

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93476

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

~~**AARON WOODSON**~~

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-513779

BEFORE: Blackmon, J., McMonagle, P.J., and Sweeney, J.

RELEASED: April 15, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building, Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Sanjeev Bhasker
Asst. County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Aaron Woodson appeals his conviction for aggravated murder.¹ He assigns the following errors for our review:

“I. The trial court erred in denying appellant’s motion for acquittal as to the charges when the state failed to present sufficient evidence to sustain a conviction.”

“II. Appellant’s convictions are against the manifest weight of the evidence.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Woodson’s conviction. The apposite facts follow.

{¶ 3} On July 12, 2008, a group of people were assembled on the back porch of an apartment located in the Garden Valley estates. They were drinking, smoking marijuana, and socializing. At approximately 3:00 a.m., William Basemore was shot on the side of the head and killed. As a result, Aaron Woodson was indicted for aggravated murder with one- and three-year firearm specifications and one count of carrying a concealed weapon.

{¶ 4} Woodson pleaded not guilty at his arraignment, and the matter proceeded to a jury trial.

Jury Trial

¹Woodson was also convicted of carrying a concealed weapon; however, Woodson does not include this conviction in his appeal.

{¶ 5} At trial, the evidence showed that on July 12, 2008, at around midnight, Eugene Coley and Durcee Hill were on the porch belonging to Coley's mother, drinking from a bottle of Remy Martin brandy. Two neighbor girls also joined them.

{¶ 6} Around 1:00 a.m., William Basemore arrived on his bike, and they shared the bottle of Remy with him. Shortly after Basemore arrived, Allen Robinson arrived with a man dressed in black. Robinson testified that the man that accompanied him was his cousin, Aaron Woodson. Coley stated that he had never seen Woodson before. Hill stated that he did not know Woodson well, but knew his mother. All three men testified that Woodson was dressed in black that night. According to Coley, Woodson appeared intoxicated. Robinson testified that he and Woodson had been drinking Long Island ice teas before coming to Coley's porch. The area was well lit by the porch light and the lights from a nearby parking lot.

{¶ 7} According to Coley, Hill, and Robinson, no one was arguing or fighting. However, Hill did state that he saw Basemore sitting with a gun on his lap. A gun was later removed from Basemore's front pocket. No one witnessed the actual shooting as they were not looking in Basemore's direction. Coley was playing catch with his daughter and little brother on the grassy area adjacent to the porch. When he heard the gunshot, he turned

around and saw Basemore lying on the ground; he said the man in black who had been standing next to Basemore was walking away with a gun in his hand.

{¶ 8} Hill was also not looking at Basemore. He stated he turned his back to the porch while he spoke to one of the girls. When he turned around, Basemore was on the ground. He stated that prior to the shooting, Woodson was sitting next to Basemore.

{¶ 9} Robinson had his back turned while he was lighting a cigar. When he heard the gunshot he ran to the nearby playground. When he turned around to see what was happening, he did not see Woodson anywhere. He stated that Woodson was the only one who was near Basemore at the time of the shooting.

{¶ 10} The coroner testified that Basemore was killed by a gunshot to the head above the left ear. The bullet traveled through Basemore's head and exited out of his right cheek. The experts estimated that based on the stippling and thermal damage to the victim's skin, the gun was fired from one to three feet away from the victim. However, the fact that white powder grains were recovered from the victim's hair indicated that it was possible the gun was shot from less than one foot.

{¶ 11} A red cup, the bottle of Remy Martin, and a Deer Park water bottle were recovered from the scene. DNA analysis was performed on all these items. The forensic scientist testified that there was a high level of

Basemore's DNA on the cup and on the water bottle. However, there were also minor contributors of DNA to these items, but not enough to conclude to whom the DNA belonged. Robinson was the major contributor of the DNA found on the Remy Martin bottle, but there were also minor contributors of DNA, which could not be distinguished.

{¶ 12} Based on the statements given by Coley and Robinson, an arrest warrant was issued for Aaron Woodson. Several days later, a confidential informant told the police that Woodson could be found in a home located on Orelly Avenue in Cleveland, Ohio. The police proceeded to that location where they found Woodson. Woodson initially denied he was Aaron Woodson. He maintained he was Tirel Woodson until the officers verified his identity by comparing his fingerprints. A .25 caliber handgun was retrieved from Woodson's back pocket.

{¶ 13} Robinson was shown a photo array and identified Woodson. Hill also immediately identified Woodson from the photo array as the person dressed in black. When the police questioned Woodson, he denied having been to the Garden Valley estates. When shown a photograph of the victim, he identified the person as "D." He told the police that it had been at least nine years since he had last seen "D."

{¶ 14} Based on the evidence, the jury found Woodson guilty as charged. The trial court sentenced Woodson to life in prison.

Sufficiency of the Evidence

{¶ 15} In his first assigned error, Woodson argues that his conviction for aggravated murder was not supported by sufficient evidence.

{¶ 16} The sufficiency of the evidence standard of review is set forth in *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus as follows:

“Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.”

See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394; *State v. Davis* (1988), 49 Ohio App.3d 109, 113, 550 N.E.2d 966.

- a. *Bridgeman* must be interpreted in light of the sufficiency test outlined in *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, in which the Ohio Supreme Court held:

“An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted 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. (*Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

{¶ 17} Woodson argues his conviction is not supported by sufficient evidence because there were no eyewitnesses to the shooting, and his DNA was not found at the scene. He also contends that his cousin Robinson

testified that he did not see him with a gun, and the gun found on his person did not match the murder weapon.

{¶ 18} Contrary to Woodson's argument, no direct evidence needed to be adduced at trial because there is no substantive difference between direct and circumstantial evidence. *Jenks*, supra at paragraph one of the syllabus. In *State v. Nicely* (1988), 39 Ohio St.3d 147, 529 N.E.2d 1236, the Supreme Court of Ohio considered the issue of whether a conviction for murder may be supported wholly by circumstantial evidence and concluded as follows:

“[W]e know of no reason that the crime of murder should be treated any differently from other crimes when considering the use of circumstantial evidence to establish their commission. Given the extensive precedent in Ohio on the use of circumstantial evidence to prove the commission of a crime and the abundant case law in other jurisdictions on the use of such evidence in homicide prosecutions, we hold that in the absence of a human body, a confession, or other direct evidence of death, circumstantial evidence alone may be sufficient to support a conviction for murder.” *Id.* at 154-155.

{¶ 19} Although there is no direct evidence that Woodson shot Basemore, we conclude that the circumstantial evidence presented, when viewed in its totality in the light most favorable to the state, was sufficient for a jury to find that Woodson committed the aggravated murder.

{¶ 20} While Woodson told the detectives he was not present at the gathering, Robinson, Hill, and Coley testified that he was there. Although Hill and Coley did not know him, they both testified that the man seated

closest to Basemore was dressed all in black and had arrived with Robinson. Robinson testified that his cousin came with him to the gathering and that his cousin's shirt, pants, and shoes were black. Hill also immediately identified Woodson from a photo array as the person dressed in black.

{¶ 21} The three men also testified that Woodson was standing next to Basemore. According to Robinson, Woodson was the only person near Basemore at the time the shot was fired. Based on evidence of stippling and thermal damage to Basemore's skin, the forensic pathologist concluded that the gun was fired from an intermediate range of one-to-three feet. The pathologist also stated that based on the fact white gun powder grains were found in the victim's hair, the gun could have been fired less than 12 inches away from the victim. According to the witnesses, Woodson was the only person close enough to Basemore to have fired a gun this close.

{¶ 22} Robinson stated that he did not see his cousin or Basemore with a gun that night. Hill, however, testified that he saw Basemore sitting with a gun on his lap; the same gun was later retrieved from Basemore's front pants pocket. Thus, just because Robinson did not see Woodson with a gun, does not mean he did not have one. Moreover, Coley testified that after the shot was fired, he saw Woodson walking towards the parking lot with a gun in his hand.

{¶ 23} Woodson also argues the gun recovered from his person several days after the shooting did not match the murder weapon. This argument is disingenuous because the evidence indicated that it was not possible to determine what kind of gun was used to shoot Basemore because the bullet and discharged casing were not recovered. Therefore, there was no way to determine if the gun was the weapon. Moreover, the gun found on Woodson's person was not recovered until several days after the murder.

{¶ 24} Although no evidence was presented that Woodson had a motive for shooting Basemore, Robinson stated Woodson and Basemore knew each other. Moreover, the state is not required to show proof of a motive to support a murder conviction. Motive is not an element of the offense of aggravated murder that the state must prove beyond a reasonable doubt. *State v. Lancaster* (1958), 167 Ohio St. 391, 155 N.E.2d 215, paragraphs one and two of the syllabus; *State v. Stoudemire* (1997), 118 Ohio App.3d 752, 694 N.E.2d 86; *State v. Sexton*, 10th Dist. No. 01AP-398, 2002-Ohio-3617; *State v. Buckley* (Apr. 15, 1991), 5th Dist. No. CA-8212; *State v. Nelson* (Apr. 24, 1980), Cuyahoga App. No. 40407. Thus, construing the evidence in the light most favorable to the state, sufficient circumstantial evidence was presented to support Woodson's aggravated murder conviction. Accordingly, Woodson's first assigned error is overruled.

Manifest Weight of the Evidence

{¶ 25} In his second assigned error, Woodson argues that his conviction was against the manifest weight of the evidence.

{¶ 26} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive — the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. ‘When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony.’ *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.”

{¶ 27} However, an appellate court may not merely substitute its view for that of the jury, but must find that “in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins*, supra,

at 387. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.”

Id.

{¶ 28} Woodson argues the jury lost it’s way because no evidence was presented showing that he killed Basemore. He argues the jury must have based its conviction on the fact that Woodson lied to the police about his identity and was found with a gun on his person. We disagree. As we addressed in the first assigned error, although there was no direct evidence that Woodson killed Basemore, circumstantial evidence was presented to support the conviction. Accordingly, Woodson’s second assigned error is overruled.

{¶ 29} Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
JAMES J. SWEENEY, J., CONCUR