

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24811

Appellee

v.

MICHAEL MURKINS

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 01 0029 (B)

DECISION AND JOURNAL ENTRY

Dated: March 10, 2010

BELFANCE, Judge.

{¶1} Defendant-Appellant, Michael Murkins, appeals his convictions for robbery from the Summit County Court of Common Pleas. For the reasons that follow, we affirm.

FACTS

{¶2} On December 29, 2008, Murkins and some friends were gathered at the apartment of another friend. Murkins devised a plan to rob a pizza delivery person and convinced one of the friends to place the order by threatening her with a gun. Murkins and another man waited outside for the pizza delivery person to arrive. Murkins hid behind the corner of the building while the other man robbed the delivery person at gunpoint. Murkins' role was to seize the pizza delivery person if he tried to flee during the robbery. The delivery person relinquished his money and the food he was to deliver and then fled the area. Murkins took the money from his accomplice and discarded the bags containing the food in the woods nearby. The two men then returned to their friend's apartment.

{¶3} A jury found Murkins guilty of one count of aggravated robbery with a firearm specification and one count of robbery with a firearm specification. The trial court merged the robbery conviction into the aggravated robbery conviction for sentencing purposes and sentenced Murkins to a total of seven years in prison.

{¶4} On appeal, Murkins' sole assignment of error is that the "[i]ntroduction of pizza warming bag found the day before trial was an error by the court."

PIZZA BAGS

{¶5} Murkins' trial began several months after the crime on a Monday morning. On the Thursday or Friday before the trial, the State interviewed one of the co-defendants who was alleged to have actually robbed the delivery person. This witness for the first time told the prosecutor that Murkins had thrown the delivery bags in the woods near the apartment building.

{¶6} On Sunday, the day before Murkins' trial, the police received information that the pizza delivery bags were still in the woods near the apartment building. The police retrieved the bags later that same day.

{¶7} Prior to the commencement of trial, the State notified the court and defense counsel of its intent to introduce the pizza bags at trial. The court considered the matter outside of the presence of the jury. Murkins' trial counsel objected, stating that she had not had time to investigate the authenticity of the bags, whether they could be connected to the robbery, and whether they were common to other pizza shops. The trial court asked counsel if she would be able to conduct that investigation that evening and counsel responded affirmatively. Defense counsel did not request a continuance to pursue her investigation. During the trial, the trial court allowed the State to introduce the pizza bags into evidence.

{¶8} Although Murkins states in his assignment of error that the trial court erred in the introduction of the pizza bags found the day before trial, he does not actually develop this assignment of error in his merit brief. Rather, Murkins makes a “public policy” argument in which he implicitly argues that his due process rights were hampered because of the delayed discovery of the pizza bags. Murkins reasons that the bags could have been discovered earlier with due diligence and that knowledge of the existence of the bags could have had a tremendous impact on the course of the plea negotiations. Murkins has not provided this Court with any legal authority suggesting that a violation of a criminal defendant’s due process rights occurs under the circumstances of this case. Moreover, once the disclosure was made, trial counsel had the opportunity to engage in plea negotiations or seek a continuance. Murkins’ counsel elected not to request a continuance and affirmatively told the trial court that she could adequately investigate the evening before the second day of trial. Had trial counsel elected to seek a continuance of the trial, there would have been more time to engage in further plea negotiations.

{¶9} Although Murkins asserts in his assignment of error that the trial court erred in allowing the introduction of the pizza bags at trial, Murkins does not argue in his merit brief that it was legally impermissible for the trial court to have allowed the State to introduce the pizza bags into evidence. Murkins also does not argue in his merit brief that the trial court improperly exercised its discretion in admitting the pizza bags into evidence. Absent an error of law, “[t]he decision to admit or exclude relevant evidence rests within the sound discretion of the trial court.” *State v. Timofeev*, 9th Dist. No. 24222, 2009-Ohio-3007, at ¶51.

{¶10} Upon review of the record and consideration of the arguments contained in Murkins’ merit brief, this Court does not discern any error in the admission of the pizza bags at trial.

CONCLUSION

{¶11} Murkins' sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

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

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

THOMAS W. WATKINS, Attorney at Law, for Appellant.

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