

[Cite as *State v. Ayers*, 2017-Ohio-6890.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105225

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ADRIAN AYERS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-607500-A

BEFORE: Stewart, J., E.A. Gallagher, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: July 20, 2017

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Adrian Ayers and a codefendant, Quintard Brown, engaged in a scheme where Brown made in-store credit card applications by using a fraudulent driver's license, used those credit cards to buy thousands of dollars of merchandise, and then sold the merchandise to Ayers at a huge discount. Ayers's actions caused a jury to find him guilty of 11 counts of money laundering; 10 counts of telecommunications fraud; theft; misuse of credit cards; and 3 counts of identity fraud. On appeal, Ayers complains among other things that there was insufficient evidence to prove that he committed the crimes because none of the several merchants involved could identify him nor was there proof that he participated in the scheme. For similar reasons, Ayers also contends that the jury's verdict is against the manifest weight of the evidence. We disagree and affirm.

{¶2} Ayers maintains that the state offered no proof to show his direct involvement in creating a fraudulent driver's license and using it to apply for credit cards — he claims that the evidence did nothing more than inculcate Brown. The state argued that Ayers's culpability was based on his aiding and abetting Brown's actions.

{¶3} A person can be prosecuted as the principal offender if he or she aids or abets another in committing the offense while acting with the kind of culpability required for commission of the offense. *See* R.C. 2923.03; *State v. Coleman*, 37 Ohio St.3d 286, 525 N.E.2d 792 (1988), paragraph two of the syllabus. Mere association with a principal offender does not aid or abet the principal's act; there must be some active participation, assistance, or encouragement by the accomplice. *State v. Nievas*, 121 Ohio App.3d 451, 456, 700 N.E.2d 339 (8th Dist.1997). That participation can be inferred from the accomplice's presence, companionship, and conduct before and after the offense is committed. *State v. Johnson*, 93 Ohio St.3d 240, 754 N.E.2d 796 (2001).

{¶4} The state's evidence showed that an elderly man (some of the counts contained an elderly person specification) discovered that several retail merchants issued credit cards in his name based on in-store applications that were not made by him. Those applications were made by Brown, who used a driver's license that contained the elderly man's name and address, but Brown's photograph and vital statistics. Ayers did not dispute that he was present when the fraudulent credit card applications and subsequent purchases were made over four successive days — security video showed Ayers leaving some of the stores with merchandise that had been purchased with the fraudulently obtained credit cards, and cell phone tracking data placed him “in the vicinity” where other credit card applications and sales transactions occurred. Those stores were located throughout the county.

{¶5} The driver's license that Brown used when applying for credit listed a driver's license number that belonged to a person who was a customer of Ayers's business. During the course of their investigation, the police drove past Ayers's place of business and, on "numerous occasions," saw a car belonging to the person whose driver's license number had been used on the fraudulent driver's license.

{¶6} When reviewing a claim that there is insufficient evidence to support a conviction, we not only view the evidence most favorably to the state, but draw all reasonable inferences in the state's favor. *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 138. The circumstantial evidence was enough to allow the jury to infer that Ayers was an active participant in Brown's scheme. Ayers claimed to have met Brown on the first day that they traveled together to buy merchandise, but that claim was undercut by evidence that the person whose driver's license number was listed on the fraudulent driver's license appeared to have some relationship with Ayers. And the jury could reject Ayers's assertion that he was an unwitting participant of Brown's fraud. The crimes occurred over a four-day period in which Ayers admitted that he personally selected, and Brown purchased using in-store credit, over \$7,000 in merchandise at different stores located throughout the county. All the while, Ayers was, by his own admission, paying half price for items that Brown purchased. This evidence was circumstantial, but enough to allow a rational trier of fact to conclude that Ayers was complicit. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶7} We likewise reject Ayers’s claim that the guilty verdicts are against the manifest weight of the evidence.

{¶8} Ayers testified that Brown, whom he had never before met, walked off the street into Ayers’s place of business and said that he “could get me some stuff half price.”

According to Ayers, Brown was going through a divorce and was “running his credit cards up so he can get some money for somewhere to stay.” Brown’s plan was to purchase merchandise by credit and then sell it to Ayers for cash at half price.

{¶9} Ayers’s evidence required the jury to believe that it was fortuity that a total stranger would approach him with an offer to buy new store merchandise at half price. When asked why he would agree to such a proposition, Ayers testified that “people come to my shop with all kind of stuff” to sell. But Ayers never explained why he would abandon his business to leave with Brown and go shopping for four successive days, in locations throughout the county. In addition, Ayers’s claim that Brown tried to raise needed money by opening charge accounts, purchasing items, and then selling the purchased merchandise for half its retail value was so far-fetched that the jury was entitled to give it no credence at all. And having testified in his own defense, Ayers failed to offer any evidence that he actually paid Brown for the merchandise. This truly was a case of “too good to be true” and the jury could reject Ayers’s testimony on that basis. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus (the weight of the evidence and credibility of witnesses are matters primarily for the finder of fact).

{¶10} 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

EILEEN A. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR