

[Cite as *State v. Robinson*, 2010-Ohio-150.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92565

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RODERICK ROBINSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART AND
REMANDED FOR CORRECTION OF
JOURNAL ENTRY**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-510591

BEFORE: Jones, J., Blackmon, P.J., and Boyle, J.

RELEASED: January 21, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

R. Brian Moriarty
R. Brian Moriarty, L.L.C.
2000 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Marcus L. Wainwright
Angela Thomas
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Appellant-defendant, Roderick Robinson (“Robinson”), through counsel, appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm in part; reverse in part and remand.

STATEMENT OF THE CASE

{¶ 2} Robinson was indicted by the grand jury and charged in Counts 1 and 2 with aggravated robbery in violation of R.C. 2911.01(A)(1), felonies of the first degree. Both counts contained one- and three-year firearm specifications, notice of prior conviction and repeat violent offender specifications. He was indicted in Counts 3, 4, and 5 with charges of kidnapping, in violation of R.C. 2905.01(A)(2), also felonies of the first degree. Each of these counts also carried the one- and three-year firearm specifications, notice of prior conviction and repeat violent offender specifications.

{¶ 3} Counts 6 and 7 charged Robinson with robbery, in violation of R.C. 2911.02(A)(2), felonies of the second degree. These counts also contained one- and three-year firearm specifications, notice of prior conviction, and repeat violent offender specifications. Robinson pled not guilty to all charges.

{¶ 4} On November 12, 2008, a jury trial commenced. Robinson’s Crim.R. 29 motion, with the exception of Count 5, was denied. The jury returned guilty

verdicts on all the remaining counts of the indictment, except for Count 2 and the three-year firearm specifications in Counts 4 and 7.

{¶ 5} On November 21, 2008, Robinson was sentenced to a total of nine years (six years plus the three-year firearm specification), to run consecutive to the sentence for his probation violation in CR-499723, also a robbery case. On May 4, 2009, Robinson filed his appellate brief with this court, alleging three assignments of error.

STATEMENT OF THE FACTS

{¶ 6} The victim, Kellie Wilson (“Wilson”), testified that she met Robinson while visiting a friend at a Cleveland restaurant. Wilson testified that Robinson introduced himself to her as Rayshawn, also known as Amp. Wilson indicated that she gave him her cell phone number because she was interested in him. Robinson made several phone calls to Wilson and they became more familiar with each other. However, Wilson has a four-year old daughter and did not want Robinson to come to her house because she did not know him that well. During one of their conversations, Wilson told Robinson that she needed a car. He told her he knew someone that was selling a Chevy Lumina for \$500.00.

{¶ 7} Robinson told Wilson that if she could get a ride from her home in Painesville she could come to Cleveland to look at the car. On February 21, 2008, Wilson, her four-year old daughter, and Wilson’s friend, the other victim, 17 year-old Jelita Rivera (“Rivera”) drove Rivera’s sister’s car to go see the Lumina.

Wilson took \$500.00 in a bank envelope to purchase the car and an additional \$141.00 to pay for the title, taxes, temporary tags, and other related expenses.

{¶ 8} After arriving in Cleveland, Wilson made several calls back and forth to Robinson because she was not familiar with that particular Cleveland neighborhood. Wilson met Robinson at approximately 1:00 p.m. that day at a home on Linn Drive.

{¶ 9} Robinson was waiting at the house with a female named Alexis. When Wilson, her daughter, and Rivera arrived, Robinson asked Wilson to drive him and Alexis to a store up the street to buy cigarettes. Wilson reluctantly agreed. Robinson and Alexis sat in the backseat, with Wilson's daughter sitting in the middle of them. Rivera rode in the front passenger seat.

{¶ 10} During the course of this brief trip, Wilson drove past a male walking down the street and noticed that the man on the street and Robinson were making some type of hand signals to each other. This caused Wilson to become uneasy. Because of her uneasiness with the situation, Wilson secretly handed the \$500 bank envelope to Rivera.

{¶ 11} After they returned from the store, Wilson got out of the two-door car to let Alexis out of the back seat. Alexis immediately pulled out a gun and showed Wilson the bullets in the gun and said, "What you got?"¹ Wilson asked Alexis if she was serious and if she was going to do this in front of her four-year old daughter. Alexis then took Wilson's coat and Robinson took the \$141.00 that

Wilson had in her pocket for the title, plates, gas, and food. When Wilson told Alexis that that was all the money she had, Robinson told Alexis, “She’s lying, she got money, shoot that bitch. She’s lying.”² Wilson also testified that she witnessed the man she saw making hand signals to Robinson earlier pull Rivera from the car, take something from her, and run away. Robinson then attempted to grab the keys out of the ignition, but after a brief struggle with Wilson, he and Alexis ran off.

{¶ 12} Later that same day, immediately after picking up her son from school and returning the borrowed car to its owner, Wilson’s grandmother drove Wilson back to Cleveland to file a police report and make a written statement. A couple of months later, Wilson picked Robinson out of a photo array. Wilson testified on re-direct that she had never been convicted of any crime and was not there to buy drugs. Wilson also testified that her numerous phone calls with Robinson were in an attempt to get to know him. Wilson testified that on February 21, 2008 it was light outside, she met Robinson on a residential street, and Robinson reassured her over the phone that the car purchase was legitimate and the seller of the car had the title.

