

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24946

Appellee

v.

HEATH D. CRABTREE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 02 0567

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 12, 2010

BELFANCE, Presiding Judge.

{¶1} Defendant-Appellant Heath Crabtree appeals from his convictions in the Summit County Court of Common Pleas. For reasons set forth below, we affirm.

BACKGROUND

{¶2} After DNA evidence linked Crabtree to an April 23, 2005 home invasion, he was indicted for aggravated burglary in violation of R.C. 2911.11(A)(1), a first-degree felony and robbery in violation of R.C. 2911.02(A)(2), a second-degree felony. A jury found Crabtree guilty of both crimes and the trial court sentenced him to an aggregate term of ten years in prison.

{¶3} Crabtree has appealed, raising two assignments of error for our review.

CRIM.R. 29 MOTION

{¶4} Crabtree argues in his first assignment of error that the trial court erred when it denied his motion for acquittal pursuant to Crim.R. 29. Specifically, he contends that insufficient evidence was presented to establish Crabtree was the perpetrator. We disagree.

{¶5} “When reviewing the trial court’s denial of a Crim.R. 29 motion, this [C]ourt assesses the sufficiency of the evidence ‘to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.’” *State v. Flynn*, 9th Dist. No. 06CA0096-M, 2007-Ohio-6210, at ¶8, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. In reviewing challenges to sufficiency, we must view the evidence in a light most favorable to the prosecution. *State v. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶5, citing *Jenks*, 61 Ohio St.3d at 279.

{¶6} Crabtree was convicted of aggravated burglary in violation of R.C. 2911.11(A)(1), which provides that:

“No 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 any criminal offense, if * * * [t]he offender inflicts, or attempts or threatens to inflict physical harm on another[.]”

Additionally, Crabtree was convicted of robbery in violation of R.C. 2911.02(A)(2), which provides that “[n]o person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall * * * [i]nflict, attempt to inflict, or threaten to inflict physical harm on another[.]”

{¶7} The State must also prove beyond a reasonable doubt the identity of the perpetrator of the crime. *Flynn* at ¶12. “The identity of a perpetrator may be established using direct or circumstantial evidence.” *Id.*

{¶8} As an initial matter we note that Crabtree does not appear to contend in either assignment of error that the State failed to establish any element of either crime, except for identity. Crabtree does not list the elements of the offenses nor does he identify any specific element aside from identity that he believes was not established. See App.R. 16(A)(7). Thus, we confine our analysis to examining whether the evidence sufficiently established that it was Crabtree who committed the crimes.

{¶9} The victim, James Sinor, Jr., testified concerning the events of April 23, 2005. At the time, Sinor was residing in his father's home in Akron due to his father's illness. That evening, Sinor was lying in bed watching TV when an intruder opened his bedroom door and asked him where the money was. Sinor described the individual as a white male, average build, wearing a ski mask and wearing several layers of sweatshirts. He stated the intruder was about his size. Sinor did not recognize Crabtree as the intruder in court. Sinor directed the intruder to an adjacent room and then tried to retrieve his gun from the end table. Before Sinor could remove his gun from the gun sock he kept it in, the intruder returned. The intruder came at Sinor with what appeared to be an ice pick, but was actually a screw driver, and another object. A struggle ensued. The intruder tried to shove the screw driver into Sinor's throat. Sinor believed the intruder was trying to kill him. By this time Sinor had removed the gun from the sock and repeatedly hit the intruder with the gun and eventually was able to shove the intruder on the floor. Sinor continued hitting the intruder and the intruder then rolled out of the way and headed down the stairs. Sinor proceeded to his father's room to check on him and to call 911. Sinor then ran outside and saw the intruder stuck on the back fence. Sinor fired a shot into the ground and the intruder fell over the fence and crawled away.

{¶10} Following the attack Sinor stated that “[t]here was blood everywhere[,]” including his mattress, himself, his sweatshirt, and the gun. Sinor testified concerning photographs taken at the scene which showed blood on the fence, his sweatshirt, and his blanket, among other places. Sinor, however, was uninjured following the attack. Sinor purchased the gun involved in the incident new and indicated that prior to that evening he had never hit anyone with the gun.

{¶11} Mildred Morris, a crime scene detective for the Akron Police Department, testified regarding the photographing of the scene and evidence collection. She indicated that she took into evidence the gun and the victim’s sweatshirt. Christopher Smith, a forensic scientist for the Ohio Bureau of Criminal Identification and Investigation (“BCI”) testified that he tested the gun for fluids and determined that the fluid on the weapon was blood.

{¶12} Detective Patrick McMillan of the major crimes division of the Akron Police Department testified concerning his role in the investigation. Detective McMillan testified that following the incident he was contacted by Sinor with the name of a possible suspect, Christopher Sample. Sinor was unable to pick Sample out of a photo array and a DNA comparison ruled Sample out as the source of the DNA. Detective McMillan further testified that in 2007, pursuant to department policy, due to the lapse in time since the incident, the screw driver and related items were destroyed.

{¶13} The BCI later contacted Detective McMillan with information that the CODIS system had returned a hit on the DNA of the intruder. The suspect identified from CODIS was Crabtree. Detective McMillan obtained a second sample of DNA from Crabtree so that the BCI could test it against the profile from the gun.

