

[Cite as *State v. Ronny*, 2011-Ohio-825.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94953

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DERICO RONNY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-531488

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

RELEASED AND JOURNALIZED: February 24, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Derico Ronny (“Ronny”), appeals his convictions for aggravated robbery, robbery, abduction, kidnapping, possession of criminal tools, and having a weapon while under disability. We find no merit to the appeal and affirm.

{¶ 2} Ronny was charged with aggravated robbery, kidnapping, and abduction, which all included one- and three-year firearm specifications. He was also charged with two counts of robbery, one count of possession of criminal tools, and one count of having a weapon under disability. He waived his right to a jury trial on the weapon under

disability charge, and the remaining counts proceeded to a jury trial, at which the following evidence was presented.

{¶ 3} The victim, Derek Tigner (“Tigner”), testified that on September 21, 2009, he met Ronny and the codefendant, Darrell Hill (“Hill”), at a gas station on East 185th Street in Cleveland while they were pumping gas. When Tigner inquired of Hill about the “for sale” sign on his car, Hill told Tigner to call the phone number on the sign to discuss a possible purchase.

{¶ 4} The following day, Tigner called the phone number and spoke to Ronny, who introduced himself as “Spaceman.” After several discussions, Tigner arranged to meet Ronny at an apartment building on Bella Drive. Tigner testified that he met Ronny in the driveway. As they walked to the garage, Ronny asked Tigner if he brought the money. When Tigner stepped inside the garage to inspect the car, Hill appeared, stuck a gun in Tigner’s face, and demanded his money. Hill took \$400 from Tigner’s hip pocket and told him to lie down on the ground. While on the ground, Tigner felt multiple hands search his pockets and take his MP3 player. Hill then ordered Tigner to get in the car.

{¶ 5} Tigner testified that Ronny opened the door “like a chauffeur.” Once all three were in the car, Ronny told Tigner, “This got to go down. We got to eat. We got to eat.” Hill got into the rear passenger seat and told Tigner not to move and to keep his head down. Ronny got into the driver’s seat, pulled out of the garage, and drove away. As the car slowed down to make a turn, Tigner jumped out and ran to his girlfriend’s

house, which was in the neighborhood. Tigner explained that he did not immediately call the police because, when he was previously robbed, the police did not help him.

{¶ 6} Tigner happened to encounter Hill the next day. Tigner testified that Hill showed him the gun and said, “I keep it on me all the time.” Tigner ran to a gas station and called the police. He showed the police the garage of the apartment building where the robbery occurred and gave a verbal statement. Detective Robert Durbin followed up with the investigation and spoke with Tigner a few days later. Within an hour of their conversation, Tigner happened to see Hill again at a local convenience store. Tigner immediately called Det. Durbin who met him at the convenience store and presented him with a photo array of suspects. Tigner identified a picture of Ronny as the driver of the car.

{¶ 7} Det. Durbin explained that Tigner gave him Ronny’s phone number, which he had obtained from the “for sale” sign in Ronny’s car. Det. Durbin ran the phone number through the police records management system and discovered that it matched a number used in connection with a drug offense. With that information, Det. Durbin compiled a photo array of suspects, which he presented to Tigner at the convenience store.

{¶ 8} Hill, who also testified for the State, told a different story. He testified that on September 21, 2009, Ronny called him and asked if he knew anybody who wanted to buy some “weed.” Hill called Tigner to arrange a purchase, with Tigner as the seller.

Ronny, Hill, and another man named “Ro” drove in Ronny’s gold Buick LeSabre to Hill’s apartment on Bella Drive where they met Tigner. Tigner got into the front passenger seat and showed Hill two ounces of weed. Hill asked for more weed so Tigner went to get more. While he was gone, Ronny told Hill that he was going to rob Tigner and showed Hill a rusty black revolver. When Tigner returned to the car, Ronny pulled out the gun, pointed it at Tigner, and said: “Give me everything.” Ronny took the weed and handed the gun to Hill who placed it on the back seat. “Ro” picked up the gun and took Tigner’s MP3 player. Hill testified that the incident ended when Ronny approached Villaview Road, where Tigner jumped out.

{¶ 9} The defense called James Mitchell (“Mitchell”), Ronny’s stepfather, who testified that Ronny could not have been at the scene of the crime because his mother had dropped him off across town at his girlfriend’s house in Fairview Park that morning. Mitchell also testified that Ronny could not have been involved in the crime because his 1994 Buick was sold in early September 2009, almost three weeks before the alleged robbery. However, the State’s rebuttal witness, the assistant manager of the business that purchased the vehicle, testified that he issued a receipt to Ronny for a bill of sale for the 1994 Buick LeSabre on October 28, 2009. Ronny, who took the stand in his own defense, admitted that the testimony regarding the sale in early September was a mistake.

{¶ 10} At the close of the State’s case, Ronny moved for acquittal pursuant to Crim.R. 29, which the court denied. At the conclusion of the trial, the jury found Ronny guilty of all counts tried to the jury including all gun specifications. The court found Ronny guilty of having a weapon while under disability and sentenced him to a total of seven years in prison with a mandatory five years of postrelease control. Ronny now appeals, raising two assignments of error.

Firearm Specifications

{¶ 11} For his first assigned error, Ronny argues that the State failed to present sufficient evidence to sustain his convictions on the firearm specifications. He contends that because Hill had control of the gun at all times, the evidence is not sufficient to establish that he had a weapon while under disability.

{¶ 12} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the State has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 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.

{¶ 13} R.C. 2941.145 states that a three-year mandatory prison term shall be imposed if the “offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.”

{¶ 14} R.C. 2923.13(A)(2) provides:

“Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if * * * [t]he person * * * has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.”

{¶ 15} The parties stipulated that Ronny had a prior robbery conviction as a juvenile. According to Tigner’s testimony, Hill had control of the gun at all times. Tigner never testified that Ronny had a gun. However, Hill testified that Ronny pointed the gun at Tigner and said: “Give me everything.” Hill further testified that Ronny robbed Tigner of weed and then passed the gun to Hill. If believed, a jury could conclude from Hill’s testimony that Ronny not only controlled the gun but was the principal in the robbery.

{¶ 16} Even if a jury did not conclude that Ronny was the principal, based on Tigner’s testimony, the factfinder could find that Ronny was an accomplice. To support a conviction for complicity by aiding and abetting, 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. R.C. 2923.03(A)(2); *In re T.K.*, 109 Ohio St.3d 512, 2006-Ohio-3056, 849 N.E.2d 286, ¶13. Further, this court has held that in order to “have” a firearm or dangerous ordnance within the meaning of R.C. 2923.13, an individual must either actually or constructively possess it. *State v. Hardy* (1978), 60 Ohio App.2d 325, 327, 397 N.E.2d 773. Actual possession requires ownership and, or, physical control; constructive possession may be achieved by means of an agent. *Id.* Thus, an accomplice may be found to have committed every element of the offense committed by the principal, including possession of the weapon. See *State v. Letts* (June 22, 2001), Montgomery App. No. 15681.

{¶ 17} According to Tigner’s testimony, Ronny met Tigner on Bella Drive and led him to the garage where the car was located and where Hill was waiting. As they walked to the garage, Ronny asked Tigner if he had the money. Once inside the garage, Hill pointed a gun at Tigner’s head and took his money while Ronny watched. Tigner testified that he felt more than two hands search his pockets while he was lying face down on the ground. Ronny also opened the door for Tigner, “like a chauffer” and drove the car while Tigner was being held against his will inside the car. Thus, there was evidence Ronny assisted and cooperated with Hill in commission of the offenses.

{¶ 18} Based on the testimony presented at trial, a jury could have reasonably concluded that Ronny was either the principal or accomplice and find him guilty on all

counts, including the firearm specifications. There was also sufficient evidence upon which the court could have concluded that Ronny had a weapon while under disability.

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

Manifest Weight of the Evidence

{¶ 20} In the second assignment of error, Ronny argues his convictions are against the manifest weight of the evidence. He contends he presented an alibi defense demonstrating that he was not at the scene of the crime on September 21, 2009.

{¶ 21} When reviewing a claim that the judgment was against the manifest weight of the evidence, we must review the entire record, weigh both the evidence and all the reasonable inferences, consider the credibility of witnesses and determine whether 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. A manifest weight of the evidence claim contests the believability of the evidence presented. *Id.*

{¶ 22} Ronny argues that evidence of his alibi defense proves he could not have committed the alleged crimes. Mitchell testified that Ronny's mother dropped off Ronny at his girlfriend's apartment in Fairview Park the morning of September 21, 2009 and that Ronny stayed there for four to five days. Obviously, the inference to be drawn from this testimony is that Ronny was not present when the crimes occurred.

{¶ 23} However, Mitchell, who is Ronny's stepfather, is a biased witness. Mitchell also testified that Ronny could not have committed a kidnapping in his Buick on September 21, 2009 because the vehicle had been sold in early September. However, this testimony was proved to be unreliable when the assistant manager testified that he purchased Ronny's Buick on October 28, 2009, over a month after the crimes were committed. Even Ronny admitted that any testimony regarding the sale in early September was a mistake.

{¶ 24} Ronny also asserts that although Hill testified that Ronny participated in the crimes, his testimony is not credible because it was self-serving. Ronny's own testimony regarding his alibi could also be self-serving. By contrast, there is nothing to suggest that Tigner would have any reason to lie about who robbed and kidnapped him. He had never seen Ronny or Hill before the day they met at the gas station.

{¶ 25} Tigner testified that he met Ronny on Bella Drive and that Ronny led him to the garage where the car was located and where Hill was waiting. Tigner testified that Ronny was present when Hill held the gun to his head, took his money and ordered him to lie face down on the ground while the two men searched his pockets. According to Tigner, Ronny opened the car door for Tigner and drove the car while holding Tigner against his will.

{¶ 26} Substantial evidence exists that Ronny participated in the crimes as either a principal or an accomplice. Based on the aforementioned facts and circumstances, we find

that the convictions are not against the manifest weight of the evidence. We cannot say that the factfinder lost its way and created a manifest injustice in convicting Ronny.

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

Judgment is 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

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR