

[Cite as *State v. Shamblin*, 2016-Ohio-393.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102917

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JENNIFER L. SHAMBLIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-590438-A

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

RELEASED AND JOURNALIZED: February 4, 2016

ATTORNEY FOR APPELLANT

Frank A. Raso
1797 Pearl Rd.
Brunswick, OH 44212

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Melissa Riley
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Defendant-appellant, Jennifer L. Shamblin, appeals her conviction for aggravated burglary and grand theft. For the reasons that follow, we affirm.

{¶2} This appeal is a companion case arising out of the same incident detailed and contained in *State v. Coleman*, 8th Dist. Cuyahoga No. 102966, 2016-Ohio-297, where Shamblin's codefendant Demetrius E. Coleman appealed from his conviction. For a recitation of the facts of this case as they relate to Coleman, the reader is referred to this companion opinion. *See Coleman* at ¶ 1-10.

{¶3} On October 28, 2015, Shamblin was charged with aggravated burglary in violation of R.C. 2911.11(A)(2) and grand theft in violation of R.C. 2913.02(A)(1), along with her codefendants, Richard C. Smith, Jr., and Demetrius E. Coleman.¹ Each count contained a firearm specification under R.C. 2941.141(A).

{¶4} On February 17, 2015, the case against Shamblin and Coleman proceeded to a joint jury trial. The state presented the testimony of the victim, Officer Kevin Berry, and that of several of the police officers involved in the October 16, 2014 arrest and investigation of Coleman and Shamblin. Shamblin testified on her own behalf.

{¶5} According to Berry, a Cleveland police officer, he left his home early the morning of October 16 for work but returned home in his patrol car at approximately 1:15 p.m. because he had forgotten his gym bag. When he arrived home, he saw a gray SUV parked in his driveway.

The engine was running, and there was a female in the driver seat, who was identified as Shamblin. Berry, who was in police uniform, approached the driver's side of the car, where the

window was partially down. He asked Shamblin what she was doing there, to which she replied that she was there “to pick up her nephew.” Berry testified that he asked Shamblin if her nephew lived there, knowing that to be untrue because Berry lived there alone. Shamblin responded that her nephew did not live there, but she was supposed to meet him there. Berry became suspicious, noting that he was aware of attempted burglaries in the neighborhood a couple of weeks ago and he believed Shamblin was “being evasive” with her answers. He asked Shamblin for her driver’s license and her car keys and then proceeded down the driveway to the house.

{¶6} When Berry approached the side door of his house, he observed his television set in his backyard. At that point, Berry returned to Shamblin and handcuffed her to the steering wheel. He then called for backup and went back to the house. He observed a basement light on, a broken rear window, and his belongings scattered all over the kitchen floor. He made several announcements for any suspects to come out with their hands up; however, he decided to retreat outside and wait for backup because Berry kept a weapon in his house that was now unaccounted for.

{¶7} After backup arrived, the officers searched the inside of the house. No suspects were found. The officers, with Berry’s assistance, discovered that several items were missing, including his revolver, ammunition, a ballistic vest, a collection of knives, a “pile of change,” and a duffle bag. Shortly thereafter, Coleman was apprehended nearby, in the neighborhood, with cuts on his hands. Officer Mark Williams testified that when the officers brought Coleman back to Berry’s house, Coleman stated that his cell phone was in the car that was in Berry’s driveway.

¹ The record indicates that the charges against Smith were dismissed.

{¶8} Berry testified that when the officers returned Coleman to the scene, Berry asked Coleman where Berry's missing gun was located. In response, Coleman asked for a favor: that Berry contact Coleman's girlfriend and let her know that he was being arrested. According to Berry, Coleman agreed to show Berry the location of the gun in exchange for Berry making a phone call for Coleman. Berry made the phone call to the girlfriend, and Coleman directed the officers to the stolen gun and Berry's personal belongings, which were located approximately one-half mile from his home, or "a short walk."

{¶9} Shamblin testified that at 12:30 p.m. on October 16, her good friend, Richard C. Smith, texted her, asking her for a ride because his "brakes went out." She called Smith in response to receiving his text. According to Shamblin, during this conversation, the plans changed. She agreed to pick up Coleman, whom she did not know, and give him a ride to her house, where they would both meet up with Smith. She testified that she did not know how Smith would get to her house if his car brakes were not working. Shortly after speaking with Smith, Shamblin received a text from Coleman, indicating that Shamblin should pick Coleman up at Kmart.

{¶10} Shamblin had been at a friend's house when she received Smith's call. She borrowed her friend's silver SUV. Shamblin stated that her friend's car had more room in it than hers because her car contained "bags of laundry."

{¶11} At approximately 1:09 p.m., Shamblin picked Coleman up at Kmart. As she began driving, Coleman told Shamblin to turn down a side street that was very close to Kmart, and he directed her to a driveway. She pulled into the driveway and parked the car, leaving the engine running. Shamblin testified that Coleman told her that he would be right back. Coleman then proceeded to the back of the house, leaving his cell phone in the car.

{¶12} Shamblin testified that, shortly thereafter, a police officer (Berry) knocked on her car window. When questioned by Berry in the driveway, Shamblin denied having any knowledge of Coleman's actions or whereabouts. She testified that she told Berry that she was waiting for someone. Shamblin denied having any part in any crime, maintaining that she was merely giving Coleman a ride as a favor for a friend.

{¶13} At the conclusion of the state's evidence, the trial court denied both defendants' Crim.R. 29 motions for acquittal. The jury found Coleman guilty of aggravated burglary, grand theft, and tampering with evidence. The jury further found Shamblin guilty of aggravated burglary and grand theft but not guilty of the firearm specifications. The court sentenced Shamblin to three years in prison on the aggravated burglary and nine months in prison on the grand theft, to be served concurrently.

{¶14} Shamblin now appeals her conviction, claiming, in one assignment of error, that the evidence was insufficient to support her convictions and her convictions were against the manifest weight of the evidence.

{¶15} When assessing a challenge of sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "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." *Id.* A reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶16} While the test for sufficiency of the evidence requires a determination 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. *Thompkins* at 390. Also unlike a challenge to the sufficiency of the evidence, a manifest weight challenge raises a factual issue.

“The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”

Id. at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A finding that a conviction was supported by the manifest weight of the evidence, however, necessarily includes a finding of sufficiency. *State v. Howard*, 8th Dist. Cuyahoga No. 97695, 2012-Ohio-3459, ¶ 14, citing *Thompkins* at 388.

{¶17} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. When examining witness credibility, a factfinder is free to believe all, some, or none of the testimony of each witness appearing before it. *State v. Ellis*, 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18.

{¶18} In the companion case in which Shamblin’s codefendant appealed his convictions, we affirmed Coleman’s convictions. *See Coleman*, 8th Dist. Cuyahoga No. 102966, 2016-Ohio-297. In determining that the state produced sufficient evidence that Berry was

present at the time of the offense, we found the essential elements of aggravated burglary were proven beyond a reasonable doubt. *Id.* at ¶ 17. We further determined that Coleman's convictions were not against the manifest weight of the evidence, finding that the state provided substantial circumstantial evidence to support the convictions. *Id.* at ¶ 23.

{¶19} Shamblin's convictions were based on accomplice liability. Having affirmed Coleman's convictions as the principal offender, we now address Shamblin's alleged complicity.

Ohio's complicity statute provides that "[n]o person, acting with the kind of culpability required for the commission of an offense, shall * * * [a]id or abet another in committing the offense." R.C. 2923.03(A)(2). Under R.C. 2923.03(F), a person who is guilty of complicity in the commission of an offense "shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated * * * in terms of the principal offense."

{¶20} In order to establish aiding and abetting, the accused must have actively taken some role in causing the commission of the offense. *State v. Langford*, 8th Dist. Cuyahoga No. 83301, 2004-Ohio-3733, ¶ 20, citing *State v. Sims*, 10 Ohio App.3d 56, 460 N.E.2d 672 (8th Dist.1983). The mere presence of an accused at the scene of the crime is insufficient evidence, in and of itself, of aiding and abetting. *State v. Widner*, 69 Ohio St.2d 267, 269, 431 N.E.2d 1025 (1982). Rather, a person aids or abets another when he supports, assists, encourages, cooperates with, advises, or incites the principal in the commission of the crime and shares the criminal intent of the principal. *State v. Johnson*, 93 Ohio St.3d 240, 245-246, 754 N.E.2d 796 (2001). Such criminal intent may be inferred from the circumstances surrounding the crime, such as presence, companionship, and conduct before and after the offense is committed. *Id.*; *State v. Pruett*, 28 Ohio App.2d 29, 34, 273 N.E.2d 884 (4th Dist.1971).

{¶21} Aiding and abetting may be shown by both direct and circumstantial evidence. *Langford*, citing *State v. Cartellone*, 3 Ohio App.3d 145, 150, 444 N.E.2d 68 (8th Dist.1981). Additionally, aiding and abetting may be established by overt acts of assistance such as driving a getaway car or serving as a lookout. *Cartellone* at 150.

{¶22} Shamblin was convicted of aggravated burglary in violation of R.C. 2911.11(A)(2), which provides that

[n]o person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure [theft in violation of R.C. 2913.02] * * * [and] [t]he offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

{¶23} Shamblin was also convicted of grand theft in violation of R.C. 2913.02(A)(1), which provides that “[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services * * * [w]ithout the consent of the owner or person authorized to give consent” and the property stolen is a firearm or dangerous ordnance. *See* R.C. 2913.02(B)(4) (where the property stolen is a firearm or dangerous ordnance, a violation of this section is grand theft).

{¶24} Shamblin essentially argues that the state failed to provide sufficient evidence that she had the requisite criminal intent to aid and abet Coleman in the burglary and theft of Officer Berry's property. She further argues that even if she had knowledge of Coleman committing the offenses, her convictions, as an aider and abettor, were against the manifest weight of the evidence.

{¶25} Here, we find that the state provided sufficient evidence of Shamblin's active participation in the aggravated burglary and grand theft. The state presented evidence that, on

the afternoon of October 16, Shamblin and Coleman had communicated with each other regarding their respective locations. Shamblin borrowed a larger and more spacious vehicle than her own in order to pick up Coleman. She then picked Coleman up and drove him to the victim's house. Coleman told Shamblin that he would "be right back," and he left his cell phone in the car. Coleman then proceeded to the back of the house, where he entered the victim's home and removed a television set, a duffle bag containing a firearm and ammunition, and cash while Shamblin waited in the driveway with the engine running. When Berry discovered Shamblin awaiting Coleman in Berry's driveway, Shamblin told Berry that she was picking up her nephew. The record demonstrated that Berry lived alone. This evidence demonstrated more than mere presence during the commission of a crime.

{¶26} Moreover, although Shamblin denied having any knowledge of Coleman's actions, the jury can infer from her actions that she shared Coleman's criminal intent. The jury can infer that Shamblin borrowed a larger car in order to fit the victim's property and that she expected Coleman to return to her vehicle because he left his cell phone in her car and he told her that he would be right back. The jury could also infer that she lied to Berry about picking up her nephew in an effort to explain her presence in Berry's driveway and direct his attention away from the real purpose of her presence.

{¶27} Therefore, viewing the evidence in a light most favorable to the state, we find that any rational trier of fact could have found the essential elements to support Shamblin's convictions under the state's complicity theory.

{¶28} We further find that Shamblin's convictions are not against the manifest weight of the evidence. While Shamblin denied having any knowledge of Coleman's actions and testified that she told Berry she was picking "someone" up, Berry testified that Shamblin told him she was

there to pick up her nephew. Berry stated that upon further questioning, Shamblin became “evasive.” Undoubtedly, the jury chose to believe Berry rather than Shamblin.

{¶29} In a manifest weight challenge, we are mindful that “the determination regarding witness credibility rests primarily with the trier of fact because the trier of fact is in the best position to view the witnesses and observe their demeanor, gestures, and voice inflections — observations that are critical to determining a witness’s credibility.” (Citations omitted.) *State v. Wilkinson*, 8th Dist. Cuyahoga No. 100859, 2014-Ohio-5791, ¶ 39. As such, the trier of fact is free to accept or reject any or all of the testimony of any witness. *Ellis*, 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18. And in this case, the jury was within its province to accept Berry’s testimony and reject Shamblin’s testimony.

{¶30} We therefore cannot say that this is an exceptional case in which the jury clearly lost its way and created such a manifest miscarriage of justice that the convictions must be reversed and a new trial ordered.

{¶31} Accordingly, Shamblin’s sole assignment of error is overruled.

{¶32} 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.

TIM McCORMACK, JUDGE

MARY EILEEN KILBANE, P.J., and
SEAN C. GALLAGHER, J., CONCUR