{¶14} Stacy Violi, a forensic scientist with the BCI, testified concerning the DNA analysis she conducted on the blood found on the gun. She stated that DNA is unique to each

individual apart from identical twins. She indicated that the DNA profile obtained from the gun was a mixture of DNA from two sources. She testified that she compared the DNA from the gun to DNA obtained from Sample and concluded that the results excluded Sample as the source of the DNA.

{¶15} The DNA profile obtained from the gun was run through CODIS which contains a databank of DNA profiles. In July 2007, BCI was notified that CODIS had located a potential match, namely Crabtree. Violi compared the profile of the potential match and the DNA from the gun and confirmed that it was a match. That information was passed on to police, and the police then obtained a second DNA sample from the suspect to confirm the DNA match. Police also provided Violi with a DNA sample from Sinor.

{¶16} After comparing Sinor's DNA and Crabtree's DNA with the DNA obtained from the gun, Violi concluded that the major DNA profile found on the gun was consistent with Crabtree's DNA and that the minor profile was consistent with Sinor's. Violi testified that Sinor's DNA could have gotten on the weapon just from routine handling of the gun. Violi concluded that Crabtree could not be excluded as a source of the DNA. She further determined that based on the national database provided by the FBI, the DNA profile exhibited by both the sample from the gun and the sample from Crabtree would occur only once in 169 quadrillion, 600 trillion unrelated individuals.

{¶17} The State presented sufficient evidence to establish beyond a reasonable doubt that Crabtree was the individual responsible for the crimes. While Sinor was unable to identify the intruder, he was able to provide important testimony. He testified that he repeatedly hit the intruder with the weapon causing blood to be "everywhere[,] " including on the gun itself. He further stated that he never hit anyone with the gun prior to that incident. The gun tested positive

for blood and that blood contained a DNA profile consistent with Crabtree's. The major DNA profile found on the gun would be expected to occur only once in 169 quadrillion, 600 trillion unrelated individuals. Violi explained that if she tested every person alive, she "would only expect to find one individual who matches this particular profile that is on the pistol[.]"

{¶18} When viewed in a light most favorable to the State, there was sufficient evidence to establish that Crabtree was the individual who broke into Sinor's residence and struggled with him, leaving his DNA behind on the gun in the process. Sinor's testimony combined with the DNA evidence was sufficient to establish Crabtree as the intruder. See, e.g., *State v. Williams*, 99 Ohio St.3d 493, 2003-Ohio-4396, at ¶52 ("The presence on the cervical and vaginal swabs of numerous sperm cells with tails intact shows that some person had sexual intercourse with Catrise no more than 24 hours before her death. The presence on Catrise's underwear of semen with DNA consistent with Williams's DNA is evidence that Williams was that person."); *State v. Snyder* (Feb. 3, 1999), 9th Dist. No. 18923, at *3 ("The DNA evidence alone was sufficient to identify defendant beyond a reasonable doubt as having had sexual intercourse with the victim.").

{¶19} In Crabtree's sufficiency argument he contends that because Sinor could not identify the intruder and because no fingerprint evidence was analyzed, the State presented insufficient evidence to establish Crabtree as the intruder. The State did, however, present uncontroverted evidence that (1) Sinor hit the intruder with the gun causing the intruder to bleed; and (2) the DNA profile obtained from the blood from the gun was consistent with Crabtree's DNA. Crabtree's assignment of error is overruled.

MANIFEST WEIGHT

{¶20} Crabtree argues in his second assignment of error that his convictions are against the manifest weight of the evidence. Specifically he argues that the State failed to meet its burden of persuasion concerning whether Crabtree was the intruder. We disagree.

{¶21} When determining whether a conviction is supported by 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 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.” *Cepec* at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke the discretionary power to grant a new trial in “extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant.” *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶22} Crabtree focuses most of his manifest weight argument on reiterating his claim that the evidence was insufficient to establish himself as the intruder. As we have already disposed of this argument, we will not address it again. Crabtree states that the BCI failed to perform a DNA analysis on the blood sample from the fence, but he offers no argument or explanation as to how this fact causes his convictions to be against the manifest weight of the evidence. Violi explained that BCI prioritizes evidence for testing, testing the most probative piece of evidence first. Because testing of the gun produced an adequate result, the agency did not perform DNA testing on the remaining items.

{¶23} After a review of the entire record we cannot say the jury lost its way in concluding that the intruder in Sinor’s home was Crabtree. After independently weighing the

evidence and considering witness credibility we conclude that the evidence did not weigh heavily in favor of Crabtree. Between Sinor's description of the events, the conclusion that the DNA evidence was consistent with Crabtree's, and testimony establishing that out of the entire population alive, only one person would be expected to match the DNA profile on the gun, it was reasonable for the jury to conclude that Crabtree was responsible for the crimes. Accordingly, we overrule Crabtree's second assignment of error.

CONCLUSION

{¶24} In light of the foregoing, we affirm the judgment of the Summit County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
MOORE, J.
CONCUR

APPEARANCES:

DONALD R. HICKS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant
Prosecuting Attorney, for Appellee.