Supreme Court of Ohio Clerk of Court - Filed June 07, 2016 - Case No. 2014-0942

IN THE SUPREME COURT OF OHIO
CASE NO. 2014-942

STATE OF OHIO,	}	
	}	ON APPEAL FROM THE CUYAHOGA
Plaintiff-Appellant,	}	COUNTY COURT OF APPEALS
	}	EIGHTH APPELLATE DISTRICT
v.	}	
	}	COURT OF APPEALS CASE NO. 99998
DAHJON WALKER,	}	
	}	
Defendant-Appellee.	}	

BRIEF OF AMICI CURIAE CUYAHOGA COUNTY PUBLIC DEFENDER AND CUYAHOGA CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE

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INTEREST OF AMICI CURIAE

The Office of the Cuyahoga County Public Defender is legal counsel to more than one-third of all indigent persons indicted for felonies in Cuyahoga County. Under the circumstances, the Office is the largest single source of legal representation of criminal defendants in Ohio's largest county.

The Cuyahoga Criminal Defense Lawyers Association (CCDLA) is one of the largest professional organizations of criminal law practitioners in Ohio. The CCDLA meets regularly to provide a forum for material exchange of information concerning the improvement of criminal law, its practices and procedures. Through these meetings, and its active online community, the CCDLA promotes the study, research and advancement of knowledge of criminal defense law and promotes the proper administration of criminal justice.

STATEMENT OF THE CASE AND FACTS

Amici adopt by reference the statement of the case and facts set forth by Defendant-Appellee Dahjon Walker.

ARGUMENT

PROPOSITION OF LAW: An appellate court, when reviewing a challenge to the sufficiency of the evidence, is required to draw all reasonable inferences in favor of the State's case, and may not adopt the Defense's inferences to reverse a conviction.

Introduction

Before this Court is a well-settled and utterly noncontroversial principle of appellate review. In drawing this Court's attention to it, the State of Ohio has portrayed the Eighth District Court of Appeals as a reviewing body run amok. While parties on both sides of litigation will always encounter decisions with which they disagree, it is rare to see a party, in this case the State of Ohio, undertake to turn a simple disagreement into a catastrophe. The State's pretenses to the contrary, the Eighth District has in no way altered, or decided to categorically misapply, the standard of review for challenges to the sufficiency of the evidence presented at trial.

As Appellee's merit brief makes clear, Dahjon Walker was one of several individuals who participated in a bar fight that ended very badly. This was not a calculated plan to commit murder. On appeal, the Eighth District modified the jury's verdict, which had adopted the prosecution's unsupported narrative that this was an aggravated murder, by modifying Mr. Walker's conviction to murder. That decision was the correct one. True, reviewing courts must view the evidence in a light most favorable to the State drawing all reasonable inferences in the State's favor. But this standard, while deferential, does not mandate blind adherence to a prosecution theory grounded on speculation rather than facts. The inferences the reviewing court draws, must be *reasonable*. In this case, they were not.

The Eighth District is not an outlier in its review of sufficiency challenges.

In painting the Eighth District's decision here as something akin to an outbreak of disease, the State of Ohio provides this Court with a list of six cases – which it characterizes as a "rash." In each case, the Eighth District found that the prosecution had failed to demonstrate that the murder was undertaken with prior calculation and design, as the law requires before the State properly convicts for aggravated murder. The state also offers a brief "factual" summary for each case. In fact, those summaries are really just distorted and, ultimately, unsupported, recitations of the prosecution's trial narrative. According to the State, these six cases – decided over a four-year period – demonstrate a trend or tendency by that court to overstep. That claim is false.

Initially, only two of those six cases, excluding this one, are actually in play before this Court. This Court has dismissed the State's appeal in *Shabazz* as improvidently allowed. It has also denied the State's request for leave to appeal in *State v. Hill*, 136 Ohio St. 3d 1450, 2013-Ohio-3210, 991 N.E.2d 257 and *State v. Hicks*, 2016-Ohio 2807. This Court has not ruled on whether to accept the State's appeal from the Eighth District's decision in Mr. Durham's case; and this Court has accepted the State's appeal in *State v. Woods*, Case No. 2014-0940, and stayed any briefing. Before this Court the State of Ohio summarizes the "facts" in *Woods* and *Durham* this way:

> [Nathaniel Woods] brought the victim back to his apartment, strangled her to death, and then burned her body.
>
> [Bryan Durham] lured the victim behind a building and shot him in the face during a feud over business.

While these statements clearly offer a thumbnail sketch of what the prosecution sought

to prove at trial, the Eighth District concluded that the records in both cases failed to support the theory that these cases involve calculated, and therefore aggravated, murders. The State of Ohio employs florid words like "feud" and "lure" to describe the circumstances surrounding Mr. Durham's case; and asks this Court to infer that Mr. Woods "*brought* the victim back to his apartment" with a *plan* to "strangle her to death." Yet the records in both cases fail to show that these offenses were planned in any fashion. Accordingly, the State's "factual summaries" are not justified on the records presented.

Moreover, the State includes the case of Walker's codefendant, Derrell Shabazz, whose offense was committed in the same bar-fight as Walker. Accordingly, there are actually five cases in four years where the Eighth District has concluded that the State of Ohio had utterly failed to prove the element of prior calculation and design. In that same four- year time period, the Eighth District reviewed and *affirmed* a greater number of convictions for aggravated murder in the face of sufficiency challenges using the same analysis that it applied in *Walker*. See, *State v. Conner*, 8th Dist. Cuyahoga No. 99557, 2014 Ohio 601; *State v. Bryson*, 8th Dist. Cuyahoga No. 98298, 2013 Ohio 934; *State v. Orr*, 8th Dist. Cuyahoga No. 100841, 2014 Ohio 4680; *State v. Bolan*, 8th Dist. Cuyahoga No. 95807, 2011 Ohio 4501; *State v. Worley*, 8th Dist. Cuyahoga No. 103105, 2016 Ohio 2722; *State v. White*, 8th Dist. Cuyahoga No. 101576, 2015 Ohio 2387; *State v. Jackson*, 8th Dist. Cuyahoga No. 100125, 2014 Ohio 3583; *State v. Powell*, 8th Dist. Cuyahoga No. 99386, 2014 Ohio 2048; and *State v. Williams*, 8th Dist. Cuyahoga No. 98528, 2013 Ohio 1181.

There is no trend here.

Other appellate districts have treated the factual scenario this case represents similarly.

Walker's case involved a bar-fight that ended fatally for one of the participants. The Eighth District concluded that the prosecution had proved the offense of murder, rather than aggravated murder, because there was insufficient evidence of prior calculation and design. Cases in appellate districts throughout the State of Ohio view this scenario in much the same way. See, e.g. *State v. Alvarado*, 2015 WL 139519, 2015-Ohio-75 (6th Dist)(Murder conviction affirmed where defendant struck and killed a woman with a broken bottle during a "riot" in the bar); *State v. Pernell*, 2011 WL 7029733. 2011-Ohio-6918 (6th Dist)(Murder conviction affirmed for killing during bar fight); *State v. Linzy*, 2013 WL 1200351, 2013-Ohio-1129 (5th Dist) (Court upheld two murder convictions where defendant killed two people in a bar fight); *State v. Dickerson*, 2012 WL 2928667, 2012-Ohio-3268 (10th Dist)(Court upheld two murder convictions for defendant who had killed two people during a bar fight); *State v. Hill*, 2013 WL 6844104, 2013-Ohio-5725 (Ohio App. Ct. 9th Dis. 2013)(Court affirmed murder conviction stemming from shooting during a bar fight); and *State v. McCray*, 2014 WL 2466311, 2014-Ohio-2289 (5th Dist) (Court upheld the murder conviction of a defendant who stabbed and killed a man during a bar fight).

This should not be surprising. By their very nature – often fueled by alcohol and rage – bar-fights are generally spontaneous/hot blooded events. Prior calculation and design, on the other hand, is decidedly cold blooded in nature – and to prove someone guilty of aggravated murder, the prosecution must show beyond a reasonable doubt that a killing was undertaken with prior calculation and design. Prior calculation and design

"indicates *studied care in planning* or analyzing the means of the crime as well as a scheme encompassing the death of the victim." *State v. Taylor*, 78 Ohio St.3d 15, 19, 1997-Ohio-243, 676 N.E.2d 82 (emphasis added). Prior calculation and design requires evidence of a scheme designed to implement the calculated decision to bring about the death of another. No definite period of time must elapse and no particular amount of consideration must be given, but acting on the spur of the moment or after momentary consideration of the purpose to cause the death is not sufficient. See, *State v. D'Ambrosio,* 67 Ohio St.3d 185, 196, 1993-Ohio-170, 616 N.E.2d 909.

In the *Walker* case, as in most bar-fights gone bad, the conduct took place in front of dozens of witnesses. Worse yet, the incident was captured on multiple cameras. That fact alone suggests an utter lack of prior calculation. Moreover, Walker was armed at the time, so the prosecution could not even argue that he left to obtain the weapon, and, thereby infer a level of calculation. The Eighth District reviewed the video depicting the incident and, not unreasonably, concluded that the inferences the State was asking it to draw were unsupported. That decision is entirely consistent with the decisions reached by other Ohio appellate districts and it is consistent with the requisite standard of review as articulated by this Court.

CONCLUSION

For the foregoing reasons, Amici ask this Court to affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Amici Curiae Cuyahoga County Public Defender's Office, and the Cuyahoga Criminal Defense Attorneys Association was served on all parties to this action via email or by regular U.S. Mail, postage pre-paid to their respective addresses on this the 7TH day of June, 2016.

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