

[Cite as *State v. Givan*, 2011-Ohio-100.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94609

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STANLEY GIVAN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-526127

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

RELEASED AND JOURNALIZED: January 13, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Stanley Givan (“Givan”), appeals his convictions for robbery, felonious assault, and theft of a motor vehicle. We find no merit to the appeal and affirm.

{¶ 2} Givan was charged with aggravated robbery, robbery, felonious assault, theft, and theft of a motor vehicle. The case proceeded to jury trial at which the following evidence was presented.

{¶ 3} The victim, Michelle Clements (“Clements”), testified that on her birthday on March 25, 2009, her then-boyfriend, Givan, assaulted her and stole her car. She explained that she and Givan had gone to her daughter’s house to celebrate her birthday. They drove Clements’s car, a silver Oldsmobile Intrigue, which Clements claimed was in very good condition. They had been drinking before the party and drank more alcohol at her daughter’s house. During the visit, Clements and Givan began arguing and eventually left the daughter’s house.

{¶ 4} Clements testified that on the way home, Givan assaulted her and told her that he was going to break her jaw. They fought over the keys until Givan eventually snatched them away from Clements. She claimed that he also took approximately \$150-160, which was pinned to her clothing. He continued to hit her and eventually pulled her out of the car and drove away. Clements testified that the car was not involved in an accident nor were the airbags deployed before Givan pulled her from the car.

{¶ 5} The State called Danielle Nailor (“Nailor”) who testified that she was driving a company van on Euclid Avenue at approximately 3:50 p.m. on March 25, 2009 when she observed a man punching a woman inside a car. She testified that the man exited the car, went to the driver’s door, and again hit the woman inside who was struggling to close the door. The man then returned to the passenger seat and continued to punch the woman. Finally, he exited the

car, went back to the driver's side, and pulled the woman out of the car. He hit her again and left her in the middle of the street as he drove off.

{¶ 6} Nailor stopped to assist Clements until the police arrived. Nailor saw blood coming from Clements's nose. Prior to this incident, Nailor had never seen Clements or Givan.

{¶ 7} Lieutenant Michael Cardilli ("Lt. Cardilli") testified that when he responded to the scene, he observed a female with a laceration over her eye and bruising to her face. Lt. Cardilli also testified that he did not observe any debris in the road or any evidence that a car had been in an accident.

{¶ 8} Clements testified that when Givan was not staying at her house, he lived with his mother on Scottsdale Blvd. in Shaker Heights. Shaker Heights police officer James Clague ("Clague") testified that he searched the garage at the Scottsdale residence at 8:30 p.m. on March 25, 2009 and discovered Clements's heavily damaged silver Oldsmobile. Officer Clague testified that the car appeared to have been pushed into the garage because the fender, rear wheel, and axle were missing, and both airbags had been deployed.

{¶ 9} Finally, Givan testified in his own defense. He stated that Clements, whom he calls "Renee," was "buzzed" and her words were slurred because she had been drinking shots of gin. He further testified that they were arguing on the way home from her daughter's house when Clements, who was driving, rear-ended a car on Euclid Avenue and both airbags deployed. Givan claimed

that the airbag had cut Clements and caused her bleeding. Givan also stated that Clements jumped out of the car at an intersection and allowed him to drive the car. Finally, Givan denied knowing how the car got into the garage on Scottsdale.

{¶ 10} The court denied the defense motion for acquittal pursuant to Crim.R. 29. The jury found Givan guilty of robbery, felonious assault, and theft of the motor vehicle. It found him not guilty of aggravated robbery and the theft of money.

{¶ 11} At sentencing, the prosecutor agreed on the record that the theft of the motor vehicle and the robbery were allied offenses of similar import. The court initially sentenced Givan to an aggregate ten-year prison term, but at Givan's request, the court reconsidered the sentence and resentenced him to four years for felonious assault and four years for robbery, to be served concurrently. Givan raises two assignments of error on appeal.

Sufficiency of the Evidence

{¶ 12} In the first assignment of error, Givan argues the trial court erred in denying his motion for acquittal because the State failed to present sufficient evidence to sustain the convictions. We disagree.

{¶ 13} A challenge to the sufficiency of the evidence supporting a conviction requires the court to determine whether the State has met its burden of production at trial. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390, 678

N.E.2d 541. 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, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 14} Givan contends there was insufficient evidence to sustain his convictions because Clements's testimony is not credible. Givan asserts that because he is 5'6" tall and weighs almost 300 pounds, he would have caused more serious injuries to Clements if he had truly assaulted her. However, issues of credibility are irrelevant to a sufficiency of the evidence analysis. *Thompkins* at 390.

{¶ 15} Givan also argues that because the State did not produce the shirt Clements was wearing at the time the crimes were committed, there was no evidence that Givan snatched the money off her shirt. This argument is irrelevant since the jury acquitted Givan of the theft of money.

{¶ 16} Moreover, the record contains ample evidence to support Givan's convictions. Clements testified that Givan beat her and stole her car. An independent witness testified that she observed Givan punching Clements before he pulled her from the car and drove away, leaving her in the middle of the street.

Thus, there is sufficient evidence to support Givan's convictions for robbery, felonious assault, and theft of a motor vehicle.

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

Manifest Weight of the Evidence

{¶ 18} In the second assignment of error, Givan argues the 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, ¶25, the Ohio Supreme Court restated 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*, 78 Ohio St.3d 380, 1997-Ohio-52, 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} Moreover, an appellate court may not merely substitute its view 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.” *Thompkins* at 387. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 21} Givan claims that Clements’s testimony was not credible because there was little evidence to corroborate her story and because her statements to police and medical personnel were different from her trial testimony.

{¶ 22} Givan’s argument ignores Nailor’s testimony. Nailor was an independent bystander who did not know either party. Nailor testified that she observed Givan punching Clements inside the car. She also watched as he opened the driver’s side door while Clements struggled to keep it closed. She saw him open the door and continue to hit Clements. Finally, Nailor testified that she watched as Givan pulled Clements out of the car, hit her again, and then left her in the street as he drove away.

{¶ 23} Lt. Cardilli’s testimony also corroborates Clements’s version of the facts. Contrary to Givan’s testimony that Clements crashed the car and deployed the airbags before leaving the car, Lt. Cardilli testified that he did not observe any debris or evidence of a car accident at the scene. Nailor also testified that she did not observe any damage to the vehicle when Givan drove away.

{¶ 24} The testimony of these witnesses contradicts Givan's testimony and corroborates Clements's version of the incident. With this competent, credible evidence in the record, we cannot say that the jury lost its way.

{¶ 25} Accordingly, 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.

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

COLLEEN CONWAY COONEY, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR