

[Cite as *State v. Clement*, 2010-Ohio-666.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92994

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

REGINALD CLEMENT

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516094

BEFORE: Cooney, J., Gallagher, A.J., and Rocco, J.

RELEASED: February 25, 2010

**JOURNALIZED:
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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).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Reginald Clement (“Clement”), appeals his convictions for aggravated robbery with firearm specifications and carrying a concealed weapon. Finding no merit to the appeal, we affirm.

{¶ 2} In October 2008, Clement was charged with aggravated robbery with one- and three-year firearm specifications, a forfeiture specification, and carrying a concealed weapon. Following a bench trial, Clement was found guilty of all of the charges. The trial court sentenced Clement to a total of six years in prison. This consisted of consecutive sentences of three years for aggravated robbery and three years for the firearm specification,¹ and a concurrent sentence of 18 months for carrying a concealed weapon.

{¶ 3} Clement appeals, raising two assignments of error for our review. He first claims that there was insufficient evidence to support his convictions. Secondly, he argues that his convictions were against the manifest weight of the evidence. We address these two assignments of error together because, although the standards of review differ, they involve the same evidence.

¹The trial court merged the one- and three-year firearm specifications for the purposes of sentencing.

{¶ 4} In *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶113, the Ohio Supreme Court explained the standard for sufficiency:

{¶ 5} “Raising the question of whether the evidence is legally sufficient to support the jury verdict as a matter of law invokes a due process concern. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. In reviewing such a 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* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.”

{¶ 6} The Ohio Supreme Court restated the criminal manifest weight standard and explained how it differs from the sufficiency standard in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶25:

{¶ 7} “The criminal manifest-weight-of-the-evidence standard was explained in * * * *Thompkins* * * *, [in which] 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."

{¶ 8} In the instant case, the court found Clement guilty of aggravated robbery in violation of R.C. 2911.01(A)(1), one- and three-year firearm specifications in violation of R.C. 2941.141 and 2941.145, respectively, and carrying a concealed weapon in violation of R.C. 2923.12(A)(2).

{¶ 9} R.C. 2911.01(A)(1) provides, in pertinent part:

"No person, in attempting or committing a theft offense * * * or in fleeing immediately after the attempt or offense, shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it."

{¶ 10} R.C. 2941.141 requires the fact-finder to find that “the offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense.”

{¶ 11} R.C. 2941.145 requires the fact-finder to find that:

“[T]he offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.”

{¶ 12} Finally, R.C. 2923.12(A)(2) provides, in pertinent part:

“No person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand * * * [a] handgun other than a dangerous ordnance.”

{¶ 13} The court heard the following evidence at trial. On September 24, 2008, Walter Williams (“Williams”) was walking in downtown Cleveland. Clement and Terrence Hill (“Hill”) approached him to ask for bus fare. Williams gave them several bus passes. Then Clement pressed a hard object into Williams’s back while Hill searched through Williams’s pockets. Clement took Williams’s messenger bag, and Hill took his Ohio Direction card.² Hill punched Williams in the face, and Williams fell to the ground. Clement and Hill then ran from the scene, and Williams ran to get help in the same direction Clement and Hill were headed.

²This card is an identification card used in the state’s food stamp program.

{¶ 14} Cleveland police officers John Dayton (“Dayton”) and McCue (“McCue”) were driving their patrol car in the vicinity of East 13th Street and St. Clair Avenue. They observed two men running through the parking lot of a bar, so they pulled into the parking lot to investigate. Off-duty Cleveland police officer John Cho (“Cho”) was parked nearby. He had also observed two men running through the parking lot. Williams ran up to the officers waving his arms and told them that he had just been robbed. Williams pointed to Clement and Hill as they ran away and identified them as the robbers. Dayton and McCue drove after the two men, and Cho pursued them in his personal vehicle.

{¶ 15} Dayton and McCue apprehended Hill at the intersection of East 17th Street and Hamilton Avenue and arrested him. McCue found Williams’s identification card and three bus passes on Hill’s person.

{¶ 16} Meanwhile, Cho located Clement and ordered him to the ground. Cho observed Clement fumbling with his waistband. Cho ordered Clement to raise his hands, and Clement refused. Cho then ordered Clement to the ground and arrested him. After Cho placed Clement in the police vehicle, he found a loaded handgun on the ground where Clement had been sitting. The officers found a messenger bag on Clement’s person, which Williams testified Clements had stolen from him.

{¶ 17} The police drove Williams to view the suspects. Williams identified Clement and Hill as the men who had robbed him.

{¶ 18} Based on the foregoing, the evidence was sufficient to support Clement's convictions. We also find that the convictions were not against the manifest weight of the evidence. Williams testified that Clement and Hill had approached him and asked for bus fare and that he was able to see their faces. Then Clement went behind Williams and pressed a hard, metal object in his back. Williams allowed Clement to take his messenger bag because he feared for his life. After the robbery, Williams ran after Clement and Hill, and Dayton, McCue, and Cho observed them running, raising suspicions that Clement and Hill had committed a crime. When the officers apprehended Clement and Hill, they recovered Williams's possessions, including the stolen messenger bag and identification card and the bus passes that Williams had given to the men.

{¶ 19} There was also significant evidence that Clement had used a gun to commit the robbery. First, Williams felt a gun in his back at the time of the robbery. Second, when Cho approached Clement and ordered him to show his hands, Clement fumbled with his waistband for a few moments and refused to raise his hands. Then he sat down on the ground on top of the

weapon. After Cho placed Clement in the police vehicle, Cho found a loaded handgun where Clement had been sitting.

{¶ 20} Clement argues that Williams testified that the men who robbed him had been wearing different clothes than Clement and Hill wore when the police asked Williams to identify them.³ Even though there were inconsistencies in his testimony regarding Clement's and Hill's clothing, we find that the other evidence of guilt was overwhelming, and the convictions are not against the manifest weight of the evidence.

{¶ 21} Both assignments of error are overruled.

{¶ 22} Judgment is 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.

³Williams first testified that Clement and Hill were wearing the same clothes before and after the arrest, then testified that they were wearing different clothes. But the trial court concluded that Williams meant that one was wearing a hooded sweatshirt and jeans, and the other a white tank top.

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

COLLEEN CONWAY COONEY, JUDGE

SEAN C. GALLAGHER, A.J., and
KENNETH A. ROCCO, J., CONCUR