

[Cite as *State v. Henry*, 2005-Ohio-6629.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85879

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
-VS-	:	AND
	:	
ANDREW HENRY	:	OPINION
	:	
Defendant-Appellant	:	

Date of Announcement of Decision:	DECEMBER 15, 2005
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Character of Proceeding:	Criminal appeal from Court of Common Pleas Case No. CR-456082
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Judgment:	Reversed and remanded.
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Date of Journalization:

Appearances:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor JOHN SMERILLO, Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	GUY D. RUTHERFORD, ESQ. 614 W. Superior Avenue Suite 940 Cleveland, Ohio 44113
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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Andrew Henry ("defendant"), appeals from his conviction and sentence in the Common Pleas Court for aggravated robbery. This is a companion case to *State v. Blair*, Cuyahoga App. No. 85880, 2205-Ohio-____, which is the appeal of the co-defendant. Both cases raise and argue identical assignments of error such that the resolution of *Blair* controls the disposition of this appeal. Accordingly, we adopt and incorporate the facts and reasoning in *Blair* here.

{¶ 2} Defendant raises six assignments of error, which are attached as Appendix A. Defendant's second assignment of error is sustained. The remaining issues and assignments of error are moot.

{¶ 3} Judgment reversed. We remand this case to the trial court to vacate the conviction and sentence and enter a judgment of acquittal.

It is ordered that appellant recover of appellee his 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 Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, P.J., and

SEAN C. GALLAGHER, J., CONCUR.

JAMES J. SWEENEY
JUDGE

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. 112, Section 2(A)(1).

APPENDIX A

"I. The trial [sic] was without jurisdiction to conduct a bench trial because the requirements of R.C. 2945.05 were not strictly followed.

"II. The evidence was insufficient to support the convictions.

"III. The verdicts of guilty are against the manifest weight of the evidence.

"IV. The trial court erred in imposing more than the minimum sentence.

"V. The trial court erred in imposing maximum sentences.

"VI. The trial court erred by failing to make required findings beyond a reasonable doubt before imposing an enhanced sentence."