

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112129
 v. :
 :
 ALTON HOLLOWAY, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 13, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-668155-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Andrew Rogalski, Assistant Prosecuting
Attorney, *for appellee*.

Allison S. Breneman, *for appellant*.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Defendant-appellant, Alton Holloway, appeals his convictions following a jury trial. For the reasons that follow, we affirm.

I. Procedural Background

{¶ 2} In March 2022, Holloway was named in a nine-count indictment charging him with aggravated murder (Count 1); murder (Counts 2 and 3); aggravated robbery (Counts 4 and 5); felonious assault (Counts 6 and 7); and having weapons while under disability (Counts 8 and 9). Counts 1 through 7 carried one- and three-year firearm specifications. The charges stemmed from the shooting death of John Dobrovic.

II. Jury Trial

{¶ 3} In the early morning hours of August 25, 2020, Cleveland police officer Michael Smith and his partner responded to the area of West 106th Street and Madison and Western Avenues regarding a possible drug overdose. When they arrived, Smith learned from bystanders and Cleveland EMS paramedics that Dobrovic was actually shot and had succumbed to his injuries. Smith testified that he located a spent 9 mm shell casing on the street between the passenger side of Dobrovic's vehicle and the curb. Detective Tommy Manson processed Dobrovic's vehicle and discovered a spent 9 mm shell casing in the backseat of the vehicle.

{¶ 4} Officer Smith testified that his partner discovered that a nearby home-surveillance camera had potentially captured what happened to Dobrovic. The surveillance video was played for the jury during the homeowner's testimony and admitted into evidence.

{¶ 5} The video showed Dobrovic's vehicle facing south and parked along West 106th Street but a tree partially obstructed the view of his vehicle. A second

vehicle heading south, with its bright headlights illuminated, arrived and parked behind Dobrovic. Occupants from the second vehicle exited the car and approached the driver and passenger sides of Dobrovic's vehicle. After a couple of minutes, the second vehicle started to speed away but slowed enough to allow a person who was running toward the vehicle to enter the car.

{¶ 6} Cleveland Police Sergeant Aaron Reese testified about his involvement with the investigation. He stated that after observing the residential surveillance video, he located additional surveillance videos from nearby businesses that captured the suspect vehicle leaving the crime scene. Based on the information obtained, he was able to locate the suspect vehicle, a black Chevrolet Aveo with a red pinstripe. He stated that officers followed the Aveo to a residence on West 104th Street in Cleveland. Sergeant Reese testified that when officers approached the West 104th Street residence, Tiffany Greene ("Greene") and Jovan Foster-Grant ("Jovan") were outside, but when Jovan noticed the officers, he ran inside the house. Sergeant Reese stated that the leaseholder consented to a search of the residence, where officers located Jovan in a bedroom. A search of that bedroom resulted in the discovery of a Ruger semiautomatic 9 mm handgun hidden inside a brown paper bag in a hole in the wall. As a result, officers took both Greene and Jovan into custody.

{¶ 7} Detective Thelemon Powell testified that he was part of the team involved in the surveillance and search of the West 104th Street residence. He stated that Detective Michael Zone observed a person, later identified as Jovan, reaching

out of a window and placing a brown paper bag in the gutter of the house, but when the detective called out to the other officers, Jovan took the bag back inside the house.

{¶ 8} Detective Powell also testified about his interview with Greene in which she implicated Jovan and identified Holloway as the person who shot Dobrovic. Detective Powell testified further that the Aveo was towed to the police impound lot, where it was processed. He stated that Detective Chuck Teel processed the Aveo for possible DNA evidence, and that it was discovered that Holloway was the registered owner of the vehicle. He stated that as a result of Greene's interview and the evidence obtained, both Greene and Jovan were charged for the murder of Dobrovic, and an arrest warrant was issued for Holloway.

{¶ 9} Greene testified that in 2020 she dated and lived with Jovan, who was also known as "Man Man." She stated that they rented a room at the West 104th Street residence. Greene stated that through Jovan, she met Holloway, who Jovan referred to as "Uncle Man." Regarding the night that Dobrovic was murdered, Greene stated that she, Jovan, and Holloway were drinking and smoking at the house. She stated that she went to bed because she had "too much," but that Jovan and Holloway left the residence. Greene testified that Jovan later "roughly" woke her, and they went downstairs where Holloway was waiting in the driver's seat of his Aveo. She stated that she thought that they were going to buy drugs but became confused when Jovan told her to ride in the front passenger seat. Greene stated that

once Holloway drove up behind a parked vehicle on West 106th Street and turned on the vehicle's bright lights, she started to feel more uncomfortable.

{¶ 10} She stated that once they were parked, Holloway exited the car and approached the passenger side of the parked car in front of them. She saw Holloway point a gun at the person inside the vehicle and motion for Jovan to exit the car. According to Greene, she was seated in the front passenger seat and watched Holloway hold the occupant of the vehicle at gunpoint while Jovan rummaged through the vehicle. She stated that she then saw Holloway shoot Dobrovic from the passenger side of his vehicle. Greene testified that she got into the driver's seat and attempted to leave but had difficulty operating the manual drive transmission. According to Greene, Holloway returned to his car "all crazy," screaming at her "that if you don't go, [you] will be next." (Tr. 277.) She stated that she started to speed away and that Jovan had to run and catch up to get into the car.

{¶ 11} Greene testified that she drove back to the house on West 104th Street. She stated that after returning to the house, Holloway and Jovan argued about Jovan's decision to involve her without telling her what was about to happen. Greene testified that Holloway stayed the night, sleeping with his gun and in the same room with them. According to Greene, Jovan reassured her that he would protect her. Greene stated that the next morning Jovan and Holloway "traded" handguns, and she and Jovan drove Holloway to West 41st Street and Newark Avenue. She testified that this was the last time she saw Holloway until after his

arrest. Greene stated that for reasons unknown to her, Jovan kept possession of Holloway's car.

{¶ 12} During her testimony, Greene acknowledged that following her arrest she initially lied to detectives about Dobrovic's murder and her involvement because she feared both the legal consequences and retaliation from Jovan and Holloway. She told the jury that she was arrested in connection with Dobrovic's murder but entered into a plea deal with the state for a reduction in charges if she agreed to testify against Holloway and Jovan. Despite the plea deal, Greene stated that she was testifying truthfully.

{¶ 13} In February 2022, Holloway was arrested after a random encounter with police at a gas station on Clark Avenue when officers were investigating an unrelated matter. Cleveland Police Detective Christian Childs testified that during this encounter, Holloway repeatedly gave officers insufficient information to verify his identity — including a false name and a claim that he did not know his social security number. Childs stated that after two hours, Holloway finally admitted who he was and that he was wanted for a homicide.

{¶ 14} Following his arrest, Detectives Powell and Reese interviewed Holloway. Portions of this interview were played for the jury wherein Holloway admitted that he was with Greene and Jovan on the night that Dobrovic was murdered but said he did not remember what had occurred because of his drug use and intoxication. He told detectives that he had no memory of what happened, but "if I did something, please tell me, * * * if I did kill this man, I need to be punished."

{¶ 15} The jury also listened to a recorded call Holloway made from the Cuyahoga County Jail after he was arrested. During the call with an unidentified female, he stated that “Man Man stayed solid; Man Man didn’t say nothing,” but “his girl said everything.” He said that “he could’ve beat it,” but, referring to Jovan’s relationship with Greene, “that’s supposed to be your bitch, * * * she supposed to stay solid.” In the same call, after further thinking things through, Holloway agreed that Greene “had to do what she had to do.”

{¶ 16} Cuyahoga County Deputy Medical Examiner, Dr. David Dolinak, testified that he performed Dobrovic’s autopsy. He stated that Dobrovic sustained three gunshot wounds — one through the right elbow, one through the right side of his chest, and the other to his right thigh. According to Dr. Dolinak, the wounds sustained to his elbow and chest could have been caused by the same bullet that first went through Dobrovic’s elbow and then reentered the right side of his chest in a downward trajectory. Dr. Dolinak stated that he was able to recover a bullet from Dobrovic’s pelvic region. According to Dr. Dolinak, Dobrovic died from a gunshot wound and the manner of death was homicide.

{¶ 17} Cuyahoga County forensic scientist, firearm, and toolmark examiner, Kristen Koeth, testified that she conducted forensic analysis on the recovered shell casings and bullets, and the Ruger firearm. She stated that she test-fired the firearm for comparison of both the recovered bullets and spent shell cases. Koeth testified that she compared the bullets from the test-firing with the bullets submitted for analysis — one from the street found near the body of Dobrovic and the second

recovered by Dr. Dolinak during the autopsy. According to Koeth, the firearm fired both of the bullets that were recovered. She also testified about the spent shell casings recovered from the crime scene — one from the street found by Officer Smith and a second from inside Dobrovic’s vehicle found by Detective Manson. According to Koeth, the recovered casings matched the casing from the firearm.

{¶ 18} Christine Scott, forensic analyst with the Cuyahoga County Regional Forensic Science Laboratory, testified about the results of the DNA testing and analysis conducted regarding the homicide investigation of Dobrovic. She stated that she conducted DNA analysis from samples taken from Dobrovic’s person, clothing, and vehicle, and from other personal items recovered, including the recovered Ruger firearm and Aveo keys. She stated that she compared the DNA swabs taken with DNA profiles of any suspects or persons of interest. According to Scott’s report and testimony, Holloway’s DNA matched the DNA profile tested from the grip and trigger of the Ruger firearm and on the Aveo keys discovered in the West 104th Street residence.

{¶ 19} The jury found Holloway guilty of all nine counts, including the attendant firearm specifications.¹ Following merger and application of the Reagan Tokes Law, the trial court imposed a sentence of six years on the firearm specifications, to be served prior to and consecutive to a 25-year-to-life sentence.

{¶ 20} Holloway now appeals, raising three assignments of error.

¹ Against the advice of counsel, Holloway chose to have all nine counts tried to the jury.

III. Sufficiency and Manifest Weight of the Evidence

{¶ 21} In his first and second assignments of error, Holloway challenges the evidence presented at trial, contending that the state presented insufficient evidence to support his convictions and that his convictions are against the manifest weight of the evidence. Although he lists these assignments of error separately, Holloway relies on the arguments of one assignment of error to support the arguments of the other. Accordingly, this court will also address them together.

A. Standards of Review

{¶ 22} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Cottingham*, 8th Dist. Cuyahoga No. 109100, 2020-Ohio-4220, ¶ 32. An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *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. *Id.*

{¶ 23} Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. * * * Weight is not a question of mathematics, but depends on its effect in inducing belief." *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-

Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. In a manifest-weight analysis, the reviewing court sits as a “thirteenth juror” and reviews “the entire record, weighs the evidence and all reasonable inferences, considers the credibility of 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 conviction must be reversed, and a new trial ordered.” *Thompkins* at *id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). The discretionary power to grant a new trial should be exercised only in exceptional cases where the evidence weighs heavily against the conviction. *Thompkins* at 386.

{¶ 24} Although sufficiency and manifest weight are different legal concepts, manifest weight subsumes sufficiency in conducting the legal analysis; that is, a finding that a conviction was supported by the manifest weight necessarily includes a finding of sufficiency. Thus, a determination that a conviction is supported by the weight of the evidence will also dispose of the issue of sufficiency. *State v. Jackson*, 8th Dist. Cuyahoga No. 100125, 2015-Ohio-1946, ¶ 11, citing *Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541; see also *State v. Nunez*, 8th Dist. Cuyahoga No. 104623, 2018-Ohio-83, ¶ 6.

B. Effect of Merger of Allied Offenses

{¶ 25} The jury found Holloway guilty of all counts of the indictment. The trial court agreed with the state that Counts 1, 2, 3, 6, and 7 merged for sentencing; Counts 4 and 5 merged; and Counts 8 and 9 also merged. The state elected that

the court sentence Holloway on Count 1, aggravated murder; Count 5, aggravated robbery; and Count 8, having weapons while under disability. Accordingly, Holloway was only *convicted* of Counts 1, 5, and 8. *See State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, ¶ 24 (“conviction” consists of a finding of guilt and a sentence).

{¶ 26} When counts in an indictment are allied offenses and there is sufficient evidence to support the offense on which the state elects to have the defendant sentenced, the reviewing court need not consider the sufficiency of the evidence on the counts that are subject to merger because any error relating to those counts would be harmless. *State v. Ramos*, 8th Dist. Cuyahoga No. 103596, 2016-Ohio-7685, ¶ 14, citing *State v. Powell*, 49 Ohio St.3d 255, 263, 552 N.E.2d 191 (1990). *See also State v. McFarland*, 162 Ohio St.3d 36, 2020-Ohio-3343, 164 N.E.3d 316, ¶ 25 (considering the sufficiency of the evidence challenge only on those convictions surviving merger), citing *Whitfield* and *State v. Myers*, 154 Ohio St.3d 405, 2018-Ohio-1903, 114 N.E.3d 1138, ¶ 138 (merger of kidnapping count with aggravated-robbery and aggravated-burglary counts moots sufficiency-of-the-evidence claim regarding kidnapping count).

{¶ 27} Holloway has not challenged his conviction for having weapons while under disability as charged in Count 8 of the indictment. Accordingly, this court will only address whether his convictions for aggravated murder in Count 1, and aggravated robbery in Count 5, are supported by sufficient evidence and are not against the manifest weight of the evidence.

C. Analysis

1. Count 1 — Aggravated Murder

{¶ 28} The state charged Holloway with aggravated murder in violation of R.C. 2903.01(B), which provides in relevant part, that “no person shall purposely cause the death of another while committing or attempting to commit” aggravated robbery.

{¶ 29} Greene testified that she saw Holloway approach the passenger side of Dobrovic’s vehicle and point a handgun at him. According to Greene, Holloway motioned to Jovan to exit his vehicle and directed him toward the driver’s side of Dobrovic’s vehicle. Greene testified that Jovan also pointed a handgun at Dobrovic. Greene stated that she saw Holloway shoot at Dobrovic from the passenger side — firing the weapon two or three times. She stated that she also saw Jovan “rummaging” through Dobrovic’s vehicle and pockets.

{¶ 30} Dr. Dolinak testified that Dobrovic suffered at least two gunshot wounds, all striking his right side, with the fatal shot entering through the right side of his chest. Scott testified that Holloway’s DNA was discovered on the keys to his Aveo and on the grip and trigger of the Ruger firearm that police recovered from the house where Greene and Jovan were apprehended. Additionally, Koeth testified that the bullets and casings recovered during Dobrovic’s autopsy, and from the street and the backseat of Dobrovic’s vehicle, were fired from the same Ruger firearm.

{¶ 31} The state also played for the jury a jail call between Holloway and an unidentified female in which Holloway stated that had Greene “stayed solid” he could have beat the charges. At no time did he deny culpability. In fact, during his recorded interview, the jury heard Holloway admit that he was with Greene and Jovan that night, and although he did not remember anything that occurred, he questioned the detectives about his role that he played in the “incident.”

{¶ 32} Regarding Greene’s testimony and identification of Holloway as the person who shot Dobrovic, Greene admitted that she entered into a plea deal with the state for a significant reduction in her charges. In fact, Holloway’s counsel brought any biases, inconsistencies, and questionable testimony to the jury’s attention, including Greene’s motivation in testifying — to diminish her culpability and inculcate Holloway. “The jury was free to believe all, part, or none of the testimony of each witness.” *State v. Colvin*, 10th Dist. Franklin No. 04AP-421, 2005-Ohio-1448, ¶ 34. Accordingly, the jury was able to assess what weight, if any, it would attribute to Greene’s testimony.

{¶ 33} Based on our review of the record, this court finds that the state presented sufficient circumstantial and direct evidence for the jury to conclude that Holloway murdered Dobrovic on August 25, 2020.

2. Count 5 — Aggravated Robbery

{¶ 34} The state charged Holloway with aggravated robbery in violation of R.C. 2911.01(A)(1). Count 5 of the indictment provided, in relevant part, that Holloway “in attempting or committing a theft offense, * * * or fleeing immediately

after the attempt or offense upon [Dobrovic] did have a deadly weapon, to wit: firearm, on or about his person or under his control and either displayed the weapon, brandished it, indicated that he possessed it or used it.” The state also brought this offense under a theory of complicity, for which the trial court instructed the jury:

A person who is complicit with another in the commission of a criminal offense is regarded as guilty as if he personally performed every act constituting the offense. And this is true even if he did not personally perform every act constituting the offense or was not physically present at the time the offense was committed.

