

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93428

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT STEWART

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515489

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

RELEASED AND JOURNALIZED: August 19, 2010

ATTORNEY FOR APPELLANT

Russell S. Bensing
1370 Ontario Street
1350 Standard Building
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Brian D. Kraft
Assistant County Prosecutor
Justice Center 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Robert Stewart appeals his conviction and assigns the following error for our review:

“The defendant’s conviction is against the manifest weight of the evidence, in violation of defendant’s right to due process of law under the 14th Amendment to the Constitution of the United States, and Article 1, Section 14, of the Ohio Constitution.”

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

{¶ 3} On September 12, 2008, a Cuyahoga County Grand Jury indicted Stewart on four counts of aggravated robbery, with one and three-year firearm specifications attached. Stewart pleaded not guilty at his arraignment, several pretrials were conducted, and on April 21, 2009, a jury trial commenced.

Jury Trial

{¶ 4} At trial, the state presented the testimony of six witnesses including Camille Guy, who testified that on August 31, 2008, her friend, Kiyanna Strozier invited her to assist in escorting Akeem, a rapper from Atlanta, his bodyguard, Jay, and his friend Emanuel to various events around Cleveland, Ohio. Akeem, who was an affiliate of the critically acclaimed rapper Ti, was wearing a large diamond studded gold chain with the letters “PSC” written on the pendant.

{¶ 5} The group went to Cyrus, a club in the Flats, where Akeem was supposed to perform. However, when they arrived, the club was overcrowded, and they were denied entrance. They left Cyrus and went to Joe D’s, a bar located on Miles Avenue in Cleveland. Guy stated that Jay went in the bar, while she and the others stayed in the car. After a few minutes, Jay returned, and the group headed to Jay’s home.

{¶ 6} When they arrived at Jay’s home, Stewart and another male were present. After approximately 15 to 20 minutes, Stewart and the other male

left. After about an hour, the group decided to leave Jay's home. While Guy was sitting in the vehicle in the driveway of Jay's home, she observed Stewart standing on the front lawn with another male talking to Jay, who was standing on his porch.

{¶ 7} When everyone had entered the vehicle, Stewart entered, sat on Guy's lap, displayed a gun, and ordered the occupants to hand over their belongings. All of the occupants complied, and Stewart took everything including Akeem's chain. Stewart was very close to Guy during the robbery and she could clearly see him and the gun in his possession.

{¶ 8} Strozier testified that on the night of the robbery, she was helping Akeem to promote his compact disc by taking him to various places around town. They eventually ended up at Jay's home. Strozier stated that Jay wanted Akeem to stay at his home, but Akeem was uncomfortable with the idea.

{¶ 9} Strozier testified that they decided to leave after being at Jay's home for about an hour. Strozier was sitting in the vehicle and was trying to find a hotel for Akeem, while he was talking with Jay. Immediately after Akeem entered the vehicle, Strozier heard a tap on the window and observed Stewart and another male at the side of the vehicle. Stewart entered the rear passenger side, where Guy was seated, displayed a small black gun, and stated that he would not shoot if everybody handed over their belongings.

{¶ 10} Strozier was facing Stewart as he sat on Guy's lap demanding that they part with their belongings. Strozier called the police after Stewart and his accomplice fled. When the police arrived, Strozier gave them Stewart's description as a light-skinned black male. Strozier subsequently identified Stewart from a photo array.

{¶ 11} Detective Joseph Daugenti of the Cleveland Police Department testified that he was the lead investigator on the case. The day after the robbery, Detective Daugenti observed a black male in the vicinity where the robbery had occurred. Detective Daugenti testified that the individual, who was later identified as Jerrel Stewart, was wearing a gold chain fitting the description of that taken from Akeem, and he broadcasted that information to the station.

{¶ 12} Detective Daugenti stated that later that same day, officer Vasile Nan, who was driving in the same area, observed three black males sitting on a porch, one of whom was wearing a chain matching the description of the one taken. The three males went inside the house when the police approached. The police surrounded the house, and after approximately 20 minutes, two males, two females, and a toddler exited the house.

{¶ 13} Detective Daugenti subsequently obtained a consent to search the house and found Jerrel Stewart, a gun, but not the chain. Stewart, his brother Jerrel Stewart, and Ferrari Taylor were detained.

{¶ 14} Detective Daugenti later prepared three photo arrays with the picture of each detained individual displayed on a separate page. Detective Daugenti showed the photo arrays to Strozier at the station two days after the incident. Detective Daugenti stated that when Strozier was shown the photo arrays, she immediately identified Stewart. Detective Daugenti also met with Guy at her home and when shown the photo arrays, she identified Stewart without hesitation.

{¶ 15} The jury found Stewart guilty of all counts including the firearm specifications. On May 13, 2009, the trial court sentenced Stewart to concurrent prison terms of four years on each count, merged the one and three-year firearm specifications, and ordered it to be served consecutively to the underlying charge.

Manifest Weight

{¶ 16} In the sole assigned error, Stewart argues his conviction was against the manifest weight of the evidence.

{¶ 17} 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*, 78 Ohio St.3d 380, 1997-Ohio-52, 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."

{¶ 18} In the instant case, Stewart argues the sole evidence against him was the eyewitness identifications of Guy and Strozier. Stewart claims he was misidentified.

{¶ 19} In assessing the reliability of an out-of-court identification, the United States Supreme Court has held:

"[T]he facts to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *State v. Shanklin*, Cuyahoga App. No. 93400, 2010-Ohio- 2779, quoting *Neil v. Biggers* (1972), 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401.

{¶ 20} Here, as it pertains to Guy's identification of Stewart, the evidence established that she testified that Stewart was present at Jay's house when the group arrived. Guy testified that Stewart was in the house

for approximately 15 to 20 minutes and then left. During this time, Guy testified that she had an opportunity to look at Stewart. In addition, Guy testified that minutes before the robbery, while sitting in the vehicle waiting to leave, she again observed Stewart standing on the front lawn with his accomplice and talking to Jay.

{¶ 21} Further, Guy testified that when Stewart entered the vehicle, he sat on her lap, with gun in hand, and ordered everyone to part with their valuables. During this time, Guy testified that although the vehicle's interior light did not activate, she was able to see Stewart because of the close proximity. Finally, Guy was able to give the police a description of Stewart and subsequently identified him from a photo array.

{¶ 22} We find that all these facts weigh in favor of reliability, because Guy had an opportunity to observe Stewart in Jay's house for approximately 15 to 20 minutes, then again, while Stewart stood outside on the lawn of Jay's house immediately prior to the robbery. Finally, Guy had a third opportunity to observe Stewart up close, while he was committing the robbery.

{¶ 23} As it pertains to Strozier's identification of Stewart, she testified that she was seated in the driver's seat when Stewart entered the rear of the vehicle behind the front passenger's seat. Strozier testified that she observed Stewart with the gun ordering everyone to give him their

belongings. Strozier testified that Stewart was mainly focused on Akeem, who was seated in the front seat because Stewart wanted Akeem's chain and watch.

{¶ 24} After the robbery, Strozier, who called the police, was able to identify Stewart as a light skinned black male and was able to identify Stewart from a photo array. Our review of the photo array reveals that Stewart is a light skinned black male. Again, all these facts weigh in favor of reliability.

{¶ 25} Most importantly, both Guy and Strozier identified Stewart when separately presented with a photo array. Detective Daugenti testified that both Guy and Strozier immediately, and without hesitation, identified Stewart as the person who robbed them at gunpoint. Based on this evidence, we find Guy's and Strozier's identification of Stewart to be reliable. As such, the conviction is not against the manifest weight of the evidence. Accordingly, we overrule the sole assigned error.

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

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR