

[Cite as *State v. Thompson*, 2010-Ohio-2366.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090450
	:	TRIAL NO. B-0806446
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
JAYDEE THOMPSON,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Common Pleas Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: May 28, 2010

Joseph T. Deters, Prosecuting Attorney, and *James Michael Keeling*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Elizabeth Agar, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

WILLIAM L. MALLORY, Judge.

{¶1} A jury found defendant-appellant Jaydee Thompson guilty of two counts of aggravated murder,¹ four counts of murder,² two counts of felonious assault,³ three counts of aggravated robbery,⁴ having a weapon while under a disability,⁵ and the gun specifications that accompanied all but the last count. He was convicted accordingly. In three assignments of error, Thompson now contends that the trial court erred in allowing the prosecutor, in his closing argument, to improperly vouch for the credibility of a witness and to misstate evidence; that he was deprived of the effective assistance of counsel; and that his convictions were against the weight and sufficiency of the evidence. Thompson's assignments are overruled, and the judgment of the trial court is affirmed.

I. The Robbery

{¶2} In March 2006, Janie Mathews was in her apartment at 722 Wayne Avenue in Cincinnati, Ohio, playing cards with Thompson, Rodney Turnbow, Jr., Derrick Dumas, and others. Thompson had stopped in early, played cards, lost money, and left.

{¶3} Shortly after midnight, someone knocked on the apartment door, and when Mathews opened the door, she saw two masked men with guns standing

¹ R.C. 2903.01(B).

² R.C. 2903.02(A) and 2903.02(B).

³ R.C. 2903.11(A)(1) and 2903.11(A)(2).

⁴ R.C. 2911.01(A)(1) and 2911.01(A)(3).

⁵ R.C. 2923.13(A)(3).

outside her apartment. As she attempted to close the door, the gunmen shot through the door and killed her.

{¶4} The gunmen then entered the apartment, robbed the remaining occupants, and killed Turnbow. As they fled down a stairwell, they joined Thompson, who had been acting as a lookout. During their escape, they ran into Deandre Thomas and one of the three gunmen shot Thomas, but his wounds were not fatal. The other two gunmen trampled Thomas as he lay on the ground. Cincinnati police officers responded to a report that shots had been fired and found Deandre Thomas lying on the staircase leading to the second floor of the apartment building.

II. The State's Witnesses

Deandre Thomas's Testimony

{¶5} Thomas testified that Thompson had shot him. Thomas also testified that he had known Thompson for many years and that it had been easy to identify Thompson as the shooter—even though he had been wearing a mask at the time—because of his distinct eyes and because of his debilitated hand that previously had been injured by a gunshot. Thomas also testified that he had seen Thompson's car in the vicinity before he entered the stairwell where he was shot, and that two days before he had seen Thompson carrying a similar weapon—a MAC-10 or MAC-11 type machine gun—to the one that had been used in the robbery and shooting.

Quincy Jones's Testimony

{¶6} In addition to Thomas's testimony about Thompson being the shooter and about Thompson having used a MAC-10, the state called Quincy Jones, who

testified that Thompson had tried to sell him a MAC-11 type gun. Jones then asked Thompson whether this was the same gun that had been used in the killings, and Thompson replied, “No.” Jones later learned that Thompson had tried to sell him the gun used in the killings, and when Jones confronted Thompson with this new information, Thompson responded that he was trying to get rid of the weapon. Jones then asked Thompson what had happened on the night of the murder, and he responded that after he had left the card game, he called some people to help commit the robbery. Jones also said that, though Thompson admitted that he had called people to orchestrate the robbery, Thompson never detailed his involvement in the shootings.

Dontai Robinson’s Testimony

{¶7} Dontai Robinson testified that several days before the actual robbery took place, Thompson had discussed robbing Mathews’s apartment with him. Robinson testified that Thompson had wanted to steal the cash that he believed would be at Mathews’s apartment, and that they had cased the apartment, but that an opportune moment had never arisen because someone was always there to thwart their plan.

{¶8} According to Robinson, Thompson became impatient and decided that he would go to the apartment and proceed with the robbery plan regardless of whether the apartment was occupied. Thompson’s suggestion that they rob the apartment, whether it was occupied or not, did not sit well with Robinson, and he backed out of the robbery plan. Robinson made it clear that “if [the robbery] wasn’t going to be [committed] with nobody there, [he] didn’t want anything to do with it.”

Antuann Watkins's Testimony

{¶9} Antuann Watkins testified that, on the night of the robbery, Thompson had called him and told him that he had “a lick” on Turnbow, meaning that they were going to rob Turnbow. Thompson picked up Watkins, Kenneth Kennedy, and Marcus Lovette and drove to Mathews’s apartment, though he did not divulge the destination to any of them. On learning that the offense would involve his aunt, Watkins became resistant, but his concerns were allayed by Thompson’s assurance that they would plan to ambush Turnbow only when he walked outside the apartment. So the foursome continued to Mathews’s apartment.

{¶10} Shortly after their arrival, Thompson reneged on the original plan to wait for Turnbow to walk outside, and he instead decided to commit the robbery inside the apartment while it was being occupied. In attempting to persuade Watkins to participate, Thompson said that it would be an easy “lick” because the apartment’s occupants were unarmed. But Watkins withdrew from the plan and waited in the car while Thompson, Kennedy, and Lovette advanced toward the apartment to commit the robbery. A short time later, Watkins heard four or five gunshots and saw Thompson, Kennedy, and Lovette fleeing from the apartment.

{¶11} As the trio got into the car, Watkins heard Kennedy say that he had shot everybody in the place, including the woman at the door. Watkins immediately became upset because he correctly assumed that the woman who had been shot was his aunt. Watkins and Kennedy then scuffled over control of a gun, and eventually Thompson took the weapon from both of them so that he could dispose of it.

III. As Thompson Talks, His Story Evolves, and His Role Enlarges

{¶12} Some three years after Mathews and Turnbow had been killed, police were still investigating the robbery and murders. From the beginning, Thompson was a suspect, and he was questioned shortly after the crimes were committed.

{¶13} In Thompson's first interview, he stated that he had played cards at Mathews's house but had left before the robbery and did not return. Thompson stated that he had not committed the crimes and did not know who had killed Mathews and Turnbow, but that the robbery might have been staged by another participant who had been playing cards that night.

{¶14} Later, Thompson was interviewed in the Queensgate Correctional Facility, where he was being held on other charges, and still later he was again questioned in Lancaster, Ohio, at the Southeastern Correctional Institute. In these later interviews, Thompson said that he had nothing to do with the robbery and murders, and that he had been at home asleep when the crimes were committed. Thompson also stated that he had received a phone call that night that woke him up and informed him of the murders.

{¶15} After Thompson had been charged with the murders, he agreed to another interview where he again stated that he had no information about the offenses. Apparently Thompson sensed that his story had not been well received, and he eventually admitted that he had been present during the killings but that Watkins had called him to set up the robbery. Thompson then attempted to minimize his role by stating that he had driven the car, pointed out the apartment, and acted as a lookout at the bottom of the stairs. He then maintained that, as soon as he had heard shots fired, he ran back out to the car, where Watkins was waiting.

{¶16} The final version of Thompson’s story came at trial when he testified that Watkins had driven the men to the apartment; that he had not known where they were going; that he had been forced at gunpoint to identify Mathews’s door and to act as a lookout; and that the others had forced him to take \$100 for his role as a lookout and for maintaining his silence.

{¶17} As we have noted, Thompson’s assignments of error relate to improper vouching, the effectiveness of trial counsel, and the denial of his acquittal motion. We now address the assignments in order.

IV. Improper Vouching and Misstatements

{¶18} Thompson first argues that the state erred in personally vouching for its witnesses during closing argument. Specifically, Thompson takes issue with the following statements made during closing arguments:

{¶19} “[The state’s witnesses] were consistent throughout, consistent from their interviews with police until they testified here before you. None of them got any breaks. They had no reason to come in here and lie about anything.

{¶20} “They were all credible.

{¶21} “So these people were all very credible.

{¶22} “[Deandre Thomas] is the only one that saw what happened out there, except for [Thompson]. And Thomas is the only believable one that saw what happened out there.

{¶23} “You’ve heard [Thompson] testify, and you heard his prior statements, and I think [that] you know [that Thompson] is not credible; but Deandre Thomas is.

{¶24} “The truth is what Quincy Jones, Deandre Thomas, Dontai Robinson, Antuann [Watkins], that’s the truth, what they said. What [Thompson] told you via tape and then later via testimony, neither one of those is true.”

{¶25} A prosecutor may not express a personal belief or opinion on the credibility of a witness.⁶ Prosecutors are afforded a degree of latitude in their concluding remarks, and they are free to draw reasonable inferences from the evidence at trial and may comment on those inferences during closing arguments.⁷ We note in this case that the state was not vouching for its witnesses; it was merely commenting on which witnesses would have a motive to lie, while pointing out facts that were in evidence that made each witness more or less credible as compared with Thompson’s testimony and version of the facts. The evidence showed that Thompson had attempted to attack the veracity of the state’s witnesses by arguing that they were all criminals who had made deals with the state, and that they could not be believed. In rebutting Thompson’s attack on the credibility of its witnesses, the state did not improperly vouch for its witnesses; it merely commented on the evidence. The record does not support Thompson’s claim of improper personal vouching or any implication that such conduct occurred. We hold that the prosecutor’s statements were not improper—the closing remarks did not amount to improper vouching, nor did they give any impression that the state had personal knowledge about the motivations of witnesses.

{¶26} In the same vein, Thompson also argues that the state misstated facts about agreements it had reached with its witnesses and about Thompson’s

⁶ *State v. Jackson*, 92 Ohio St.3d 436, 2001-Ohio-1266, 751 N.E.2d 946, citing *State v. Smith* (1984), 14 Ohio St.3d 13, 470 N.E.2d 883.

⁷ *State v. Smith* (1997), 80 Ohio St.3d 89, 684 N.E.2d 668.

statements to the police. In this respect, Thompson's assignment of error challenges the state's argument that "none of [the state's witnesses] got any breaks. They had no reason to come in here and lie about anything. The last one, Antuann Watkins, hopes to get some consideration. [But] he was not made any promises, [and] the other five or six had nothing * * * they were all credible." Thompson's appellate brief argues that both Quincy Jones and Antuann Watkins had received consideration in exchange for their testimony, and that the prosecution's closing arguments contradicted, misstated, or misrepresented that fact.

{¶27} Jones testified that as part of his plea bargain he would testify in other cases. But Jones never agreed to testify in this particular case; his agreement was a general one to testify in multiple cases where he had knowledge of the facts. When brokering his plea bargain, Jones never spoke to the prosecutor in this case, and he testified that he had made a specific deal to testify in another case in exchange for less time served, but that he had not made a similar deal with the prosecutor in this case.

{¶28} We note that in a technical sense Jones was not given a deal to testify in this case; rather the arrangement that Jones negotiated was that he would testify in future cases, and the record shows that the arrangement did not contemplate that he would testify in Thompson's specific case. But Jones did confirm that after he had testified before the grand jury in this case, his two murder charges were reduced to manslaughter, and that he had received a four-year sentence for manslaughter, but that the lesser charges and sentence had occurred only after he had "clarified some stuff on [his] case." The prosecutor's statement that Jones did not get a break was close to being misleading, but we are convinced that any perceived misstatement was

cured by the full disclosure to the jury of the circumstances surrounding Jones's testimony and by the fact that the prosecutor in this case was never involved in Jones's plea bargain. Thompson's argument is largely a matter of perception, and the jury had the relevant information that it required to make an assessment of Jones's credibility. We cannot say that the prosecution misrepresented the fact that it had not bargained with Jones in this case.

{¶29} The record also shows that Antuann Watkins testified that, in exchange for his testimony, the prosecutor had agreed to speak on his behalf with regard to a pending motion for his early release for an unrelated crime. But the record is clear that Watkins was promised only that the prosecutor would appear on his behalf, which was not a guarantee for a favorable outcome. We note that the prosecutor pointed out that fact to the jury, and we are convinced that in neither Jones's nor Watkins's case did the prosecutor's arguments run afoul of the law.

{¶30} Finally Thompson argues that the prosecution improperly argued that he had changed his story throughout the investigation. This aspect of the assignment of error is summarily overruled. The evidence showed that Thompson had originally stated that he did not know who had killed Matthews and Turnbow and that he did not know anything about the crimes. Later Thompson told police that Watkins, Kennedy, and Lovette were involved in the crime—all the while continuing to deny his own participation. Eventually Thompson admitted that he had acted as a lookout. And finally at trial, Thompson stated that he had been forced to participate in the crime at gunpoint. That Thompson's story changed throughout the investigation is palpably factual and well documented in the record, and Thompson's argument to the contrary is overruled.

{¶31} We hold that the prosecutor's statements were not improper, but nevertheless we note that Thompson did not object to any of the comments that he now challenges; therefore even if we were to assume that there had been an improper statement by the prosecution, we hold that it was not outcome-determinative and therefore did not constitute plain error.

V. Ineffective Assistance of Counsel

{¶32} Thompson next argues that defense counsel's failure to object throughout the trial constituted ineffective assistance of counsel. Not so.

{¶33} In making an ineffective-assistance claim, the defendant must show that (1) counsel's performance was deficient, and (2) the deficiency prejudiced the defendant.⁸

{¶34} As we have already noted, the state's representations regarding its witnesses were not improper, and they did not warrant an objection from defense counsel. It, therefore, cannot be said that counsel's performance was deficient. We overrule this assignment of error.

VI. Weight and Sufficiency of the Evidence

{¶35} Finally, Thompson argues that the trial court erred in denying his motion for an acquittal, and that his convictions were against the weight and sufficiency of the evidence. His argument in these respects is not well taken.

{¶36} When reviewing the sufficiency of the evidence to support a criminal conviction, we must examine the evidence admitted at trial in the light most

⁸ See *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

favorable to the state. We must then determine whether that evidence could have convinced a rational trier of fact that the essential elements of the crime had been proved beyond a reasonable doubt.⁹

{¶37} A review of the weight of the evidence puts the appellate court in the role of a “thirteenth juror.”¹⁰ We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.¹¹ A new trial should be granted only in exceptional cases where the evidence weighs heavily against the conviction.¹²

{¶38} Thompson’s argument amounts to an indictment of the credibility of the state’s witnesses. But we note that the credibility of witnesses is an assessment to be made by the jury, and in this case the jury believed the state’s witnesses. Although there were some minor inconsistencies in the testimony, we are convinced that the state produced credible evidence to support Thompson’s convictions. Thomas testified that he had known Thompson for a long time, and that he had recognized the masked man who had shot him as Thompson because of his unique eyes and his enfeebled hand. And as we have noted, Thompson placed himself at the crime scene as a lookout, and although he testified that he had been forced to participate at gunpoint, the jury was free to disbelieve his testimony. And that is exactly what happened.

{¶39} Thompson’s conviction was against neither the weight nor the sufficiency of the evidence.

⁹ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

¹⁰ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

¹¹ *Id.*, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211.

¹² *Id.*

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{¶40} Having overruled each of Thompson's assignments of error, we affirm the trial court's judgment.

Judgment affirmed.

HILDEBRANDT, P.J., and DINKELACKER, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.