

[Cite as *State v. Green*, 2011-Ohio-329.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94634

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAVONTE GREEN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525590

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

RELEASED AND JOURNALIZED: January 27, 2011

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building, Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Brad S. Meyer
Steven E. Gall
Assistant County Prosecutors
9th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Lavonte Green (“Lavonte”), appeals his aggravated murder, aggravated robbery, and kidnapping convictions. We find no merit to the appeal and affirm.

{¶ 2} Lavonte was charged with two counts of aggravated murder, one count of kidnapping, and one count of aggravated robbery, all of which included firearm specifications. The case proceeded to a jury trial, at which the following evidence was presented.

{¶ 3} On November 30, 2008, Dominic Rodgers (“Dominic”), Alfred Rodgers (“Alfred”), and their cousin Demetrius Williams (“Demetrius”) were together at the Rodgers’ house located on South Green Road in South Euclid. They wanted to buy some marijuana, so Dominic called Gregory Williams (“Gregory”), a known marijuana dealer. The men decided to rob Gregory to get his money and marijuana. Demetrius invited Reginald Clement (“Reginald”) to the Rodgers’ house and together they picked up Lavonte and returned to the Rodgers’ house. Reginald and Lavonte both had guns.

{¶ 4} When Gregory and his friend Tramel Wallace (“Tramel”) pulled into the Rodgers’ driveway to deliver the marijuana, Alfred, Demetrius, Reginald, and Lavonte came out of the house to meet them. Gregory, who was seated in the front passenger seat, opened his window. Tramel testified that one of the men, later identified as Lavonte, hopped into the backseat of the car, pointed a gun at Gregory, and said: “You know what this is?” Gregory grabbed the gun as he climbed into the backseat and struggled with Lavonte to get the gun from him. Reginald, who also held a gun, stood at the open passenger window. As Lavonte and Gregory were wrestling in the backseat, Lavonte’s gun discharged,

shattering the rear window. Tramel backed the vehicle out of the driveway, and Reginald followed them on foot. When Tramel stopped to drive forward, Reginald stuck his arm in the open window and shot Gregory.

{¶ 5} Reginald fired five or six more shots at the car as Tramel drove away. Lavonte and Gregory continued fighting in the backseat despite Gregory's wound. Moments later, Lavonte jumped out of the moving car, leaving his gun behind, and Tramel drove to the nearest police station. An ambulance transported Gregory to the hospital where he died from a gunshot wound to his chest.

{¶ 6} Tramel was unable to identify Lavonte or Reginald as the gunmen. However, Alfred testified that Lavonte and Reginald approached Gregory's car with guns, that Lavonte got into the backseat, and that Reginald pointed a gun through the passenger window.

{¶ 7} After the State rested, Lavonte moved for acquittal, which the court granted as to one count of aggravated murder. At the conclusion of the trial, the jury convicted Lavonte of all remaining counts. He was sentenced to life imprisonment with parole eligibility after 25 years and three years on the firearm specification. This appeal followed.

{¶ 8} In his two assignments of error, Lavonte argues that his convictions were not supported by sufficient evidence and are against the manifest weight of the evidence.

{¶ 9} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390, 678 N.E.2d 541. 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 942, paragraph two of the syllabus.

{¶ 10} A challenge to the manifest weight of the evidence attacks the verdict in light of the State’s burden of proof beyond a reasonable doubt. *Thompkins* at 386-87. A reviewing court may reverse the judgment of conviction if it appears that 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.” *Id.* A finding that a conviction was supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *Id.* at 388.

{¶ 11} Lavonte does not dispute that an aggravated robbery, kidnapping, and murder occurred at the Rodgers’ house, but he contends there was insufficient evidence to establish that he was the perpetrator. He argues there were no fingerprints on either of the guns found at the scene or DNA evidence to connect him to the crimes. Although investigators found gunshot residue on Reginald’s shirt, there was none on Lavonte’s clothing. However, the shooting occurred on November 30, 2008, and Lavonte was not arrested until December

3, 2008. Martin Lewis, a gunshot residue expert employed by the Ohio Bureau of Criminal Identification, testified that residue is lost over time and can be removed by wiping or washing. Nevertheless, Lavonte asserts that he was convicted solely on the “unreliable” eyewitness testimony of codefendants who testified pursuant to “self-serving plea bargains.”

{¶ 12} Lavonte was convicted of aggravated murder in violation of R.C. 2913.01(B), which provides that: “[n]o person shall purposely cause the death of another * * * while committing or attempting to commit * * * aggravated robbery.” He was also convicted of aggravated robbery in violation of R.C. 2911.01(A)(1), which provides that “[n]o person, in attempting or committing a theft offense, shall [h]ave a deadly weapon on or about the offender’s person or display the weapon * * *.” Finally, Lavonte was convicted of kidnapping in violation of R.C. 2905.01(A)(2), which provides: [n]o person, by force, * * * shall * * * restrain the liberty of [an]other person [t]o facilitate the commission of any felony * * *.” All charges included firearm specifications that require proof that the defendant had a firearm under his control while committing the offenses. R.C. 2941.141(A) and 2941.145(A).

{¶ 13} Based on the evidence presented at trial, we do not find that Lavonte’s convictions are against the manifest weight of the evidence. We also find no merit to his sufficiency-of-the-evidence challenge. The testimony at trial established that Alfred, Dominic, Reginald, Demetrius, and Lavonte planned to

rob Gregory to get his money and marijuana. Dominic and Alfred both testified that Lavonte got into Tramel's car. Tramel testified that the man in the backseat pointed a gun at Gregory and said: "You know what this is?" Any reasonable person would conclude under these circumstances that this statement was a threat made to restrain the victim during a robbery.

{¶ 14} Although Alfred, Dominic, and Demetrius testified pursuant to plea bargains, their testimony was strikingly similar and consistent with the State's only independent witness, Tramel. Tramel testified that while one man got in the backseat and displayed a gun, another man pointed a gun through the open window of the car and shot Gregory. Tramel's testimony is consistent with Alfred's testimony that Reginald pointed his gun through the open window and shot Gregory. Dominic and Alfred both testified that Lavonte got in the backseat with a gun. The trial testimony established that all the defendants conspired to rob Gregory and that Reginald shot Gregory while he was struggling with Lavonte during the robbery.

{¶ 15} The court properly instructed the jury that:

"a person, who acts in concert with the principal with the intent to aid the principal in the crime is regarded as the aider and abettor. Whoever aids, abets or assists in procuring with another to commit an offense may be prosecuted as if he were the principal offender."

{¶ 16} R.C. 2923.03(F). The evidence at trial established that Lavonte conspired with the codefendants to rob Gregory and that Gregory was killed

during the robbery. Therefore, we find no merit to Lavonte's challenges to the sufficiency and manifest weight of the evidence. This is not the extraordinary case where the jury lost its way and created a manifest miscarriage of justice.

{¶ 17} Accordingly, both assignments of error are 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.

COLLEEN CONWAY COONEY, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
LARRY A. JONES, J., CONCUR