

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009-CA-0048
BRANDON J. GRIFFITH	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas Case No. 2007-CR-326H

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: October 13, 2009

APPEARANCES:

For Plaintiff-Appellee:

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Prosecuting Attorney

ANDREW M. KVOCHICK
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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant Brandon J. Griffith appeals his conviction and sentence in the Richland County Court of Common Pleas for attempted murder in violation of R.C. 2903.02(A) and R.C. 2923.02(A). For the reasons that follow, we affirm.

{¶2} The following evidence was adduced at trial.

{¶3} On December 23, 2007, Derek White patronized an establishment owned by Appellant, a strip club named “The Girls Next Door.” White’s friend, Kyle Rinehart, worked at the club as a bouncer. White stayed at the club until the early morning hours of December 24, 2007, because he and Rinehart were going to discuss the business operations with Appellant and Appellant’s co-owner, Tywan Osborne. Amy Reynolds, Shanna Clay, Ashley Pfeifer and Brittini Hart, women who worked as servers and strippers at the club, were also present in the room.

{¶4} The men decided to share some marijuana before discussing business. Appellant asked to use Rinehart’s glass marijuana pipe and when Appellant smoked from the pipe, he said it tasted like crack cocaine. He threw the pipe down and Appellant and Osborne began punching White.

{¶5} Appellant ordered White to give him his money, which White did, but the beating continued. Rinehart tried to come to White’s aid, but Osborne brandished a gun and told Rinehart to sit down. Appellant and Osborne told one of the women to go upstairs and get their guns. The woman brought their guns down and Appellant and Osborne held White and Rinehart at gunpoint. Appellant and Osborne ordered White and Rinehart to take their clothes off. Then the men continued to beat White and

Rhinehart, threw ice water on them, point fans at them and ordered them to crawl around the floor and pick up the ice.

{¶6} The men then ordered the victims to clean up the bar. At some point, White sat in a chair against the wall. Hart witnessed Appellant point his gun at White and pull the trigger. After the shot was fired, White put his head down and Hart and Pfeifer thought he had been shot; however, the bullet did not hit White, but hit the wall behind him.

{¶7} Appellant and Osborne next blindfolded White and Rinehart. White could hear them discussing what they were going to do with them. White heard Appellant say that they needed to get rid of them because they did not want them to tell what had happened. White then heard Osborne talking on the telephone to someone who would come and take care of them.

{¶8} Osborne telephoned Robert Perry for assistance. Osborne had made Perry's acquaintance through drug-dealing and small construction jobs Perry would perform for the club. Osborne did not know that Perry's son was a good friend of Rinehart's.

{¶9} Perry arrived at the club. Appellant and Osborne removed the blindfolds and allowed the victims to wash their faces in the restroom. Perry did not recognize Rinehart at first because Rinehart's face was so swollen, but recognized him when he heard Rinehart's voice. As Perry watched, Appellant attacked White again using a chain. Perry broke up the fight by grabbing White by the shirt and pretending to threaten White. Perry spoke to Appellant and Osborne and led them to believe that he

would take the victims to the woods and bury them. Perry observed Appellant attack White with the chain again, this time choking him with it until Osborne pulled him off.

{¶10} Perry was able to convince Appellant and Osborne to allow him to take White, Rinehart, Hart, and Pfeifer. Perry drove them to his house and got them cleaned up. He advised them not to call the police due to possible Cleveland gang involvement.

{¶11} White went to the hospital due to his injuries and made a police report as to the incident. The Richland County Sheriff's Department began an investigation. While the investigation was ongoing, a Galion City Police Officer conducted a routine traffic stop of a vehicle of which Appellant was a passenger. As the officer was speaking to Appellant, the officer noticed a gun magazine spring and ammunition on the floor of the car. All four occupants of the car were arrested. The driver of the vehicle told the police that they could locate the gun they were looking for at the Mansfield Inn. The police obtained the gun and the gun linked Appellant to the crime at "The Girls Next Door".

{¶12} The Richland County Grand Jury indicted Appellant on twenty-one counts: one count of conspiracy to commit murder with a firearm specification, two counts of felonious assault with a firearm specification, two counts of felonious assault, eight counts of kidnapping with a firearm specification, four counts of aggravated robbery with a firearm specification, and four counts of attempted murder.

