

[Cite as *State v. Doumbouya*, 2015-Ohio-1640.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101482

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JANE DOUMBOUYA**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-583494-A

**BEFORE:** Boyle, J., E.T. Gallagher, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** April 30, 2015

## **ATTORNEY FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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MARY J. BOYLE, J.:

{¶1} Following a jury trial, defendant-appellant, Jane Doumbouya (“Doumbouya”), was convicted of aggravated robbery and two counts of kidnapping. The charges arose from a robbery on February 22, 2014 of the Liberty Tax Service (“LTS”) located at 10933 Lorain Avenue where approximately \$720 was stolen. The two employees, who were present at the time of robbery and ordered to turn over the money at gunpoint, later identified Doumbouya as the perpetrator.

{¶2} Doumbouya appeals her convictions, raising the following two assignments of error:

- I. The verdict of the jury finding defendant-appellant guilty is against the manifest weight of the evidence.
- II. The trial court erred in denying appellant’s motion for acquittal where the evidence is not sufficient to support the conviction.

Finding no merit to the appeal, we affirm.

#### Procedural History and Facts

{¶3} In March 2014, Doumbouya was indicted on three counts: aggravated robbery, in violation of R.C. 2911.01(A)(1), and two counts of kidnapping, in violation of R.C. 2905.01(A)(2). All counts carried a one- and three-year firearm specification, notice of prior conviction specification, and repeat violent offender specification. Doumbouya pleaded not guilty to all the charges. She further moved to bifurcate the notice of prior conviction and repeat violent offender specifications, electing those to be

tried to the bench, and proceeded to a jury trial on the underlying charges and firearm specifications where the following evidence was presented.

*State's Case: Eyewitness Identification Testimony and Video Surveillance*

{¶4} Vicky Irizarry testified that she was working at LTS on February 22, 2014 when an African American female walked into the store and pulled out a gun when Irizarry got up to greet her. According to Irizarry, the perpetrator ordered her to “go to the back and open the cash box.” At that time, Irizarry’s manager, James Ramos, was in the back room and going up the stairs to exit. Irizarry asked him for the key to open the cash box, and the perpetrator told him to get back down the steps. Ramos opened the cash box and complied with the perpetrator’s order to give her “everything in there.” The perpetrator then told them to get down on the floor, indicating that no one would get hurt as long as they complied with her orders. After the perpetrator left, Ramos immediately telephoned the police.

{¶5} The state offered the video surveillance from the day of the incident that captured the perpetrator walking into LTS, escorting Irizarry by gunpoint to the back of the office, and ordering Ramos to return from the stairs. The perpetrator is seen wearing glasses, a hat with a hood over her head, a dark jacket, jeans, and dark shoes.

{¶6} According to Irizarry, the perpetrator was roughly the same height as she is at approximately 5’3” or 5’4.” Irizarry testified that the woman had a deep voice. At trial, Irizarry identified Doumbouya as the perpetrator, stating that she knew Doumbouya was the perpetrator based on her mouth, her lips, and her small build. On

cross-examination, Irizarry reiterated that she “looked at [Doumbouya] long enough. \* \* \* It wasn’t a glimpse. I looked at her long enough to see, you know, like her mouth.” Irizarry further testified that she knew Doumbouya was the perpetrator based on the “deep creases” on her face.

{¶7} Ramos corroborated Irizarry’s testimony, identifying Doumbouya in court as the perpetrator. Ramos explained that, following the robbery, he believed that the perpetrator had previously been a customer in the store based on her voice. Relying on this hunch, Ramos examined the company’s recent files, sorting customers’ returns into three piles: (1) completed return, (2) on hold, and (3) walk out. James then reviewed video surveillance based on the time-stamps on the customers’ returns, starting with walkouts. Ramos testified that he did not see any individuals on the video surveillance from the “walkout” pile that matched the perpetrator. He then proceeded to the “on hold” pile but still did not identify a match. He, along with the store’s owner, Rachel Ruffing, ultimately reviewed the surveillance video of customers who had completed returns. From that surveillance video coverage, Ramos finally identified Doumbouya as the perpetrator.

{¶8} Ramos testified that, based on the video surveillance, Doumbouya had been in the store to file her taxes on two other days: twice on February 5, 2014, and then twice again on February 10, 2014. Ramos was present on both days but directly interacted with Doumbouya on February 10, 2014. Ramos believed that Doumbouya was the robber because she “had the same height, build, facial features, [and] walk.” Ramos

explained that Doumbouya had the same distinctive walk as the robber, where she “swept [her] right leg out, \* \* \* kind of goes out straight and then forward” and that she had the same distinctive nose as the robber. Ramos further testified that Doumbouya was wearing the same hat on the day of the robbery that she had worn on another occasion in the office and that her voice is “deeper than normal” for a female.

{¶9} Ramos identified Doumbouya’s address from her file and discovered that she lived very close to LTS. Ramos testified that it would take “maybe 30 seconds driving.”

{¶10} The state presented the video surveillance of February 5, 2014, February 10, 2014, and February 22, 2014 — the day of the robbery. Ramos identified Doumbouya in the video surveillance, pointing out her distinctive walk in the clips.

{¶11} Rachel Ruffing, who was not present at the time of the robbery, testified that she reviewed at least six or seven days of video footage when Doumbouya caught her attention. Ruffing reiterated Ramos’s testimony, stating that Doumbouya had the same height and distinctive walk as the robber. Ruffing further testified that Doumbouya had a distinctive, wide nose.

{¶12} After identifying Doumbouya and determining that she lived around the corner from LTS, Ruffing contacted the Cleveland police, turned over the video surveillance, and identified Doumbouya as the perpetrator. Doumbouya was subsequently arrested.

*Doumbouya Denies Committing the Robbery*

{¶13} Doumbouya testified on her own behalf at trial. While she admitted to being a customer at LTS on February 5 and 10, Doumbouya denied any involvement in the robbery on February 22, 2014. She testified that she went to LTS to have her taxes done and had to return a second time with additional documentation. She expected to receive a little over \$800. According to Doumbouya, she only spoke to Ramos upon leaving the second day, telling him “thank you.” Doumbouya further testified that her “cap” that is seen in the video surveillance is sold at “every Family Dollar Store or every corner store for \$5.”

{¶14} On cross-examination, Doumbouya admitted to having been convicted of burglary in 2005. Doumbouya also testified that it takes her approximately five minutes to walk to LTS from her house. She further acknowledged the similarity between her own hat and the robber’s hat seen in the video surveillance.

#### *Verdict and Sentence*

{¶15} The jury found Doumbouya guilty on all of the counts, including the firearm specifications, and the trial court found Doumbouya guilty of both the notice of prior conviction and repeat violent offender specifications. The trial court merged the kidnapping counts with the aggravated robbery count, and the state elected to proceed on the aggravated robbery count for sentencing. The trial court ultimately sentenced Doumbouya to 14 years in prison: 11 years for aggravated robbery to be served consecutive to three years on the firearm specification.

{¶16} Doumbouya appeals, raising two assignments of error, attacking the jury's verdict and the trial court's denial of her Crim.R. 29 motion for acquittal.

### Sufficiency and Weight of the Evidence

{¶17} In her first and second assignments of error, Doumbouya argues that the verdict is against the manifest weight of the evidence and that the state failed to present sufficient evidence to support the convictions. We disagree.

{¶18} When an appellate court reviews a record upon a sufficiency challenge, “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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶19} While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997). When a defendant asserts that a conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at 387.



{¶20} The gravamen of both of Doumbouya's arguments is that the state failed to prove that she was the perpetrator. Doumbouya argues that the identification testimony was lacking, contradictory, and that Ramos and Ruffing were biased. We find her arguments to lack merit.

{¶21} As to her sufficiency challenge, the state met its burden of production. The state presented the video surveillance tapes, which allowed the jury to view firsthand the similarities between Doumbouya and the perpetrator, including her distinctive walk, build, and the same hat. Further, two eyewitnesses — Ramos and Irizarry — positively identified Doumbouya as the perpetrator. And Ramos not only observed Doumbouya on earlier occasions while she was in the office, he specifically interacted with her. Construing this evidence in the light most favorable to the state, any rational juror could have found that Doumbouya was the perpetrator.

{¶22} We likewise cannot say that the conviction is against the manifest weight of the evidence. While Doumbouya testified that she did not commit the robbery, the jury obviously found that she was not credible. Nor do we find any merit to Doumbouya's claim that Ramos's and Ruffing's testimony was not credible simply because Ramos had a suspicion that the robber had been a customer. Again, the video surveillance that was seen by the jury corroborated Ramos's testimony. Based on the evidence presented, we cannot say that this is the exceptional case where the jury lost its way.

{¶23} The first and second assignments of error are overruled.

{¶24} Judgment affirmed.

It is ordered that appellee recover from appellant the 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.

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MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and  
MELODY J. STEWART, J., CONCUR