

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91682

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAYSHON STARKS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED AND REMANDED FOR CORRECTION OF
SENTENCING JOURNAL ENTRY**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-487482

BEFORE: Boyle, J., Cooney, A.J., and Celebrezze, J.

RELEASED: July 9, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Rayshon Starks, appeals his convictions. Finding no merit to the appeal, we affirm, but remand to the trial court to correct a clerical error on the final sentencing entry.

{¶ 2} In September 2006, the grand jury indicted Starks on thirteen counts: Counts 1 through 5, aggravated robbery, in violation of R.C. 2911.01; Counts 6 through 10, kidnapping, in violation of R.C. 2905.01; Count 11, having weapons while under a disability, in violation of R.C. 2923.13; and Counts 12 and 13, receiving stolen property, in violation of R.C. 2913.51. Counts 1 through 10 also had one- and three-year firearm specifications attached, as well as notices of prior conviction and repeat violent offender specifications. Starks entered a plea of not guilty to the charges and waived his right to a jury trial. The following evidence was presented at a bench trial.

{¶ 3} Brandon Eller, an employee at Advanced Auto Parts (“Advanced Auto”), testified that he was working on September 13, 2006, when a man, whom he later identified to be codefendant Thomas Hunter, came into the store looking for spark plugs. Hunter did not seem to know anything about the car for which he allegedly needed the spark plugs, so Eller told him to come back when he did. Hunter returned “and still did not know any of the information,” but purchased some spark plugs anyway. Hunter left again and came back about five minutes later, pointed a gun at Eller, and demanded money. Eller said that as he began to get the money out of his register, Hunter went to the rear of the store because Eller had told Hunter

that he could not open all of the registers. Arika Perryman and Ken Chappell, assistant managers, were working that day, as well as Karl Marvin and Crue Blakely.

Eller said that Hunter came back a couple minutes later and had a bag of money in his hand. Hunter was walking behind Perryman, pointing his gun at her. Perryman opened the other registers and gave the tills with the money inside to Hunter, who then ran out of the store.

{¶ 4} When the police arrived, Eller accompanied them to view possible suspects. Eller identified Hunter as the man who had entered the store with a gun. Eller said there were also two other people in the van, a male and a female. Eller said that he had never seen the female before, but the other man, whom he identified as Starks, had come into the store about 15 minutes before Hunter robbed the store. Starks never spoke to anyone and appeared to be shopping.

{¶ 5} Marvin testified that he called 911 when Hunter went to the back of the store to find the other managers. Marvin followed Hunter when he ran out of the store to see where he went. He saw Hunter run through several yards, jump a couple of fences, and dive into a dark-colored van, which then pulled onto Babbitt Road and drove north. Marvin pointed out the van to the police when they arrived.

{¶ 6} Thomas Hunter testified that he pled guilty to aggravated robbery and was serving a six-year prison sentence for it. As part of his plea, he agreed to testify against Starks. He explained that he and Starks and some others were at a hotel earlier on the day of the robbery where they smoked marijuana. They “split,” and Hunter saw Starks later at a shoe store. They first talked about robbing a store

when they were at the shoe store. According to Hunter, Starks asked him if he wanted to make some money and told him that it would be “easy” and they would “split it 50/50.” Starks further described how Advanced Auto was “set up,” including where the registers were located. Hunter also said that Starks gave him the gun to use to rob the store. Hunter explained that Starks arrived at the bus stop in front of the store in a brown minivan. Hunter said that a black woman was driving the van, who was later identified as Juquite Dunklin.

{¶ 7} Hunter testified that he was supposed to rob the store the first time he went in, but he “froze up,” so he purchased the spark plugs. He went back in again and pulled a gun on a man at the register. Hunter said that he told the man to open the cash register and give him the money. Hunter went to a back room, a man gave him money out of the safe, and a woman opened the other registers and gave him the money out of them. He said the woman put the “money trays” and the money in his bag. After that, Hunter said he “bailed.” He ran outside into some backyards, hopped a couple of fences, and then heard Starks whistling to him from the van. Hunter said he did not expect to see Starks when he came out of Advanced Auto. Hunter then got in the van, put the bag of money under his “box,” and gave the gun to Starks. Hunter said that Starks put the gun under the seat Starks was sitting in, the front passenger seat. They took off in the van and then got pulled over by the police. Hunter said Starks told him to run. He did not run because he knew he had been caught. Hunter could not identify a silver credit card with the name Boldin Tyus on it. Hunter explained that when the police pulled the van over, Starks was

dropping “stuff” in the van and putting things behind him, where Hunter was sitting in the van.

{¶ 8} Hunter was taken to the police station where he gave two statements to the police, one in his own handwriting and the other a detective wrote out for him because Hunter said he could not put it into words himself. Hunter stated that Starks asked him not to tell the police about his involvement. Hunter thought that was a good idea at first because then Starks might not tell on him. But he later changed his mind and decided to tell.

{¶ 9} Juquite Dunklin testified that she knew Starks because he was a customer at the Popeye’s where she worked. She had gone to a hotel to “hang out” with him a couple of days before the robbery. On the day of the robbery, she saw Starks at a bus stop outside the hotel. He flagged her down and asked her if she would take him to Advanced Auto, which she did. She was driving her van, a 1999 purple Dodge Grand Caravan. She waited for Starks while he went in the store. He came back out and talked to a man at the bus stop in front of the store. Starks got back into the van and told her to drive around the corner and park. While they were parked there, she and Starks made small talk. About six or seven minutes later, Starks blew the horn, opened the side door, and a man jumped in the van. Dunklin said it was the same man Starks had been talking to at the bus stop. Starks told her “to just drive.” She said soon after the police stopped them. Starks kept telling the man that he had to get out of the car, but the man kept saying “no, no.”

{¶ 10} Dunklin said she was arrested and taken to the police station, but she was released the same day.

{¶ 11} About six months after the robbery, Dunklin ran into Starks at the grocery store. Starks told her that if she “would change her story of how the situation went on that particular day,” he would make sure that she “was taken care of.” When asked what that meant, she replied, he was “[t]rying to pay me off to change my story.” She said that Starks wanted her to say that he did not really know Hunter and that Hunter had simply asked him for a ride on that day. Dunklin said that Starks’s attorney had her write up a statement saying that she and Starks were just hanging out in the car when Hunter came up to them and asked them for a ride. She said she wrote it because Starks had promised to pay her for it, but she never received any money from Starks. She was also told that she would not have to come to court if she wrote the statement. She was afraid to testify against Starks because of what “his people” might do to her.

{¶ 12} Boldin Tyus testified that he was robbed on September 12, 2006 in Warrensville Heights at a Marathon gas station. He went in the gas station and saw a man wearing a mask and holding a gun. The man demanded his wallet and Tyus complied.

{¶ 13} Detective Kenneth Kucinski testified that he responded to the robbery. He went straight to where the police had the van pulled over. He said that officers already had the three suspects out of the van. He identified two Visa cards belonging to Tyus; one was found on the rear floor of the van, and the other was

found on Starks's person, in his wallet. He testified that the money and the gun were found in the van. He transported the gun that was found in the van, but another officer transported the money that was found. He then interviewed the three suspects.

{¶ 14} Starks admitted knowing that Tyus's credit card was stolen, but denied that he stole it. Starks told Detective Kucinski that he had been "staying" at the hotel across from Advanced Auto; that he had gone there before the robbery to buy some motor oil; that he had also gone to a grocery store and a shoe store that day; and that he went back to Advanced Auto. Starks further told Detective Kucinski that he had "flagged down" Dunklin at the bus stop in front of the hotel and asked her to take him to Advanced Auto. Starks had said that he saw Hunter at Advanced Auto and that Hunter was "up to no good." Starks told Detective Kucinski that after he came out of Advanced Auto, he got into the van and told Dunklin that they were going to wait for Hunter to come out of the store. Starks also told Detective Kucinski that when Hunter came out of the store, he got in the van and yelled, "drive, drive, drive," and that when the police began following them, he told Hunter to get out of the van.

{¶ 15} On cross-examination, Detective Kucinski stated that he believed Hunter to be a credible witness because he was very consistent with his statements. He further stated that he did not obtain a statement from Dunklin because Hunter had said that he never saw her before, and Starks said that he had "just bumped into her."

{¶ 16} At the close of the state's case, Starks moved for a Crim.R. 29 acquittal, which the trial court denied. Starks then rested.

{¶ 17} The trial court found Starks guilty of aggravated robbery, with the one- and three-year firearm specifications and the prior conviction specifications as charged in Counts 1 through 5; guilty of only one count of kidnapping, Count 8, with the one- and three-year firearm specifications and the prior conviction specifications; guilty of having weapons while under a disability, as charged in Count 11; and guilty of one of the receiving stolen property counts (Boldin Tyus's credit card), as charged in Count 13. The trial court found Starks not guilty of kidnapping as charged in Counts 6, 7, 9, and 10; not guilty of receiving stolen property (gun), as charged in Count 12; and not guilty of the repeat violent offender specifications.

{¶ 18} The trial court sentenced Starks to an aggregate sentence of six years in prison: three years each on Counts 1 through 5, and Count 8; one year each on Counts 11 and 13; all to be served concurrently to one another, but consecutive to the mandatory three years on firearm specifications (which were all merged).

{¶ 19} It is from this judgment that Starks appeals, raising four assignments of error for our review:

{¶ 20} "[1.] The evidence was insufficient to support the court's guilty verdicts.

{¶ 21} "[2.] The evidence was insufficient to support the one and three year firearm specifications attendant to Counts 1-5 and 8 of the indictment.

{¶ 22} "[3.] The court's guilty verdicts were against the manifest weight of the evidence.

{¶ 23} “[4.] The court’s guilty verdicts relative to the one and three year firearm specifications attendant to Counts 1 - 5 and 8 of the indictment were against the manifest weight of the evidence.”

Sufficiency of the Evidence

{¶ 24} In his first and second assignments of error, Starks argues that the state did not present sufficient evidence to prove his convictions and the firearm specifications beyond a reasonable doubt. Starks maintains that there was little or no direct evidence presented to prove that he was involved in the aggravated robbery at Advanced Auto. We disagree.

{¶ 25} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. On review for sufficiency, courts are to assess not whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* 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.

{¶ 26} After viewing the evidence in a light most favorable to the prosecution, we conclude that any rational trier of fact could have found that the essential elements of aggravated robbery, kidnapping, having a weapon while

under a disability, and receiving stolen property were proven beyond a reasonable doubt.

{¶ 27} The evidence, if believed, established that Starks was not only involved in the aggravated robbery but that it was his idea. A store clerk testified that he had seen Starks in the store about 15 minutes before the robbery, which Starks himself admitted. Hunter testified that Starks asked him if he wanted to make some money, and said that it would be “easy” and they would “split it 50/50.” Starks even described to Hunter how the store was “set up,” including where the registers were located. Hunter further testified that it was Starks who provided the gun to rob the store. While in the store, Hunter held Arika Perryman at gunpoint, making her walk from the back of the store to the front to open the other cash registers. And Boldin Tyus’s stolen credit card was found on Starks’s person when he was apprehended by police. Starks told the police that he did not steal it, but that he knew it was stolen. Finally, Starks was with Hunter immediately before the robbery, and had Dunklin park her van around the corner and wait for Hunter until he came out of the store. This evidence was sufficient to prove beyond a reasonable doubt that he was guilty of aggravated robbery, kidnapping, receiving stolen property, and the firearm specifications.

{¶ 28} The state also presented evidence to establish that Starks had a prior felony conviction, which was sufficient to prove that Starks was guilty of having weapons while under a disability.

{¶ 29} Accordingly, Starks's first and second assignments of error are overruled.

Weight of the Evidence

{¶ 30} In his third and fourth assignments of error, Starks argues that his convictions, as well as the court's findings with respect to the firearm specifications, were against the manifest weight of the evidence. We disagree.

{¶ 31} A challenge to the manifest weight of the evidence, however, attacks the credibility of the evidence presented. *Thompkins* at 387. Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. *Id.*, citing *State v. Robinson* (1955), 162 Ohio St. 486, 487.

{¶ 32} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as a "thirteenth juror," and, after "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.” *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 33} Starks makes the same arguments with respect to weight of the evidence that he did regarding sufficiency of the evidence, essentially that no evidence was presented to implicate him in these crimes. We disagree. We find, after reviewing the entire record and considering all of the evidence, that this is not the exceptional case that should be reversed as being against the manifest weight of the evidence. The trial court, as the factfinder, was free to believe Hunter’s testimony that not only implicated Starks, but proved him to be an essential actor in the aggravated robbery of Advanced Auto.

{¶ 34} Accordingly, Starks’s third and fourth assignments of error are overruled.

{¶ 35} The judgment is affirmed. We note, however, that the trial court made a clerical error on the final sentencing entry. The trial court orally found Starks not guilty of the repeat violent offender specifications, but stated on the written entry that it found him guilty of them. We therefore remand this case and instruct the trial court to correct the sentencing entry to reflect the actual disposition of the repeat violent offender specifications, i.e., that Starks was *not guilty* of them.

It is ordered that appellee recover of 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 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.

MARY J. BOYLE, JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;
COLLEEN CONWAY COONEY, A.J., CONCURS IN JUDGMENT ONLY