

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 10AP-175
Plaintiff-Appellee,	:	(C.P.C. No. 09CR07-4171)
	:	and
v.	:	No. 10AP-176
	:	(C.P.C. No. 09CR12-7222)
Nelson L. Romine, Jr.,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 2, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Steven A. Larson*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} In these consolidated appeals, defendant-appellant, Nelson L. Romine, Jr., appeals from judgments of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm those judgments.

{¶2} In the early morning hours of July 5, 2009, appellant and a friend left a bar on the east side of Columbus, Ohio. Shortly thereafter, appellant's friend realized that her purse was missing. Therefore, they returned to the bar's parking lot to look for the purse.

{¶3} Around the same time, William Farmer and his cousin, Kenny Jackson, left the same bar and walked to the bar's parking lot. Farmer went to Jackson's car to

retrieve a black bag out of the car to take home with him. After Farmer removed the bag from the vehicle, appellant walked up from behind him with a gun. Appellant said something to him about a stolen purse, but Farmer did not know what appellant was talking about. Appellant took Farmer's bag at gunpoint and told him to get on the ground. Farmer got on one knee but refused to lie on the ground. Appellant began to walk away from Farmer when he saw Jackson running towards him. Appellant turned towards Jackson and yelled at him to stop. Jackson did not stop. Appellant fired a single shot at Jackson, hitting and killing him. Appellant immediately got into his friend's car and drove off. Police apprehended appellant shortly thereafter.

{¶4} As a result of these events, a Franklin County Grand Jury indicted appellant in case No. 09CR07-4171 with one count of aggravated murder in violation of R.C. 2903.01, one count of kidnapping in violation of R.C. 2905.01,<sup>1</sup> and one count of improperly handling firearms in a motor vehicle in violation of R.C. 2923.16. The aggravated murder count alleged that appellant caused Jackson's death while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping. The indictment named Farmer as the victim of the kidnapping.

{¶5} Six months later, another grand jury indicted appellant in case No. 09CR12-7222 with another count of aggravated murder in violation of R.C. 2903.01 and one count of aggravated robbery in violation of R.C. 2911.01. This aggravated murder count alleged that appellant caused Jackson's death while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, aggravated robbery. The indictment named Farmer as the victim of the aggravated robbery.

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<sup>1</sup> Both of these counts also contained a firearm specification pursuant to R.C. 2941.145.

{¶6} Appellant entered not guilty pleas to all of the counts and proceeded to a jury trial. The two indictments were tried together pursuant to Crim.R. 13. At trial, Farmer testified to the version of events described above. Appellant testified that he shot Jackson in self-defense.

{¶7} According to appellant, he and his friend returned to the bar's parking lot to find her purse. When they got there, appellant exited the car with his gun in his hand. He quickly saw Farmer approaching him with his hand inside a black bag. Based on Farmer's demeanor and body language, appellant thought that Farmer had a gun inside the bag, so he quickly pointed his own gun at Farmer, and took the bag from him.<sup>2</sup>

{¶8} Appellant told Farmer to get on the ground so that he could safely leave the area. He began to walk away from Farmer, towards his friend's car, when he saw Jackson coming towards him. Appellant estimated that Jackson was 10 to 12 feet away. Appellant thought Jackson had a gun, although he did not see a gun in his hands. Appellant turned towards Jackson and told him to stop. Jackson continued to approach, so appellant fired his gun, hitting Jackson once. Appellant then left the area in his friend's car.

{¶9} In case No. 09CR07-4171, the jury found appellant guilty of all the charges and specifications. In case No. 09CR12-7222, the jury found appellant not guilty of aggravated murder, but guilty of the lesser offense of murder. The jury also found appellant guilty of aggravated robbery and the firearm specifications. The trial court sentenced appellant accordingly.

{¶10} Appellant appeals and assigns the following errors:

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<sup>2</sup> Appellant did not confirm that the bag contained a gun until after he left the scene.

I. APPELLANT'S CONVICTIONS FOR AGGRAVATED MURDER IN COUNT ONE IN NOT SUPPORTED BY SUFFICIENT EVIDENCE.

II. THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION FOR AGGRAVATED MURDER, WHICH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.

{¶11} Appellant contends in his two assignments of error that his aggravated murder conviction in case No. 09CR07-4171 is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶12} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus. Therefore, we will separately discuss appellant's sufficiency of the evidence and weight of the evidence arguments.

{¶13} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. \* \* \*

{¶14} Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins* at 386. Indeed, in determining the sufficiency of the evidence, an appellate

court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh* (2001), 90 Ohio St.3d 460, 484; *Jenks* at 273.

{¶15} Appellant's manifest weight of the evidence claim requires a different review. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, after " '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 [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.' " *Thompkins* at 387 (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*

{¶16} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No.

02AP-604, 2003-Ohio-958, ¶21. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Gale*, 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston*, 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶17} Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶15 (citing *State v. Roberts* (Sept. 17, 1997), 9th Dist. No. 96CA006462). "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's conviction is supported by the manifest weight of the evidence. *State v. Sowell*, 10th Dist. No. 2008-Ohio-3285, ¶89.

{¶18} In order to convict appellant of aggravated murder in case No. 09CR07-4171, the state had to prove beyond a reasonable doubt that appellant purposefully caused Jackson's death while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, a kidnapping. R.C. 2903.01(B).

{¶19} Appellant does not contest his underlying kidnapping conviction. Rather, he contends that he did not kill Jackson while fleeing immediately after the kidnapping. He argues that the kidnapping of Farmer was complete before he shot Jackson, and that he fled only after he shot Jackson. We reject appellant's argument.

{¶20} In the context of R.C. 2903.01(B), Ohio's felony-murder statute, the Supreme Court of Ohio has explained that "the term "while" does not indicate \* \* \* that the killing must occur at the same instant as the [predicate felony], or that the killing must have been caused by the [felony]. \* \* \* Nor does it mean that the felony must have been the motive for the killing. \* \* \* Rather "while" means that "the killing must be directly associated with the [felony] as part of one continuous occurrence." "[T]he term "while" means that the death must occur as part of acts leading up to, or occurring during, or immediately subsequent to the [relevant felony]." \* \* \* "The sequence of events" may be "examined in light of time, place, and causal connection" to determine whether it "amounts to one continuous occurrence." ' ' " *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, ¶55-56 (citations omitted); see also *State v. McNeill*, 83 Ohio St.3d 438, 440-41, 1998-Ohio-293.

{¶21} When viewed in light of time, place, and causal connection, the jury did not lose its way in concluding that Jackson's murder occurred immediately after Farmer's kidnapping and amounted to one continuous occurrence. *Johnson*; *State v. Lockhart*,

10th Dist. No. 09AP-613, 2010-Ohio-173, ¶17. The evidence indicates that as appellant walked away from robbing and kidnapping Farmer, he turned and saw Jackson approaching. After yelling at him to stop, Jackson continued to come towards him. Appellant then shot Jackson. The testimony indicates that these events occurred within a very short period of time, perhaps seconds, and in the same place. Moreover, but for the kidnapping, Jackson's murder likely would not have occurred, because Jackson was approaching to assist Farmer. *McNeil* at 441. The fact that the kidnapping was technically complete before appellant shot Jackson is of no consequence. *Lockhart* at ¶16 (" 'Because the killing and predicate felony need not be simultaneous in order to constitute a felony-murder, the technical completion of one before the commission of the other does not remove a murder from the ambit of R.C. 2903.01(B)' ") (quoting *McNeil* at 440).

{¶22} The jury did not lose its way or create a manifest miscarriage of justice. Accordingly, appellant's conviction for aggravated murder in case no. 09CR07-4171 is not against the manifest weight of the evidence and we overrule appellant's second assignment of error. This conclusion is also dispositive of appellant's first assignment of error, which claims that the conviction is not supported by sufficient evidence. *Braxton* at ¶15.

{¶23} In conclusion, we overrule appellant's two assignments of error and affirm the judgments of the Franklin County Court of Common Pleas.

*Judgments affirmed.*

TYACK, P.J., and BROWN, J., concur.

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