ASSIGNMENTS OF ERROR

{¶ 13} Robinson assigns three assignments of error on appeal:

¹Tr. 272.

²Tr. 274.

{¶ 14} “[1.] The guilty verdicts concerning Jelita are based upon insufficient evidence.

{¶ 15} “[2.] The conviction of appellant is against the manifest weight of the evidence.

{¶ 16} “[3.] Defendant-appellant’s sentencing entry is incorrect.”

LEGAL ANALYSIS

Insufficient Evidence and Manifest Weight

{¶ 17} Robinson argues in his first two assignments of error that the verdict was based on insufficient evidence and was also against the manifest weight of the evidence. Due to the substantial interrelation between Robinson’s first two assignments of error we shall address them together.

{¶ 18} “The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different.

{¶ 19} “With respect to sufficiency of the evidence, ‘sufficiency’ is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law. In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. (Internal citations omitted.)

{¶ 20} “Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may, nevertheless, conclude that the judgment is against the weight of the evidence. Weight of the evidence concerns ‘the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jurors that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.’

{¶ 21} “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the fact-finder’s resolution of the conflicting testimony.” *Id.*

{¶ 22} As to a claim that a judgment is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Martin* (1983), 20 Ohio App.3d 172, 485

N.E.2d 717. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶ 23} A review of the evidence in the case at bar demonstrates that Robinson was acting in concert with Alexis and the unknown male in committing the robbery and kidnaping against Rivera. Here, the lower court found that there was sufficient evidence that Rivera was, by force, restrained of her liberty for the purpose of facilitating the commission of a felony, and that there was some struggle over her person and trying to get in her pockets.³ The evidence further shows that Robinson was with a female (Alexis), and that he asked Wilson to take them to the store.⁴ While driving past a male walking down the street, Wilson noticed Robinson and another male make hand signals to one another; this caused her to feel weird so she slid the \$500.00 in an envelope to Rivera, who was seated in the front passenger seat.⁵ When the group returned to the home on Linn Dr., the unknown male who was walking down the street earlier and signaling to Robinson, came over, pulled Rivera out of the car, took the money and ran. Robinson then went over to Rivera, pulled her back out of the car and went through her pockets.

³Tr. 359.

⁴Tr. 270.

⁵Tr. 270-272.

{¶ 24} The trial court clearly instructed the jury to give each count and each firearm specification its own deliberation and consideration.⁶ Accordingly, the jury was free as the finders of fact to deliver any verdict they deemed appropriate. The evidence showed that Robinson told Alexis to shoot Wilson. However he did not tell her to shoot Rivera. It is reasonable to believe that the jury took this fact into consideration in finding him guilty of only the one- and not the three-year firearm specifications regarding Rivera.

{¶ 25} In addition, there is nothing in the record to suggest that the jury clearly lost its way and created such a manifest miscarriage of justice as to require a reversal of appellant's convictions. The trial court instructed the jury that they are not bound to believe something to be fact simply because it was testified to by a witness who was under oath.⁷ The jury was told that they are the sole judges of the facts and credibility of the witnesses and the weight to be given to the testimony of each witness. The trial court instructed the jury that it is the quality of the evidence that must be given primary consideration and that may or may not be commensurate with the quantity of the evidence.⁸

{¶ 26} There is no evidence that Wilson was there for anything other than to purchase a car from Robinson. Wilson did not want Robinson to come to her home, and she advised him that she was looking for a car. Robinson informed

⁶Tr. 432.

⁷Tr. 420.

⁸Tr. 417.

Wilson that he knew someone selling a Chevy Lumina for \$500.00. Wilson asked Robinson to bring the car to her and he indicated that the guy was not available, and that it would just be better for her to come look at the car. Robinson called Wilson several times after that pressuring her about the car purchase. Accordingly, based on Robinson's comments, Wilson drove out to a neighborhood she was not familiar with and was victimized by Robinson and his two accomplices.

{¶ 27} We find the evidence legally sufficient to sustain the trial court's convictions. In addition, when the evidence is viewed in a light most favorable to the state, we find that all essential elements of appellant's convictions were proven beyond a reasonable doubt. Moreover, nothing in the record demonstrates that the trial court lost its way in convicting Robinson.

{¶ 28} Accordingly, Robinson's first and second assignments of error are overruled.

Sentencing Entry

{¶ 29} Robinson argues in his third assignment of error that his sentencing entry is incorrect. We find appellant's third assignment of error to have merit.

{¶ 30} In this case, both parties agreed that the repeat violent offender specification under R.C. 2941.149 does not apply to Robinson since he had never served a term of incarceration for a felony of violence. The trial court agreed and

subsequently dismissed the specifications for Counts 1, 3, 4, 6, and 7.⁹ However, the sentencing entry of the court indicates Robinson was found guilty of said specifications. Although the ultimate sentence was not affected by these specifications, this error needs to be corrected.

Judgment is affirmed in part, reversed in part, and remanded for correction of journal entry.

It is ordered that appellant and appellee split the 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

LARRY A. JONES, JUDGE

PATRICIA A. BLACKMON, P.J., and
MARY JANE BOYLE, J., CONCUR

⁹Tr. 477.

