[Cite as *State v. Barrow*, 2015-Ohio-525.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101356

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD BARROW

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-577219-A

BEFORE: S. Gallagher, P.J., Keough, J., and McCormack, J.

RELEASED AND JOURNALIZED: February 12, 2015

ATTORNEY FOR APPELLANT

Scott Claussen
4834 Autumn Lane
Brooklyn, OH 44144

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Stephanie N. Hall
Eric Foster
Assistant Prosecuting Attorneys
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, OH 44113

SEAN C. GALLAGHER, P.J.:

{¶1} Defendant Richard Barrow appeals from his conviction for attempted murder and having a weapon while under disability. For the following reasons, we affirm.

{¶2} Before trial, Barrow pleaded guilty to attempted murder and felonious assault with a one-year gun specification, with the understanding the court would merge the counts as allied offenses. Barrow pleaded guilty on the first day his case was set for trial. During the colloquy, although claiming satisfaction with his attorney's representation, Barrow seemed dissatisfied with the plea because his attorney would not get affidavits from witnesses for trial. After a brief discussion and the court informing Barrow that affidavits were unacceptable for trial, Barrow agreed to plead guilty. After leaving the court, Barrow seemed even more dissatisfied with his attorney's representation, and the court reconvened the change of plea hearing. Barrow once again agreed to plead guilty.

{¶3} Thereafter, Barrow filed a pro se motion to withdraw his plea and seek new counsel. The trial court granted the motion, allowing Barrow's first attorney to withdraw, and appointed new counsel to represent Barrow at trial. This led to trial on four counts: one for attempted murder with one- and three-year firearm specifications, two for felonious assault with one- and three-year firearm specifications, and one for having a weapon while under disability. Barrow waived the jury for the final count.

{¶4} The following facts emerged from the trial. On July 23, 2013, a dispute between neighbors erupted. It was the victim's family pitted against the family of Barrow's friends. The victim approached Barrow's friend Justin, who lived next door to the victim's mother and siblings. Justin was with Barrow's brother. Barrow was dating Justin's sister. The victim approached Justin and his friend with the intent to inquire about their association with Barrow

and about an earlier incident involving Barrow and the victim's brother. The victim believed that Barrow assaulted his little brother the day before or the morning of the July 23 altercation. The assault and altercation stemmed from an earlier incident in which Barrow accused the victim's family of stealing another firearm.

{¶5} A week earlier, Barrow accused the victim's family of stealing the firearm based on the word of a three-year-old child. Barrow apparently confronted the victim's family in their house. Barrow did not live in the neighboring residence. After accusing the victim's family, Barrow retreated to his car, parked in the neighboring driveway, and grabbed a gun. His girlfriend restrained him, but not before Barrow warned the victim's family to return the missing gun "or else."

{¶6} During the dispute on July 23, Justin was overheard calling someone after discussing Barrow's involvement in the assault on the victim's brother. While on the phone, Justin relayed the fact that the victim was asking for whomever Justin was calling. Shortly thereafter, Barrow arrived. Barrow was known in the neighborhood under the pseudonym "G." Barrow immediately confronted the victim with a handgun aimed at the victim's head. The victim attempted to redirect the muzzle away from his face, but Barrow pulled the trigger and shot the victim in the shoulder.

{¶7} During the trial, three fact witnesses and two investigating police officers testified. One of the witnesses, Justin's grandmother, has psychological issues for which she receives medication. Her testimony was largely consistent with the victim's and his mother's, although she did not identify Barrow specifically. When Barrow approached the victim, she assumed it was Barrow from his demeanor and the fact he was walking with her granddaughter. She later clarified that she was unable to identify the shooter as Barrow. The victim and his mother had

their own credibility issues. There were slight inconsistencies in some versions of the events, and the victim claimed he did not use drugs, although he later admitted to smoking marijuana. Barrow's trial counsel cross-examined all the witnesses regarding the credibility issues.

{¶8} All the witnesses identified Barrow from a photo array, although the victim and his mother did not provide the identification until three weeks later. Although the victim claimed he told the treating medical teams that Barrow was the shooter, the victim's medical records noted that the victim "does not know the [shooter] but recognized him as the person who jumped [the victim's] brother yesterday." During cross-examination, the victim indicated that he told the hospital that he did not know Barrow's given name, but identified him pursuant to his street name. Further, the responding police officer testified that upon arriving, it was determined that Barrow was the suspect, again being identified under his street name.

{¶9} Barrow was convicted of all charges. The trial court merged the felonious assault counts into the attempted murder and sentenced Barrow to six years of imprisonment for attempted murder and imposed three years on the firearm specification, to be served consecutively. The court imposed a one-year sentence on the count of having a weapon while under disability, to be served concurrently.

{¶10} It is from this conviction that Barrow timely appealed, advancing two assignments of error. In his first assignment of error, Barrow claims his conviction is against the manifest weight of the evidence in light of the psychological or other credibility issues of the witnesses as established at trial. Barrow's first assignment of error is without merit.

{¶11} When reviewing a claim challenging the manifest weight of the evidence, the court, reviewing the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, 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. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id*.

{¶12} Although the three fact witnesses demonstrated credibility concerns, those concerns were provided for the trier of fact's review. Further, all three fact witnesses largely provided consistent versions of the events. According to Justin's grandmother, someone of Barrow's demeanor walked up with her granddaughter and shot the victim. She conceded at trial that she could not be sure Barrow was the person she saw, but that she assumed it was Barrow because of his build and the fact that he arrived with her granddaughter. The grandmother also corroborated the victim's and his mother's accounts that the victim attempted to grab the gun held to his head before being shot. The victim and his mother both positively identified Barrow, and the police officer testified that the responding officers immediately began searching for Barrow based on his street name. A minor inconsistency in the victim's medical report is not enough to claim the trier of fact lost its way. The victim clearly identified the person he accused of assaulting his brother, who was Barrow, as the shooter. The victim and his mother both positively identified Barrow as the man who approached and shot the victim. We overrule Barrow's first assignment of error.

{¶13} In his second assignment of error, Barrow claims his conviction is against the sufficiency of the evidence because the state failed to demonstrate that he attempted to purposely cause the death of the victim. We find no merit to Barrow's argument.

{¶14} A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *Thompkins*, 78 Ohio St.3d at 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, "[t]he 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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶15} Barrow argues that because there was a struggle for the gun and it went off during that struggle, he cannot be convicted of attempted murder. He further claims that shooting the victim in the shoulder, and away from vital areas, demonstrates the Barrow had no intent to cause the death of the victim. Barrow was charged with attempted murder pursuant to R.C. 2923.02 and 2903.02(A), which in pertinent part provides that no person shall attempt to purposely cause the death of another.

{¶16} Whether an offender had the specific intent to kill is a fact-dependant inquiry, which can include reviewing the nature of the instrument used, the lethality of the instrument, and the manner in which the wound was inflicted. *State v. Majid*, 8th Dist. Cuyahoga No. 96855, 2012-Ohio-1192, ¶ 23, citing *State v. Pound*, 2d Dist. Montgomery No. 16834, 1998 Ohio App. LEXIS 4364, *3 (Sept. 18, 1998); and *State v. Robinson*, 161 Ohio St. 213, 218-219, 118 N.E.2d 517 (1954). A firearm is an inherently dangerous instrument. *Id.* The specific intent to kill may be reasonably inferred from that fact, especially when accompanied with evidence demonstrating the offender's intent to use the firearm. *Id.*; *see also State v. Brown*, 8th Dist. Cuyahoga No. 92814, 2010-Ohio-661, ¶ 52 (death is the natural and probable consequence of shooting a gun at someone); *State v. Wilson*, 8th Dist. Cuyahoga No. 96098, 2011-Ohio-5653, ¶ 6

(evidence that the offender fired a handgun at a police officer from close range was sufficient evidence of attempted murder despite the fact that the officer was not hit by any bullets).

{¶17} In construing the evidence in a light most favorable to the prosecution, the state demonstrated every element of attempted murder. A week before the shooting, Barrow threatened the victim's family by brandishing a firearm and telling them to return his missing property "or else." Shortly after assaulting the victim's younger brother, the victim confronted Justin asking for the name of the person involved in the assault. Justin called that person, and Barrow arrived with a deadly weapon. Barrow immediately confronted the victim and pointed a loaded handgun at the victim's head. The victim defended himself by trying to redirect the muzzle, but the victim's attempt at self-defense does not negate any element of attempted murder. *See Wilson*. The jury was free to infer that Barrow intended to cause the death of the victim based on Barrow's threat and subsequent actions. Any rational trier of fact could have found the essential elements of attempted murder proven beyond a reasonable doubt when considering the evidence in a light most favorable to the state. Barrow's second and final assignment of error is overruled.

{¶18} Barrow's conviction is 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, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
TIM McCORMACK, J., CONCUR