

[Cite as *State v. Lockhart*, 2010-Ohio-173.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 09AP-613
Plaintiff-Appellee,	:	(C.P.C. No. 08CR-01-188)
v.	:	No. 09AP-614
	:	(C.P.C. No. 08CR-05-3430)
William L. Lockhart,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on January 21, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

*Yeura R. Venters*, Public Defender, and *John W. Keeling*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, William L. Lockhart ("appellant"), appeals the judgments of the Franklin County Court of Common Pleas, which convicted him of aggravated murder with a firearm specification, aggravated robbery with a firearm specification, and having a weapon under disability. For the following reasons, we affirm.

{¶2} The Franklin County Grand Jury indicted appellant on aggravated murder with a firearm specification, aggravated robbery with a firearm specification, tampering with evidence with a firearm specification, and having a weapon under disability. The charges stem from a robbery at Convenient Plus Food Mart and the death of employee Muhammed Aslam. Appellant pleaded not guilty, and a jury trial ensued on all charges except the having a weapon under disability charge, which was tried to the bench.

{¶3} Keith Colbourn testified as follows on behalf of plaintiff-appellee, the state of Ohio ("appellee"). Colbourn identified appellant at trial as a man he saw at Convenient Plus Food Mart on May 4, 2007, although Colbourn was unable to identify appellant in a pre-trial photo array. Colbourn was walking to the convenience store when appellant approached him. Appellant was wearing a brown shirt and beige and brown Nike Air Force One shoes. Appellant also wore "three-quarter length" "short pants." (Vol. I Tr. 22.) Appellant asked Colbourn where he could buy a large amount of marijuana. Colbourn was a drug dealer at the time, but he told appellant that he did not sell large amounts of drugs. He would not have sold drugs to appellant anyway because "[s]omething about him made [him] nervous." (Vol. I Tr. 21.)

{¶4} Colbourn and appellant walked to the store together, but appellant did not go in. Aslam was working. Colbourn bought cigarettes and a couple of cigars. After making this purchase, Colbourn walked back to his apartment; the walk took up to a minute. As he arrived, a neighbor asked Colbourn to return to the convenience store for some purchases. He spoke with his neighbor for 30 seconds. Colbourn's return to the store took about 45 seconds. Upon returning to the store, Colbourn discovered that Aslam had been shot behind the store counter. Colbourn saw appellant exit the store.

Appellant was "running like a bat out of hell." (Vol. I Tr. 54.) Appellant carried a black bag that held some videotapes, and he was waving a gun. Appellant fled to the nearby apartments.

{¶5} Columbus Police Officer Joseph Gibson testified that he was dispatched to the convenience store after the shooting. He was a half mile away from the store when he received the dispatch. He heard no gunshots in the area prior to the dispatch, and he did not receive any earlier dispatches about gunshots in the area. When he arrived, he saw Aslam dead behind the counter. Gibson saw no firearms around Aslam. Detective William Snyder also responded to the shooting scene on May 4, 2007. Snyder testified that he found the store's gun behind the counter, and he and his assistant took photographs of the gun.

{¶6} Franklin County Coroner Jan Gorniak testified that Aslam died of a single gunshot wound to the head. Gorniak surmised that Aslam died within seconds of being shot and that he would have been unable to make any purposeful movements in the interval between being shot and dying.

{¶7} Chaudhary Ansar owned Convenient Plus Food Mart and testified as follows. Ansar went to the convenience store after the shooting. He noticed that someone broke into the cabinet holding the surveillance video recorder and that the surveillance videotape was gone. Ansar also found that money was missing from a cash register and the safe and estimated that \$11,000 was stolen. He testified that a photograph that police took after the shooting depicted the store's gun in its usual spot.

{¶8} Fingerprint expert Robert Lawson testified that fingerprints lifted from the handle of the cabinet in the convenience store office matched those of appellant.

Detective Vince Houpe interviewed appellant. The interview was audio-recorded, and the prosecution played the recording at trial. Appellant stated the following during the interview. Appellant was at the convenience store when he had "this little issue with these little peoples." (Vol. II Tr. 288.) Appellant retrieved a gun, returned to the store and engaged in a "shoot-out." (Vol. II Tr. 290.) Appellant went in the convenience store and asked the clerk if he could hide, but the clerk pointed a gun at appellant and ordered him out of the store, at which point appellant shot the clerk. Appellant ran outside the store and saw two men, one of whom was Darnell Freeman who owned the gun appellant retrieved. At their suggestion, appellant went back inside the store and stole money from the cash register and the back office. He denied stealing the videotape, however. He did not flee to the nearby apartments. Instead, appellant left the store in a car with Freeman, and he and Freeman split the stolen money. Appellant was wearing a brown shirt, tan shorts, and Nike Air Force One shoes.

{¶9} The prosecution rested its case. Appellant raised a Crim.R. 29 motion for acquittal, and the court denied the motion.

{¶10} Crystal Ray, testifying for the defense, stated that, on May 4, 2007, she was across the street from the convenience store when she saw a man wearing a gray shirt and black jeans "waving his arms and yelling profanity, trying to entice [Aslam] out of the store." (Vol. II Tr. 335.) Later, Ray saw a television news report about the shooting at the convenience store.

{¶11} The defense rested. The jury found appellant guilty of aggravated murder and aggravated robbery with the accompanying firearm specifications, but not guilty of

tampering with evidence. The court found appellant guilty of having a weapon under disability.

{¶12} Appellant appeals, raising the following assignment of error:

THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE DEFENDANT ON THE CHARGE OF AGGRAVATED MURDER WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE CONVICTION AND THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE ON AN ESSENTIAL ELEMENT OF THE OFFENSE.

{¶13} Appellant first asserts that his aggravated murder conviction is based on insufficient evidence. We disagree.

{¶14} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶15} The prosecution alleged that appellant committed aggravated murder under R.C. 2903.01(B) by purposely causing Aslam's death "while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit" aggravated robbery. Appellant does not challenge the evidence that proved that he killed Aslam or that he committed aggravated robbery. Instead, appellant argues that the killing does not fall under the definition of aggravated murder because he killed Aslam before he committed the aggravated robbery. To support his interpretation of the aggravated murder statute, appellant relies on R.C. 2901.04(A), which requires that statutes be strictly construed against the state and liberally construed in favor of the accused. We reject appellant's interpretation.

{¶16} "The term 'while' in R.C. 2903.01(B), Ohio's felony-murder statute, neither requires that the killing occur at the same instant as the predicate felony, nor requires that the killing be caused by the predicate felony. Rather, the killing must be directly associated with the predicate felony as part of one continuous occurrence." *State v. McNeill* (1998), 83 Ohio St.3d 438, 440, 1998-Ohio-293, citing *State v. Coe* (1989), 46 Ohio St.3d 20, 23. "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)." *McNeill* at 440, citing *State v. Smith* (1991), 61 Ohio St.3d 284, 290. "[T]he question whether [the defendant] killed before he stole or stole [or attempted to steal] before he killed is of no consequence." (Bracketed material sic.) *McNeill* at 440-41, quoting *State v. Palmer*, 80 Ohio St.3d 543, 571, 1997-Ohio-312. "A robber cannot avoid the effect of the felony-murder rule by first killing a victim, watching her die, and

then stealing her property after the death." *Smith* at 290, citing *State v. Jester* (1987), 32 Ohio St.3d 147, 151-52, and *Conrad v. State* (1906), 75 Ohio St. 52.

{¶17} Appellant also argues that the evidence failed to establish that the killing and aggravated robbery were part of one continuous occurrence. We look to whether "[t]he sequence of events \* \* \* examined in light of time, place, and causal connection, amounts to 'one continuous occurrence.'" See *McNeill* at 441. In *McNeill*, the Supreme Court of Ohio upheld an aggravated murder conviction because the homicide and the predicate felony were closely connected in time, and the two crimes occurred in the same place. *Id.* The court also recognized that one crime "would not and could not have occurred but for" the other. *Id.* Relying on *McNeill*, and construing the evidence in a light most favorable to the prosecution, we conclude that the jury could have properly concluded that appellant killed Aslam as part of a continuous occurrence with the aggravated robbery of Convenient Plus Food Mart given that (1) appellant's own confession and Colbourn's testimony about the timing of events established the temporal proximity of the crimes, (2) both crimes occurred in the same location, and (3) appellant's shooting Aslam enabled him to rob the convenience store.

{¶18} Accordingly, sufficient evidence proved that appellant committed aggravated murder when he killed Aslam. Next, appellant argues that his aggravated murder conviction is against the manifest weight of the evidence. We disagree.

{¶19} In determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.'" *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we 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." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact \* \* \* unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶20} Appellant argues that his statement to Houpe weighs heavily against his aggravated murder conviction because he said that he left the store after he shot Aslam and did not return to rob it until after the urging of two other men he talked with outside. Although the prosecution's testimonial and physical evidence gave the jury ample reason to believe appellant's admission that he shot Aslam and robbed the convenience store, it was within the province of the jury to conclude that appellant lacked credibility when he described how the incidents transpired. *State v. Johnson*, 10th Dist. No. 06AP-67, 2007-Ohio-2385, ¶69 (stating that a jury is free to believe all, some or none of a defendant's statements in a police interview). In any event, the jury could have properly found appellant guilty of aggravated murder even if it accepted his claim about how the crimes transpired. "Appellant's intent to steal need not have preceded the murder for purposes of R.C. 2903.01(B)." *State v. Biros*, 78 Ohio St.3d 426, 451, 1997-Ohio-204, citing *State v. Williams*, 74 Ohio St.3d 569, 1996-Ohio-91. "Appellant cannot

escape the effect of the felony-murder rule by claiming that the aggravated robbery was simply an afterthought." *Biros* at 451. Even accepting the truth to all of appellant's confession, it remains that the timing, location, and "causal connection" of appellant's crimes established that he killed Aslam as part of a continuous occurrence with the aggravated robbery of the convenience store. Therefore, appellant's aggravated murder conviction is not against the manifest weight of the evidence.

{¶21} In summary, appellant's aggravated murder conviction is neither based on insufficient evidence nor against the manifest weight of the evidence. Consequently, we overrule appellant's single assignment of error, and we affirm the judgments of the Franklin County Court of Common Pleas.

*Judgments affirmed.*

BROWN and CONNOR, JJ., concur.

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