[Cite as *State v. Shanklin*, 2010-Ohio-2779.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93400

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHARIF SHANKLIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516217

BEFORE: Cooney, J., Rocco, P.J., and Jones, J.

RELEASED: June 17, 2010

JOURNALIZED:
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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Sharif Shanklin ("Shanklin"), appeals his conviction of aggravated robbery with a firearm specification. We find no merit to the appeal and affirm.

{¶ 2} In October 2008, Shanklin was charged with aggravated robbery with one- and three-year firearm specifications. Prior to trial, Shanklin was referred to the Court Psychiatric Clinic for a competency evaluation. After holding a competency hearing in January 2009, the court found Shanklin competent to stand trial and the case proceeded to a bench trial at which the following evidence was presented.

{¶ 3} On February 20, 2008, Cleveland police cadet Thelemon Powell ("Powell") exited the police academy and proceeded to the Money Mart at 14201 Kinsman Avenue. As he was leaving the Money Mart, a man across the street asked him if he had "change for a twenty." Powell responded "no" and continued to his car. The man, whom Powell later identified as Shanklin, approached Powell, and Powell observed that Shanklin was wearing a black, knee-length pea coat, blue jeans, a black skullcap, and black shoes.

{¶ 4} As Powell was unlocking his car, Shanklin pulled out a black revolver, held it to Powell's head and ordered him to the ground. Powell turned his head slightly and observed Powell's finger on the trigger. Powell dropped to the ground, and Shanklin took his $85 and threatened Powell, stating, "I better not see you around here again, cuz, if so, I'm going to kill your ass." Shanklin then walked away, and Powell drove home and called police. Powell filed a police report and provided a description of Shanklin, but the police were unable to locate him.

{¶ 5} On April 11, 2008, after having lunch at Tower City with other cadets, Powell noticed Shanklin walking with a female toward the Public Square exit. When Powell was approximately five feet away from Shanklin, he recognized Shanklin's voice. Powell contacted an off-duty police officer at Tower City, and Shanklin was arrested.

{¶ 6} At the end of the trial, the court found Shanklin guilty and sentenced him to three years on the firearm specification which was to be served consecutive to a four-year prison term for aggravated robbery.

{¶ 7} Shanklin appeals, raising two assignments of error.

Competency to Stand Trial

{¶ 8} In the first assignment of error, Shanklin contends the trial court erred in finding him competent to stand trial.

{¶ 9} The conviction of an accused not legally competent to stand trial is a violation of due process. *State v. Berry*, 72 Ohio St.3d 354,1995-Ohio-310, 650 N.E.2d 433.

{¶ 10} Pursuant to R.C. 2945.37(G),

> "A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code."

{¶ 11} An appellate court will not disturb a competency determination if there was "some reliable, credible evidence supporting the trial court's conclusion that [the defendant] understood the nature and objective of the proceedings against him." *State v. Williams* (1986), 23 Ohio St.3d 16, 19, 490 N.E.2d 906. "[T]he adequacy of the data relied upon by the expert who examined the [defendant] is a question for the trier of fact." Id. at 19, 490 N.E.2d 906.

{¶ 12} When the trial court is provided with divergent expert opinions regarding competency, as the trial court was here, the issue becomes one of credibility. Under such circumstances, "the weight to be given the evidence and the credibility of the witnesses are primarily for the judge" as the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. Further, great deference must be given to the trial court's assessment of witness credibility because the trial judge is best able to view the witnesses and observe

their demeanor, gestures, and voice inflections. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 13} In the instant case, Shanklin's competency to stand trial was raised before trial commenced, and the trial court complied with the mandates of R.C. 2945.37. Two doctors submitted reports and testified at the competency hearing. Dr. Peter Barach from the Court Psychiatric Clinic evaluated Shanklin and opined that Shanklin was competent to stand trial. He testified that, although Shanklin did not fully understand the charges against him and the possible penalties, once they were explained to him, Shanklin understood and retained the explanation throughout the examination. After explaining the roles of defense counsel and prosecutor, Shanklin understood them and retained this knowledge.

{¶ 14} Dr. Daniel Cowan, of the Warrensville Developmental Center, testified that he interviewed Shanklin on two separate occasions and it appeared to him that Shanklin was not performing to his full potential during the interviews and that he was purposely answering Dr. Cowan's questions incorrectly. For example, Shanklin told Dr. Cowan that it is hot in the wintertime and that a penny is five cents.

{¶ 15} Although Shanklin struggled to understand the seriousness of the charges against him and the concept of plea negotiations, Dr. Cowan's report indicated that Shanklin understood the roles of witnesses at trial and the functions

of the jury, lawyers, and prosecutor without explanation. Although Dr. Cowan withheld his opinion on competency and suggested Shanklin be referred to Northcoast Behavioral Health Care for restoration to competency, he admitted that he believed Shanklin did not cooperate fully with the evaluation and that he was a malingerer.

{¶ 16} Dr. Barach testified that Shanklin understood the proceedings and the roles of lawyers and judge such that he was competent to stand trial. Although Dr. Cowan withheld a finding of competency, the court likely gave his opinion less weight than Dr. Barach's because he admitted that Shanklin purposely answered questions incorrectly and was a malingerer. Therefore, based on the record, we find the trial court's finding of competency was supported by competent, credible evidence.

{¶ 17} Accordingly, the first assignment of error is overruled.

Manifest Weight of the Evidence

{¶ 18} In the second assignment of error, Shanklin argues his conviction was against the manifest weight of the evidence because there was no physical evidence linking Shanklin to the crime. Shanklin claims the only evidence against him consisted of Powell's eyewitness testimony, which is unreliable.

{¶ 19} When a conviction is challenged on appeal as being against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and

determine whether, in resolving conflicts in the evidence, the trier of fact "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* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. In making this analysis, the reviewing court must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and the weight to be given the evidence. *DeHass* at paragraph one of the syllabus.

{¶ 20} In the instant case, Powell's testimony is the only evidence linking Shanklin to the robbery. At trial, Powell testified that he recognized Shanklin as the robber when he saw him at Tower City less than two months after the robbery. Shanklin contends Powell's identification of Shanklin was not reliable because Powell did not have sufficient time to view his assailant's face at the time of the robbery and because almost two months had elapsed between the time of the robbery and Powell's identification of Shanklin at Tower City.

{¶ 21} In assessing the reliability of an out-of-court identification, the United States Supreme Court has held:

> "[T]he facts to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."

Neil v. Biggers (1972), 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401.

{¶ 22} Unlike a typical staged identification procedure, which invites claims of suggestibility, Powell's identification of Shanklin at Tower City was a chance encounter. This fact weighs in favor of reliability. Powell testified that he viewed his attacker before the robbery occurred because the robber asked Powell for change. At that time, Powell observed the man's clothing. During the robbery, Powell turned and looked at the man's face. Powell testified that the parking lot of the Money Mart was well lit, and he could clearly see the robber's face from his eyebrows to his chin.

{¶ 23} Furthermore, Powell testified that he confirmed Shanklin's identity at Tower City when he recognized his voice. Although he admitted that there was nothing distinctive about Shanklin's voice, Powell noted that Shanklin spit when he spoke. When a fellow cadet questioned Powell as to whether he was sure Shanklin was his assailant, Powell stated that he was certain.

{¶ 24} Based on this evidence, the trial court properly found Powell's identification of Shanklin to be reliable. As such, the conviction is not against the manifest weight of the evidence.

{¶ 25} Therefore, the second assignment of error is overruled.

Judgment affirmed.

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.

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COLLEEN CONWAY COONEY, JUDGE

KENNETH A. ROCCO, P.J., and
LARRY A. JONES, J., CONCUR