

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93903

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LONNELL ROYAL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517516

BEFORE: Blackmon, J., Gallagher, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: October 28, 2010

ATTORNEY FOR APPELLANT

David L. Doughten
The Brownhoist Building
4403 St. Clair Avenue
Cleveland, Ohio 44103

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Nathaniel Tosi
Asst. County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Lonnell Royal appeals from his convictions for two counts of aggravated robbery and one count of theft of a motor vehicle. He assigns the following two errors for our review:

“I. The stipulation by trial counsel to a witnesses [sic] in-court identification of appellant deprived the appellant of his right to effective assistance of counsel.”

“II. The convictions are against the weight of the evidence.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Royal’s convictions. The apposite facts follow.

Facts

{¶ 3} On the morning of May 7, 2008, Sharlene Hill, her niece, Aryon, Donte Black, and Lonnell Royal were riding around in a car getting high. According to Hill, Black came up with the idea of committing a robbery. She told him her friend Irwin Belser would be a good candidate because Belser always seemed to have money. Hill had been friends with Belser for about 10 years; she said she would occasionally have sex with Belser in exchange for cash.

{¶ 4} When the car ran out of gas, Black and Royal pushed the car to the curb and left. According to the plan, Hill called Belser; after he obtained gas for the car, they decided to go back to Hill's house. Hill thought that Black and Royal were going to rob Belser when he came to help her get gas, but they did not return.

{¶ 5} Hill, her niece, Belser, and Belser's friend, Gerald Thomas, all went back to Hill's house. Thomas remained in Belser's car while the others went inside. Hill stated that they sat around and talked for a little bit. She then excused herself to use the bathroom. While she was in the bathroom, she heard Belser yelling and could hear Black's and Royal's voices. Her niece joined her in the bathroom. When the niece opened the door, Hill saw Belser on the floor. Royal was standing by his head, and Black was standing by Belser's feet. She stated she heard them asking Belser for his wallet.

Black eventually came to the bathroom and yelled at them for hiding. He tried to punch Aryon in the face, but missed, hitting the wall instead. He then walked away.

{¶ 6} Once the men left, Hill left the bathroom. She looked out the window and saw Black and Royal approaching Thomas in the car. They ordered Thomas out of the car. Black and Royal then took off in Belser's car.

After they left, Hill called 911. She did not tell the operator the identity of the robbers because according to Hill, it was the "rule of the street" not to turn in your friends. A couple hours after the robbery, Royal called Hill's niece and arranged to meet with them. He gave the niece \$300; the niece in turn gave Hill \$150 of the \$300. She understood this to be hush money. It was not until she was indicted and offered a deal in exchange for her cooperation that she revealed the identity of the robbers.

{¶ 7} Belser corroborated Hill's testimony as to what occurred at the house. He admitted that he often provided Hill with money. He did not know the robbers but provided a physical description of them. He described one the robbers as short, heavy set, and light skinned. The other one was tall and slim and had a moustache and wore glasses. He stated that they were clean-shaven and well groomed. He identified Royal in-court as one of the robbers.

{¶ 8} Belser testified that Royal pointed a gun at his head and told him to turn over so they could check his back pockets. The men then retrieved his wallet containing \$2,600. Belser admitted that he had obtained the money by committing tax fraud. After taking the wallet, the men kicked him in the head, and one of the robbers said, "Next time don't be in another n*****s B.'s house." Belser's car was eventually recovered, undamaged. Belser believed that Hill was a participant in the robbery. He stated the timing of her leaving to go to the restroom and the men storming into the house was too coincidental. He also stated that Hill was able to locate his car.

{¶ 9} Gerald Thomas stated that when the men came out of the house, they pointed a gun at him and ordered him out of the car. The gun appeared to be a nine or .45 mm handgun. One of them was asking, "What you doing at another man's woman's house?" Thomas stated once he exited the car, the men left in the car.

{¶ 10} The jury found Royal guilty of two counts of aggravated robbery and one count of theft of a motor vehicle. The trial court sentenced Royal to a total of nine years in prison.

Ineffective Assistance of Counsel

{¶ 11} In his first assigned error, Royal contends his counsel was ineffective for stipulating to the witnesses' in-court identification of Royal.

{¶ 12} We review a claim of ineffective assistance of counsel under the two-part test set forth in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Under *Strickland*, a reviewing court will not deem counsel's performance ineffective unless a defendant can show his lawyer's performance fell below an objective standard of reasonable representation and that prejudice arose from the deficient performance. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph one of the syllabus. To show prejudice, a defendant must prove that, but for his lawyer's errors, a reasonable probability exists that the result of the proceedings would have been different. *Id.* at paragraph two of the syllabus. Judicial scrutiny of a lawyer's performance must be highly deferential. *State v. Sallie*, 81 Ohio St.3d 673, 1998-Ohio-343, 693 N.E.2d 267.

{¶ 13} In the present case, defense counsel stipulated to the in-court identification of Royal by the victim-witness. The following took place:

“State: Do you see one of those individuals in the courtroom today?”

“Witness: Yeah, he has glasses on over there.”

“Counsel: I’ll stipulate, your honor.”

“Court: Stipulate that the witness identified the defendant?”

“Witness: Yeah, that’s him.” Tr. 163-164.

{¶ 14} During the questioning of the second victim-witness, a similar exchange occurred:

“State: Describe what he is wearing, the person you identify in court.

“Witness: Black shirt, glasses.

“Counsel: We’ll stipulate your honor.

“Court: Thank you. So stipulated. The witness identified the defendant.” Tr. 204.

{¶ 15} Royal contends these stipulations constituted deficient performance by trial counsel and prejudiced his case. Specifically, he argues the jury may have concluded that his attorney was stipulating to the crime; since identification was an issue, the stipulation was deficient and prejudicial.

{¶ 16} The record establishes that the stipulation was to the witnesses’ in-court identification. This was a trial tactic by defense counsel that is often used to remove the more detailed identification of the defendant from the jury’s consideration.

{¶ 17} Besides, we cannot ascertain from the record any prejudice to the defendant. The burden is on the defendant to establish that he was prejudiced by counsel’s deficient performance. *Bradley* at paragraph one of the syllabus; *State v. Reynolds* (1998), 80 Ohio St.3d 670, 674, 687 N.E.2d 1358; *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102, 714 N.E.2d 905. The trial court noted for the record and to the jury that the stipulation pertained to the in-court identification of the defendant. Contrary to Royal’s

argument, he was not prejudiced. Accordingly, Royal’s first assigned error is overruled.

Manifest Weight of the Evidence

{¶ 18} In his second assigned error, Royal contends his convictions are against the manifest weight of the evidence.

{¶ 19} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive --- the state’s or the defendant’s? We went on to hold that

although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. ‘When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony.’ Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.”

{¶ 20} However, an appellate court may not merely substitute its views for that of the jury, but must find that “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* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” Id.

{¶ 21} Royal argues his convictions are against the manifest weight of the evidence because the only person to identify Royal prior to trial was Sharlene Hill, who was not credible. He argues Hill was not credible because she was also indicted for the robbery and received community control for

cooperating with the police; thus, she falsely accused Royal to receive a good deal. Royal also argues Hill's identification of him was not credible because she did not tell the 911 operator or the police the identity of the robbers. He also claims that while Hill had a motive to commit the robbery because she had no income except for the \$600 she received for child support, no motive was established for him.

{¶ 22} However, the jury was aware of Hill's participation in the robbery scheme and was aware she received a deal because she cooperated with the police. Additionally, Hill explained she did not initially identify the robbers because it is the "rule of the street" not to turn in your friends. It was within the province of the jury whether to believe Hill. We defer to the jury regarding credibility issues because the jury is able to weigh the evidence and judge the credibility of witnesses by viewing the demeanor, voice inflections, and gestures of the witnesses testifying. See *Seasons Coal Co. v. Cleveland* (1994), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273; *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. The jury obviously chose to believe Hill's testimony identifying Royal as one of the robbers.

{¶ 23} Royal contends Belser's and Thomas's identification of him was not credible because it occurred only after Hill identified him at trial and did not occur until a year after the robbery. The only reason Belser and Thomas did not identify Royal prior to trial was because they were never shown a

photo of Royal nor did they view Royal in a line-up. However, both of the men had an opportunity to view Royal. Belser testified that he watched the men walk down the hall towards him when they first entered the home. He later wrestled with the men as they tried to rob him. Therefore, Belser was able to view Royal in close proximity. Thomas also had an unobstructed view of the men as they entered the home and exited the home. He also came in close proximity with the robbers when they ordered him to get out of the car. Thus, Belser's and Thomas's identification of Royal was not merely based on Hill's identification, but was based on their own observations of Royal when he robbed them.

{¶ 24} Royal argues that Belser's descriptions of him as the robber were inconsistent. At trial, Belser stated that Royal had braids; however, he never described Royal's hair to police. He only told them the suspect had a neat moustache and glasses. We do not see how these two descriptions are inconsistent. Although Royal claims the braids would be the strongest identifying feature, it clearly was not to Belser.

{¶ 25} Royal also argues that Belser was not credible because he incorrectly stated the number of years he knew Hill. He first stated three to four years, then stated seven to eight years. Royal also argues that the fact the money stolen from Belser was obtained from filing a fraudulent tax return affected his credibility. The jury was aware of these facts and it was

within their province to decide whether these issues affected Belser's credibility. Additionally, Belser's testimony as to the actual robbery closely mirrored the testimony of Hill's; therefore, his testimony at least concerning the robbery was consistent.

{¶ 26} Royal also argues there was no physical evidence tying him to the robbery because no fingerprints were found, nor was his DNA recovered from the scene. Given the circumstances of the robbery, we do not find the lack of DNA or fingerprints was determinative of Royal's guilt. Moreover, no such evidence was attempted to be gathered.

{¶ 27} Lastly, Royal argues that the motive for the robbery was to send Belser and Thomas a message to stay away from Hill's house because of the robbers warning them to stay away from another man's woman's house. Royal claims this exculpates him because he did not have a relationship with Hill. Hill, however, stated that Royal used to date her niece Aryon, who was present at the house. This could provide an explanation for the warning. Hill had also testified that Belser was openly flirting with her niece both at the car and at the house. Accordingly, Royal's second assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR