

[Cite as *State v. Crowell*, 2010-Ohio-6245.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 10CA0005

Appellee

v.

GREGORY L. CROWELL

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 09-CR-0079

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 20, 2010

BELFANCE, Presiding Judge.

{¶1} Appellant, Gregory L. Crowell, appeals his convictions from the Wayne County Court of Common Pleas. For the reasons that follow, we affirm.

BACKGROUND

{¶2} On September 27, 2008, Jason Knight was at the Market Grill, drinking and talking with three other men: Travis Mosley, Joshua Carter and Gregory Crowell. Mr. Knight recognized that he was too intoxicated to drive, so he called his friend, Randy Goodwin, for a ride. When Mr. Goodwin arrived at the Market Grill, he saw Mr. Knight talking to the three other men. Mr. Goodwin recognized Mr. Carter because they had served time in the county jail together. The five men decided to visit the 3 Amigos restaurant and bar. Mr. Carter did not have identification and was not permitted into 3 Amigos; so, the men decided to go back to the Market Grill.

{¶3} As Mr. Goodwin drove back to the Market Grill, Mr. Mosley directed Mr. Goodwin to pull into the parking lot of the Wooster Township Road Department Garage. After Mr. Goodwin stepped out of the car to let Mr. Mosley out of the backseat, Mr. Mosley got out and started punching Mr. Goodwin in the head. Mr. Carter got out of the front, passenger seat and assaulted Mr. Goodwin also. Mr. Goodwin stated that during the attack, he saw Mr. Crowell in the backseat hitting Mr. Knight. Mr. Goodwin escaped and sought help from police.

{¶4} It is undisputed that Mr. Goodwin and Mr. Knight sustained serious injuries. Mr. Goodwin sustained cuts and bruising to his face. His nose and one orbital bone, or eye socket, were fractured. Mr. Knight sustained multiple cuts and bruises to his head, face, and torso. His face was severely swollen and both of his orbital bones were fractured. There was a noticeable shoe print on his cheek. Mr. Knight had a titanium plate permanently implanted in his face to stabilize the bone structure. He also suffered a rib fracture.

{¶5} Mr. Mosley and Mr. Carter each pled guilty to felonious assault and were sentenced accordingly. Mr. Crowell maintained his innocence and his case was tried to the bench. The trial court found Mr. Crowell guilty of two counts of felonious assault and two counts of aggravated robbery. He was sentenced to serve a total of eight years in prison.

{¶6} On appeal, Mr. Crowell argues that his convictions are based on insufficient evidence and not supported by the manifest weight of the evidence. He also claims that his sentence is contrary to law because the trial court erroneously cited an unconstitutional statute in its sentencing entry.

SUFFICIENCY OF THE EVIDENCE

{¶7} Mr. Crowell claims in his first assignment of error that his convictions were based on insufficient evidence. Specifically, Mr. Crowell argues that the State failed to establish the

essential element of identity of the perpetrator. Alternatively, Mr. Crowell argues that the State failed to establish that he committed the offenses of aggravated robbery or felonious assault against Mr. Goodwin.

{¶8} Whether a conviction is based on sufficient evidence is a question of law this Court reviews de novo. *State v. Williams*, 9th Dist. No. 24731, 2009-Ohio-6955, at ¶18, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. The relevant inquiry is whether the State has met its burden of production by presenting sufficient evidence to sustain a conviction. *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring). In reviewing the evidence, we do not evaluate credibility and must make all reasonable inferences in favor of the State. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273. The State's evidence is sufficient if it allows the jury to reasonably conclude that the essential elements of the crime charged were proven beyond a reasonable doubt. *Id.*

Identity

{¶9} Mr. Crowell is correct in his legal assertion that the State must prove the identity of the perpetrator of the crime beyond a reasonable doubt. *State v. Flynn*, 9th Dist. No. 06CA0096-M, 2007-Ohio-6210, at ¶12. However, identity is not an issue in this case as there is no dispute that Mr. Crowell was with the other men the night of the incident and present while the offenses were taking place. In a statement to the sheriff's detective investigating the incident, Mr. Crowell admitted that he was present during the commission of the crimes; however, he denied participation in the criminal activity. Thus, his denial of participation in the assaults and robberies did not create a dispute as to his identity; rather it created a dispute regarding Mr. Crowell's conduct at the time the crimes occurred. See, e.g., *State v. Curry* (1975), 43 Ohio St.2d 66, 73.

Assault and robbery against Mr. Knight

{¶10} Mr. Crowell also argues that there was insufficient evidence to support his convictions for assault and robbery against Mr. Knight. However, in viewing the evidence in the light most favorable to the State, there was sufficient evidence to establish that Mr. Crowell assaulted and robbed Mr. Knight.

{¶11} Mr. Goodwin testified that as he was being attacked by Mr. Mosley and Mr. Carter, he called out to Mr. Knight to alert him that they were being robbed. At this point, Mr. Goodwin observed Mr. Crowell hitting Mr. Knight. Mr. Goodwin also testified that as he drove away to get help, he observed the three men assaulting Mr. Knight behind the car.

{¶12} Mr. Carter prepared a written statement for law enforcement approximately one week after the incident in which he admitted that Mr. Mosley devised a plan in which Mr. Carter and Mr. Crowell would assault Mr. Knight. Mr. Carter also stated that he observed Mr. Mosley and Mr. Crowell stomping on Mr. Knight. Additionally, after the men fled, Mr. Crowell told Mr. Carter he had stolen three dollars from Mr. Knight. Mr. Knight testified that he remembered that he had eighty-seven dollars remaining in his wallet prior to the assault and robbery.

Assault and robbery against Mr. Goodwin

{¶13} Mr. Crowell also argues that there was insufficient evidence to establish that he committed felonious assault and aggravated robbery upon Mr. Goodwin. He argues that there was no evidence that he assaulted Mr. Goodwin and that based upon the trial testimony of Mr. Mosley and Mr. Carter, there was no premeditated plan to assault and rob Mr. Goodwin.

{¶14} The State's indictment specifically provided that Mr. Crowell either committed the crimes or was complicit in the commission of the crimes against Mr. Knight and Mr. Goodwin. An offender is complicit in an offense if the offender solicits, procures, aides, abets,

or conspires with another person to commit the offense, or if the offender causes an innocent or irresponsible person to commit the offense. R.C. 2923.03(A). With respect to complicity, the Supreme Court of Ohio has stated: “the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. Such intent may be inferred from the circumstances surrounding the crime.” *State v. Johnson* (2001), 93 Ohio St.3d 240, 245.

{¶15} The evidence, construed in favor of the State, is sufficient to allow the factfinder to reasonably conclude that Mr. Crowell was complicit in the assault and robbery of Mr. Goodwin. Assuming that Mr. Crowell did not directly assault and rob Mr. Goodwin, there was sufficient evidence to establish that he assisted, encouraged, and cooperated with Mr. Mosley and Mr. Carter as they assaulted and robbed Mr. Goodwin. As noted above, one week after the incident, Mr. Carter admitted that the men had a plan to assault and rob Mr. Knight and that the plan was put into action when Mr. Mosley began punching Mr. Goodwin. In light of Mr. Carter’s admission that the attack upon Mr. Goodwin was part of the plan, coupled with evidence that Mr. Crowell was at the scene, was witnessing what was transpiring and at the same time was assaulting and robbing Mr. Knight, there was sufficient evidence to conclude that Mr. Crowell supported, cooperated and assisted in the assault and robbery of Mr. Goodwin. Although Mr. Crowell suggests that there was insufficient evidence of any premeditated plan to assault and rob Mr. Goodwin, it was unnecessary for the State to establish a *premeditated* plan. It is equally possible that as events were unfolding, a decision was made to both assault and rob Mr. Goodwin. Thus, even assuming that there was no premeditated plan, the evidence was sufficient to establish that Mr. Crowell was complicit in the assault and robbery of Mr. Goodwin. Mr.

Crowell's first assignment of error is overruled to the extent that he argues that his convictions were not supported by sufficient evidence.

MANIFEST WEIGHT OF THE EVIDENCE

{¶16} In his first assignment of error, Mr. Crowell additionally contends that his convictions were against the manifest weight of the evidence.

{¶17} When determining whether a conviction is supported by the manifest weight of the evidence,

“an appellate court must 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. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke the discretionary power to grant a new trial in “extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant.” *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶18} We initially note that Mr. Crowell again raises the issue of identity in support of his manifest weight argument. As explained above, identity is not an issue in this case because all of the men, including Mr. Crowell, agree that Mr. Crowell was present. The actual issue is whether the factfinder lost its way in determining that Mr. Crowell committed the offenses against Mr. Knight and Mr. Goodwin.

{¶19} Mr. Crowell also suggests that his convictions are against the manifest weight of the evidence because the trial court should have believed the trial testimony of Mr. Mosley and Mr. Carter. Both men averred that Mr. Crowell did not participate in the commission of the

offenses. Mr. Crowell also challenges the credibility of Mr. Goodwin because he contends that certain conditions limited Mr. Goodwin's ability to observe the affray.

Assault and robbery against Mr. Knight

{¶20} Mr. Knight testified at trial that he was drinking heavily the night of September 27. He stated that he remembered talking with Mr. Mosley, Mr. Carter and Mr. Crowell at the Market Grill and that Mr. Goodwin came to pick him up. However, he acknowledged that he only vaguely recalled driving to 3 Amigos and did not remember getting back in the car to drive to the Market Grill. The next event he could remember was lying on the ground and being kicked. Mr. Knight testified that more than one person was kicking him, but he did not know who or how many exactly. He testified that his shoes, wallet and cell phone were taken from him that night. The last time he looked at his wallet, he recalled that he had eighty-seven dollars.

{¶21} Mr. Goodwin stated at trial that he pulled into the Township Garage after Mr. Mosley instructed him to do so. Upon exiting the vehicle to let Mr. Mosley out of the backseat, Mr. Mosley and Mr. Carter began to punch him and he called out to Mr. Knight that they were being robbed. While being attacked by the two men, Mr. Goodwin could see Mr. Crowell and Mr. Knight in the backseat and that Mr. Crowell was punching Mr. Knight. Upon fleeing the scene, he also witnessed all three defendants assaulting Mr. Knight while he lay on the ground behind the car. Mr. Goodwin's statements regarding the incident have been consistent throughout the case.

{¶22} Mr. Crowell argues that Mr. Goodwin was not able to clearly see what transpired in the Township Garage parking lot because it was dark outside and his face and eye were severely injured. He also lost a contact lens. However, Mr. Goodwin did not state that his vision was severely compromised and his general testimony indicated that he could see what was

transpiring. Furthermore, there was evidence that Mr. Goodwin's vision was not severely compromised given that he was able to drive to a nearby gas station and use a phone to call for help. Mr. Goodwin testified that he never lost consciousness and did not become dizzy after being hit in the head. Additionally, he was able to coherently speak with law enforcement the night of the attack.

{¶23} At trial, Mr. Carter acknowledged that one week after the incident he provided a written statement to the sheriff's detective that Mr. Mosley told him and Mr. Crowell to "go to [3] Amigos then get dropped off somewhere and beat [Mr. Knight] up." When Mr. Mosley began punching Mr. Goodwin in the parking lot of the Township Garage, Mr. Carter recognized this as "part of [Mr. Mosley's] plan[.]" When Mr. Knight attempted to exit the vehicle, Mr. Carter kicked him in the face. According to Mr. Carter, Mr. Crowell and Mr. Mosley pulled Mr. Knight out of the car while Mr. Carter continued to assault Mr. Goodwin. Further, he confirmed that all three defendants kicked and stomped on Mr. Knight while he was on the ground. In his written statement, Mr. Carter also acknowledged that Mr. Crowell told him that he stole three dollars from Mr. Knight. Mr. Carter attempted to recant his prior written statement at trial and claimed that it was *his* plan to rob the victims and he did not see Mr. Mosley or Mr. Crowell assault anyone. He testified that he lied in the statement because he hoped that implicating Mr. Mosley and Mr. Crowell would result in more favorable treatment for himself. However, he admitted on the stand that he subsequently reconfirmed the facts contained in his written statement when the sheriff's detective and the prosecutor met with him at the jail.

{¶24} Mr. Mosley denied the existence of a plan to rob Mr. Goodwin or Mr. Knight. Mr. Mosley claimed at trial that Mr. Goodwin used a racial slur and Mr. Mosley became angry.

He stated that he asked Mr. Goodwin to pull over because of the derogatory comment, not as part of a plan to rob the victims. Mr. Mosley denied seeing Mr. Crowell rob or assault either victim.

{¶25} Mr. Crowell did not testify at trial; however, his prior, recorded statement made to a sheriff's detective investigating the crimes was admitted into evidence. In the statement, he denied any involvement in the assault and robbery of Mr. Knight. Mr. Crowell told the detective who interviewed him that there was no plan to rob and/or assault Mr. Knight. Instead, he was surprised when Mr. Goodwin pulled over in the Township Garage parking lot and he and Mr. Mosley began to fight. According to Mr. Crowell, Mr. Carter and Mr. Knight also began to fight with each other. Mr. Crowell urged everyone to stop, then walked away when no one would listen. He said that Mr. Mosley and Mr. Carter caught up with him later as he walked down the road. Mr. Mosley's girlfriend picked up all three men from the side of the road. Mr. Mosley's girlfriend, Amanda Stoll, confirmed that she picked up the defendants around 2:00 a.m. on September 28, 2008. Although none of them told her what happened earlier, she noticed blood on the clothes of Mr. Mosley and Mr. Carter.

{¶26} Mr. Crowell contends that the fact finder lost its way in failing to place more weight upon Mr. Carter and Mosley's trial testimony as well as Mr. Crowell's statement to law enforcement. The trial court was able to observe the witnesses' demeanor during extensive testimony and use these observations to weigh the credibility and resolve conflicts in the testimony. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. We have previously stated that a verdict is not against the manifest weight of the evidence because the court chose to believe the State's witnesses rather than the defense witnesses. *State v. Fallon*, 9th Dist. No. 23002, 2007-Ohio-1478, at ¶22.

{¶27} Here, it is plain that the trial court chose not to believe Mr. Carter and Mr. Mosley's version of events at trial. With respect to Mr. Carter, it was not unreasonable for the trial court to disbelieve Mr. Carter when he stated at trial that his initial written statement to the sheriff's detective as well as his subsequent oral statement to the detective and the prosecutor were not truthful. In both statements, Mr. Carter confirmed that the assault upon Mr. Goodwin was part of the plan.

{¶28} In evaluating the credibility of Mr. Crowell's statement, no other witnesses' testimony corroborates Mr. Crowell's assertion that he attempted to stop the fight or that he walked away from the scene. Neither Mr. Mosley nor Mr. Carter stated that Mr. Crowell urged them to stop the attack or that Mr. Crowell walked away from the scene. There was also evidence that the three men remained together given that Ms. Stoll picked up all three defendants sometime after the incident. Thus, the trier of fact could reasonably conclude that Mr. Crowell's statement lacked credibility given his behavior and the lack of any other testimony corroborating his assertion that he urged the others to not fight and walked away.

{¶29} Upon thorough review of all of the evidence, we cannot conclude that the trier of fact clearly lost its way and created manifest miscarriage of justice in determining that Mr. Crowell assaulted and robbed Mr. Knight.

Assault and robbery against Mr. Goodwin

{¶30} Again, Mr. Crowell argues that the trial court erred in disbelieving his version of the events of September 27, 2008 and discrediting the trial testimony of Mr. Mosley and Mr. Carter. As noted above, it was not unreasonable for the trier of fact to disbelieve Mr. Carter's assertion at trial that no plan existed and that Mr. Crowell was not involved given that Mr. Carter confirmed the plan and Mr. Crowell's involvement on two separate occasions when speaking to

law enforcement. A plan can also be inferred from the video that depicts the defendants talking together outside of 3 Amigos shortly before the attack. Even assuming that a preexisting plan was not formed, the evidence supported the conclusion that once the attack began, Mr. Crowell assisted in part by subduing Mr. Knight. Given all of the evidence adduced at trial and upon assessing the relative credibility of the witnesses, it was not unreasonable for the trial court to conclude that Mr. Crowell supported, assisted, encouraged, or cooperated in the assault and robbery of Mr. Goodwin. See R.C. 2923.03(A); *Johnson*, 93 Ohio St.3d at 245. Accordingly, we conclude that Mr. Crowell's convictions as to Mr. Goodwin are not against the manifest weight of the evidence.

{¶31} Mr. Crowell's convictions as to Mr. Knight and Mr. Goodwin are not against the manifest weight of the evidence. Mr. Crowell's first assignment of error is overruled in its entirety.

SENTENCING

{¶32} Mr. Crowell next argues that his sentence should be vacated and the matter remanded for resentencing because the trial court committed reversible error. He asserts that the trial court cited and relied upon a statute that has been held unconstitutional, R.C. 2967.11.

{¶33} Mr. Crowell was originally sentenced on June 15, 2009. He attempted to appeal from that sentence. In a journal entry dated November 19, 2009, this Court dismissed the appeal and remanded for resentencing. We reasoned that the trial court imposed an incorrect term of post-release control. Mr. Crowell was resentenced on January 6, 2010. In the journal entry of resentencing, the trial court stated: "As part of the sentence herein, the Parole Board and any judge having jurisdiction while the defendant is subject to post-release control may, pursuant to R.C. 2967.11 and R.C. 2967.28, extend the prison term."

{¶34} Mr. Crowell correctly points out that R.C. 2967.11 was declared unconstitutional and subsequently repealed. See *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132, syllabus. R.C. 2967.11 addressed extensions of a prisoner's incarceration due to rules violations committed while incarcerated. Other than including the statute number, the trial court made no other reference to R.C. 2967.11 in the entry or at the sentencing hearing. However, the trial court also referenced R.C. 2967.28, Ohio's post-release control statute, in the sentencing entry. The trial court explained post-release control to Mr. Crowell by informing him that if he committed any violations while on post-release control following his release from prison, he could be returned to prison for determined periods of time as outlined in R.C. 2967.28. Mr. Crowell has not argued that the trial court's reference to R.C. 2967.11 had any prejudicial effect. Although the court's inclusion of R.C. 2967.11 in its entry was erroneous, the error was harmless as it is clear that the repealed statute could not be enforced and Mr. Crowell was properly notified of the applicable mandates of post-release control pursuant to R.C. 2967.28. Mr. Crowell's second and final assignment of error is overruled.

CONCLUSION

{¶35} Mr. Crowell's assignments of error are overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

MARTIN FRANTZ, Prosecuting Attorney and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.