

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-T-0017
ORYAN L. MILLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 562.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113-1204 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Oryan L. Miller, appeals from the January 5, 2010 judgment entry of the Trumbull County Court of Common Pleas, in which he was sentenced for complicity to murder and complicity to aggravated burglary.

{¶2} On August 20, 2009, appellant was indicted by the Trumbull County Grand Jury on five counts: count one, complicity to murder with a firearm specification in violation of R.C. 2923.03(A)(1), R.C. 2903.02(B)&(D), and R.C. 2941.145; count two,

complicity to aggravated burglary, a felony of the first degree with a firearm specification in violation of R.C. 2923.03(A)(1), R.C. 2911.11(A)(1)&(B), and R.C. 2941.145; count three, complicity to aggravated burglary, a felony of the first degree with a firearm specification in violation of R.C. 2923.03(A)(1), R.C. 2911.11(A)(2)&(B), and R.C. 2941.145; count four, complicity to aggravated robbery, a felony of the first degree with a firearm specification in violation of R.C. 2923.03(A)(1), R.C. 2911.01(A)(1)&(C), and R.C. 2941.145; and count five, complicity to aggravated robbery, a felony of the first degree with a firearm specification in violation of R.C. 2923.03(A)(1), R.C. 2911.01(A)(3)&(C), and R.C. 2941.145. Appellant pleaded not guilty at his arraignment on August 25, 2009.

{¶3} A jury trial commenced on November 10, 2009.

{¶4} At the trial, Michael Ahladis testified for appellee, the state of Ohio, that his cousin, Delshawn Scrivens, was a marijuana customer of Cameron Murray. Murray resided at 2200 Sandpiper Trail, in the Sawgrass condo development in Howland Township, Trumbull County, Ohio. According to Ahladis, he and Scrivens plotted to burglarize Murray's condo for some quick cash. On December 22, 2008, Scrivens visited Murray and unlocked his back patio door. Around 11:00 a.m. the following morning, Ahladis and Scrivens picked up appellant in Ahladis' green pick-up truck and the three went to a local Wal-Mart to purchase ski masks. While en route, Ahladis stated the three discussed a plan to burglarize Murray's condo. At Wal-Mart, Ahladis phoned his girlfriend, Shawna McElroy, and told her to make a marijuana purchase from Murray and see when he would be leaving his condo. McElroy complied and told Ahladis that Murray was planning to leave his residence right after the transaction.

Ahladis purchased two pairs of gloves and three ski masks from Wal-Mart and the three men left the store. Ahladis indicated that each of them had guns, and they continued to discuss burglarizing Murray's condo and splitting the proceeds equally.

{¶5} After Ahladis pulled up to Murray's condo, Scrivens and appellant knocked on the door. Ahladis stated that when no one answered, Scrivens and appellant went around back and entered the unit from the patio door that Scrivens had unlocked the previous day. Ahladis left the condo and went to a nearby Burger King.

{¶6} Michael Theodore, a resident of Sawgrass, testified for the state that he heard a loud noise which sounded like a gunshot. After looking out his door, Theodore saw individuals fighting. He indicated that one of the men wore an orange ski mask and another wore a black or dark blue one. After Theodore retrieved his cell phone, the individuals were gone. About five minutes later, Theodore heard another loud, gunshot-like noise but did not see anything after looking out his door again.

{¶7} After Ahladis returned to the condo, he saw Murray's vehicle and called Scrivens' cell phone to warn him. Ahladis said that someone answered the phone but did not speak. A few minutes later, Scrivens called Ahladis and told him that he and appellant had been shot. Scrivens and appellant got in Ahladis' pick-up truck and the three drove away. According to Ahladis, appellant told him that a fight ensued between Scrivens and Murray, Murray opened fire, and then appellant shot Murray. Ahladis stated that appellant said he hid his gun "out back."

{¶8} After leaving the condo, Ahladis pulled down Hollywood Street in Warren, Trumbull County, Ohio, and put Scrivens' gun in a trash can. Ahladis asked his father to dispose of his gun. Because Ahladis thought the police might be in pursuit of his

green pick-up truck, he took Scrivens to Trumbull Memorial Hospital in Jody Hayes' Ford Expedition and dropped him off. In the meantime, Hayes drove appellant to Kerby Lee's home to swap vehicles again. Lee took appellant to St. Joseph's Hospital in his Jeep Cherokee. Appellant left blood stains in Lee's vehicle and did not offer any information about the shooting to Lee.

{¶9} Jamaar Kimble, a friend of Murray's, testified for the state that he arrived at Murray's condo around dusk later that day and noticed that his garage door was open, which he found to be unusual as it was always closed as a precaution due to a previous break-in. Kimble discovered Murray face down in his doorway and believed that he was dead. Kimble alerted nearby construction workers who called 9-1-1.

{¶10} A team from Howland Township Police Department ("HTPD"), Ohio Bureau of Criminal Investigation ("BCI"), and Trumbull County Homicide Task Force arrived at the scene. Jeffrey Urso, a sergeant with the HTPD, testified for the state that he noticed a mop, ski mask, and zip ties near Murray's body. Sergeant Urso described the scene as one in which a struggle had taken place. Ed Carlini, a special agent with BCI, testified for the state that he discovered and preserved blood drops in the snow and on the back patio door handle of Murray's condo. He also recovered a projectile near the washer/dryer unit, one in the guest bedroom, and two near Murray's body. In addition, Carlini recovered a dark-colored knit hat in the main hallway of the condo next to Murray's body, a bag of marijuana, and a digital scale. Paul Monroe and Frank Dillon, both with the HTPD, recovered approximately \$21,600 in cash at Murray's condo.

{¶11} Officers from Warren City Police Department (“WCPD”) were dispatched to both hospitals to interview appellant and Scrivens. Dillon testified for the state that he attempted to interview Scrivens, but he was unconscious and later died. Appellant, however, was interviewed and gave different stories with regard to how he ended up in the hospital with a gunshot wound. Rich Kovach with the WCPD testified for the state that appellant told him he was shot while walking along Ogden and Hall Avenues in Warren. Officers were immediately dispatched to that area but found no evidence of a shooting. Jeff Hoolihan with the WCPD testified for the state that appellant told him that he was shot at Arlington and Roosevelt in Warren and that Lee drove him to the hospital. After further questioning, Hoolihan indicated that appellant said that Hayes drove him to the hospital. Hoolihan also stated that appellant later told him that he ran to his nephew’s house after the shooting and that both Lee and Hayes drove him to the hospital.

{¶12} Nick Roberts with the HTPD viewed security footage from Wal-Mart and testified for the state that he identified Ahladis, Scrivens, and appellant. Roberts saw Ahladis purchase candy, two pairs of gloves, and three ski masks before leaving the store with Scrivens and appellant. Roberts retrieved a copy of the receipt from Wal-Mart, which was submitted as Exhibit 50.

{¶13} Brenda Gerardi with BCI testified for the state that a mixture of Murray’s and appellant’s DNA was found on a hat recovered from the right side of Murray’s body as well as from the inside patio door handle of Murray’s condo. Gerardi stated that by a profile of one in 18 sextillions, appellant’s DNA was detected in blood stains found on the exterior east lawn of Murray’s condo. Appellant’s DNA was also found on a seat

belt buckle in Ahladis' pick-up truck. In addition, Martin Lewis with BCI testified for the state that swabs from appellant's hands indicated he fired a weapon on the day at issue.

{¶14} Dr. Humphrey Germaniuk, coroner and medical examiner for Trumbull County, testified for the state that he recovered three bullets from Murray's back, left neck, and chest during the autopsy. Dr. Germaniuk ruled Murray's death a homicide due to multiple gunshot wounds.

{¶15} In April 2009, Ahladis' lawyer informed the prosecutor that appellant hid his gun behind Murray's condo. Paul Monroe, Chief of Police with the HTPD, testified for the state that he searched the area and found a weathered .38 caliber Taurus handgun lodged in a rock pile along a drainage ditch behind Murray's condo. Roberts, who is assigned to the firearm section inside the laboratory of BCI, indicated that the three bullets removed from Murray during the autopsy and the one bullet recovered near his body were all fired by the gun found by Chief Monroe behind Murray's condo.

{¶16} Following the trial, the jury found appellant guilty of counts one, two, and three, but not guilty on counts four and five.

{¶17} Pursuant to its January 5, 2010 judgment entry, the trial court sentenced appellant to 15 years to life on count one, complicity to murder with a firearm specification; 10 years on counts two and three, complicity to aggravated burglary with firearm specifications, which were merged and ordered to run concurrent to count one; and 3 years on the firearm specifications in counts one, two, and three, which were merged and ordered to run prior to and consecutive to the underlying offenses, for a total term of 18 years to life. The trial court notified appellant that a period of parole

supervision equal to the length of the life sentence imposed on the complicity to murder charge is mandatory if he is released before serving the life sentence. The trial court further notified appellant that post-release control is mandatory as to counts two and three up to a maximum of five years. It is from that judgment that appellant filed a timely appeal, asserting the following assignments of error for our review:

{¶18} “[1.] The trial court abused its discretion by permitting appellee, over objection, to continue its direct examination of Dr. Humphrey Germaniuk after resting.

{¶19} “[2.] The appellant’s convictions are against the manifest weight of the evidence.”

{¶20} In his first assignment of error, appellant argues that the trial court abused its discretion by permitting the state, over objection, to continue its direct examination of Dr. Germaniuk.

{¶21} Evid.R. 611(A) provides: “The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.”

{¶22} “Whether to permit a witness to be recalled to the stand to give additional testimony is a matter committed to the sound discretion of the trial court.” *State v. Sims* (1981), 3 Ohio App.3d 321, 329. (Citation omitted.) “[T]he general rule in Ohio [is] that the question of opening up a case for the presentation of further testimony is within the sound discretion of the trial court, and the court’s action in that regard will not be disturbed on appeal unless under the circumstances it amounted to an abuse of

discretion.” *Columbus v. Grant* (1981), 1 Ohio App.3d 96, 97. An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black’s Law Dictionary (8 Ed.Rev.2004) 11.

{¶23} In the case at bar, the record establishes that Dr. Germaniuk testified as a witness for the state regarding Murray’s wounds and the cause of his death. Appellant’s counsel cross-examined Dr. Germaniuk concerning the various possible causes of ligature marks; whether any of the marks had been found on Murray; the state of Murray’s dress at the outset of the autopsy; and Murray’s weight. On redirect examination by the state, Dr. Germaniuk further indicated the reasons ligature marks may or may not appear on a body. Following redirect examination, the trial judge excused Dr. Germaniuk and recessed for a mid-afternoon break. After an 18-minute recess, the prosecutor asked the trial judge at sidebar for the opportunity to recall Dr. Germaniuk to inquire on a couple of questions about one of the injuries sustained by Murray. Appellant’s counsel objected. The trial court overruled the objection, told the prosecutor to “keep it short,” and allowed Dr. Germaniuk to retake the stand.

{¶24} We determine that the trial court did not abuse its discretion by permitting the state to recall Dr. Germaniuk for the purpose of conducting continued redirect examination. We note that neither side had rested and no other witnesses had been called. Upon questioning, no objections were made to any of the questions asked. The record before us does not establish that appellant suffered any prejudice due to the recalling of Dr. Germaniuk.

{¶25} Appellant’s first assignment of error is without merit.

{¶26} In his second assignment of error, appellant contends that his convictions are against the manifest weight of the evidence.

{¶27} As this court stated in *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, at *14-15:

{¶28} “*** ‘[M]anifest weight’ requires a review of the weight of the evidence presented, not whether the state has offered sufficient evidence on each element of the offense.

{¶29} “‘In determining whether the verdict was against the manifest weight of the evidence, “(***) the court reviewing 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. (***)’” (Citations omitted.) ***” (Emphasis sic.)

{¶30} A judgment of a trial court should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387.

{¶31} With regard to the manifest weight of the evidence, we note that the jury is in the best position to assess the credibility of witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Here, the jury chose to believe the state’s witnesses.

{¶32} Again, Ahladis, Scrivens, and appellant went to Wal-Mart, purchased gloves and ski masks, and discussed a plan to burglarize Murray’s condo. Scrivens and

appellant entered the unit through the back patio door. According to Ahladis, appellant told him that a fight ensued between Scrivens and Murray, Murray opened fire, and then appellant shot Murray. Ahladis stated that appellant said he hid his gun “out back.” Ahladis threw Scrivens’ gun in a trash can, switched vehicles, and took Scrivens to Trumbull Memorial Hospital. Lee took appellant to St. Joseph’s Hospital in another car.

{¶33} Kimble testified for the state that he arrived at Murray’s condo around dusk later that day, discovered Murray’s lifeless body, and a 9-1-1 call was placed. After arriving at the scene, Sergeant Urso noticed a mop, ski mask, and zip ties near Murray’s body. Special Agent Carlini discovered and preserved blood drops in the snow and on the back patio door handle. He also recovered projectiles, a dark-colored knit hat, a bag of marijuana, and a digital scale.

{¶34} Scrivens ultimately died. Appellant, however, was interviewed and gave different stories with regard to how he ended up in the hospital with a gunshot wound. Detective Roberts later viewed security footage from Wal-Mart and identified Ahladis, Scrivens, and appellant. He saw Ahladis purchase two pairs of gloves and three ski masks before leaving the store with Scrivens and appellant. A copy of the Wal-Mart receipt was entered into evidence.

{¶35} Forensic scientist Gerardi testified for the state that a mixture of Murray’s and appellant’s DNA was found on a hat recovered from the right side of Murray’s body as well as from the inside patio door handle. Gerardi stated that by a profile of one in 18 sextillions, appellant’s DNA was detected in blood stains found on the exterior lawn of Murray’s condo. Appellant’s DNA was also found on a seat belt buckle in Ahladis’ pick-up truck. In addition, forensic scientist Lewis testified for the state that swabs from

appellant's hands indicated he fired a weapon on the day at issue. Dr. Germaniuk recovered three bullets from Murray during the autopsy and ruled Murray's death a homicide.

{¶36} Ahladis' lawyer later informed the prosecutor that appellant hid his gun behind Murray's condo. Chief Monroe performed a search and found a weathered .38 caliber Taurus handgun. Detective Roberts indicated that the three bullets removed from Murray during the autopsy and the one bullet recovered near his body were all fired by that gun.

{¶37} Based on the evidence presented, pursuant to *Schlee* and *Thompkins*, supra, we cannot say that the jury clearly lost its way in finding appellant guilty of complicity to murder with a firearm specification and complicity to aggravated burglary with firearm specifications.

{¶38} Appellant's second assignment of error is without merit.

{¶39} For the foregoing reasons, appellant's assignments of error are not well-taken. The judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.