



[Cite as *State v. Robinson*, 2018-Ohio-1844.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106049

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROSARIO D. ROBINSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-611347-B

BEFORE: S. Gallagher, J., E.T. Gallagher, P.J., and Jones, J.

RELEASED AND JOURNALIZED: May 10, 2018

ATTORNEY FOR APPELLANT

Thomas A. Rein
820 West Superior Avenue, Suite 800
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Brandon Piteo
Assistant Prosecuting Attorney
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Rosario Robinson appeals his convictions for six counts of felonious assault, with associated three-year firearm specifications, and one count of having a weapon while under disability. We affirm.

{¶2} Robinson was charged with aggravated burglary and several charges of felonious assault, each for a separate victim, along with associated firearm specifications and having a weapon while under disability. Although the indictment originally identified one victim, the trial court permitted the state to amend the indictment to reflect the names of six victims in the case. The codefendant, Robert Littlejohn, was charged under the multicount indictment under a complicity theory. The case proceeded to a bench trial in which Robinson was found guilty of the aggravated burglary, felonious assaults, and all firearm specifications. The trial court imposed a 13-year aggregate sentence on the six felonious assaults and one count of having a weapon while under disability.¹ Robinson's aggravated burglary count merged with the felonious assault counts for the purposes of sentencing.

{¶3} Littlejohn drove Robinson and another unidentified male, known only as "Brick," to a residence in Bedford, Ohio. The victims' testimony reflected that three men entered the residence together and went into a bedroom where the victims were sitting. Littlejohn took money out of his pocket to pay for marijuana, and then Robinson

¹The 13-year sentence was imposed consecutive to another one-year prison term imposed in a separate case.

fired multiple shots into the bedroom at the individual victims. Several of the victims testified that the third person to enter the room had dreadlocks. They identified the third person as Robinson and indicated he had a gun and shot multiple bullets into the room. There was some testimony to suggest that Brick also may have had a gun.

{¶4} One of the victims who had been shot had a gun and returned fire. Littlejohn and Robinson were both wounded in the exchange. Littlejohn, Robinson, and Brick then left the house together, with Brick driving the two others to the hospital. Littlejohn directed Brick to take the vehicle to his place of work.

{¶5} At trial, Littlejohn testified that he was taking the other two men to a house they directed him to because they wanted to buy drugs, that they wanted to borrow \$40 from him to buy marijuana, and that he did not see a gun on anyone with him. Littlejohn claimed that there was a fourth person who came to the door behind Robinson and pointed a gun at Robinson's face and shot Robinson. Littlejohn also stated multiple shots were fired and that he was shot on his way out of the room. Littlejohn maintained that he and Robinson were victims.

{¶6} Robinson also testified that a fourth person came to the door and pointed a gun at his face. He claimed that he grabbed the man's arm and was shot in the face. Robinson denied having a gun on his person and claimed that he was just there to buy marijuana.

{¶7} In the first assignment of error, Robinson challenges the sufficiency of the evidence supporting his convictions. According to Robinson, there is "a question

whether [Robinson] had a firearm” and there “is also not the requisite evidence that [Robinson] knew anything ahead of time about any robbery.”

{¶8} A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, “[t]he 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, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶9} Robinson was convicted of felonious assault under R.C. 2903.11(A)(1)-(2) for his part in firing a weapon at several victims, one of whom was shot in the leg. R.C. 2903.11(A) provides that “no person shall knowingly * * * cause serious physical harm to another * * * or cause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance.”

{¶10} Robinson claims that one of the six victims could not identify Robinson as a shooter. He also claims that the five witnesses who did identify Robinson as a shooter could not have actually seen him because “everyone was ducking and fearing for their lives” when the shooting started. Even if one victim could not identify Robinson as one of the persons firing the weapons, several other victims did, and their credibility is a matter for the trier of fact. There is sufficient evidence supporting the felonious assault convictions. *Jenks* at paragraph two of the syllabus.

{¶11} Further, we need not address the sufficiency of the evidence supporting the aggravated burglary count. Because the felonious assault counts are supported by sufficient evidence, any claim with respect to the merged offense would be harmless error. *State v. Worley*, 8th Dist. Cuyahoga No. 103105, 2016-Ohio-2722, ¶ 23, citing *State v. Powell*, 49 Ohio St.3d 255, 263, 552 N.E.2d 191 (1990) (even if evidence of kidnapping by restraint was insufficient to support conviction, the fact that the kidnapping by removal was based on sufficient evidence and merged with the kidnapping by restraint count means any error with the conviction was harmless beyond a reasonable doubt). The first assignment of error is overruled.

{¶12} In the second assignment of error, Robinson claims that his convictions are against the weight of the evidence because there is no evidence linking Robinson to the felonious assaults. According to Robinson, his being shot in the face by one of the victims or the fourth individual proves that Robinson was an innocent bystander.

{¶13} A claim that a jury verdict is against the weight of the evidence involves a separate and distinct test that is much broader than the test for sufficiency. *State v. Drummond*, 111 Ohio St.3d 4, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 193. When reviewing a claim challenging the manifest weight of the evidence, the court, reviewing the entire record, must 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. *Thompkins*, 78 Ohio St.3d at 387,

1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id.*

{¶14} This is not the exceptional case anticipated in *Thompkins*. There is ample evidence supporting the felonious assault convictions. Robinson claims he did not have a firearm when he entered the room to buy drugs. Several witnesses identified Robinson as the person firing the weapon at the victims, although it is acknowledged that their credibility may be impacted by the fact they were trying to avoid getting shot. Nevertheless, Robinson is asking this court to believe his testimony over that of the victims. The court did not find Robinson credible, but considered the victims' testimony about ducking for cover to avoid being shot and its impact on their ability to identify Robinson as the shooter. "A conviction is not against the manifest weight of the evidence because the trier of fact believed the state's version of events over the defendant's version." *State v. Lipkins*, 10th Dist. Franklin No. 16AP-616, 2017-Ohio-4085, ¶ 39, citing *State v. Gale*, 10th Dist. Franklin No. 05AP-708, 2006-Ohio-1523, ¶ 19. This is not the exceptional case in which we can find the trier of fact lost its way. We overrule the second assignment of error.

{¶15} Finally, in the third assignment of error expressly presented "for the record and to preserve" his rights, Robinson claims the trial court imposed his sentences consecutively without making the findings under R.C. 2929.14(C)(4), as required in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. Robinson

concedes, and the record reflects, that the trial court made all the required findings at sentencing and again in the final entry of conviction. Importantly, Robinson is not contesting whether the record supports the findings under R.C. 2953.08(G)(2)(a). App.R. 16(A)(7). In light of the concession, we must overrule the third assignment of error.

{¶16} Robinson's convictions are affirmed.

It is ordered that appellee recover from 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR