

[Cite as *State v. Glover*, 2010-Ohio-6354.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94431

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STANLEY GLOVER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525860

BEFORE: Gallagher, A.J., Kilbane, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 23, 2010
ATTORNEY FOR APPELLANT

Nancy T. Jamieson
420 Lakeside Place
323 W. Lakeside Avenue
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: John Hanley
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant Stanley Glover appeals his convictions for aggravated robbery and kidnapping by the Cuyahoga County Court of Common Pleas. For the reasons set forth herein, we affirm.

{¶ 2} On June 26, 2009, a Cuyahoga County grand jury indicted Glover on three counts of aggravated robbery, two counts of kidnapping, and one

count of having a weapon while under disability.¹ On November 10, 2009, a bench trial commenced.

{¶ 3} Around 3:00 a.m. on June 18, 2009, Jocelyn Cabeza, Ashley Burton, and Shavonne Jones were walking home from the Bottom's Up bar in Cleveland, Ohio. As they walked along Bryant Road, Glover approached them on a bike. He asked them if they were interested in getting tattoos, to which the women responded they were not. Glover rode off down the street and returned shortly thereafter with an unidentified male on a separate bike.

Cabeza testified that she felt nervous, as if something bad were going to happen, so she instructed Jones to run. Jones ran off down the street, toward Cabeza's house, and did not witness the ensuing events.

{¶ 4} Both Burton and Cabeza testified that the unidentified male pulled a gun on them and demanded they drop everything they were carrying.

Cabeza dropped her purse; Burton was not carrying a purse. While the unidentified male pointed his gun at Cabeza and Burton, Glover was circling on his bike and riding up and down the street. Both women described Glover as acting as if he were a lookout for the male who was robbing them. At certain points, Glover would stop and tell the women to do what they were told. He also told them to call for Jones to come back. Cabeza and Burton

¹ The aggravated robbery counts and the kidnapping counts carried one- and three-year firearm specifications.

testified they did not move because they were afraid of the male pointing the gun at them.

{¶ 5} After the males rode off with Cabeza's purse, Burton called 911. When Cabeza and Burton spoke with the police approximately five to ten minutes after they were robbed, they were asked to identify Glover. The police had apprehended him in a nearby backyard, where they also found a bike and Cabeza's purse. Both Cabeza and Burton identified Glover as one of the males who had robbed them, but specifically stated that Glover was not the person holding the weapon.

{¶ 6} At the close of the state's case, Glover moved the court for a Crim.R. 29 acquittal of all charges. The trial court dismissed two counts of aggravated robbery, all the firearm specifications, and the charge of having a weapon while under disability. The defense rested. On November 12, 2009, the trial court returned guilty verdicts on the remaining charges, merging one count of kidnapping with the aggravated robbery count. Glover was sentenced to four years on the merged aggravated robbery and kidnapping convictions, and four years on the remaining kidnapping conviction. The court ran the sentences concurrent.

{¶ 7} Glover appealed and raises two assignments of error for our review. He argues his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶ 8} An appellate court's function in reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 9} While the test for sufficiency requires a determination of whether the prosecution has met its burden of production at trial, a manifest weight challenge questions whether the prosecution has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. When considering a manifest weight claim, a reviewing court must examine the entire record, weigh the evidence, and consider the credibility of witnesses. *State v. Thomas* (1982), 70 Ohio St.2d 79, 80, 434 N.E.2d 1356. The court may reverse the judgment of conviction if it appears that the fact finder "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, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. A judgment should be reversed as

against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387, 678 N.E.2d 541. A finding that a conviction was supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *Id.* at 388, 678 N.E.2d 541.

{¶ 10} Glover was convicted of aggravated robbery² and kidnapping.³ He does not contend that the state failed to present sufficient evidence that a robbery took place, but instead that the evidence is not sufficient to support the conviction against him on a complicity theory. He further argues that the state failed to present sufficient evidence to support the kidnapping convictions. We disagree.

{¶ 11} The state presented sufficient evidence that Glover aided and abetted the unidentified male who held the two victims at gunpoint and robbed Cabeza. Pursuant to R.C. 2923.03(A)(2), a person who aids and abets

² R.C. 2911.01(A) states as follows: “No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following: (1) Have a deadly weapon on or about the offender’s person or under the offender’s control and either display the weapon, brandish it, indicate that the offender possesses it, or use it * * *.”

³ R.C. 2905.01(A) states as follows: “No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes: * * * (2) To facilitate the commission of any felony or flight thereafter * * *.”

another in the commission of an offense shall be prosecuted and punished as if he were a principal offender. “To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. Such intent may be inferred from the circumstances surrounding the crime.” *State v. Johnson* (1991), 93 Ohio St.3d 240, 245, 754 N.E.2d 796. Aiding and abetting may be established by overt acts of assistance such as * * * serving as a lookout.” (Internal citations omitted.) *State v. Cardamone*, Cuyahoga App. No. 92235, 2009-Ohio-5361. See, also, *State v. Bennett*, Cuyahoga App. No. 94428, 2010-Ohio-5247.

{¶ 12} The evidence at trial showed that in his first contact with the victims, Glover detained them by asking them if they wanted tattoos and riding beside them as they walked home. Even after the women told him they were not interested, Glover returned to them, this time accompanied by an unidentified male. While the other male held Cabeza and Burton at gunpoint and took Cabeza’s purse, Glover shouted at them to “tell that b*tch [Jones] to come back here.”

{¶ 13} During the course of the robbery, Glover rode up and down the street as if he were a lookout. At other points during the robbery, he stood

close to the victims and yelled at them to do as they were told by the male holding the gun. Although the defense argues Glover was encouraging the women to be cooperative to avoid getting hurt, his statements, coupled with his statements to them that they call their friend back, suggest he was hurrying them and trying to keep Jones from calling for help. Finally, Glover repeatedly told the unidentified male to “hurry up,” and ultimately the two males rode off together on their bikes.

{¶ 14} Furthermore, we find there was sufficient evidence to support the kidnapping convictions. The victims both testified they felt scared to move because they were not sure what the gunman would do. Their testimony demonstrates that they were restrained by the male holding them at gunpoint as he robbed Cabeza. While Glover may not have held the gun, the evidence is sufficient to support convictions for aggravated robbery and kidnapping under a theory that he was aiding and abetting the principal offender.

{¶ 15} We find this evidence sufficient to establish that Glover aided and abetted the unidentified male in the commission of aggravated robbery and kidnapping as to the two victims.

{¶ 16} We also find that the verdicts were not against the manifest weight of the evidence. As trier of fact, the court was able to consider the witnesses’ credibility and assess the discrepancies in their testimony.

Admittedly Cabeza and Burton had different versions of what occurred before they went to the bar and what occurred immediately after they left the bar; however, both women identified Glover as the person who stood lookout and assisted an unidentified man who held them at gunpoint and robbed them on June 18. While we acknowledge that the victims' stories were not factually identical, their testimony is well-aligned as to Glover's role in the robbery and kidnapping.

{¶ 17} Glover's first and second assignments of error are 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 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR