

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

State of Ohio

Court of Appeals Nos. L-12-1044
L-12-1045

Appellee

Trial Court Nos. CR0201102925
CR0200803884

v.

Frankie L. Miles

DECISION AND JUDGMENT

Appellant

Decided: May 17, 2013

* * * * *

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

Andrew R. Schuman, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which accepted appellant’s voluntarily negotiated *Alford* plea on one count of aggravated robbery with a firearm specification and one count of voluntary manslaughter. The voluntary plea agreement was reached in lieu of appellant proceeding to trial on the more serious charge of aggravated murder with a firearm specification. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Frankie Miles, sets forth the following sole assignment of error:

The trial court erred in accepting a guilty plea that was not knowingly, intelligently, and voluntarily made, in violation of Defendant's right to due process of law under the 14th Amendment to the Constitution of the United States.

{¶ 3} The following undisputed facts are relevant to this appeal. On the evening of November 29, 2008, appellant and several accomplices robbed a Stop and Go convenience store located on Jackman Road in Toledo. Appellant, by his own admission, utilized a .32 caliber firearm in the course of the robbery. Appellant fired the weapon at the clerk despite the clerk's cooperation. Fortunately, appellant's shot did not strike the clerk. The bullet instead lodged in the wall of the store.

{¶ 4} The weapon utilized by appellant in the carryout robbery belonged to appellant's friend, Terrance King. On November 30, 2008, the day after the robbery in which he used King's gun, appellant admits to being with King until approximately 11:30 p.m. Approximately ten minutes after appellant claims to have left King, a 9-1-1 call was made reporting shots being fired in the area of Brooke Park Drive in West Toledo. King's body was recovered in a wooded section adjacent to Brooke Park Drive the following morning. King had been shot three times in the head with his own gun, the same gun appellant had possessed and utilized the day before in the carryout robbery. Appellant, by his own admission, was present with King in the timeframe immediately prior to King being shot to death with that same gun.

{¶ 5} On November 29, 2008, appellant was indicted on one count of aggravated robbery with a firearm specification, in violation of R.C. 2911.01(A)(1), and one count of felonious assault with a firearm specification, in violation of R.C. 2903.11(A)(2). Subsequent to King's murder, appellant also was indicted on one count of aggravated murder with a firearm specification, in violation of R.C. 2903.01(A). Given the facts and circumstances, the cases were later consolidated and set for trial.

{¶ 6} On May 11, 2011, pursuant to a voluntarily negotiated plea agreement, appellant tendered pleas to voluntary manslaughter and aggravated robbery with a firearm specification. The record reflects that appellant expressly conveyed to the trial court that his motivation in entering into the plea arrangement was in order to avoid facing trial on the more serious charge of aggravated murder. On June 7, 2011, appellant was scheduled to be sentenced. After having successfully avoided trial on aggravated murder, appellant stated his desire to withdraw his former pleas to the lesser charges. The trial court granted appellant's request to withdraw his pleas. All pending cases against appellant were then set for trial.

{¶ 7} On November 28, 2011, appellant was scheduled for jury trial. However, appellant once again changed course. Appellant conveyed to the court his desire to not go to trial and to receive a plea agreement similar to the one he had previously accepted, and subsequently rejected. Accordingly, appellant and his counsel spent approximately the next four hours while the trial court and the jurors were on standby discussing whether appellant would accept a plea arrangement or proceed to trial.

{¶ 8} In order to facilitate this process, appellant was accommodated. Appellant was permitted to call multiple relatives, including his sister, and discuss the matter in great detail and at great length. At approximately 1:00 p.m., appellant indicated through counsel that he just had several remaining questions or issues. Upon inquiry, appellant altered course yet again and conveyed a desire at that moment to proceed to trial.

{¶ 9} The jury returned to the courtroom, following the four hour delay in which appellant mulled over his options and had consulted with counsel and multiple parties. As voir dire was about to commence, counsel for appellant conveyed that appellant had, in fact, changed his mind once again. Appellant had purportedly finally determined that he would accept the plea agreement. Following a brief recess, the trial court inquired of appellant and confirmed from appellant that he wanted to accept the proffered plea arrangement.

{¶ 10} Just as had occurred in appellant's original plea hearing some months earlier, the trial court again thoroughly and precisely explained to appellant the legal ramifications of what appellant was agreeing to and further affirmed appellant's understanding and consent to same. Significantly, the trial court once again verified and articulated that appellant was not making an admission of guilt to murdering King and that appellant was entering an *Alford* plea to voluntary manslaughter based upon appellant's express desire to not proceed to trial and face potential conviction on the far more serious offense of aggravated murder. Appellant unambiguously affirmed his understanding and agreement to this arrangement. Appellant subsequently entered *Alford*

pleas to both aggravated robbery and voluntary manslaughter. Appellant was sentenced to a total term of incarceration of 16 years. This appeal ensued.

{¶ 11} In the single assignment of error, appellant contends that the trial court erred in accepting the extensively and exhaustively negotiated voluntary plea agreement. In support, appellant maintains that he did not adequately acknowledge his claimed innocence in the death of King and that the trial court and counsel somehow forced his plea through coercion. We have carefully reviewed and considered the record of evidence in this matter. We do not concur.

{¶ 12} The record of evidence clearly reflects appellant's unwavering insistence that he did not shoot King and the trial court's acknowledgment of that claim. In conjunction with this, the statements of counsel for appellant throughout this matter likewise repeatedly affirmed that position. The record reflects that appellant and his counsel made it abundantly clear at all relevant times that appellant's agreement to plea to voluntary manslaughter driven by appellant's desire to not be convicted of aggravated murder and in no way reflected appellant conceding to murdering King. In point of fact, the written form connected to this plea explicitly stated, "By this plea of guilty, I do not admit committing the offense, but I entered this plea only to avoid the risk of conviction on a more serious offense if I went to trial."

{¶ 13} Appellant relies significantly upon this court's holding in *State v. Henry*, 6th Dist. No. WD-08-057, 2009-Ohio-5729. However, we find the *Henry* case to be materially distinguishable from the instant case. In *Henry*, there was no indication that

appellant was steadfastly maintaining his innocence and was consciously and explicitly entering a plea to avoid potential conviction on a far more serious charge with far more serious sanctions.

{¶ 14} With respect to appellant's remaining subjective and unsupported allegations purporting to show some fatal deficiency or compromise in the plea and sentencing, we simply note that the record of evidence in this matter is wholly devoid of any indicia of discovery violations by appellee or of any improper actions or statements by the trial court or by any counsel that could conceivably be construed as coercive towards appellant so as to potentially negate the legitimacy of the plea. On the contrary, the record clearly reflects that painstaking efforts were undertaken by all involved to go to extraordinary lengths to accommodate appellant in connection to his numerous changes of heart and to ensure his understanding of all of his rights throughout the proceedings. We find no impropriety of any kind in the disputed plea. Appellant's assignment of error is found not well-taken.

{¶ 15} Wherefore, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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:
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