Before you can find the defendant guilty of complicity in the commission of Count 5, aggravated robbery, you must find beyond a reasonable doubt that on or about the 25th day of August in 2020, in Cuyahoga County, Ohio, the defendant, Alton Holloway, aided or abetted another in committing the offense of aggravated robbery.

Before you can find the defendant guilty of complicity by aiding and abetting, you must find beyond a reasonable doubt that the defendant supported, assisted, encouraged, cooperated with, advised or incited the principal offender in the commission of the offense and that the defendant shared the criminal intent with the principal offender. Such intent may be inferred from the circumstances surrounding the offense including, but not limited to, presence, companionship, and conduct before and after the offense was committed. The mere presence of the defendant at the scene of the offense is not sufficient to prove in and of itself that the defendant was an aider and abettor.

It is no defense to a charge of complicity that no person with whom the defendant was allegedly in complicity has been convicted as a principal offender.

The defendant cannot be found guilty of complicity unless the offense was actually committed or there was an attempt to commit the offense.

(Tr. 762-764.)

{¶ 35} Holloway contends that the evidence is insufficient and against the manifest weight of the evidence because no testimony or evidence was presented demonstrating that he participated in or had knowledge of Jovan’s “rummaging” though Dobrovic’s vehicle and pockets. We disagree.

{¶ 36} Greene testified that as Holloway held Dobrovic at gunpoint, she saw Jovan rummaging through the car and Dobrovic’s pockets. Cleveland Police Detective Kevin Walsh testified that he processed and took photos of the crime scene, including the positioning of Dobrovic’s body outside his vehicle and personal items found in the street behind Dobrovic’s vehicle. He testified about the condition of Dobrovic’s pockets when he processed and photographed the scene — the jury saw the photographs showing Dobrovic’s turned-out pockets. Curtiss Jones, supervisor in the Cuyahoga County Regional Forensic Laboratory, Trace Evidence Unit, testified that based on the report he received from the investigating officers, he swabbed Dobrovic’s pockets for possible DNA evidence. Additionally, forensic analyst Scott, testified that items containing Dobrovic’s DNA — a watch and sunglasses — were found outside his vehicle and in Jovan’s path of travel to enter the Aveo as Greene attempted to drive away.

{¶ 37} The jury could have reasonably inferred based on Greene’s testimony that Jovan’s conduct of going through Dobrovic’s pockets caused them to be turned inside out, and the items strewn about the street were items Jovan or Holloway took from Dobrovic’s possession. Holloway’s conduct of holding Dobrovic at gunpoint assisted Jovan in his ability to rifle through Dobrovic’s belongings and vehicle.

{¶ 38} Accordingly, this court finds that the state presented sufficient circumstantial and direct evidence to support Holloway’s convictions for aggravated murder and aggravated robbery and that the jury did not lose its way in finding Holloway guilty of these offenses. This is not the exceptional case that requires this court to reverse his convictions and order a new trial.

{¶ 39} Holloway’s first and second assignments of error are overruled.

IV. Reagan Tokes Law

{¶ 40} In his third assignment of error, Holloway contends the trial court erred when it sentenced him to an indefinite sentence under S.B. 201, commonly referred to as the Reagan Tokes Law, because the law is unconstitutional under the United States and Ohio constitutions because it violates due process, the separation-of-powers doctrine, and the right to trial by jury.²

{¶ 41} Holloway does not cite to this court’s en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536, ¶ 17-51 (8th Dist.), wherein this court rejected the arguments he raises challenging the constitutionality of the Reagan Tokes Law. Because *Delvallie* fully and completely addressed the concerns Holloway raises, and he has not raised any additional arguments not considered by the *Delvallie* en banc court, we summarily overrule his assignment of error.

² Neither party has raised any issue as to the imposed terms of Holloway’s sentence; therefore, any determination as to the validity of the sentence other than challenges raised herein is beyond the scope of this direct appeal. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27.

{¶ 42} Judgment affirmed.

It is ordered that appellee recover from 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR

N.B. Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Administrative Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.

