[Cite as *State v. Taylor*, 2011-Ohio-839.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95041

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE P. TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519865

BEFORE: Cooney, J., Boyle, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: February 24, 2011

ATTORNEY FOR APPELLANT

Britta M. Barthol
P.O. Box 218
Northfield, Ohio 44067

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Steven Gall
Margaret A. Troia
Assistant County Prosecutors
9th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Maurice P. Taylor ("Taylor"), appeals his convictions for murder, aggravated robbery, and receiving stolen property. Finding no merit to the appeal, we affirm.

{¶ 2} In January 2009, Taylor was charged in a five-count indictment. Count 1 charged him with murder and included firearm specifications. Count 2 charged him with aggravated robbery and included firearm specifications. Count 3 charged him with

tampering with evidence. Count 4 charged him with having a weapon while under disability. Finally, Count 5 charged him with receiving stolen property.

{¶ 3} Beginning in March 2010, Counts 1, 2, 3, and 5 were tried to a jury, while Count 4 was tried to the bench. At the conclusion of the State's case, Taylor moved for judgment of acquittal. The motion was granted as to Counts 3 and 4, but denied as to the remaining counts. The jury found Taylor guilty of Counts 1, 2, and 5, as well as the firearm specifications.

{¶ 4} On Count 1 — murder, Taylor was sentenced to 15 years to life in prison plus an additional three years for the firearm specifications to be served consecutively — for a total of 18 years incarceration. Count 2 — aggravated robbery, was merged into Count 1 for sentencing. On Count 5 — receiving stolen property, Taylor was sentenced to 18 months in prison to be served concurrently to the remainder of his sentence.

{¶ 5} Taylor now appeals, raising two assignments of error.

Manifest Weight of the Evidence

{¶ 6} In his first assignment of error, Taylor argues that his convictions are against the manifest weight of the evidence.

{¶ 7} A challenge to the manifest weight of the evidence attacks the verdict in light of the State's burden of proof beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 1997-Ohio-52, 678 N.E.2d 541. When inquiring into the manifest weight of the

evidence, the reviewing court sits as the "thirteenth juror and makes an independent review of the record." Id. at 387; *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652. The appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of all witnesses and determines 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 judgment must be reversed and a new proceeding ordered. *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. Where a judgment is supported by competent, credible evidence going to all essential elements to be proven, the judgment will not be reversed as being against the manifest weight of the evidence. *State v. Mattison* (1985), 23 Ohio App.3d 10, 14, 490 N.E.2d 926. Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶ 8} Taylor was convicted of murder, pursuant to R.C. 2903.02(B), which states: "[n]o person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code." Taylor was convicted of aggravated robbery, pursuant to R.C. 2911.01(A)(1), which states: "[n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the

following: (1) Have 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." Finally, Taylor was convicted of receiving stolen property, pursuant to R.C. 2913.51(A), which states: "[n]o person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense."

{¶ 9} Ohio's complicity statute, R.C. 2923.03(A), provides: "[n]o person, acting with the kind of culpability required for the commission of an offense, shall do any of the following: (2) Aid or abet another in committing the offense." In order to constitute aiding and abetting, the accused must have taken some role in causing the commission of the offense. *State v. Sims* (1983), 10 Ohio App.3d 56, 460 N.E.2d 672. A person aids or abets another when he supports, assists, encourages, cooperates with, advises, or incites the principal in the commission of the crime and shares the criminal intent of the principal. *State v. Johnson*, 93 Ohio St.3d 240, 245-246, 754 N.E.2d 796. "Such intent may be inferred from the circumstances surrounding the crime." Id. at 246.

{¶ 10} Aiding and abetting may be shown by both direct and circumstantial evidence, and participation may be inferred from presence, companionship, and conduct before and after the offense is committed. *State v. Cartellone* (1981), 3 Ohio App.3d 145, 150, 444 N.E.2d 68, citing *State v. Pruett* (1971), 28 Ohio App.2d 29, 34, 273 N.E.2d 884. Aiding and

abetting may also be established by overt acts of assistance such as driving a getaway car or serving as a lookout. Id. at 150. See *State v. Trocodaro* (1973), 36 Ohio App.2d 1, 301 N.E.2d 898.

{¶ 11} Taylor claims that his convictions are against the manifest weight of the evidence because no credible evidence was presented to prove that he provided the gun used in the robbery and murder.

{¶ 12} The State concedes that Taylor was not at the scene of the crime during the robbery and murder. The State argues that *but for* Taylor's providing the gun, no robbery or murder would have occurred. The State referred to Taylor as a co-conspirator acting in concert with the four young men who committed the robbery and murder.

{¶ 13} The following evidence was adduced at trial.

{¶ 14} On the night of November 28, 2008, four young men, Dennis Hutcherson ("Hutcherson"), Dorian Simpson ("Simpson"), Jerry Brown ("Brown"), and Dominic Kilgore ("Kilgore"), wanted to steal a vehicle with custom rims located in the parking lot of an apartment complex in Cleveland. The car belonged to Johnnie Boyd ("Boyd"), who was on duty as the security guard at the apartment complex that evening. During the course of the robbery, Kilgore shot and killed Boyd. Taylor was not present at the time of the robbery and shooting.

{¶ 15} Brown, a codefendant who pled guilty to involuntary manslaughter and was sentenced to 20 years in prison, testified that prior to the shooting, while planning the robbery, Kilgore stated that the group needed a gun in order to successfully steal the car and he knew where to get one. Kilgore then called Taylor and asked if they could borrow Taylor's gun for the purpose of stealing this car. Brown testified that the four men then drove to East 66th Street and Broadway Avenue, and met Taylor "on the street." Taylor then gave Kilgore a medium-sized silver gun.

{¶ 16} Brown testified that after Kilgore shot Boyd, Kilgore took Boyd's car keys. Brown and Kilgore then returned to East 66th Street and Broadway Avenue in Boyd's car to return the gun to Taylor. Brown testified that he and Kilgore then went with Taylor to see a man, who Taylor claimed could assist them in removing the rims from the car. However, this man was unable to help them remove the rims without a specific key. Brown, Kilgore, and Taylor then parked the stolen car in the garage of a nearby abandoned house.

{¶ 17} Brown testified that his plea agreement included the requirement that he testify against Taylor. His testimony was consistent with the statement he gave to police in 2009, prior to his plea.

{¶ 18} Hutcherson, another codefendant, also testified at trial. Hutcherson testified that he pled guilty to involuntary manslaughter and was sentenced to a juvenile facility until his 21st birthday. Hutcherson's version differed from Brown's in regard to the origin of the

murder weapon. In Hutcherson's original statement to police, he claimed that they drove to a location where Kilgore was given a gun by a "group of men on the corner." However, at trial, Hutcherson changed his story and said that Kilgore drove the four young men to his house, where he retrieved the gun. During the trial, he claimed that he had lied to the detective but his trial testimony is truthful. Hutcherson testified that the gun used to shoot Boyd was a silver revolver.

{¶ 19} The trial court instructed the jury to treat Hutcherson's and Brown's testimony with grave suspicion based on their status as codefendants.

{¶ 20} Ralph Townsend ("Townsend") testified that he knew Taylor from the Broadway neighborhood where they both lived. Townsend testified that Taylor and two young men came to his home one evening, sometime in November or December 2008, inquiring about selling some wheel rims. Taylor wanted Townsend's help in getting the rims off the car. Since Taylor and the other young men did not have the proper key to remove the rims, they needed a special tool. Townsend indicated he could obtain the correct tool within a few days. He testified that he assumed the car was stolen. Townsend also testified that after that night, he spoke with Taylor who told him that he and the young men had "put it up," meaning they had parked the car in the garage of an abandoned house. In addition, Townsend testified at trial and had informed police that he had seen Taylor in the past with a gun, specifically a chrome revolver.

{¶ 21} Taylor denied giving Kilgore a gun on the night in question. Taylor testified that he received a phone call from Kilgore regarding rims that Kilgore wanted to sell. Taylor met Kilgore and Brown on East 69th Street in the Broadway neighborhood, to look at the rims they mentioned. Taylor testified that Brown and Kilgore were driving a car they claimed Brown owned. Taylor admitted that they then went to Townsend seeking his assistance in removing the rims. Townsend was unable to help, and Taylor claims that Brown and Kilgore then left with the car. Taylor testified that he did not know the car had been stolen. Taylor admitted that he was untruthful in his initial statement to police in which he stated that he was not involved in any aspect of the crime.

{¶ 22} After a thorough review of the evidence, it is not apparent that the jury lost its way. Certain witnesses present contradictory evidence. However, such inconsistencies are for the trier of fact to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212. The jury was free to weigh the credibility of the witnesses in this case and choose to believe one witness over another. Taylor's conviction is not against the manifest weight of the evidence.

{¶ 23} Thus, his first assignment of error is overruled.

Mistrial

{¶ 24} In his second assignment of error, Taylor contends that the trial court erred in denying his motion for a mistrial.

{¶ 25} The standard of review for evaluating the trial court's decision on a motion for a mistrial is an abuse of discretion. *Cleveland v. Gonzalez*, Cuyahoga App. No. 85070, 2005-Ohio-4413; *State v. Garner*, 74 Ohio St.3d 49, 59, 1995-Ohio-168, 656 N.E.2d 623; *State v. Glover* (1988), 35 Ohio St.3d 18, 517 N.E.2d 900. In order to demonstrate an abuse of discretion on these matters, a criminal appellant must be able to show that the trial court's decision was arbitrary, unreasonable, or unconscionable. *State v. Nichols* (1993), 85 Ohio App.3d 65, 619 N.E.2d 80.

{¶ 26} A mistrial should not be ordered in a criminal case merely because some error or irregularity has occurred, unless the substantial rights of the accused or the prosecution are adversely affected, and this determination is made at the discretion of the trial court. *State v. Reynolds* (1988), 49 Ohio App.3d 27, 33, 550 N.E.2d 490. The granting of a mistrial is only necessary when a fair trial is no longer possible. *State v. Franklin* (1991), 62 Ohio St.3d 118, 127, 580 N.E.2d 1, citing *Illinois v. Somerville* (1973), 410 U.S. 458, 462-463, 93 S.Ct. 1066, 35 L.Ed.2d 425. Thus, the essential inquiry on a motion for mistrial is whether the substantial rights of the accused are adversely or materially affected. *State v. Goerndt*, Cuyahoga App. No. 88892, 2007-Ohio-4067.

{¶ 27} Prior to closing arguments in the instant case, the court addressed the jury and inquired whether any of the jurors had read the Plain Dealer article published the previous day that summarized the case. Four jurors replied affirmatively. After informing the jurors that

the article was not completely accurate, the court asked whether these jurors felt that they could judge the instant case independent of what was stated in the article. All four jurors replied that they could. The remaining jurors were instructed not to read the article, and all of the jurors were instructed not to discuss the article. Defense counsel requested that the trial court individually voir dire the four jurors; the trial court denied this request. Defense counsel's motion for a mistrial was denied.

{¶ 28} The article in question stated that Hutcherson, a codefendant who testified at trial, would be in a juvenile facility until his 21st birthday and perhaps serve up to an additional six years in prison after that.[1] During trial, however, Hutcherson testified that he had been sentenced only to juvenile prison until his 21st birthday. Defense counsel was concerned that Hutcherson's credibility might be negatively impacted by the inconsistency regarding the additional six-year sentence.

{¶ 29} "The trial judge has a large discretion in ruling on the issue of prejudice resulting from the reading by jurors of news articles concerning a trial." *Marshall v. United States* (1959), 360 U.S. 310, 312, 79 S.Ct. 1171, 3 L.Ed.2d 1250. In *State v. Freeman*, Cuyahoga App. No. 81405, 2003-Ohio-3216, this court found a jury's alleged exposure to a newspaper article concerning the case did not warrant a mistrial, because the trial court

[1] The additional six years refers to the court's discretion to invoke a serious youth offender sentence.

correctly concluded that the jurors' exposure to the article was innocuous. The trial court in *Freeman* addressed each juror exposed to the article, and was assured by each that they could proceed in a fair and impartial manner.

{¶ 30} As was the case in *Freeman*, the article in the instant case did not contain inadmissible evidence or prejudicial statements about the defendant specifically. Moreover, the trial court identified those jurors who read the article. After the court informed the jurors that the article was inaccurate, the judge inquired as to whether those jurors felt that they could remain fair and impartial despite having read it. The court was assured by each that they could. Jurors who had not yet read the article were instructed not to read it. All of the jurors were instructed not to discuss the article with each other. Thus, Taylor has failed to show that the trial court acted in an arbitrary, unreasonable, or unconscionable manner.

{¶ 31} We agree with the trial court that the newspaper article was not prejudicial to the defendant. The trial court did not abuse its discretion in denying Taylor's motion for a mistrial.

{¶ 32} Taylor's second assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

_____

COLLEEN CONWAY COONEY, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR