

[Cite as *State v. Yancy*, 2015-Ohio-4082.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102497

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY M. YANCY

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-587249-A

BEFORE: Stewart, P.J., Boyle, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: October 1, 2015

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MELODY J. STEWART, P.J.:

{¶1} Following a bench trial, the court found defendant-appellant Anthony Yancy guilty of one count of aggravated robbery and two counts of felonious assault, with various firearm specifications on all counts. On appeal, Yancy complains that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶2} The Due Process Clause of the Fourteenth Amendment “protects a defendant in a criminal case against conviction ‘except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.’” *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), quoting *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The relevant question when reviewing a claim that the state failed to present sufficient evidence of guilt “is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* This is a highly deferential standard of review because “it is the responsibility of the [trier of fact] — not the court — to decide what conclusions should be drawn from evidence admitted at trial.” *Cavazos v. Smith*, 565 U.S. ____ , 132 S.Ct. 2, 3, 181 L.Ed.2d 311 (2011).

{¶3} Yancy first argues that the state failed to present sufficient evidence to support an aggravated robbery conviction. The victim testified that he and his brother were walking down the street when Yancy approached them while riding a bicycle. The victim not only knew Yancy from his sister's neighborhood, he further identified Yancy's two "tear drop" tattoos. Yancy pointed a gun at them, told them to get down, and said "I heard you all was hollin," a phrase the victim understood as an accusation that he or his brother had spoken ill of Yancy. The victim's brother went to the ground, but the victim steadfastly refused to do so, saying that "I work hard for what I had." Yancy then shot the victim in the leg and took the brother's money.

{¶4} The state charged Yancy under R.C. 2911.01(A)(1), which states that no person shall commit a theft offense while having a deadly weapon on or about the offender's person and, among other things, display, brandish, or use it. The victim's gunshot wound undeniably proved that Yancy used the weapon. The state proved the theft offense with testimony that Yancy took the brother's money. While it is true that at no point in the testimony is there any evidence that Yancy verbalized his intention to rob the victims, an announced intention to rob is not an element of the offense — Yancy's intent to steal was shown by his act of taking the money. The court could rationally conclude that Yancy committed the robbery when he took the brother's money at gunpoint, thus satisfying the elements of R.C. 2911.01(A)(1).

{¶5} Yancy next argues that his convictions are against the manifest weight of the evidence because the court disregarded his alibi evidence.

{¶6} The manifest weight of the evidence standard of review requires us to 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 trier of fact 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. Otten*, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (9th Dist.1986). The use of the word “manifest” means that the trier of fact’s decision must be plainly or obviously contrary to all of the evidence. This is a difficult burden for an appellant to overcome because the resolution of factual issues resides with the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact has the authority to “believe or disbelieve any witness or accept part of what a witness says and reject the rest.” *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

{¶7} Yancy’s alibi evidence consisted of testimony by his mother and uncle to the effect that he was at their house for a cookout during the time frame in which the robbery occurred. The court did not find the alibi testimony credible, finding that both witnesses were equivocal about Yancy’s presence at the house throughout the day (“I heard answers like: Not that I know of.”). What is more, both the mother and uncle testified that Yancy had, on the day in question, pestered them to give him money. They refused to do so and thus the state was able to establish a motive for the aggravated robbery. The victim did contradict himself on when the robbery occurred: he testified that the robbery occurred at 10:30 a.m., but in a police statement said that the robbery occurred at 12:50 p.m. That

contradiction was a factor that might have diminished his credibility; however, there was no doubt that the victim suffered a gunshot wound and the court could have found his identification of Yancy particularly credible given the distinctive nature of Yancy's tear drop tattoos. On balance, we have no basis for finding that the court lost its way by accepting the victim's testimony and finding Yancy guilty.

{¶8} Judgment affirmed.

It is ordered that appellee recover of said 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.

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

MELODY J. STEWART, PRESIDING JUDGE

MARY J. BOYLE, J., and
SEAN C. GALLAGHER, J., CONCUR