

[Cite as *State v. Jordan*, 2005-Ohio-386.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84216

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
DERICK JORDAN	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	<u>February 3, 2005</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-438318
	:	
JUDGMENT	:	AFFIRMED.
	:	
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor By: EDWARD J. CORRIGAN, ESQ. Assistant County Prosecutor The Justice Center - 8th
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SEAN C. GALLAGHER, J.:

{¶1} Defendant-appellant Derick Jordan ("Jordan") appeals from his conviction for aggravated robbery following a jury trial in the Cuyahoga County Court of Common Pleas. Finding no error in the proceedings below, we affirm.

{¶2} The following facts give rise to this appeal. Jordan was charged with aggravated robbery in violation of R.C. 2911.01, a felony of the first degree. Jordan was convicted as charged and sentenced to four years in prison.¹

{¶3} On March 6, 2003, the victim, a juvenile, took the RTA bus home from school. The victim got off the bus at East 105th Street and Lee Road in Cleveland around 3 p.m. The victim testified that Jordan, known to him as "Tex," snuck up on him and struck him in the face with a brick. Jordan, along with two others, took the victim's jacket and twenty dollars from his pocket.

{¶4} The victim walked home, and his mother called EMS. EMS arrived and looked over the victim; however, the victim did not want to go to the hospital. About an hour later, the victim's mother noticed he was bleeding from his ear, so she called EMS again. The victim was taken to the hospital, where it was determined that he had a fractured mandible.

¹ The first trial ended in a mistrial.

{¶ 5} The victim informed his mother and police that "Tex" had done this to him.

{¶ 6} Detective Small from the Cleveland Police Department testified as to his investigation. He also testified that after the defense attorney's opening statement, wherein he indicated that Nathan Batiste ("Batiste") would testify that he was the actual perpetrator, the victim looked in the hall at Batiste and told the detective that Batiste had not been there on the day of the offense.

{¶ 7} Jordan took the stand in his defense and testified that he was standing with Batiste when the victim approached them looking for marijuana. Jordan claimed that Batiste sold marijuana to the victim for twenty dollars. Jordan testified that Batiste realized the twenty was fake and confronted the victim, eventually punching him in the jaw. Jordan stated he stepped in between to stop the fight and helped the victim up. Batiste took the stand and testified to the same.

{¶ 8} The jury found Jordan guilty as charged, and this appeal follows. Jordan advances two assignments of error for our review.

{¶ 9} "I. The trial court erred in denying the appellant's motion for acquittal as to the charges when the state failed to present sufficient evidence to sustain a conviction."

{¶ 10} Crim.R. 29(A) governs motions for acquittal and provides for a judgment of acquittal "if the evidence is insufficient to

sustain a conviction * * *." 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 (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. A verdict will not be disturbed on appeal unless reasonable minds could not reach the conclusion reached by the trier of fact. *Id.* In essence, sufficiency is a test of adequacy. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386-387.

The statute under which Jordan was convicted provides, in pertinent part, that: "No person, in attempting or committing a theft offense, * * * shall have a deadly weapon on or about the offender's person or under the offender's control and * * * use it." R.C. 2911.01(A)(1).

{¶ 11} Here, Jordan argues that the state failed to establish that he was involved in this crime, because the victim's testimony was questionable at best. Further, Jordan argues that Batiste took responsibility for the crime, completely exonerating Jordan.

{¶ 12} "The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *Thompkins*, supra at 386. "'[S]ufficiency' is a term of art meaning that legal standard applied to determine whether the case may go to the jury or whether the evidence is legally

sufficient to support the jury verdict as a matter of law." *Id.*, citing Black's Law Dictionary (6 Ed. 1990) 1433.

{¶ 13} After reviewing the entire record, we find that the evidence is legally sufficient to support the jury verdict as a matter of law.

{¶ 14} Jordan's first assignment of error is overruled.

{¶ 15} "II. Appellant's convictions are against the manifest weight of the evidence."

{¶ 16} In reviewing a claim challenging the manifest weight of the evidence, we are directed as follows: "[t]he court, reviewing the entire record, 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 at 387, quoting *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. It indicates clearly to a jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics,

but depends on its *effect in inducing belief*." (Emphasis in original.) Id. at 388, quoting Black's, *supra*, at 1594.

{¶ 17} A reviewing court will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a reasonable doubt.

State v. Eley (1978), 56 Ohio St.2d 169. Furthermore, the power to reverse a judgment of conviction as against the manifest weight must be exercised with caution and in only the rare case in which the evidence weighs heavily against the conviction. *State v. Martin*, 20 Ohio App.3d 172, 175.

{¶ 18} After reviewing the entire record, including Jordan's testimony, we cannot say that the jury lost its way. Although the victim and Jordan gave conflicting accounts of what happened and who was the actual perpetrator, the jury believed the victim. The trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility. *State v. Bezak*, Cuyahoga App. No. 84008, 2004-Ohio-6623. We cannot say that the verdict is against the manifest weight of the evidence.

{¶ 19} Jordan's second assignment of error is overruled.

Judgment 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 Cuyahoga County Common Pleas Court to carry this judgment into execution. The defendant's conviction 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.

ANTHONY O. CALABRESE, JR., J., AND

JOSEPH J. NAHRA, J.*, CONCUR.

SEAN C. GALLAGHER
PRESIDING JUDGE

*Sitting by assignment: Judge Joseph J. Nahra, retired, of the Eighth District Court of Appeals.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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