{¶13} A four-day jury trial was held in August 2007. The jury found Appellant guilty of two counts of felonious assault with a firearm specification, two counts of felonious assault, eight counts of kidnapping with a firearm specification, one count of robbery, three counts of aggravated robbery, and one count of attempted murder. The

trial court sentenced Appellant to a total of twenty-three years in prison including a ten-year sentence for attempted murder to run concurrently with the other prison terms.

{¶14} It is from this conviction and sentence Appellant now appeals.

ASSIGNMENT OF ERROR

{¶15} Appellant raises one Assignment of Error:

{¶16} “THE JURY’S VERDICT IN FINDING THE DEFENDANT-APPELLANT GUILTY OF WOULD BE ATTEMPTED MURDER AGAINST DEREK WHITE COUNT EIGHTEEN (18) WAS CONTRARY TO THE MANIFEST WEIGHT OF EVIDENCE, THUS THE CONVICTION WAS IN VIOLATION OF ARTICLE I, 10 [SIC] OF THE OHIO CONSTITUTION AND THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.”¹

{¶17} Appellant argues in his Assignment of Error that his conviction under Count 18, attempted murder in violation of R.C. 2903.02(A) and R.C. 2923.02(A) was against the manifest weight of the evidence. We disagree.

{¶18} When analyzing a manifest weight claim, this court sits as a “thirteenth juror” and in reviewing the entire record, “weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving

¹ In the body of Appellant’s brief, Appellant begins his arguments with the following Assignment of Error: “THE JURY’S VERDICT IN FINDING THE DEFENDANT-APPELLANT GUILTY IN COUNT ONE (1) OF FELONIOUS ASSAULT WITH A FIRE ARM SPECIFICATION AND GUILTY IN COUNT TWO (2) OF ATTEMPTED MURDER WITH A FIRE ARM SPECIFICATION WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE THUS THE CONVICTION WAS IN VIOLATION OF ARTICLE I, 10 OF THE OHIO CONSTITUTION AND THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.” In his brief, however, Appellant argues only that his conviction for Count 18 for attempted murder was against the manifest weight of the evidence in accordance with the Assignment of Error recited in our opinion. As such, we will proceed under the Assignment of Error dealing with Count 18.

conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶19} In Count 18, Appellant was charged with the attempted murder of White, in violation of R.C. 2903.02(A) and R.C. 2923.02(A) due to his conduct of firing a gun at White. These statutes provide that attempted murder is committed by purposely engaging in conduct that, if successful, would constitute or result in the purposeful death of another person.

{¶20} The Ohio Supreme Court has held that a criminal attempt occurs when the offender commits an act constituting a substantial step towards the commission of an offense. *State v. Woods* (1976), 48 Ohio St.2d 127, 357 N.E.2d 1059, paragraph one of the syllabus, overruled in part by *State v. Downs* (1977), 51 Ohio St.2d 47, 364 N.E.2d 1140.

{¶21} Appellant argues that the testimony of the witnesses who were present at the incident does not prove beyond a reasonable doubt that Appellant pointed the gun and shot at White. On direct examination, Hart testified that Appellant shot White. (T. 165). Appellant points out that on cross-examination, Hart testified that she was “pretty sure” it was Appellant who fired the gun, but she did not see him fire it; she saw the gun and then she heard the shot. (T. 207).

{¶22} Pfeifer testified that she saw Appellant shoot his gun at White. (T. 330). She saw the gun go off and then she saw White put his head down. Id. Pfeifer thought White was dead. Id. Appellant submits that while Pfeifer testified on direct examination that she saw Appellant point the gun at White and pull the trigger, aspects of her testimony regarding other events that occurred that night conflict with the other witness testimony. (T. 330).

{¶23} White testified that Appellant fired the gun, but he did not see the gun pointed at him. (T. 408-409). He reacted because he thought he had been shot as the bullet barely missed him. (T. 409).

{¶24} After carefully reviewing the evidence, we cannot say that this is one of the exceptional cases where the evidence weighs heavily against the conviction for attempted murder. The jury did not create a manifest injustice by concluding that Appellant was guilty of the crime of attempted murder.

{¶25} Appellant's sole Assignment of Error is overruled.

{¶26} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

PAD:kgb

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FIFTH APPELLATE DISTRICT

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Plaintiff-Appellee	:	
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-vs-	:	JUDGMENT ENTRY
	:	
BRANDON J. GRIFFITH	:	
	:	
	:	Case No. 2009-CA-0048
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN