

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

State of Ohio

Court of Appeals No. L-11-1291

Appellee

Trial Court No. CR0201003248

v.

Alexander Osley

**DECISION AND JUDGMENT**

Appellant

Decided: June 28, 2013

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} Defendant-appellant, Alexander Osley, appeals the October 18, 2011 judgment of the Lucas County Court of Common Pleas which, following a jury trial and conviction for complicity in the commission of murder and complicity in the commission

of aggravated robbery, sentenced appellant to a total term of life imprisonment with parole eligibility after 15 years. For the reasons that follow, we affirm.

{¶ 2} On December 21, 2010, appellant and his cousin, Luis Osley, were indicted on one count of aggravated murder, R.C. 2903.01(B) and (F), one count of murder, R.C. 2903.02(B) and 2929.02, and one count of aggravated robbery, R.C. 2911.01(A)(1), all with firearm specifications. The charges stemmed from the December 11, 2010 shooting death of William Carswell, while he was working at the Main Street Exchange in Toledo, Lucas County, Ohio.

{¶ 3} On October 12, 2011, the case proceeded to a jury trial. The evidence presented by the state showed that on December 11, 2010, appellant and his cousin were together at a housing complex in east Toledo. After smoking a “blunt” or marijuana cigarette they walked to Main Street Exchange where used goods were bought and sold. Working at the Exchange was the victim, William (or Lamar) Carswell. William was legally blind. Also at the store was John Welch or “Shorty” who was an employee, though not officially working at the time, and lived in an upstairs apartment.

{¶ 4} Welch testified that although the store has a back door it is bolted and the store can only be accessed from the front. The only individual that had a key to the back was the owner and victim’s brother, Kevin Carswell. Welch stated that he left the store and was approached by appellant and Luis who were entering the store. Welch stated that one man had on a Carhartt coat and the other a blue, down-filled jacket.

{¶ 5} Welch quickly returned to the store and observed appellant and Luis discussing a swivel television set. Also in the store were the victim's fiancée, her friend, a neighborhood resident named Vito, and owner Keith Carswell.

{¶ 6} According to Welch, Vito had brought in a battery-operated black Santa Claus to sell but it did not have batteries. William sent Welch on foot to the nearby Rite Aid to get batteries. Welch stated that when he left the store only William, his brother Keith, and the Osleys remained. Welch stated that he did not have enough money for the batteries but remembered that he had some in his apartment. Welch stated that he returned to the building through the back alley where there is access to the above apartments. Returning to the store through the front entrance, Welch did not see anyone. He testified that he called out to William but got no response. Welch then proceeded towards the back of the store and spotted William lying on the floor. He dialed 9-1-1.

{¶ 7} Surveillance video from an adjacent building and across-the-street business was played for the jury while Welch identified the individuals entering and exiting the store. Significantly, at approximately, 4:03 to 4:05 p.m., the video depicts appellant exiting the store, looking around, reentering the store and then the two leaving and crossing the street. It appeared that Luis Osley had something under his jacket.

{¶ 8} Keith Carswell testified that on the day of the shooting he went to the Exchange to pick up some blank DVDs. When he arrived, appellant and his cousin were in the store. Keith stated that appellant approached him and asked if he would be

interested in purchasing a china cabinet. When Keith left after six to seven minutes, only the Osleys remained.

{¶ 9} James Carswell, known as Kevin Carswell, is part owner of the store. Kevin testified that the Exchange cannot be entered from the back because the door is bolted from the inside. Kevin testified that he did not notice anything missing after the shooting. He further stated that William had money and jewelry on his person at the autopsy.

{¶ 10} Toledo Police Detectives James Scott and Kermit Quinn interviewed appellant on December 15, 2010. The videotape of the interview was played for the jury. Appellant initially told the officers that an unknown individual was already in the back room of the store and he shot William. Appellant then admitted that it was his cousin that shot William but that he had no knowledge of a robbery plan. Appellant also stated that Luis would not give anything up from the robbery. Appellant stated that he stepped out of the front door, heard gunshots, and ran back in yelling “what the f\*\*k happened?” At that point, the two left the store and Luis’ girlfriend picked them up. Appellant admitted that prior to the police interview, appellant and Luis met to make sure their stories jibed. Appellant also admitted that they threw two spent shell casings down a sewer in south Toledo. Police proceeded to the location and recovered the casings.

{¶ 11} Following the conclusion of the testimony, the jury convicted appellant of complicity to murder and complicity to aggravated robbery. Appellant was sentenced to a 15 years to life term of imprisonment for the murder conviction and ten years of

imprisonment for the aggravated robbery conviction to be served concurrently. This appeal followed.

{¶ 12} Appellant raises three assignments of error:

- I. The evidence was insufficient to support a conviction.
- II. The state prejudiced appellant's right to have a fair trial by asserting appellant had a burden of proof.
- III. Prosecutor committed reversible error in failing to disclose a witness.

{¶ 13} Appellant's first assignment of error asserts that appellant's convictions for complicity to murder and complicity to aggravated robbery were supported by insufficient evidence. Sufficiency of the evidence is a "test of adequacy" and a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "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.

{¶ 14} Murder, R.C. 2903.02(A), provides in relevant part that "[n]o person shall purposely cause the death of another." Ohio's complicity statute, R.C. 2923.03, provides that "[n]o person, acting with the kind of culpability required for the commission of an offense, shall \* \* \* [a]id or abet another in committing the offense." R.C. 2923.03(A)(2). To prove complicity, 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.” *State v. Johnson*, 93 Ohio St.3d 240, 754 N.E.2d 796 (2001), syllabus. Intent may be inferred from the circumstances surrounding the crime. *Id.* “[P]articipation 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 (4th Dist.1971).

{¶ 15} In the present case, during the commission of the offenses, appellant walked out of the store, looked around, returned to the store and then left with Luis. After the offenses, appellant helped dispose of the shell casings and met with Luis in order to fabricate a story for the police. When interviewed by police, appellant initially lied and attempted to blame an unknown third individual. Taking these facts together, we find that sufficient evidence supported appellant’s convictions. Appellant’s first assignment of error is not well-taken.

{¶ 16} In his second assignment of error, appellant argues that the trial court erroneously overruled defense counsel’s objection to comments made by the prosecutor during his opening statement. The comments provided:

And you’ll hear Alexander Osley tell Detective Quinn and Detective Scott that at that point when Lamar turned his back and started to walk toward the back of the store he saw his cousin pull what appeared to be a silver colored handgun from behind him, hold it up and Lamar Carswell

was not looking toward them, and watched Luis Osley follow Lamar Carswell to the back of the store. The evidence is going to establish that Alexander Osley made no attempt to stop Luis –

Mr. Wingate: Your Honor, I'm going to object.

\* \* \* [a bench conference was held]

THE COURT: What is the basis?

Mr. Wingate: Your Honor, that is inappropriate. He's now putting a duty on the defendant to act in a manner to stop this from happening as opposed to complicity that he aided and abetted.

THE COURT: Well, the point is this, it's in furtherance of the complicity.

Mr. Wingate: That he didn't stop him?

THE COURT: No, he said he did nothing. And in other words, if he is saying he didn't know what was going on, when he hears shots, it's not that he's guilty of any offense, but it is as relates to his conduct, not his guilt. \* \* \*.

{¶ 17} The objection was then overruled. The jury was reminded that opening statements are not to be considered as evidence. Further, while instructing the jury on aiding and abetting, the court explained that “[t]he mere presence of an accused at the scene of a crime is not sufficient to prove in and of itself that the accused was with the aider and/or abettor.”

{¶ 18} Appellant argues that the above comments improperly placed, absent an affirmative defense, a burden of proof upon him at trial. Upon review, we find that any potential error in the prosecutor's statement was cured by the court's instructions to the jury. It is presumed that a jury will follow the instructions of the court. *See State v. Henderson*, 39 Ohio St.3d 24, 33, 528 N.E.2d 1237 (1988). Appellant's second assignment of error is not well-taken.

{¶ 19} In appellant's third assignment of error he argues that he was unfairly prejudiced by the state's failure to disclose witness Keith Carswell prior to trial. Reviewing the transcript, it appears that appellate counsel confused brothers Keith and Kevin. Trial counsel did object to Kevin, or James, Carswell's testimony arguing that he was not identified as a potential witness. Reviewing the record, Kevin was listed as a witness on the "State's Witness List" filed on March 29, 2011.

{¶ 20} Keith Carswell also testified. Based solely on the March 29 filing, it appears that he was not disclosed as a witness prior to trial. However, defense counsel did not object to his testimony. Thus, we review the failure to disclose a witness under a plain error standard. *State v. Caudill*, 6th Dist. No. WD-07-009, 2007-Ohio-1557, ¶ 46.

{¶ 21} During counsel's cross-examination, Keith was questioned about his December 11, 2010 interview with Detective Kermit Quinn. Based on counsel's line-of-questioning it is apparent that counsel received and reviewed the taped police interview; he was attempting to reveal inconsistencies between Keith's interview and his direct



testimony. Accordingly, appellant was not prejudiced by any failure to disclose.

Appellant's third assignment of error is not well-taken.

{¶ 22} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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