

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27434

Appellee

v.

DEMARCO DEVONTA WRIGHT

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2013 10 2978 (C)

DECISION AND JOURNAL ENTRY

Dated: June 17, 2015

SCHAFER, Judge.

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

I.

{¶2} In the early morning of October 25, 2013, Demarco D. Wright, Teon Lipkins, and Derek Recktenwalt robbed the house located at 617 Brown Street in Akron, Ohio in pursuit of money and marijuana. At the time of the robbery, four of the residence’s five tenants, all college students, were at home. The tenants at home during the robbery were McKinley Lancaster, Roy Illegbodun, Jacob Walker, and Trevor McClung. Also present in the home was Mr. Lancaster’s girlfriend, Devin Lawrence. One tenant, Jackson Liebler, was not in the residence at the time of the robbery.

{¶3} The residence in question consists of three floors. At the time of the robbery, Mr. Walker was in his first floor bedroom. He never left his room during the robbery and did not see

any of the suspects. At the same time, Mr. McClung and Mr. Illegbodu were both asleep in their respective second floor bedrooms, while Mr. Lancaster and Ms. Lawrence were watching television in the third floor attic bedroom.

{¶4} At around 1:00 a.m., Mr. Wright, Mr. Lipkins, and Mr. Recktenwalt broke open the front door of the residence and entered the home. Trevor McClung testified that he awoke in the middle of the night with three unknown men standing in his bedroom demanding money and marijuana. Mr. McClung testified that one of the men wore a red ski mask while another man, who he identified as Demarco Wright, held a gun to his head during the encounter. Mr. McClung then testified that the men tied his wrists and feet together with a 20-foot guitar amplifier cord. He also testified that the men took his cell phone.

{¶5} McKinley Lancaster stated that he walked downstairs to investigate the loud noises. Upon walking down the stairs to the second floor, Mr. Lancaster witnessed an unknown person enter one of his roommates' rooms. Another man, identified as Demarco Wright, then pointed a gun at Mr. Lancaster's head and ordered him to sit down on the stairs and not move. Mr. Lancaster complied with Mr. Wright's command. Mr. Lancaster testified that Mr. Wright then entered Mr. Illegbodu's bedroom with his gun.

{¶6} Roy Illegbodu testified that he heard loud noises in the hallway before two of the three suspects kicked in his door and ordered him to stay on his bed face down and not move. Mr. Illegbodu identified Demarco Wright as one of the two men in his room that night. The other man wore a red ski mask, according to Mr. Illegbodu. Mr. Illegbodu testified that Mr. Wright held a gun to his head and demanded money and marijuana. The two suspects then took money, marijuana, and a cell phone from Mr. Illegbodu.

{¶7} Devin Lawrence testified that she heard Mr. Lancaster say, “Please don’t shoot” after he walked downstairs to investigate the loud noises. Ms. Lawrence immediately called 911 to report the robbery and hid behind a couch in the attic bedroom. Ms. Lawrence testified that one of the intruders, later identified as Teon Lipkins, then walked upstairs into the bedroom where she was hiding. Ms. Lawrence stated that the suspect looked at her and began rummaging through the room’s belongings. Upon hearing police sirens, the suspect attempted to kick out one of the room’s windows, then kicked out another window and crawled outside onto the roof of the house.

{¶8} The police eventually arrived at the scene and arrested Mr. Wright, Mr. Lipkins, and Mr. Recktenwalt. The police returned the cell phones that the suspects had stolen from Mr. McClung and Mr. Illegbodu. The police also returned a check that the suspects had stolen from Mr. Liebler’s nightstand after they broke into and ransacked his bedroom.

{¶9} Mr. Lipkins and Mr. Recktenwalt eventually pled guilty to the charges against them in return for lesser sentences. Mr. Wright was indicted on three counts of aggravated robbery (R.C. 2911.01(A)(1)), four counts of kidnapping (R.C. 2905.01(A)(2)), one count of aggravated burglary (R.C. 2911.11(A)(2), and one count of tampering with evidence (R.C. 2921.12(A)(1)). The aggravated robbery, kidnapping, and aggravated burglary charges also carried firearm specifications (R.C. 2941.145).

{¶10} After the State rested at trial, Mr. Wright’s counsel moved for a judgment of acquittal on the charges for aggravated robbery against Mr. Lancaster and kidnapping against Ms. Lawrence pursuant to Crim.R. 29. The trial court denied that motion. The jury ultimately found Mr. Wright guilty on all counts and specifications. The trial judge sentenced Mr. Wright to 43 years of incarceration. The trial judge sentenced Mr. Wright to ten years for the aggravated

robbery of Mr. McClung, plus three years for the underlying gun specification, seven years for the aggravated robbery of Mr. Illegbodu, plus three years for the underlying gun specification, and three years for the aggravated robbery of Mr. Lancaster, plus three years for the underlying gun specification. The trial judge ordered those sentences be served consecutively. The trial judge then sentenced Mr. Wright to three years for the kidnapping of Ms. Lawrence, plus three years for the underlying gun specification, to run concurrently. She then merged the remaining kidnapping counts. The trial judge then sentenced Mr. Wright to eleven years for the aggravated burglary, plus three years for the underlying gun specification, to be served consecutively, and sentenced Mr. Wright to three years for tampering with evidence, to run concurrently.

{¶11} Mr. Wright timely appealed his convictions and sentence and raises two assignments of error for this Court's review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DEFENDANT-APPELLANT'S MOTION FOR JUDGEMENT OF ACQUITTAL UNDER CRIMINAL RULE 29.

{¶12} In his first assignment of error, Mr. Wright argues that his convictions for aggravated robbery against McKinley Lancaster and kidnapping against Devin Lawrence are based on insufficient evidence and that the trial court erred in denying his Crim.R. 29 motion for acquittal. Additionally, he argues that those two convictions are against the manifest weight of the evidence. We disagree.

Sufficient Evidence

{¶13} "We review a denial of a defendant's Crim.R. 29 motion for acquittal by assessing the sufficiency of the State's evidence." *State v. Frashuer*, 9th Dist. Summit No.

24769, 2010–Ohio–634, ¶ 33. The issue of whether a conviction is supported by sufficient evidence is a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution has met its burden of production. *Id.* at 390 (Cook, J. concurring). In making this determination, an appellate court must view the evidence in the light most favorable to the prosecution:

An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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.

State v. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. “In essence, sufficiency is a test of adequacy.” *Thompkins* at 386.

{¶14} Ohio’s aggravated robbery statute states in relevant part that “[n]o person, in attempting or committing a theft 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.” R.C. 2911.01(A)(1). Subsection (A)(1) of R.C. 2911.01 imposes strict liability as to the elements of displaying, brandishing, or waving a deadly weapon. *State v. Lester*, 123 Ohio St.3d 396, 2009-Ohio-4225, ¶ 32. Otherwise, the mental element is the same as theft under R.C. 2913.02, which is “knowingly.” *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, ¶ 53. R.C. 2901.22(B) states, in part, that a person acts “knowingly” when that person, regardless of purpose, is aware that his conduct “will probably cause a certain result or will probably be of a certain nature.”

{¶15} After reviewing the entire record, we conclude that the State presented sufficient evidence to support Mr. Wright’s conviction of aggravated robbery under R.C. 2911.01(A)(1). At trial, McKinley Lancaster testified that after venturing downstairs from his third floor bedroom, Mr. Wright ordered him at gunpoint to sit down on the stairs and not move. Mr. Lancaster testified that Mr. Wright and the two other suspects entered other bedrooms in the home. Mr. McClung and Mr. Illegbodu both testified that the suspects entered their respective bedrooms and demanded money and marijuana at gunpoint. Mr. Lancaster then testified that while he was sitting on the stairs, one of the suspects, later identified as Teon Lipkins, passed him and walked upstairs into his bedroom on the third floor. Ms. Lawrence testified that while she was hiding in Mr. Lancaster’s bedroom, Mr. Lipkins rummaged through the room’s belongings before kicking out a window and attempting to escape.

{¶16} This testimony, if believed, shows that Mr. Wright possessed a deadly weapon and brandished it while he and the two other suspects committed theft offenses against the home’s residents. Mr. Lancaster and Ms. Lawrence’s testimony, if believed, shows that Mr. Wright’s action of restraining Mr. Lancaster by an implicit threat of force allowed Mr. Lipkins, an accomplice, to rummage through Mr. Lancaster’s bedroom without interruption. Because aiders and abettors are equally liable with principal offenders, *see State v. Palfy*, 11 Ohio App.2d 142, 147 (9th Dist.1967), we find there to be sufficient evidence to support Mr. Wright’s conviction for aggravated robbery against McKinley Lancaster.

{¶17} Ohio’s kidnapping statute provides, in part, that, “[n]o person, by force, threat, or deception * * * shall * * * restrain the liberty of the other person * * * [t]o facilitate the commission of any felony or flight thereafter[.]” R.C. 2905.01(A)(2). The mental element is purpose. *State v. Hardges*, 9th Dist. Summit No. 24175, 2008-Ohio-5567, ¶ 12.

{¶18} After reviewing the record, we conclude that the State presented sufficient evidence to support Mr. Wright’s conviction of kidnapping against Devin Lawrence under R.C. 2905.01(A)(2). In this case, Ms. Lawrence testified at trial that upon Mr. Lancaster leaving the attic bedroom and walking downstairs, she heard him say, “Please don’t shoot.” Ms. Lawrence testified that she immediately called 911 to report a robbery because she was scared for her life and the lives of the other residents. Mr. Lancaster testified at trial that Demarco Wright was the intruder who pointed a gun at him when he walked downstairs. Ms. Lawrence further testified that she tried to hide behind a couch as one of the suspects, Mr. Lipkins, entered the attic bedroom. Ms. Lawrence stated that Mr. Lipkins looked at her before rummaging through the bedroom’s belongings and ultimately kicking out one of the bedroom’s windows and escaping onto the roof. Ms. Lawrence also testified that she felt like she could not move from behind the couch or leave the bedroom because she was scared of “[t]he men in the house that had guns.” Ms. Lawrence stated that even after Mr. Lipkins exited the bedroom through the window, she remained in the bedroom and waited there until the police arrived.

{¶19} This testimony, if believed, shows that Mr. Wright’s explicit threat of force against Mr. Lancaster caused Ms. Lawrence to become frightened and think that she was unable to leave the attic bedroom lest she get hurt or killed. Additionally, the jury was free to infer that Mr. Lipkins’ presence in the attic bedroom alone constituted enough circumstantial force to restrain Ms. Lawrence’s liberty. As an accomplice, Mr. Wright bears responsibility for Mr. Lipkins’ actions. *See Palfy*, 11 Ohio App.2d at 147. Moreover, numerous State witnesses testified at trial that Mr. Wright possessed and brandished a firearm during the robbery. As such, this testimony could lead the average mind to conclude that Mr. Wright’s threat of force was purposely made to facilitate the robberies of the home’s occupants. We believe this evidence is

sufficient for a jury to conclude that Mr. Wright kidnapped Devin Lawrence. Accordingly, we find there to be sufficient evidence to support Mr. Wright's conviction of kidnapping against Devin Lawrence under R.C. 2905.01(A)(2).

Manifest Weight

{¶20} Mr. Wright next argues that his convictions for aggravated robbery against McKinley Lancaster and kidnapping against Devin Lawrence are against the manifest weight of the evidence. We disagree.

{¶21} If a defendant asserts that his convictions are against the manifest weight of the evidence:

[A]n 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. Otten 33, Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side. *Thompkins*, 78 Ohio St.3d at 387. An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases. *State v. Carson*, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at ¶ 340.

{¶22} In this case, Mr. Wright contends that because he personally did not commit a theft offense against Mr. Lancaster and because neither he nor Mr. Lipkins ever threatened or otherwise spoke to Ms. Lawrence, that his convictions for aggravated robbery against McKinley Lancaster and kidnapping against Devin Lawrence are against the manifest weight of the evidence. However, the jury apparently accepted Mr. Lancaster's testimony that Mr. Wright held a gun to his head and ordered him not move. The jury also seemed to accept Ms.

Lawrence's testimony that Mr. Lipkins entered the third floor bedroom and rummaged through Mr. Lancaster's belongings. This testimony, if believed, would support the conclusion that Mr. Wright brandished a deadly weapon while an accomplice committed a theft offense against Mr. Lancaster. After reviewing the entire record, we cannot conclude that the jury lost its way and committed a manifest miscarriage of justice in convicting Mr. Wright of aggravated robbery against Mr. Lancaster.

{¶23} Additionally, the jury apparently accepted Ms. Lawrence's testimony that she was afraid to leave the third floor bedroom during the robbery because she believed the intruders were armed after overhearing Mr. Lancaster say "Please don't shoot" to one of the suspects. The jury was also free to infer that Mr. Lipkins' mere presence in the third floor bedroom as he rummaged through the Mr. Lancaster's belongings constituted enough circumstantial force to restrain Ms. Lawrence's liberty. Ms. Lawrence's testimony, if believed, would support the conclusion that Mr. Wright and his accomplice, Mr. Lipkins, restrained Ms. Lawrence's liberty by means of an implicit threat of force and by circumstantial force for the purpose of carrying out a robbery. As such, we conclude that the jury did not lose its way in convicting Mr. Wright of kidnapping against Ms. Lawrence.

{¶24} Accordingly, Mr. Wright's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED WHEN IT SENTENCED THE DEFENDANT-APPELLANT TO FOUR CONSECUTIVE FIREARM SPECIFICATIONS.

{¶25} In his second assignment of error, Mr. Wright argues that his gun specification convictions should merge because the underlying felonies were committed as part of the same act or transaction. We disagree.

{¶26} The jury convicted Mr. Wright on eight gun specifications, in connection with his three aggravated robbery convictions, his four kidnapping convictions, and his aggravated burglary conviction. The trial judge merged three of the kidnapping counts and ran the fourth kidnapping count concurrent to the remaining sentence. The trial judge sentenced Mr. Wright to three years of incarceration for each of the four remaining gun specifications.

{¶27} Mr. Wright contends that the trial judge erred by sentencing him to more than one three-year sentence for the firearm convictions because the underlying felonies were part of the same act or transaction. In support of his argument, Mr. Wright cites to former R.C. 2929.14(D)(1)(a)(ii) (which is comparable to R.C. 2929.14(B)(1)(b)). R.C. 2929.14(B)(1)(b) provides, in relevant part, “Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a), of this section for felonies committed as part of the same act or transaction.” However, R.C. 2929.14(B)(1)(b) is subject to R.C. 2929.14(B)(1)(g), which provides that:

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, *aggravated robbery*, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court *shall* impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads *guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.*

(Emphasis added.) The plain language of R.C. 2929.14(B)(1)(g) requires the trial court to impose a prison term on the two most serious specifications for which a defendant is convicted, and permits the trial court, in its discretion, to sentence a defendant on any or all of the remaining specifications. *State v. Bushner*, 9th Dist. Summit No. 26532, 2012-Ohio-5996, ¶ 30. Mr. Wright failed to develop any argument as to why R.C. 2929.14(B)(1)(g) would not apply in this

case. *See* App.R. 16(A)(7). As such, we conclude that the trial court did not err in sentencing Mr. Wright to four consecutive three-year sentences for his firearm convictions. Mr. Wright's second assignment of error is overruled.

III.

{¶28} Mr. Wright's assignments of error are overruled, and 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(C). 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.

JULIE A. SCHAFER
FOR THE COURT

WHITMORE, J.
CONCURS.

CARR, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶29} With regard to the first assignment of error, I agree with the majority that Wright’s conviction for aggravated robbery should be affirmed. I concur in judgment only, however, regarding the Court’s disposition of the kidnapping count involving Devin Lawrence.

{¶30} Although I agree that Wright’s conviction for kidnapping (in count four) was supported by sufficient evidence and not against the manifest weight of the evidence, I would affirm that conviction on the basis of accomplice liability. The majority, however, in affirming the conviction, focuses on the victim’s state of mind during the home invasion, emphasizing her own subjective fear. I agree with the argument made by defense counsel during closing argument that it is the defendant’s mental state, rather than the state of mind and subjective fears of the victim, which constitutes an essential element of the crime. *See State v. Smith*, 198 Conn. 147, 153 (1985) (emphasizing that “[i]t is the intent of the accused which the state has to prove, not that of the victim.”). In fact, the victim need not be fearful at all or even know that her movement is restrained; yet kidnapping will exist. *See id.* at 152 (“The fact that the victim did not know that she was being restrained is of no consequence.”). Nonetheless, I would conclude

that Wright's conviction for kidnapping relative to Ms. Lawrence should be affirmed as he was complicit in committing the crime.

{¶31} I concur with the remainder of the majority's opinion.

APPEARANCES:

JACOB T. WILL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.