

[Cite as *State v. Gorrasi*, 2010-Ohio-2875.]

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

STATE OF OHIO,	:	APPEAL NO. C-090292
	:	TRIAL NO. B-0809419-B
Plaintiff-Appellee,	:	
vs.	:	<i>DECISION ON RECONSIDERATION.</i>
CARMEN GORRASI,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed and Cause Remanded

Date of Judgment Entry on Appeal: June 25, 2010

Joseph T. Deters, Prosecuting Attorney, and *Judith Anton Lapp*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Christine Y. Jones, for Defendant-Appellant.

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

Per Curiam.

{¶1} Defendant-appellant Carmen Gorrasi appeals his conviction for robbery. The assignments of error raised by Gorrasi do not have merit. But because the trial court failed to inform Gorrasi during the sentencing hearing that he was subject to three years of mandatory postrelease control, we remand this case to the trial court for it to correct its judgment. In all other respects, we affirm the judgment of the trial court.

{¶2} Gorrasi was convicted in 2009. He appealed, and on January 27, 2010, we affirmed his conviction in all respects.¹ In February 2010, Gorrasi applied under App.R. 26 for reconsideration of our January 2010 judgment entry in his case. We denied the application. But the record shows that the trial court failed to advise Gorrasi of the proper period of postrelease control. Accordingly, we have set aside our March 31, 2010, entry denying reconsideration and granted reconsideration. And we here reconsider, and substitute this decision for, our January 27, 2010, judgment entry.

{¶3} Gorrasi was indicted for aggravated robbery with specifications, robbery, and two counts of felonious assault. He waived his right to a jury trial, and the case was tried to the bench.

{¶4} During the trial, William Lockett testified that on November 28, 2008, Earl York and Gorrasi contacted him to purchase crack cocaine. Lockett agreed to meet York and Gorrasi at a house in the Price Hill neighborhood of Cincinnati around midnight. According to Lockett, he gave some of the crack to Gorrasi. Gorrasi tested the crack, said that it was acceptable, and told York to pay

¹ *State v. Gorrasi* (Jan. 27, 2010), 1st Dist. No. C-090992.

Lockett. York then pulled out a gun and demanded that Lockett turn over everything that he had. When Lockett attempted to fight York, Gorrasi grabbed him from behind. According to Lockett, York took \$9 and a credit card from Lockett's pocket. Lockett testified that York and Gorrasi had punched him, that York had pistol-whipped him, and that Gorrasi had told York to kill Lockett. York stabbed Lockett in the stomach and the back. Lockett managed to escape from the house and to call 911.

{¶5} Because he did not want his mother to know that he sold drugs, Lockett initially told police officers that he had been abducted and forced into the house. But he later told police officers the version of the incident to which he testified at trial. He identified Gorrasi from a photograph array.

{¶6} Police officer Mike Roth responded to the house. Near the house, he saw a man matching the description that had been given in a radio dispatch about the robbery. When he asked the man to stop, the man refused, and Roth chased him. He apprehended the man, who was later identified as York. York had \$9 in his pocket, a credit card in Lockett's mother's name, a crack cocaine pipe, and a lighter. Blood was visible on the money that was found in York's pocket.

{¶7} At trial, York testified that he had gone with Gorrasi to the house so that Gorrasi could buy crack cocaine. According to York, Gorrasi and Lockett had begun to fight when Gorrasi refused to purchase the drugs that were offered by Lockett. York stated that he had gotten in the middle of the dispute, that Lockett had pushed him, and that Gorrasi had tried to break up the fight between York and Lockett. At some point, according to York, Gorrasi had left. He claimed that he had found the credit card on the floor. York identified Gorrasi in a photograph array.

{¶8} Gorrasi testified that he had been buying the crack cocaine for another person named Rondal. Gorrasi stated that he had tested the crack, and that

he had refused to buy it because he believed that it contained too much baking soda. According to Gorrasi, Lockett got angry and started to come towards him. York intervened. Gorrasi stated that he had tried to break up the fight between Lockett and York, but that he had left after he was knocked down. When interviewed by police officers, he denied that he had been at the house.

{¶9} At the conclusion of the testimony, the trial court found Gorrasi guilty of robbery, but not guilty of aggravated robbery and felonious assault. The court sentenced Gorrasi to seven years' confinement.

{¶10} We consider Gorrasi's assignments of error together. In the first, he asserts that the trial court's finding of guilty was not supported by sufficient evidence. In the second, he asserts that the finding was against the manifest weight of the evidence. And in the third, he claims that the trial court erred when it overruled his Crim.R. 29 motion for an acquittal.

{¶11} The standard of review for a sufficiency claim and for the denial of a Crim.R. 29 motion for an acquittal is the same. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.² On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

{¶12} We conclude that the state presented sufficient evidence of the robbery offense. That the court's not-guilty findings on the aggravated-robbery and felonious-assault counts seem to contradict its finding of guilt on the robbery count

² See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

³ See *id.* at 387.

does not negate the sufficiency of the evidence that was presented.⁴ Further, we conclude that the trial court did not lose its way when it found Gorrasi guilty of robbery. Gorrasi challenges the credibility of the witnesses, particularly Lockett. But the trial court was in the best position to determine the credibility of all the witnesses. Accordingly, we overrule the assignments of error.

{¶13} But the record shows that that the trial court failed at sentencing to adequately inform Gorrasi that he was subject to postrelease control for a mandatory period of three years. The trial court stated that Gorrasi “was subject to supervision for a period of up to five years[.]” And the judgment entry correctly stated that Gorrasi was subject to postrelease control for a mandatory period of three years. But because the trial court did not state the correct term, the trial court erred in imposing Gorrasi’s sentence.⁵ We, therefore, remand this case to the trial court for it to correct its judgment by “employing the sentence-correction mechanism of R.C. 2929.191.”⁶ In all other respects, the judgment of the trial court is affirmed.

Judgment accordingly.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

Please Note:

The court has recorded its own entry this date.

⁴ See *State v. Woodson* (1985), 24 Ohio App.3d 143, 493 N.E.2d 1018.

⁵ See *State v. Williams*, 1st Dist. No. C-081148, 2010-Ohio-1879.

⁶ *State v. Williams*, supra, ¶24, citing *State v. Wilson*, 8th Dist. No., 92148, 2010-Ohio-550, ¶57.