

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25332

Appellee

v.

ROGER L. ROBINSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 06 1780(A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 2, 2011

BELFANCE, Judge.

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

BACKGROUND

{¶2} On the morning of June 3, 2009, Mr. William Riley was walking to a nearby store when he was robbed at gunpoint. Based upon this incident, Mr. Robinson was charged with one count of aggravated robbery in violation of R.C. 2911.01(A)(1), a felony of the first degree, along with an attendant firearm specification. A jury found Mr. Robinson guilty of complicity to commit aggravated robbery and the accompanying firearm specification. Mr. Robinson was sentenced to a total term of six years in prison. Mr. Robinson has appealed, raising one assignment of error for our review.

MANIFEST WEIGHT

{¶3} In Mr. Robinson’s sole assignment of error, he asserts that his conviction for complicity to commit aggravated robbery is against the manifest weight of the evidence. Specifically, he contends that the evidence did not support the conclusion that Mr. Robinson was involved in the robbery or that he acted knowingly. Mr. Robinson asserts this is so, because the testimony of those who implicated Mr. Robinson in the robbery was unreliable and not credible and that his version of events was credible. We disagree.

{¶4} In reviewing a challenge to the weight of the evidence, the 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.’” *State v. Thomas*, 9th Dist. Nos. 22990, 22991, 2006-Ohio-4241, at ¶7, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

{¶5} In reversing a conviction as being against the manifest weight of the evidence, “the appellate court sits as the ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.” *Thomas* at ¶8, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. Accordingly, “this Court’s ‘discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.’” *Thomas* at ¶8, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶6} R.C. 2911.01(A)(1) provides that:

“[n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]”

{¶7} R.C. 2913.02(A) 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 in any of the following ways: [][w]ithout the consent of the owner or person authorized to give consent; [][b]eyond the scope of the express or implied consent of the owner or person authorized to give consent; [][b]y deception; [][b]y threat; [][b]y intimidation.”

“A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B). Further, R.C. 2923.03(A)(2) 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[.]”

{¶8} In this matter, there was a stark conflict between Mr. Robinson’s version of events and that of the other witnesses. According to Mr. Robinson, he was never present when the victim, Mr. Riley, was robbed. Conversely, Mr. Riley contends that Mr. Robinson was present and participated in the robbery. According to Mr. Riley, on the morning of June 3, 2009 he had just finished helping a friend move. He testified it was a clear day. The friend had given Mr. Riley ten dollars, five of which he put in his pocket and five of which he kept in his hand. Mr. Riley was walking to the corner store when he noticed a red Cavalier driving towards him. Mr. Riley waved at the car, thinking it was someone he knew. When the window of the car was rolled down, Mr. Riley realized that he was mistaken and told the people in the car, “I’m sorry. I thought you were somebody else.” To which, someone in the car replied “Well, I got that good stuff.” Mr. Riley declined the offer and the car drove off.

{¶9} Shortly thereafter, the car turned around and proceeded back towards Mr. Riley. The passenger in the vehicle got out and pointed a gun at Mr. Riley and told him to “Give me all

your money.” Mr. Riley refused several times as he was backing away. The person pointing the gun at Mr. Riley, later identified as J.T., was a juvenile and Mr. Riley did not believe that the person would shoot him. However, then the driver, whom Mr. Riley identified in court as Mr. Robinson, got of the car with his hands in his pockets and said, “We got a problem?” Mr. Riley believed that Mr. Robinson had a gun in his pocket. Additionally the passenger in the back seat, identified as M.H., also began to exit the vehicle. At this point, Mr. Riley became apprehensive, threw the five dollars on the ground, and ran to a nearby neighbor’s house and called 911.

{¶10} Mr. Riley described the car and relayed the license plate number to the operator. He also described the attire of the men who robbed him. Mr. Riley also relayed this information to police officers. While Mr. Riley was speaking to police, he was informed that the police had located a vehicle matching the description, along with three suspects. Officer John Strainer, a nearly fifteen-year veteran of the Akron Police Department, responded to Mr. Riley’s 911 call and testified at the trial. He spoke with Mr. Riley, who gave him a description of the suspects and of the vehicle. Officer Strainer relayed that information to dispatch. Captain Lynn Callahan, a forty-year veteran of the Akron Police Department, testified that on June 3, 2009, he was one of several police units looking for the vehicle matching the description Mr. Riley provided. A car matching the description and bearing the license plate Mr. Riley provided was located in Akron with three people inside. The rear passenger was not immediately noticed due to foggy windows from the rain. Captain Callahan identified Mr. Robinson as the driver of the vehicle. A .22 caliber revolver and a large knife were found in the vehicle.

{¶11} After police located the suspects and vehicle, Officer Strainer drove Mr. Riley to the scene where he could view the suspects. According to Officer Strainer, Mr. Riley was able to identify the three suspects as the individuals that robbed him. Detective Kenneth Clark, a twenty-

nine year veteran law enforcement officer and a current member of the Akron Police Department, testified that he was also on the scene when police located the vehicle in question. Detective Clark corroborated Officer Strainer's testimony. He stated that he arrived after the three suspects had been handcuffed and placed in police cars. Detective Clark arranged to have the suspects, juveniles M.H. and J.T., and Mr. Robinson, brought outside so that Mr. Riley could view them when the police drove him by the scene. According to Detective Clark, Mr. Riley was able to identify all the men as being involved in the robbery. Detective Clark testified that marijuana was found in the vehicle upon searching it after it was towed.

{¶12} J.T. also testified about the morning of June 3, 2009. He testified that he was spending time with the mother of his child when M.H. knocked on his door. J.T. suggested that they go around the neighborhood breaking into houses. M.H. agreed. J.T. left the house wearing his mom's coat and light blue sweatpants. The two proceeded to walk around the neighborhood, knocking on doors to see if anyone would answer. At some point, J.T. grabbed a knife from his house. When Mr. Robinson appeared in his vehicle, M.H. and J.T. went with him. According to J.T., Mr. Robinson brought the gun. Then Mr. Robinson got a phone call from the brother of the mother of his child, asking Mr. Robinson to pick him up from school. On the way to the school, the three encountered Mr. Riley who appeared to flag them down. However, upon seeing the three, Mr. Riley realized he did not know them.

{¶13} Mr. Robinson then suggested that they rob Mr. Riley. J.T. took the gun, got out of the car and pointed the gun at Mr. Riley. Mr. Riley refused to comply with J.T.'s demands and proceeded to back away from him. Then according to J.T., M.H. and Mr. Robinson got out of the car and then Mr. Riley dropped the five dollars. They took the five dollars and went to the

“weed man’s” house and bought marijuana. At this point, police arrived and the three were arrested.

{¶14} When J.T. spoke to the police, he implicated Mr. Robinson and blamed the entire robbery on him. J.T. testified that he did so initially because he was nervous and afraid. J.T. testified that he pled guilty and agreed to testify truthfully in the case against Mr. Robinson. On cross-examination, J.T. admitted again that he was untruthful with the police when he blamed Mr. Robinson for the things that J.T. himself had done. J.T. reaffirmed that he was testifying truthfully at the trial.

{¶15} Mr. Robinson testified in his defense and described a different version of events. He testified that he was driving his mother’s car when he encountered M.H. He picked up M.H. and they drove a little further up the street and picked up J.T. J.T. suggested that they go get marijuana. Because Mr. Robinson did not have any money, they proceeded back towards his house. Mr. Robinson testified that he went in his house, got money, and when he came out the police were arresting M.H. and J.T. Mr. Robinson denied robbing Mr. Riley, denied even seeing M.H. and J.T. rob Mr. Riley, and denied ownership of the gun. He also denied seeing the knife or the gun and said that the marijuana that was found was what they had brought to smoke at his house.

{¶16} Detective Bertina King, a nineteen-year law enforcement veteran, testified that she interviewed Mr. Riley at the police station. Mr. Riley described the suspects; he indicated that the front passenger had on light blue sweatpants. At trial, Detective King identified a photograph she took of J.T. on the date of the incident in which he is wearing light blue sweatpants. On cross-examination, Detective King testified that she also interviewed J.T. She stated that J.T.’s story contained inconsistencies and that she doubted his credibility.

{¶17} In light of the foregoing, we cannot say that the jury lost its way in convicting Mr. Robinson of complicity to commit aggravated robbery. Mr. Robinson argues that Mr. Riley's testimony is not believable because Mr. Riley testified that it was clear out that day and other testimony indicated it was rainy. Mr. Robinson's emphasis on this minute factual dispute does not warrant the conclusion that Mr. Riley's testimony as to the events that transpired was unreliable. Mr. Riley provided officers with a description of the suspects and the vehicle, including the license plate number. In court, Mr. Riley testified that Mr. Robinson was driving the vehicle and that he became intimidated only after Mr. Robinson got out of the vehicle and approached him. The police recovered the vehicle with the license plate Mr. Riley provided and Captain Callahan testified that Mr. Robinson was driving that vehicle. Moreover, Mr. Riley testified that the man who pointed a gun at him was wearing light blue sweatpants. There is no dispute that J.T. was wearing light blue sweatpants that day and there is no dispute that he was arrested in the company of M.H. and Mr. Robinson in the vehicle matching the description provided by Mr. Riley. After reviewing the evidence, we cannot say that the jury created a manifest miscarriage of justice in finding Mr. Riley's testimony credible.

{¶18} Further, despite the fact that Mr. Robinson focuses much of his brief on the issue of identity, after a thorough review of the evidence, this Court concludes there is substantial evidence to support the jury's conclusion that Mr. Robinson was indeed involved in the robbery. As noted above, Mr. Riley was able to describe the suspects and the vehicle, including the license plate. Mr. Riley relayed that information to the police and shortly thereafter the police located the vehicle at issue. Mr. Robinson was the driver of that vehicle. Further, Mr. Riley was unequivocal at trial in his identification of Mr. Robinson as a participant in the robbery and the driver of the vehicle.

{¶19} Mr. Robinson also maintains that the jury lost its way in relying on J.T.'s testimony. It is true that J.T. told the police that Mr. Robinson committed the actions that J.T. later admitted to at trial. It is likewise true that J.T. received a plea bargain for his testimony at Mr. Robinson's trial. Nonetheless, J.T.'s version of events at trial shares many similarities to Mr. Riley's version of events in that both point to J.T. being the person who pointed a gun at Mr. Riley and both point to Mr. Robinson being the driver. Thus, in light of the fact that Mr. Riley's testimony corroborates much of J.T.'s testimony, we cannot say the jury lost its way in convicting Mr. Robinson of complicity to commit aggravated robbery. Further, it is unclear what weight the jury gave to J.T.'s testimony; the jury could have reasonably disbelieved J.T.'s testimony, but believed Mr. Riley's testimony, along with the testimony of the various police officers, and thereby reasonably concluded that Mr. Robinson was guilty of complicity to commit aggravated robbery.

{¶20} The weight of the evidence supports the conclusion that Mr. Robinson was knowingly involved in the plan to rob Mr. Riley and that he actively participated in that robbery. While there was some conflicting evidence presented to the jury, we cannot say the jury's resolution of the conflicting evidence was unreasonable. The jury did not lose its way in convicting Mr. Robinson of complicity to commit aggravated robbery. Mr. Robinson's sole assignment of error is overruled.

CONCLUSION

{¶21} 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.
DICKINSON, P. J.
CONCUR

APPEARANCES:

THOMAS M. DICAUDO, Attorney at Law, for Appellant.

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