

[Cite as *State v. Burst*, 2010-Ohio-5773.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94080

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WALTER BURST

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519920

BEFORE: Boyle, J., Rocco, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: November 24, 2010

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Walter Burst, appeals his convictions asserting that they were not supported by sufficient evidence and were against the manifest weight of the evidence. We find no error and affirm.

Procedural History

{¶ 2} The Cuyahoga County Grand Jury returned a six-count indictment against Burst for the following charges: two counts of aggravated robbery; one count of robbery; two counts of kidnapping; and one count of theft. All counts, except one of the kidnapping counts, included one-year firearm specifications.

The allegations giving rise to the indictment were that Burst, along with codefendant, Tiffany Goss, and an unknown accomplice, committed the charged acts against brothers, Chester and Cornelius Brown.

{¶ 3} Burst pleaded not guilty to the charges, while Goss pleaded guilty to robbing the Browns, and was sentenced to two years in prison. The matter proceeded to a jury trial. At the conclusion of the state's case, the trial court denied Burst's Crim.R. 29 motion for acquittal as to all charges. The jury ultimately acquitted Burst on the first count of aggravated robbery (deadly weapon) and of all firearm specifications, but found him guilty of the remaining five counts. The trial court subsequently sentenced Burst to a total of four years in prison consecutive to a six-month sentence he received in another case.

Jury Trial

{¶ 4} Chester, Cornelius, and Goss testified at trial, as well as a police officer and Burst.

{¶ 5} Chester and Goss met for the first time in the summer of 2008. They began a relationship that Chester described as "dating," but Goss said was "like a business/pleasure like — we'd date for a little while, he would give me some money after the date."

{¶ 6} On the day of the incident, in October 2008, Goss called Chester throughout the day asking him for money to buy food. Later that evening, Chester agreed to meet Goss in the parking lot of a bar. Chester and

Cornelius drove to the meeting place in their father's van. When they got there, Goss got into the backseat of the van.

{¶ 7} While the three were sitting in the van, two men approached it. The man who approached Chester's side of the vehicle, later identified to be Burst, asked Chester for a light. Before Chester could lock his door, Burst reached in and opened it. Chester said he was hit in the back of the head with what seemed to be a metal object. Burst then pushed Chester out of the driver's seat and got in the van. Chester fell to the floor between the front seats. Burst continued to hit Chester when he was on the floor of the van.

{¶ 8} Cornelius tried to push Burst off of Chester, but then was grabbed from behind and hit. Chester heard Burst tell his accomplice to shoot Cornelius if he did not have anything. Burst's accomplice got into the passenger side of the van and was hitting and kicking Cornelius. Goss was also hitting and kicking Cornelius.

{¶ 9} Burst then drove the van uncontrollably for about five blocks. Burst, Goss, and the unknown accomplice ran from the van when it stopped. Cornelius called the police.

{¶ 10} Chester testified that Burst took his wallet, which had \$200, seven credit cards, and his Social Security card in it, along with his chains, watch, rings,

and car keys, and “anything else he had,” including his necessary medical supplies.

{¶ 11} Goss testified that she was convicted of robbery arising out of this incident and that she served time in prison for it. She explained that Burst was her boyfriend and that she had lived with him “off and on for a couple of years.” She knew the third accomplice to be Burst’s cousin, “Woozy.”

{¶ 12} In addition to corroborating most of the Browns’ testimony, Goss said that when Burst told her that they were in trouble for the robbery, he suggested that she write a letter saying that Burst was trying to protect her from being raped by the Brown brothers. She did write the letter, which was admitted into evidence. But Goss testified that she lied in the letter, and that Chester and Cornelius never assaulted her.

{¶ 13} She acknowledged that she did not have an agreement with the state to testify against Burst; she stated that she testified because that is what had occurred. She further stated that Burst knew she was going to meet someone that evening, but that he did not know who.

{¶ 14} Officer Charles Battle testified that he knew Cornelius because he had been his substitute teacher. When the Browns described Goss to Officer Battle, Officer Battle immediately knew who she was and that she was Burst’s girlfriend. Officer Battle provided Goss’s and Burst’s names to the detective on the case.

{¶ 15} Burst testified on his own behalf and denied the allegations. Contrary to the Browns' and Goss's testimony, Burst explained that while he was at work, which is near the scene, he heard a woman screaming and went to investigate. He saw two men assaulting a woman in a van. The woman turned out to be his girlfriend. He said that, when he saw this, he punched Chester and told Goss to get out of the van. Burst further testified that Goss was lying at trial, and he denied ever telling her to write the letter. Burst said Goss wrote the letter to explain what happened because of the uncomfortable nature of the offense. Burst further denied that there was a second person present.

Sufficiency and Weight of the Evidence

{¶ 16} Burst challenges his convictions, claiming they were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶ 17} An appellate court's function in 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. 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. *Jenks* at 273.

{¶ 18} While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins* at 390. When a defendant asserts that a conviction is against the manifest weight of the evidence, an 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 fact finder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at 387.

{¶ 19} Burst was convicted of aggravated robbery, robbery, two counts of kidnapping, and theft (of a motor vehicle). The elements of these crimes are as follows:

{¶ 20} R.C. 2911.01(A)(3), aggravated robbery, provides: “No person, in attempting or committing a theft offense ***, or in fleeing immediately after the attempt or offense, shall *** [i]nflict, or attempt to inflict, serious physical harm on another.”

{¶ 21} R.C. 2911.02(A)(3), robbery, states: “No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall *** [u]se or threaten the immediate use of force against another.”

{¶ 22} R.C. 2905.01(A)(2), kidnapping, provides: “No person, by force, threat, or deception *** , by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes: *** [t]o facilitate the commission of any felony or flight thereafter.”

{¶ 23} R.C. 2913.02(A)(1), theft, states: “No 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: Without the consent of the owner or person authorized to give consent[.]”

{¶ 24} Burst contends that he did not commit any crimes, and the state failed to establish that he did. He claims that he was merely there to rescue his girlfriend, Goss, from being assaulted by Chester and Cornelius Brown.

{¶ 25} But construing Chester’s, Cornelius’s, and Goss’s testimony in a light most favorable to the state, we find that any rational trier of fact could have found Burst guilty beyond a reasonable doubt on all charges. All three testified that Burst, along with another man, (1) entered the Browns’ parked van by force; (2) beat, kicked, and physically injured Chester and Cornelius Brown; (3) took money, credit cards, jewelry, medical supplies, and “whatever they could get their hands on”; and (4) then drove the van away with the occupants still inside it.

{¶ 26} Based upon this testimony, we likewise cannot say that the jury “clearly lost its way” when it found Burst guilty of the five charges. To the

contrary, the jury carefully considered all the evidence, and where Burst presented credible, conflicting evidence, the jury disregarded the state's evidence. Notably, the jury acquitted him of all charges relating to the presence of a gun, including the aggravated robbery by use of a deadly weapon, as well as the firearm specifications.

{¶ 27} Although Burst alleges that the Browns' and Goss's testimonies were inconsistent, we disagree that that means the jury lost its way. The trier of fact is free to believe or disbelieve all or any of a witness's testimony. See *State v. Chandler*, 10th Dist. No. 05AP-415, 2006-Ohio-2070, ¶9. And here, the jury obviously found Chester, Cornelius, and Goss more credible than Burst — a determination entitled to deference on appeal. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212. We further conclude that any inconsistencies in their testimonies were insignificant. It was Cornelius who immediately called 911. No one corroborated Burst's version of the events, including his girlfriend who testified against him.

{¶ 28} Accordingly, based on our review of the record, we find sufficient evidence to support the convictions and that such convictions were supported by the weight of the evidence. The two assignment of errors are overruled.

Judgment affirmed.

It is ordered that appellee recover of 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.

MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR