

[Cite as *State v. Mitchell*, 2010-Ohio-6473.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94495

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DELEANO MITCHELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-527244

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

RELEASED AND JOURNALIZED: December 30, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Deleano Mitchell appeals from his conviction after a jury trial for aggravated robbery.¹

{¶ 2} Mitchell presents two assignments of error, claiming that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence.

{¶ 3} Since a review of the record demonstrates his assignments of error lack merit, they are overruled. Mitchell's conviction, accordingly, is affirmed.

¹The jury also convicted Mitchell of two other counts related to the same incident, but he raises no challenge to those convictions in this appeal.

{¶ 4} According to Tyshaun Brumfield, the 16-year-old victim in this case, he had attended a party with friends at “Morris Black,”² a “housing unit off of Woodland” Avenue, and, sometime after midnight, he went with several of them to the unit’s playground where they could sit and talk. A short time later, Mitchell arrived in the area with a companion. Brumfield recognized Mitchell, who was a few years older, because his brother knew Mitchell from “the neighborhood.”

{¶ 5} Mitchell conversed for awhile, then walked over to Brumfield and complimented him on his watch. Brumfield described the watch as “pretty flashy,” since it was “gold with diamonds in it.” Brumfield displayed it so that Mitchell could better see it. He told Mitchell that he obtained it from his brother. Mitchell eventually walked away.

{¶ 6} Approximately ten minutes later, Mitchell reappeared in the area, but stood farther from the group, gesturing to Brumfield. Brumfield went over to find out what Mitchell wanted.

{¶ 7} Mitchell again indicated he thought Brumfield’s watch was “nice”; he told Brumfield that he “want[ed] that watch.” Brumfield refused to give it to Mitchell. With his left hand, Mitchell grabbed Brumfield’s arm, stating, “Last time. Take it off.” When Brumfield again refused, Mitchell hit him in the face, using the other hand.

²Quotes indicate testimony presented at trial.

{¶ 8} At first, Brumfield was too surprised to respond, but then he attempted to fend Mitchell off. Since Mitchell was “a pretty big person,” Brumfield was “having a hard time,” so he tried to run. Mitchell tripped him, straddled him once he was down, and kept hitting him; Mitchell repeated, “Just give me the watch,” as he punched.

{¶ 9} One of Brumfield’s friends observed what was happening; he came to “knock [Mitchell] off” Brumfield. Mitchell picked himself up and left.

{¶ 10} Brumfield’s friend escorted him home, where his aunt, who had heard the altercation as it occurred outside in the play area, met them. In describing Brumfield’s injuries, she stated “he just looked like Quasimodo.” Brumfield’s family members took him to the hospital, where he received treatment for a broken nose, lacerations on his chin that required sutures, and a cut under his eye that made his eye swell shut.

{¶ 11} Mitchell subsequently was indicted on three counts, charged with aggravated robbery, kidnapping, and felonious assault. His case proceeded to a jury trial.

{¶ 12} The state presented Brumfield and his aunt as witnesses and introduced into evidence Brumfield’s medical record of his injuries. After the trial court denied Mitchell’s motion for acquittal of the charges, he elected to present no evidence.

{¶ 13} The jury eventually found Mitchell guilty on all three counts. At the sentencing hearing, the state acknowledged the first two counts were allied offenses pursuant to R.C. 2941.25(A), choosing to pursue the aggravated robbery count. The trial court ultimately sentenced Mitchell to concurrent terms of 5 years each on his convictions for aggravated robbery and felonious assault.

{¶ 14} Mitchell appeals only his conviction for aggravated robbery. He presents the following two assignments of error.

{¶ 15} “I. The trial court erred in denying Appellant’s Criminal Rule 29 motion for acquittal when there was insufficient evidence to prove the elements of aggravated robbery.

{¶ 16} “II. Appellant’s conviction for aggravated robbery was against the manifest weight of the evidence.”

{¶ 17} Mitchell argues that, because Brumfield acknowledged he never lost possession of his watch and he was the state’s only witness, the conviction for aggravated robbery was not supported by sufficient evidence, therefore, the trial court should have granted his motion for acquittal of this charge. For the same reasons, Mitchell further argues his conviction on the charge of aggravated robbery was against the manifest weight of the evidence. Mitchell’s arguments remain unpersuasive.

{¶ 18} In considering a claim of insufficient evidence, this court is required to view the evidence adduced at trial in a light most favorable to the prosecution

to determine if a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 1997-Ohio-372, 683 N.E.2d 1096.

{¶ 19} With regard to an appellate court's function in reviewing the weight of the evidence, this court is required to consider the entire record and determine whether in resolving any 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." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541, citing, inter alia, *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 20} Mitchell was convicted of violating R.C. 2911.01(A)(3). Pursuant to this section, no person, "in *attempting* or committing a *theft offense*, * * * or in fleeing immediately after * * * , shall * * * [i]nflict, or attempt to inflict, serious physical harm on another." (Emphasis added.) An "attempt" occurs when a person purposely or knowingly engages in conduct that, *if successful*, would result in the commission of the offense. (Emphasis added.) R.C. 2923.02(A).

{¶ 21} This court previously has observed that the theft offense need not "actually be committed in order to sustain a robbery conviction"; thus, it is unnecessary for the state to prove that the robber successfully acquired possession of the property. *State v. Johns*, Cuyahoga App. No. 90811, 2008-Ohio-5584, ¶14-16. See, also, *In re: Swift*, Cuyahoga App. No. 79610,

2002-Ohio-1276; cf., *State v. Lawson*, Cuyahoga App. No. 84402, 2005-Ohio-880. The record in this case leads to the conclusion that Mitchell's convictions are supported by both sufficient evidence and the weight of the evidence. Brumfield's testimony was simple, coherent, and compelling.

{¶ 22} Brumfield stated that Mitchell grabbed him, demanded his watch, and began punching him in the face. As Mitchell struck, he told Brumfield to just "give him the watch." Although Mitchell left without gaining his objective, from Brumfield's testimony, a rational trier of fact could determine Mitchell knowingly committed aggravated robbery. *State v. Hood*, Cuyahoga App. No. 83678, 2004-Ohio-4758.

{¶ 23} Brumfield's testimony was corroborated by the physical evidence; the medical records detailed his injuries from the night of the incident. Therefore, this court cannot find that the jury clearly lost its way in resolving any evidentiary conflicts. *Johns*, ¶19.

{¶ 24} Under these circumstances, Mitchell's conviction for aggravated robbery is supported by both sufficient evidence and the manifest weight of the evidence. Accordingly, his assignments of error are overruled.

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.

KENNETH A. ROCCO, PRESIDING JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR