markings present on spiral notebooks recovered during a subsequent search of appellant's Beecham Street residence.

{¶ 16} With respect to the testimonial evidence presented, Detective Clark testified at trial that co-defendant Harris led police to the location where the keys to the truck used in the crime had been discarded. The keys were recovered from a sewer drain. The drain was located in extremely close proximity to appellant's residence.

{¶ 17} Most significantly, appellant's roommate, Miara McMillian, furnished uncontroverted testimony that she heard appellant and his co-defendants in a highly emotional state discussing the crime. McMillian testified that she heard appellant, Kuhns, and Harris expressing much concern that someone, "[W]as supposed to be robbed, but the wrong person was robbed and it was an accident" and "[S]omeone accidentally got hurt."

{¶ 18} In addition, Alberto Selvera testified that appellant and other men came to his home in December of 2012, shortly after these crimes, and sold him a shotgun. The gun was determined to be used in these crimes. Selvera definitively picked appellant from a photo array as one of the men who sold him the shotgun.

{¶ 19} We find that the record of evidence contains ample evidence to convince a rational trier of fact of appellant's guilt. Wherefore, we find appellant's first assignment of error not well-taken.

{¶ 20} In the second assignment of error, appellant maintains that his conviction was against the manifest weight of the evidence. We are not persuaded.

{¶ 21} Even when there is sufficient evidence to support a verdict, a court of appeals may nevertheless decide that the verdict is against the weight of the evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), paragraph two of the syllabus. When weighing the evidence, the court of appeals must consider whether the evidence in a case is conflicting or where reasonable minds might differ as to the inferences to be drawn from it, consider the weight of the evidence, and consider the credibility of the witnesses to determine if 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.” *Id.* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983), and *State v. Smith*, 80 Ohio St.3d 89, 114, 684 N.E.2d 668 (1997).

{¶ 22} Upon examination of the record of evidence, we find that the conviction was not contrary to the manifest weight of the evidence. Uncontroverted testimony from appellant’s co-defendants placed appellant at the scene during the crime, participating in the crime. The evidence also established that appellant and Harris burned the pickup truck that was used to carry out the robbery and murder in a failed effort to conceal their crimes.

{¶ 23} As noted, witness McMillian testified that appellant, Kuhns, and Harris arrived at appellant’s home in the early morning hours on the day of the crime. They were frantically discussing a robbery that went wrong and lamenting that they had gotten

the wrong person. McMillian further testified that she heard them discussing the burning of the truck that was used in the crime.

{¶ 24} In contrast to the state's significant and compelling evidence, appellant unconvincingly testified on his own behalf. Appellant furnished alibi testimony that he was with his then girlfriend, Kiarah Brown, at the time of the shooting. Notably, Brown, appellant's own girlfriend, did not corroborate appellant's alibi claim. On the contrary, she testified that appellant was not with her and she was actually calling police stations looking for appellant on the night of the incident. At trial, Brown testified that she made calls to booking because she "thought he was doing something dumb." Her phone records confirm her testimony.

{¶ 25} Shortly after the murder, appellant fled the state and went to Houston. Appellant adopted an alias in order to avoid capture. After approximately a year on the run, appellant was captured and returned to Ohio. While awaiting trial, appellant made several phone calls from prison covertly using the phone pin code of a different inmate in a failed effort to avoid evidence that he contacted Brown trying to influence her testimony in exchange for money. In the taped conversation with witness Brown and someone connected to Harris, appellant clearly attempts to convince witnesses to alter their testimony so as to not implicate appellant in exchange for money. Appellant's attempts from prison to orchestrate false testimony failed. In conjunction with this, Detective Clark produced a taped conversation of appellant suggesting a third party kill key witness and roommate, McMillian. Appellant used thinly veiled code words as

“clapped” and “plug that bitch.” During this conversation, appellant conveys the street name and a detailed description of McMillian’s home to the party whom he intended to convince to eliminate this key witness against appellant.

{¶ 26} Our review of the record reflects ample and convincing evidence in support of appellant’s disputed convictions. Appellant’s convictions were not against the manifest weight of the evidence. The record contains no evidence in support of the notion that a manifest miscarriage of justice occurred. Wherefore, we find appellant’s second assignment of error not well-taken.

{¶ 27} In the third assignment of error, appellant contends that the trial court erred in denying the motion to suppress the search warrant. In support, appellant essentially asserts that the search warrant failed to identify with sufficient particularity the premises to be searched.

{¶ 28} The Ohio Supreme Court has established that appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982). Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

State v. McNamara, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist.1997). Further, an affidavit supporting a search warrant carries a presumption of validity. *Franks v. Delaware*, 438 U.S. 154, 172, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

{¶ 29} Appellant predominantly argues that the search warrant is defective based upon the second page utilizing the word “vehicle” instead of the word “residence.” We are not persuaded. We note that the first page of the warrant encompassed an extremely detailed depiction of the address, color, and special characteristics of the house on Beecham Street such that any police officer would effectively be able to properly execute the search warrant from the description listed at the proper location.

{¶ 30} Appellant also disputes the propriety of the search warrant authorizing a search to be conducted at night. We do not concur. As noted by the trial court, Crim.R. 41(C) provides in relevant part:

[A] warrant shall be served in the daytime unless the issuing Court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime.

As the trial court also noted:

The reasonable cause standard set forth in Criminal Rule 41(c) supersedes the provisions of R.C. 2933.24. Therefore, the complaining party must demonstrate that the issuing judge abused his discretion in ordering a nighttime search. *State v. Marko*, 36 Ohio App.2d 114, 303 N.E.2d 94 (1973).

{¶ 31} Appellant presents no evidence demonstrating that a night search somehow constituted an abuse of discretion. Based upon the foregoing, appellant's third assignment of error is found not well-taken.

{¶ 32} On consideration whereof, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is hereby 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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