

[Cite as *State v. Smith*, 2015-Ohio-1328.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26116
	:	
v.	:	T.C. NO. 13CR3150
	:	
ALEX L. J. SMITH	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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**OPINION**

Rendered on the 3rd day of April, 2015.

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HALL, J.

{¶ 1} Alex L.J. Smith appeals from his conviction and sentence on one count of aggravated robbery.

{¶ 2} In his two assignments of error, Smith challenges the legal sufficiency and manifest weight of the evidence to sustain his conviction.

{¶ 3} The present appeal involves a carjacking in the early morning hours of

October 3, 2013. One of the State's primary witnesses at trial was Adrian Harrell, who was riding in a Jeep driven by Joshua, his younger brother. Harrell testified that the two men were in the vicinity of North Main Street and Laura Avenue in Dayton when they saw a pedestrian later identified as Caleb Willis.<sup>1</sup> Harrell testified that Willis was waving his arms and appeared to be in distress. Harrell's brother stopped the Jeep to offer help. According to Harrell, Willis approached the Jeep, fired a handgun, and ordered the two men out of the vehicle. Joshua immediately exited and fled. Harrell attempted to grab his cell phone before fleeing, but Willis ordered him to leave it. Harrell complied and ran away leaving behind the phone, money, his identification, and a bag of dog food.

{¶ 4} Harrell quickly flagged down a Dayton police cruiser and told Officer Melissa Schloss what had happened. Schloss transmitted a description of Willis and the stolen vehicle over her radio. She then took Harrell back to the scene of the robbery, where she found a spent nine-millimeter shell casing in the road. Another officer, Adam Sharp, saw the stolen Jeep and followed it. Assisted by Schloss, he attempted a traffic stop. When he activated his overhead lights, two men jumped from the moving Jeep and ran. As they did so, he noticed that they were wearing blue latex gloves. Additional officers soon arrived in the area with a K-9 dog. Shortly thereafter, Officers Creigee Coleman and Joseph Heyob found Smith hiding in a window well behind a residence. The officers found Harrell's identification in Smith's possession. They also noticed blue latex glove material around Smith's wrists. In the immediate area, they found a pair of rubber gloves that had been torn around the wrist.

{¶ 5} Following the incident, Harrell reviewed a photo spread and identified Willis

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<sup>1</sup> Willis is referred to by the nickname "Whisper" in the parties' briefs and in the trial transcript.

as the person who stole the Jeep at gunpoint. Detective Debra Ritchey testified that she interviewed Smith after his arrest. He initially told her that Willis had arrived at his house in a stolen Jeep and had asked him to drive it. According to Ritchey, Smith stated that he went next door to his girlfriend's house and retrieved blue latex gloves for himself and Willis. He then got into the stolen vehicle with Willis and a third person identified as "Wiggles." Smith told Ritchey that he continued to drive around with Willis when Wiggles later left. He and Willis then "bailed" from the car when police tried to stop it.

{¶ 6} Smith changed his story when Ritchey interviewed him again the following day. At that time, he agreed to "lay it all out" for her. He explained that he was at his girlfriend's house when Willis showed up and told him, "I have a lick and I need you to drive."<sup>2</sup> Smith proceeded to accompany Willis to a porch on Laura Avenue where the two men waited. According to Ritchey, Smith told her they were waiting for "the weed man to show up." Thereafter, a Jeep stopped in the middle of the road. Smith told the detective that he and Willis both got into the Jeep and that he "intended to buy \$20 worth of weed from this fella." Before any transaction could occur, however, Willis pulled out a handgun and ordered the driver to exit the Jeep. According to Ritchey, Smith told her "that's when [he] realized this was a lick and this was the car [he's] supposed to drive." (Trial Tr. at 296). After the driver exited the Jeep, Smith moved into the driver's seat to stop the rolling vehicle. (*Id.*). Smith told the detective that Willis then fired a shot. At that point, Smith drove the two of them to a vacant house where they had been staying. He proceeded to feed his dogs with dog food found in the Jeep. He also got latex gloves from his girlfriend's house. (*Id.* at 296-297). Smith and Willis then drove around wearing the gloves until

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<sup>2</sup> At trial, Ritchey explained that "a lick" was street slang meaning "you're going to do a robbery, you're going to do a burglary," or "you're going to rip somebody off."

police initiated the traffic stop and Smith was caught. (*Id.* at 297).

{¶ 7} For his part, Smith provided testimony from his girlfriend, Danielle Evans. She stated that Smith was with her prior to the incident in question. They were taking care of her one-year-old niece at her sister's house on North Main Street. At some point, Willis knocked on the door and Smith stepped outside. He then came back inside and told her he would be right back. Evans testified that she watched through a window as Smith got into a Jeep with Willis and drove away.

{¶ 8} In closing arguments, the State asserted that Smith was guilty of aggravated robbery with a firearm specification on a complicity theory. The jury found Smith guilty of aggravated robbery but acquitted him of the specification. At sentencing, the trial court imposed a four-year prison term. This appeal followed.

{¶ 9} In his first assignment of error, Smith challenges the legal sufficiency of the evidence to sustain his conviction. He contends the State presented insufficient evidence to prove that he purposely aided or abetted Willis in robbing the Harrell brothers at gunpoint. Even if we accept his statements to Detective Ritchey as true, Smith contends the record lacks evidence that he knew Willis intended to rob "the weed man" at gunpoint. Smith claims he entered the Jeep only intending to buy marijuana. He argues that he did not act with the purpose to aid or abet Willis even after realizing that stealing the Jeep was the "lick" and that the Jeep was the vehicle Willis had mentioned wanting him to drive. Smith maintains that he climbed into the driver's seat only to stop the Jeep from rolling. He further asserts that the record is devoid of evidence regarding his intent to aid or abet Willis by proceeding to drive the Jeep away from the scene. Smith insists there was "no time" for him "to form the specific intent to aid or abet" and that he "was simply reacting to

the unfortunate events that were unfolding around him.”

{¶ 10} When a defendant challenges the legal sufficiency of the evidence, he is arguing that the State presented inadequate evidence on an element of the offense to sustain the verdict as a matter of law. *State v. Hawn*, 138 Ohio App.3d 449, 471, 741 N.E.2d 594 (2d Dist.2000). “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.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 11} Upon review, we find legally sufficient evidence to sustain Smith’s conviction. The aggravated robbery statute, R.C. 2911.01(A)(1), provides that “[n]o person in attempting or committing a theft offense \* \* \* shall \* \* \* [h]ave a deadly weapon on or about the offender’s person or under the offender’s control and either display the weapon, brandish it, indicate that the offender possesses it, or use it.” As noted above, Smith was prosecuted as an accomplice. The complicity statute, R.C. 2923.03(A)(2), provides: “No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following: \* \* \* (2) [a]id or abet another in committing the offense.” 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). “To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), 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, 754 N.E.2d 796 (2001), at syllabus. In particular, “participation in criminal intent may be inferred from presence, companionship, and conduct before and after the offense is committed.” *Id.* at 245, quoting *State v. Pruett*, 28 Ohio App.2d 29, 34, 273 N.E.2d 884, 887 (4th Dist.1971).

{¶ 12} Here the record contains evidence that Smith knew Willis intended to do “a lick” and wanted him to assist as a driver. With this knowledge, Smith accompanied Willis to a porch to wait. Factually, what happened next is less clear. Harrell testified that he and his brother stopped their Jeep to help Willis, who was waiving as if in distress. According to Harrell, Willis pulled a gun and stole the Jeep. Harrell did not see anyone other than Willis. In his second statement to Detective Ritchey, however, Smith stated that he and Willis approached the Jeep. Smith claimed he intended to buy marijuana. Before he could do so, Willis stole the Jeep at gunpoint. Regardless of which factual scenario is true, Smith admitted to Ritchey that when Willis pulled the gun and took the Jeep he knew this was the “lick” and the Jeep was the vehicle he was supposed to drive. With that knowledge, Smith proceeded to get into the driver’s seat and transport Willis from the scene as Willis earlier had asked him to do. Because Smith admittedly knew (1) that Willis intended to do “a lick” and wanted him to drive and (2) that the theft of the Jeep was the “lick”, the record contains legally sufficient evidence to support a finding that Smith aided and abetted Willis with the requisite criminal intent when he drove the Jeep away. The first assignment of error is overruled.

{¶ 13} In his second assignment of error, Smith contends his aggravated robbery conviction is against the manifest weight of the evidence. In support, he notes that Adrian Harrell only reported seeing one perpetrator involved in the robbery, namely the gunman later identified as Willis. Smith also notes that in his first statement to Detective Ritchey he did not mention being involved in a robbery. Rather, he only admitted riding around in a Jeep that already had been stolen. Smith additionally relies on the testimony of his girlfriend, Evans, who recalled him leaving the house and getting into a Jeep with Willis. Smith then argues:

Three witnesses, including Mr. Smith, testified that Mr. Smith was not present during the aggravated robbery of [Adrian Harrell]. [Harrell] even testified, which was consistent with every report he has given to police, that he only believed one person was involved in robbing him and was not informed of a possible second person until he was interviewed by police. (Tr. page 249). When told about a possible second person, [Harrell] still was not able to provide police with any information pertaining to Mr. Smith, simply referencing a gold car he saw drive down the same street after the incident occurred. (Tr. page 254). In addition, [Harrell] saw Mr. Smith in the courtroom on the day he testified, yet he could only compare him to the man he saw that night, [Willis]. (Tr. page 260). Additionally, the story Mr. Smith told on October 4, 2013 was factually impossible given the consistent statements of [Harrell] and his subsequent testimony. Mr. Smith stated that he climbed into the passenger seat of the Jeep Compass. However, [Harrell] never saw Mr. Smith and even testified he was in the passenger

seat and his brother was the one driving. (Tr. page 249).

Further, evidence that the jury clearly lost its way is found in the inconsistent verdicts it rendered. At the conclusion of the trial, the jury found Mr. Smith guilty of aggravated robbery, having found a deadly weapon was used or brandished during the course of the theft of [Harrell's] vehicle. However, the jury acquitted Mr. Smith of the attached firearm specification. After considering all of the evidence presented as to Mr. Smith's lack of involvement, it is clear the factfinders lost their way and created such a manifest miscarriage of justice that the conviction must be reversed.

(Appellant's brief at 13-14).

**{¶ 14}** When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A judgment should be reversed as being against the manifest weight of the evidence "only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

**{¶ 15}** Here we do not find that Smith's conviction is against the weight of the evidence. Smith relies heavily on the fact that Harrell did not see him when the Jeep was stolen. This does not mean, of course, that Smith was not there. In his second statement



to Detective Ritchey, Smith admitted being present when Willis stole the Jeep at gunpoint. We acknowledge that Harrell likely would have noticed Smith if the robbery had occurred in the context of a planned marijuana purchase, as Smith described to Ritchey. But if the robbery occurred in the context of Willis feigning distress, as Harrell testified, Smith easily could have been present but unnoticed in the background. In its role as trier of fact, the jury had discretion to reach this conclusion. The jury also had discretion to accept as true Smith's statements to Ritchey about knowing (1) that Willis intended to do "a lick" and wanted him to drive and (2) that the theft of the Jeep was the "lick." Finally, the jury had discretion to accept as true Smith's statement to Ritchey that he drove Willis away from the scene and to find that Smith aided and abetted Willis with the requisite criminal intent when he did so.

**{¶ 16}** Although Smith claims "three witnesses" testified he was not present when the Jeep was stolen, this is not accurate. These witnesses apparently are Harrell, Smith (who did not testify but whose statements were introduced through Detective Ritchey), and Evans, his girlfriend. But Harrell did not say Smith was not present. He simply did not see anyone other than Willis. As for Smith, Ritchey testified about two statements he made to her. In the first, he claimed to have been picked up by Willis in a Jeep that already had been stolen. This statement is largely consistent with Evans' trial testimony. In his second statement, however, Smith admitted being present when Willis stole the Jeep. As explained above, the jury had discretion to accept this statement as true. The jury also reasonably could have found that Smith aided and abetted Willis by driving the stolen vehicle away from the crime scene.

**{¶ 17}** Finally, Smith's argument about inconsistent verdicts fails to establish that

his aggravated robbery conviction is against the weight of the evidence. Smith bases his argument on the fact that the jury acquitted him of a firearm specification but convicted him of aggravated robbery (deadly weapon) based on Willis' use of a firearm. This argument lacks merit. "It is well-established by courts in Ohio that 'a finding of guilty on a principal charge but not guilty on a specification attached to the charge does not render the verdict inconsistent and thus invalidate the guilty verdict on the principal charge, at least where legally sufficient evidence supports the guilty verdict on the principal charge.'" *State v. Ortega*, 2d Dist. Montgomery No. 22056, 2008-Ohio-1164, ¶ 17, quoting *State v. Gardner*, 2d Dist. Montgomery No. 21027, 2006-Ohio-1130, ¶ 32. Although we do not know why the jury acquitted Smith on the firearm specification, doing so did not render his aggravated robbery conviction against the weight of the evidence.<sup>3</sup> The second assignment of error is overruled.

**{¶ 18}** The judgment of the Montgomery County Common Pleas Court is affirmed.

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FAIN, J. and WELBAUM, J., concur.

Copies mailed to:

Tiffany C. Allen  
Bradley S. Baldwin  
Hon. Dennis J. Langer

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<sup>3</sup> During deliberations, the jury expressed uncertainty about whether Smith could be found guilty on the firearm specification, as opposed to the substantive aggravated robbery charge, as an accomplice. (Trial Tr. at 405). This may be the reason for his acquittal on the specification.