

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1191

Appellee

Trial Court No. CR0200803329

v.

Dana Rister

DECISION AND JUDGMENT

Appellant

Decided: February 10, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Timothy Young, State Public Defender, and Craig M. Jaquith, Assistant State
Public Defender, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Dana Rister, appeals from his conviction in the Lucas County
Court of Common Pleas on one count of murder in violation of R.C. 2903.02(A).

Because we conclude that the trial court's decision was not against the manifest weight of the evidence, we affirm.

{¶ 2} The Toledo police were called to a shed near the former Southwyck Mall in Toledo, Ohio, on June 26, 2008, where they found the body of a 57 year-old woman. An autopsy revealed that the victim, Debra Pioterek, was manually strangled to death. The police had no suspects until September 8, 2008, when an informant called the police and indicated that appellant was involved. After police interviewed appellant's mother, stepfather, and girlfriend, an arrest warrant was issued on September 9, 2008, and served on appellant in San Bernardino, California, shortly thereafter.

{¶ 3} On October 3, 2008, appellant was named in a two count indictment for the murder of Debra Pioterek. Count I charged appellant with murder in violation of R.C. 2903.02(A). Count II charged appellant with felony murder in violation of R.C. 2903.02(B). Appellant's initial jury trial in April 2009 was ruled a mistrial after some technical difficulties involving a redacted DVD of the police interview with appellant. Subsequently, appellant waived his right to a jury trial.

{¶ 4} Appellant's bench trial began June 30, 2009. During the trial, a new DVD of appellant's interview with detectives from the San Bernardino County Sheriff's Office revealed the only firsthand account of the events of June 25, 2008, the night Pioterek was murdered. On the DVD, appellant disclosed the following.

{¶ 5} On June 25, 2008, appellant drank several beers throughout the course of the day and periodically urinated in the vicinity of a shed behind a nearby gas station.

He did not feel like walking home at the end of the day, so he walked back to the shed to sleep on a shelf on the wall. When he got there, Pioterek, already lying on the shelf, was startled and began screaming. Appellant started manually choking her to quiet her because he was afraid the police would be called, and a struggle between the two ensued. According to appellant, he released his stranglehold at some point, but Pioterek started screaming again, so he continued choking her. At some point before her death, Pioterek lost consciousness and stopped fighting back. Appellant stated that once he realized Pioterek was dead, he feared being caught by the police, so he made an aborted attempt to cut Pioterek's hands off so he would not be identified by his DNA. Soon thereafter, he moved to San Bernardino, California.

{¶ 6} Appellant was found guilty of murder in violation of R.C. 2903.02(A). He was sentenced to life in prison with the possibility of parole after 15 years.

{¶ 7} Appellant now appeals, setting forth the following assignment of error:

Dana Rister's conviction for murder was against the manifest weight of the evidence.

{¶ 8} In a criminal context, a verdict or finding may be overturned on appeal if it is either against the manifest weight of the evidence or because there is an insufficiency of evidence. Although appellant phrases his assignment of error in terms of manifest weight, in his argument he maintains that the state failed to prove the necessary mens rea for murder: purposefulness. Accordingly, we will address both manifest weight and the sufficiency of the evidence against appellant.

{¶ 9} In determining whether a verdict is against the manifest weight of the evidence, the appellate court determines whether the trier of fact ““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), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In doing this, the court weighs all credible evidence, and if the greater amount of credible evidence weighs on the state’s side, it is entitled to its verdict. *Id.* Manifest weight errors are only found in exceptional cases where the evidence weighs heavily against conviction. *Id.*

{¶ 10} In comparison to manifest weight, sufficiency of the evidence is a legal standard testing if the evidence submitted at trial is legally sufficient to support a verdict. *Id.* at 386-387. Specifically, we must decide here whether the state has presented evidence which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. The test is whether, “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.” *Id.*; *Thompkins* at 390 (Cook, J., concurring). *See also State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978); *State v. Barnes*, 25 Ohio St.3d 203, 495 N.E.2d 922 (1986). Sufficiency errors are generally found if reasonable minds could not arrive at the same conclusion as reached by the trier of fact. *Jenks* at 273.

{¶ 11} Appellant was convicted under R.C. 2903.02(A), which states, “No person shall purposely cause the death of another * * *.” Therefore, to sustain appellant’s murder conviction with sufficient evidence, the state must have proven that appellant purposefully caused the death of Debra Pioterek. “A person acts purposely when it is his specific intention to cause a certain result[.]” R.C. 2901.22(A). Appellant maintained throughout the interview with the detectives that his purpose in strangling Pioterek was to prevent her from screaming, not to murder her, and that therefore, the trier of fact could not have found that each element of the charge against him was met. We disagree.

{¶ 12} The evidence here shows Pioterek was strangled to death, and there is both direct and circumstantial evidence indicating that appellant was the murderer. Direct evidence is evidence based on personal observation, including confessions. *State v. Nicely*, 39 Ohio St.3d 147, 529 N.E.2d 1236 (1988), paragraph one of the syllabus. Here, appellant presented direct evidence against himself when he confessed to killing Pioterek by strangling her to death. Circumstantial evidence is the proof of certain facts and circumstances in a given case, from which the trier of fact may infer other connected facts that usually and reasonably follow according to the common experience of mankind. *State v. Nobles*, 6th Dist. No. L-10-1172, 2011-Ohio-5041, ¶ 19. Here, the circumstantial evidence creates the inference that appellant purposefully strangled Pioterek to death, regardless of his initial motivation. Purposeful killing may be inferred simply from the act of manual strangulation. *State v. Kaeff*, 2d Dist. No. 20519, 2004-

Ohio-5288, ¶ 16; *State v. Schaffer*, 113 Ohio App. 125, 177 N.E.2d 534 (4th Dist.1960).

This is because, as the medical examiner testified, when a victim is strangled to death, at some point she will lose consciousness and be unable to fight back or make any noise.

To continue strangling the victim at that point gives rise to the inference that the purpose of appellant's action was to cause the death of Pioterek.

{¶ 13} "It is well settled that the state may rely on circumstantial evidence to prove an essential element of an offense, because circumstantial evidence and direct evidence inherently possess the same probative value." *Nobles* at ¶ 19; *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus, 574 N.E.2d 492. Therefore, the state may use circumstantial evidence to prove the element of purpose. *Nicely* at paragraph one of the syllabus; *State v. Heinisch*, 50 Ohio St.3d 231, 238, 553 N.E.2d 1026 (1990). A reasonable factfinder could find that the purpose of appellant's actions once Pioterek had lost consciousness was to cause her death. Therefore, each essential element of murder in violation of R.C. 2903.02(A) is met, and the evidence is sufficient to sustain appellant's conviction.

{¶ 14} Regarding the weight of the evidence, we find nothing to suggest the trial court lost its way. Uncontroverted evidence showed that appellant purposefully continued choking an unconscious Pioterek, eventually causing her death. The weight of the evidence weighs heavily in favor of sustaining the trial court's decision; accordingly, appellant's assignment of error is not well-taken.

{¶ 15} Although appellant did not assert this as an assignment of error, he argues that the trial court's verdict should be overturned because it did not make specific findings of fact regarding appellant's proposed alternative charge of involuntary manslaughter; accordingly, appellant argues that the trial court reached its verdict through an improper analysis. However, in a bench trial, the court is presumed to know the law and have considered any lesser offenses that are supported by the evidence. *State v. Buckley*, 8th Dist. No. 68419, 1995 WL 693113 (Nov. 22, 1995); *In re Z.C.*, 12th Dist. Nos. CA2005-06-065, CA2005-06-066, CA2005-06-081, CA2005-06-082, 2006-Ohio-1787, ¶ 30-31. Furthermore, the judge in a bench trial does not need to make a record of the fact that he considered lesser offenses and rejected them since Crim.R. 23(C) only requires the court to make a general finding of guilty or not guilty. *See State v. Walker*, 26 Ohio App.3d 29, 31, 498 N.E.2d 191 (8th Dist.1985) (discussing that Crim.R. 23 was modeled after Fed.R.Crim.P. 23, which only requires specific findings upon request); *State v. Avery*, 12th Dist. No. CA87-03-006, 1987 WL 20375 (Nov. 23, 1987).

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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