

[Cite as *State v. Champion*, 2010-Ohio-2390.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO

:

Plaintiff-Appellee

CASE NO. 23451

:

C.A.

T.C. NO. 2008 CR 2164  
2008 CR 2904

ANGELO J. CHAMPION

:

Defendant-Appellant

(Criminal appeal from  
Common  
Pleas Court)

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**OPINION**

Rendered on the 28<sup>th</sup> day of May, 2010.

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FROELICH, J.

{¶ 1} Angelo J. Champion was convicted after a jury trial in the Montgomery County Court of Common Pleas of one count of domestic violence, a third degree felony, in Case No. 2008 CR 2164. This charge arose from an altercation between Champion and his then-girlfriend,

Angelia Tool, which occurred on May 22, 2008. The same jury acquitted Champion of a second charge of domestic violence (Case No. 2008 CR 2904), which arose from an altercation between Champion and Tool on July 18, 2008. The trial court sentenced him to four years in prison in Case No. 2008 CR 2164.

{¶ 2} Champion appeals from both judgments, claiming that the trial court erred in instructing the jury on complicity. Because Champion was acquitted of domestic violence in Case No. 2008 CR 2904, any error in the trial court's jury instructions could not have affected Champion's substantial rights and was harmless in that case. Crim.R. 52(A); *State v. Powell*, 176 Ohio App.3d 28, 2008-Ohio-1316, ¶15. The judgment in Case No. 2008 CR 2904 will be affirmed, and we will not discuss that matter further.

{¶ 3} As for Case No. 2008 CR 2164, we conclude that the trial court properly instructed the jury on complicity, in light of the evidence presented at trial. Accordingly, the trial court's judgment in Case No. 2008 CR 2164 will be affirmed.

#### I.

{¶ 4} The State's evidence regarding the May 22, 2008, domestic violence charge established the following facts.

{¶ 5} Champion met Angelia Tool in 2005. They lived together for approximately two years and, in November 2007, the two had a son. Tool also had a child from a prior relationship.

{¶ 6} At approximately 4:00 p.m. on May 22, 2008, Champion and Tool were at their residence on Iddings Court when they began to argue about another woman. Tool, however, needed to leave to go to Southwestern College, where she was taking classes. Instead of permitting Champion to drop her off and keep the car while she was at school, she decided to drop him off elsewhere. Champion was "very mad" that he would not have access to Tool's car. Tool

got in her car with Champion, the two children, and her neighbor, April Turner, with whom she regularly rode to school. Tool asked Turner to sit up front, because she (Tool) was nervous. Tool stated that she was nervous, because “every time we argue he [Champion] put his hands on me.” Champion rode with the children in the rear passenger compartment, seated behind Turner. Tool drove Champion to his cousin’s house at 648 Anna Street in Dayton.

{¶ 7} During the drive, Champion called Tool a “whore” and a “slut” and cursed at her. Tool testified that Champion “called some girl on the phone” and told her, “I’ll pay you \$50 soon as we pull up, to beat the fuck out of this bitch when we pull up.” After arguing more with Tool, Champion called the woman back and said, “Well, I got a hundred dollars for you to jerk the bitch out of the car soon as we pull up, ‘cause she ain’t gonna get out.”

{¶ 8} When they arrived at the house on Anna Street, Tool put the car in “Park” so Champion could exit the car. Champion told Tool to get out, but Tool refused. Champion reached over the back seat and repeatedly punched Tool in the back of her head. Tool bent over and tried to protect her face. The oldest child started screaming and crying, and he begged Champion, “Please don’t hit my mom.” Turner got out of the front passenger seat and got the oldest child out of the car. When Turner did so, Champion got out of the back of the car and sat in the front passenger seat that Turner had vacated. Champion hit Tool some more, pulled her hair and tried to get her out of the car by her hair. Tool spun her legs around and tried to kick Champion out of the car. During the altercation, Champion grabbed Tool’s car keys from the ignition.

{¶ 9} Champion let go of Tool and went around to the driver’s side of the car. He reached through the partially-opened driver’s window and grabbed Tool by the hair. Champion punched Tool through the window and banged her head against the window. When Tool “thought

[she] was gonna pass out,” Champion tried to kick out the driver’s side window and tossed her car keys in her lap. Tool suffered bruises and scratches, and her shirt was ripped as a result of Champion’s conduct.

{¶ 10} Turner and the oldest child got back in the car, and Tool drove a short distance down the street. Tool then stopped and ordered Turner out of the car, because Tool believed that Turner had not tried “to help [Tool] get him off of me or anything.” As Tool drove off, she saw Champion running toward the car, carrying a car exhaust. Tool called the police and met them at a nearby gas station.

{¶ 11} The State presented evidence that Champion had two prior convictions for domestic violence. Champion did not dispute that he had these prior convictions.

{¶ 12} Champion testified on his own behalf at trial. He admitted that he argued with Tool at their apartment. The argument continued while he was in the back seat of Tool’s vehicle with the two children and Turner was in the front seat. Champion stated that Tool had reached into the back seat, grabbed his hat from his head, and threw it out the window. Champion testified that he then got upset and called a friend, Shonda, and “offered her some money to do something to her, put her hands on her, basically beat – fight her for me \*\*\*.” Champion further acknowledged that, after Champion and Tool continued to argue, Champion called Shonda and “upped the price” for Shonda to “jerk [Tool] out of the car and beat her up.”

{¶ 13} According to Champion, upon their arrival at 648 Anna Street, Tool refused to come out of the car and fight. Champion reached over the seat and grabbed Tool’s car keys. Shonda then came round to the driver’s side of the car and starting assaulting Tool. Shonda opened the door and the women fought in the street. Champion’s cousin, Clayton Bloodshaw, tried to pull Shonda away, but Champion interceded and told Bloodshaw to let them fight. After

the altercation ended, Tool got in her car, backed it up, and told Champion that she was calling the police and “[b]oth of ya’ll are going to mother fucking jail.” Tool pulled away. At the end of the street, she had Turner get out of the car. Turner walked home.

{¶ 14} On August 27, 2008, Champion was indicted for domestic violence in Case No. 2008 CR 2164, based on the events of May 22, 2008. Upon the State’s motion, the trial court consolidated Case No. 2008 CR 2164 with Case No. 2008 CR 2904, concerning allegations of domestic violence against Tool on July 18, 2008, for trial. The two cases were tried on February 23, 2009. However, due to conduct by Champion, defense counsel requested to be removed from the case; that request was granted, and the court ordered a mistrial. New defense counsel was appointed.

{¶ 15} A second trial began on April 29, 2009. After all of the evidence had been presented, the trial court instructed the jury on the relevant law. With respect to the May 22, 2008, charge, the court instructed the jury on complicity, over defense counsel’s objection, as follows:

{¶ 16} “Now regarding the May 22<sup>nd</sup>, 2008 charge, the law provides two ways in which a [sic] criminal responsibility may be placed upon the Defendant. First, that the Defendant was the principal offender, that is, the Defendant did all the acts which make up all the elements of the particular offense charged in the indictment.

{¶ 17} “The other way for placing criminal responsibility on the Defendant is that the Defendant aided and abetted one or more persons in committing an offense or offenses, knowing that he was facilitating the offense charged in the indictment.

{¶ 18} “Whether the defendant is the principal offender or an aider and abetter, the State must prove each and every element of an offense beyond a reasonable doubt before the Defendant can be found guilty of this offense. If you find that the State proved beyond a reasonable doubt

that the Defendant committed all of the essential elements of the offense charged in the indictment, your verdict must be guilty as to that offense. Or if you find beyond a reasonable doubt that another person or persons committed the offense charged in the indictment, you may consider whether or not the Defendant aided and abetted such person or persons in the commission of the offense.

{¶ 19} “An aider and abettor is a person who purposely aids, helps, assists, encourages or directs themselves with another person or persons for the purpose of committing an offense. An aider and abettor is regarded as if he were the principal offender, and is just as guilty as if he personally performed every act constituting the offense.

{¶ 20} “When two or more persons have a common purpose to commit a crime, and one does one part and another performs another part, those acting together are equally guilty of the crime. A person acts purposely when it is his specific intention to cause a certain result. Before you can find the Defendant guilty as an aider and abettor, it must be established that there was present in the mind of the Defendant a specific intention to aid and abet another in the commission of the offense charged in the indictment.

{¶ 21} “The mere association with one who perpetrates an unlawful act does not render a person or a participant in the crime so long as his acts are innocent.”

{¶ 22} Defense counsel renewed his objection to the complicity instruction at the conclusion of the court’s reading of the instructions to the jury.

{¶ 23} After consideration of the evidence, the jury found Champion to be guilty of domestic violence and that he had pled guilty or been convicted of domestic violence in two prior cases. Champion moved for a judgment of acquittal or a new trial, claiming that the trial court erred in instructing the jury on complicity. The trial court overruled the motion. Champion was

sentenced accordingly.

{¶ 24} Champion appeals from his conviction.

## II.

{¶ 25} Champion's sole assignment of error states:

{¶ 26} "THE TRIAL COURT ERRED WHEN IT INCORRECTLY INSTRUCTED THE JURY REGARDING A MATTER OF LAW."

{¶ 27} Champion claims that the trial court erred in instructing the jury on complicity, because there was no evidence that the person who Champion paid to assault Tool was a family or household member of the victim. Champion states that "the offense which [he] was aiding or encouraging another to commit is assault, and while [he] may be found guilty as though he were the principle [sic] offender, he may only be found guilty of the actual offense he aided or encouraged."

{¶ 28} The verdict form does not indicate whether the jury found Champion guilty of domestic violence as a principal offender, i.e., based on his own assault of Tool, or as an aider and abetter, i.e., based on his having paid Shonda to assault Tool. We cannot determine whether the jury believed Tool's testimony, which was corroborated by Turner, that Champion had assaulted her in her car or, instead, accepted Champion's testimony that he had paid Shonda to assault Tool at 648 Anna Street and that Shonda had done so.

{¶ 29} "A criminal defendant has the right to expect that the trial court will give complete jury instructions on all issues raised by the evidence." *State v. Williford* (1990), 49 Ohio St.3d 247, 251; *State v. Mullins*, Montgomery App. No. 22301, 2008-Ohio-2892, ¶9. As a corollary, a court should not give an instruction unless it is specifically applicable to the facts in the case. *State v. Fritz*, 163 Ohio App.3d 276, 2005-Ohio-4736, ¶19. The decision to give a requested jury

instruction is a matter left to the sound discretion of the trial court, and the court's decision will not be disturbed on appeal absent an abuse of discretion. *State v. Davis*, Montgomery App. No. 21904, 2007-Ohio-6680, ¶14.

{¶ 30} When reviewing a trial court's jury instructions, an appellate court must consider the instructions as a whole, rather than viewing an instruction in isolation, and then determine whether the jury charge probably misled the jury in a matter materially affecting the complaining party's substantial rights. *State v. Crawford*, Montgomery App. No. 22314, 2008-Ohio-4008, ¶36, citing *Becker v. Lake Cty. Mem. Hosp. West* (1990), 53 Ohio St.3d 202. An appellate court will not reverse a conviction due to an erroneous jury instruction unless the error was so prejudicial that it might have induced an erroneous verdict. *Id.*

{¶ 31} Champion was found guilty of domestic violence, in violation of R.C. 2919.25(A), which provides: "No person shall knowingly cause or attempt to cause physical harm to a family or household member." "Family or household member" includes "[a] spouse, a person living as a spouse, or a former spouse of the offender" who is or has resided with the offender, R.C. 2919.25(F)(1)(a)(i), and "[t]he natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent," R.C. 2919.25(F)(1)(b). On May 22, 2008, Champion resided with Tool, and they had a child together. Accordingly, Tool was a family or household member of Champion, within the meaning of R.C. 2919.25.

{¶ 32} R.C. 2923.03(A), the complicity statute, provides: "No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

{¶ 33} "(1) Solicit or procure another to commit the offense;

{¶ 34} "(2) Aid or abet another in committing the offense;

{¶ 35} "(3) Conspire with another to commit the offense in violation of section 2923.01 of

the Revised Code;

{¶ 36} “(4) Cause an innocent or irresponsible person to commit the offense.”

{¶ 37} To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the section under which the jury was charged, “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*, 93 Ohio St.3d 240, 245, 2001-Ohio-1336; *State v. Wilson*, Montgomery App. No. 22581, 2009-Ohio-525, ¶27. A person who is complicit in an offense may be charged and punished as if he were the principal offender, and a charge of complicity may be stated under R.C. 2923.03 or in terms of the principal offense. R.C. 2923.03(F).

{¶ 38} The State asserts that Champion’s testimony, if believed, supported a finding that Champion committed complicity to commit domestic violence. The State argues that Champion’s testimony “squarely established that he was a family or household member of [Tool]. At trial, Champion tried to escape responsibility for his crime by claiming that Shonda delivered the punches. But Champion’s culpability is not lessened because he did not actually use his own fists to assault [Tool]. He might as well have. \*\*\* He fully accomplished his goal of beating [Tool]. He just did it by using Shonda in place of his own hands and feet. Shonda was merely a mechanism used by Champion to assault [Tool]. Consequently, the trial court correctly focused on his relationship to [Tool], not Shonda’s, when considering whether to give the complicity instruction. \*\*\*”

{¶ 39} As Justice Story once wrote, “it is the known and familiar principle of criminal jurisprudence, that he who commands, or procures a crime to be done, if it is done, is guilty of the

crime, and the act is his act. This is so true, that even the agent may be innocent, when the procurer or principal may be convicted of guilt, as in the case of infants, or idiots, employed to administer poison.” *United States v. Gooding* (1827), 25 U.S. (12 Wheat.) 460, 469, 6 L.Ed. 693. This “familiar principle” is codified in R.C. 2923.03(A)(4). This principle also holds true when the agent is a willing participant; under such circumstances, the one who procures the act and his accomplice may both be culpable for the act under R.C. 2923.03(A)(2), the section under which the trial court instructed in this case.

{¶ 40} Even accepting Champion’s testimony that he did not touch Tool and that Shonda assaulted her, Champion’s testimony established that he called Shonda and that Shonda had acted at his direction. By requesting that Shonda assault Tool for him, Champion had the mens rea to knowingly cause physical harm to Tool, and he encouraged and directed Shonda to cause physical harm to his then-girlfriend. By using another to act in his place Champion was the cause of Tool’s physical harm, and he remains culpable for domestic violence.

{¶ 41} We appreciate Champion’s argument that a detailed parsing of the court’s instructions could suggest that Champion aided Shonda, as opposed to Shonda’s having aided Champion, and that since Shonda could not be guilty as the principal, Champion cannot be guilty of aiding her. And we agree that the instructions should have been clearer and more precise. However, reading the instructions as a whole, we cannot say the jury was misled in a manner materially affecting Champion’s rights. The jury heard different versions of the events and had sufficient evidence to find either that Champion personally committed the assault or that he procured or aided another to commit it for him.

{¶ 42} The assignment of error is overruled.

### III.

{¶ 43} The judgment of the trial court will be affirmed.

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FAIN, J. and WILLAMOWSKI, J., concur.

(Hon. John R. Willamowski, Third Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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