

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff-Appellee,

v.

CASE NO.: 2018-0646

ZACHARIAH HUDDLESTON,
Defendant-Appellant.

ON APPEAL FROM THE LOGAN COUNTY COURT OF APPEALS
THIRD APPELLATE DISTRICT, App. No. 8-17-21

STATE OF OHIO'S MEMORANDUM CONTRA SUPREME COURT JURISDICTION

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WHY THIS CASE FAILS TO PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION AND WHY LEAVE TO APPEAL SHOULD BE DENIED

There is nothing contained in the Appellant's brief which gives this Court reason to take jurisdiction of this case. The Appellant raises ineffective assistance of counsel issues that do not rise to the level of a constitutional violation, nor are any of the matters raised of great public or general interest.

STATEMENT OF THE FACTS

On the morning of Thanksgiving Day 2016, Jeffrey Brentlinger's 24-year-old daughter found his lifeless body lying on the floor of their Zanesfield home, and called 911. Tr: 140-142. Although Mr. Brentlinger's daughter lived in the home, she had spent the previous night with her boyfriend, arriving back home at about 10:45 a.m. Tr. 140. The deputy who responded to the 911 call noted that Mr. Brentlinger had been deceased long enough that he was cold to the touch. Tr. 162.

Logan County Sheriffs Detective Phil Bailey arrived at about 11 :30 a.m. He noted a shell casing lying next to Mr. Brentlinger's body, and also observed a gunshot wound to Mr. Brentlinger' s chest. Tr. 177-178. With the assistance of BCI, Detective Bailey collected evidence from the scene that afternoon, including the first shell casing he saw, another casing found in the living room, a bullet found on the bathroom floor, and a black ski mask found outside of the house, near the road. Tr. 185-191. Later, when the house was being cleaned, a third casing was found in a floor vent that was located near where Mr. Brentlinger's body was found. Tr. 191, 227-228. No other bullets were found at the scene, but one was recovered from Mr. Brentlinger' s body. Tr. 191-192. The casings found in the living room and in the floor vent were made of steel, and were manufactured by TulAmmo. Tr. 210-211. The casing next to Mr. Brentlinger's body was made of brass, and was manufactured by Smith and Wesson. Id. No usable fingerprints were obtained from the home. Tr. 182.

On the next day, Detective Bailey returned to the home with Mr. Brentlinger's daughter and recovered a tablet-type personal computer that belonged to Mr. Brentlinger. Tr. 182, 193. When that computer was examined by BCI, it was found to contain a video created during the early-morning hours of Thanksgiving Day. Tr. 220-223. That video recording showed Mr. Brentlinger talking in his bedroom with two teen-aged girls, who would later be identified as Tatiana Freeman and Jasmine Lewis.

The evidence at trial established that Mr. Brentlinger had requested that they come to his home to have sex. Mr. Brentlinger had recently begun exchanging messages with Ms. Lewis, who was using a cell phone registered in Mr. Huddleston's name, and Mr. Brentlinger had met with her in person in Lima two days previously. Tr. 339-340, 383-384.

After the girls had been inside Mr. Brentlinger's house for about 30 minutes, two men, later identified as Marquevous Watkins and Zachariah Huddleston, entered the house, seeking to subdue Mr. Brentlinger and take valuables from his house. The video shows Mr. Brentlinger in his bedroom with the two teenage girls. They hear a sound coming from the front of the house and Mr. Brentlinger leaves the bedroom to investigate. A gunshot is heard in the background. Mr. Brentlinger is then seen on the video backing into his bedroom and sitting on the bed. An arm with a gun in the hand comes into the video pointed at Mr. Brentlinger. The gunman (later identified as Marquevous Watkins) demands Mr. Brentlinger's money. Mr. Brentlinger looks to the right of the gunman and makes the comment, "I know you," to Zachariah Huddleston. Mr. Brentlinger then stood up and went to grab the gun from Marquevous Watkins and Mr. Watkins shoots him in the chest. Mr. Huddleston fired his handgun upon entering the house (not hitting anyone) but later fires again with a shot that seemingly went through Mr. Brentlinger's thigh. Tr. 254-256. After the shooting occurred, Watkins, Huddleston, Lewis, and Freeman immediately fled, panicked by the unexpected, tragic turn of events. The only property taken from Mr. Brentlinger's person or his house was his cell phone.

The ski mask recovered outside the house bore DNA consistent with that of Marquevous Watkins, and which would be expected to be found in one in every three trillion unrelated individuals. Tr. 432-433. After Mr. Huddleston was arrested, his belongings were found to include a handgun and a box containing TulAmmo cartridges.

Tr. 277-278. Ballistics testing on the gun showed that it was consistent with the gun that left the two TulAmmo casings at the scene, but it was not the gun that fired the bullet that killed Mr. Brentlinger. Tr. 321, 324-325. Mr. Huddleston admitted, in a recorded interview with detectives, to being involved in the robbery attempt with Mr. Watkins, the two girls, and a third female co-defendant who remained outside in the car, and also admitted to firing the gun he had with him when he entered Mr. Brentlinger's house. Tr. 391, 400. Further, he made similar admissions on two jailhouse recordings made when he was talking to family members. Tr. 457-458, 463.

STATEMENT OF THE CASE

On December 6, 2016, the Logan County Grand Jury issued a five-count indictment against Mr. Huddleston. The charges were as follows: Count 1-aggravated robbery, with a firearm specification; Count 2-aggravated burglary, with a firearm specification; Count 3-felony murder, with a firearm specification; Count 4-weapon under disability; and Count 5-tampering with evidence. Indictment (Dec. 6, 2016).

After a competency evaluation was requested and performed, the case proceeded to trial, with jury selection beginning on July 25, 2017. Prior to the commencement of deliberations, the trial court granted Mr. Huddleston's Crim.R. 29 motion with respect to Count 5, which alleged tampering with evidence. Tr. 481. Accomplice instructions were given to the jury due to the fact that the State's evidence established that Mr. Watkins was the principal offender. The jury convicted Mr. Huddleston of Counts 1 through 4 on July 27, 2017.

At sentencing, the aggravated burglary and aggravated robbery convictions were merged into the felony murder conviction. The trial court sentenced Mr. Huddleston to 15 years to life for murder, consecutive to three years for the firearm specification on that count, and consecutive to three years for having a weapon while under a disability. Thus, the overall sentence imposed was twenty-one years to life. Judgment Entry/Sentencing (Aug. 3, 2017).

ARGUMENT

I. RESPONSE TO APPELLANT'S PROPOSITION OF LAW

Trial Counsel for the defendant did not render ineffective assistance of counsel.

A. Statements of the Defendant

The Defendant argues that portions of his recorded statements should have been redacted as irrelevant and damaging. First, it is arguable as to how damaging, if at all, the statements listed by the Defendant were. Some of the statements listed by Appellant are exculpatory. As noted by the Third District, two of the statements contain evidence of Huddleston's lack of intent to rob or murder Brentlinger. One statement questions the character of the victim and two statements were about Mr. Huddleston's employment. The Third District found the statements were not prejudicial and that trial counsel's decision to not redact them was a "strategic trial tactic."

Second, the State fails to see how any of the listed statements are any more damaging and inflammatory than his admission to going to Mr. Brentlinger's home to with a plan to hustle him for money; any more damaging than his admission to entering the home with his co-defendant Marquevious Watkins with guns in their hands; any more damaging than admitting that his gun went off in Mr. Brentlinger's home; any more damaging than admitting he pointed a gun towards him; any more damaging than "he rushed towards us, two men with a gun, like, and dude just shot him." (Trial Tr. at 382). The Defendant admitted to being there and actively participating in the crime.

Redacting any of the proposed statements wouldn't change the outcome of the trial. The Defendant cannot show but for counsel's errors, the outcome at trial would have been different.

B. Stipulation to a Prior Conviction is a matter of trial strategy and does not rise to the level of ineffective assistance of counsel.

The Defendant claims that his trial counsel should have stipulated to his prior conviction rather than permit the State to put on evidence to prove one of the elements of the Weapons Under Disability charge.

An ineffective assistance of counsel claim requires proof that trial counsel's performance fell below objective standards of reasonable representation and that the defendant was prejudiced as a result. *State v. Spivey*, 2013-Ohio-851, 2013 Ohio App. LEXIS 786. To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, but for counsel's errors, the outcome at trial would have been different. *Id.* "Reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* Further, the court must look to the totality of the circumstances and not isolated instances of an allegedly deficient performance. Ineffective assistance does not exist merely because counsel failed to recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it. *Id.*

Of the hours and hours of testimony, the only evidence presented to the jury regarding the Defendant's prior conviction was as follows:

During testimony, Detective Brugler identified the judgment entry from Auglaize County which placed the Defendant under a weapons disability. He read from the entry the following, "Court finds the defendant has been convicted pursuant to the plea of guilty on October 5th, 2012, of selling dangerous drugs, a violation of Ohio Revised Code 4729.51(C)(1), a felony of the fourth degree without specification. (Trial Tr. at 418). Det. Brugler then indicated that the date of birth of the defendant and last four numbers of his social security number matched the entry from Auglaize County.

The State must provide sufficient proof necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of an offense. *In re Winship* (1970), 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368, 375. When a previous conviction is an element of an offense, the State must prove the prior offense beyond a reasonable doubt. *State v. Bibler*, 2014-Ohio-3375, 17 N.E.3d 1154, 1156, 2014 Ohio App. LEXIS 3313.

Stipulations to prior convictions are a matter of trial strategy and do not amount to ineffective assistance of counsel. According to the Ohio Supreme Court, neither the State nor the trial court is required to accept a defendant's stipulation as to the existence of a conviction. *State v. Smith*, 68 Ohio App.3d 692. That said, trial counsel's "tactical decision to stipulate to a defendant's prior conviction is not unreasonable, and certainly not the kind of incompetence necessary to support a claim for ineffective assistance of counsel." *State v. Reynolds*, 148 Ohio App.3d 578, 2002 Ohio 3811, accord *State v. Gray* (Aug. 19, 1988), 6th Dist. No. L-87-393, 1988 Ohio App. LEXIS 3372. The fact that it was a tactical decision in this case is evident from the record as counsel for the Defendant wanted to raise some doubt that the Defendant was in fact the person that was convicted in the Auglaize County case. Counsel for defense raised questions about the lack of the full social security number identifying the Defendant. (Trial Tr. at 420).

The Defendant relies on *State v. Creech*, 150 Ohio St.3d 540 in his argument that counsel for the Defendant should have stipulated to his prior conviction. The facts of *Creech* are not on point. In *Creech*, the Defendant was charged with three counts of Weapons Under Disability and the State used three different prior convictions to prove each count. The judgment entries contained details of the prior crimes and extensive testimony was presented regarding the prior convictions. The Supreme Court found that because there was conflicting evidence on whether the defendant had a gun, the cumulative effect of three different prior convictions and details of the prior cases were

prejudicial. That is not what happened in the case at hand. In this case, there was no question that Huddleston possessed and used a firearm in the commission of the offenses. The evidence that was presented to the jury was limited to one conviction and the testimony was kept to the bare minimum.

In addition, trial counsel for the Defendant specifically tried to attack the proof of the prior conviction by questioning the lack of a full social security number on the judgment entry. The court of appeals also found this to be a strategic trial tactic. There was no prejudicial error to the Defendant.

C. Jury Instruction on Causation

Defendant claims that the "failure to act" language in the definition of causation was improper because it allowed the jury to infer that the failure to assist the victim, or the failure to prevent Marqueveous Watkins from shooting the victim, was grounds for finding causation. Counsel then speculates that it was "possible the jurors followed that instruction." The Defendant provides no proof that the jury deliberated this way. By his own admission, the entirety of the State's case was spent proving Mr. Huddleston **actively** participated in the crime with his co-defendants.

The trial court followed the standard instructions provided in OJI. Viewing the charge to the jury in its entirety, there was no prejudicial error. *State v. Price* (1979), 60 Ohio St.2d 136, 398 N.E.2d 772. The trial court specifically instructed the jury that, in order to find appellant guilty of complicity to murder, they had to find that the Defendant aided or abetted another in committing the aggravated robbery or aggravated burglary which caused the death of Jeffrey Brentlinger. (Trial Tr. at 526). The instructions, viewed in their entirety, were correct statements of the law.

The Tenth District found that the phrase "failure to act" was arguably improper to include in the definition of causation when the Defendant had no duty to act, however, the Court found that including it was superfluous and non-prejudicial. *State v. Brown*,

1994 Ohio App. LEXIS 5359, 1994 WL 672714 (Ohio Ct. App., Franklin County Nov. 29, 1994). In addition, "[r]eversible error ordinarily cannot be predicated upon one paragraph, one sentence or one phrase of the general charge to the jury. Where the court's charge to the jury, considered as a whole, is not prejudicial to the objecting party, no reversible error results from a misstatement or ambiguity in a portion thereof." *Snyder v. Stanford* (1968), 15 Ohio St.2d 31, 238 N.E.2d 563, paragraph three of the syllabus; *State v. Blunt* (Aug. 31, 1989), Franklin App. No. 88AP-933, unreported (1989 Opinions 3111, 3122).

The Third District found that even if the instruction was problematic, it would only amount to harmless error as there was more than enough competent credible evidence for the jury to find the Defendant guilty of complicity.

Conclusion

In this case there was overwhelming evidence presented of the Defendant's guilt. A video surveillance recording from the victim's room showed the victim getting robbed and shot. Phone records tied the Defendant and his accomplices to the victim on the night of the murder. (Trial Tr. at 339) The Defendant and his accomplices were apprehended shortly thereafter. A gun that was used and fired during the commission of the crime was found with the Defendant's belongings in Indiana. The Defendant gave multiple statements to law enforcement and others admitting to his involvement in the crime. The Defendant cannot show that the outcome of the trial would have been different if any of the alleged errors had been prevented.

The Third Appellate District properly reviewed each of the assignments of error and did not find any merit to them. This Court should deny jurisdiction to the Defendant's proposition of law.

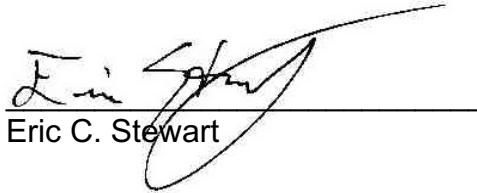
Respectfully submitted,
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PROOF OF SERVICE

This is to certify that a copy of this Brief was served upon Craig M. Jaquith, Assistant State Public Defender, by email at craig.jaquith@opd.ohio.gov on June 8, 2018.



Eric C. Stewart