

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2010-L-145
MICHELLE A. TATE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 000266.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Michelle A. Tate, appeals from the judgment of conviction, entered by the Lake County Court of Common Pleas, after trial by jury. For the reasons discussed in this opinion, we affirm.

{¶2} On the morning of April 20, 2001, Iisha Pagan; her daughter, Samantha Rice; her ex-husband, Alonso Pagan; and Samantha's infant son were at their residence in Painesville, Ohio. Ms. Pagan left the home by herself to purchase some

items at a local convenience store, Falcone's RediGo. As she drove, she observed a green Ford Explorer with a Pennsylvania license plate. She did not see the driver, but noticed a black male in the passenger seat. The SUV resembled a vehicle belonging to a family friend from Erie, Pennsylvania. She consequently thought the family friend may be en route to her home for an unexpected visit.

{¶3} On her way back from her errand, Ms. Pagan again noticed the green Explorer at the top of her street, in the process of parking behind another car. Puzzled, Ms. Pagan related what she saw to her ex-husband. While Mr. Pagan thought the situation was odd, he left the home to meet with some friends. Before he left, Mr. Pagan gave Ms. Pagan \$150 cash in five-dollar denominations and asked her to deposit the money in the bank.

{¶4} While sitting with Samantha and Samantha's son, Ms. Pagan heard the side door to her home open. Thinking it was Mr. Pagan, she did not check the door. Suddenly, however, a black male wearing a black, hooded sweatshirt with the hood up appeared from the hallway. The male was brandishing a firearm and demanded money. Ms. Pagan gave him the \$150, but the intruder demanded more. Ms. Pagan stated the only other item of value in the house was the liquor in her basement. The intruder ordered Ms. Pagan and Samantha to the basement where he began riffling through Ms. Pagan's liquor cabinet. While he looked for more items to take, Ms. Pagan noticed the intruder was wearing a latex glove on his left hand, the hand gripping the gun.

{¶5} The intruder found nothing in the cabinet and ordered Ms. Pagan and Samantha to the floor. Rather than comply, Ms. Pagan ran to a nearby bathroom to

separate the intruder from her daughter. The intruder followed, aimed the gun, and fired. Ms. Pagan was able to drop to the floor to avoid the shot. The intruder subsequently fled the home. And, after a few minutes, Ms. Pagan grabbed a samurai sword, and made her way out of the home.

{¶6} Prior to the incident, Dontiez Wagner, a friend of the Pagans' neighbor across the street, observed a man in a black, hooded sweatshirt approach the Pagans' side door and enter the residence. He later saw the same man exit the home in haste, running in the same direction from which he originally came. Wagner stated that, as the man ran off, his hand was in the pocket of the sweatshirt. After observing Ms. Pagan emerge from the home armed with a sword, Wagner called 911.

{¶7} Shortly after the invasion, Samantha notified her father of the incident. With several friends in his truck, Mr. Pagan left to return to the Pagan home. While driving, Mr. Pagan noticed a Green Ford Explorer at an intersection that resembled the vehicle described by his ex-wife earlier that morning. Mr. Pagan further recognized appellant as the driver of the vehicle. Mr. Pagan knew appellant as the girlfriend of his friend, Abdule. The evidence indicated that appellant had visited the Pagan home on at least four occasions, the most recent of which occurred just days before the incident.

{¶8} On a hunch, Mr. Pagan began to follow the Explorer. While doing so, two of Mr. Pagan's friends called 911 and notified authorities of the home invasion, the vehicle description, and the license plate number. Mr. Pagan followed the Explorer on Route 2 until it exited the highway at Route 615 and turned right onto Market Street in Mentor, Ohio, a road running parallel to Route 2. The Explorer made a right turn onto

Hopkins Road, but Mr. Pagan was unable to continue following because of traffic. He eventually lost sight of the Explorer.

{¶9} On the date of the incident, Patrolman Michael Fitzgerald of the Willoughby Police Department was on duty patrolling near Route 2. He received the information from dispatch regarding the suspect vehicle; he was further informed that the occupants of the vehicle may have been involved in a home invasion that took place in Painesville. The officer identified a vehicle matching the description, radioed for backup, and initiated a traffic stop.

{¶10} Once the vehicle was stopped, the on-site officers ordered the Explorer's occupants out of the vehicle. A black female, later identified as appellant was driving and a black male, later identified as Alphonso Allen, was her passenger. Officers at the Pagan home were notified of the stop, and Detective John Levicki transported Ms. Pagan to the location. Upon arrival, Ms. Pagan immediately identified Allen as the intruder. Ms. Pagan also was able to identify appellant as a woman who had accompanied Abdule to the Pagan home on several prior occasions.

{¶11} At the scene of the stop, appellant was cooperative with officers and gave them consent to search her vehicle. The officer subsequently located two black, hooded sweatshirts and a latex glove. The officers further discovered \$35 cash in Allen's pocket. The money was in five-dollar denominations. Later, Sergeant Toby Burkett of the Painesville Police Department administered a gunshot residue test on Allen, which, after forensic analysis, yielded a positive result.

{¶12} When Detective Livicki spoke with appellant, she stated she was traveling to Cleveland to have sex with an unidentified man and Allen was merely her road

companion. She denied being in either Painesville or Mentor that day, and asserted she had no knowledge of the home invasion that occurred at the Pagan residence. During a later interview, appellant noted that, at some point during their journey, Allen did leave her vehicle for about 10 minutes; appellant claimed, however, she was unaware of why he left or where he went.

{¶13} At the Pagan home, officers found a bullet hole in the bathroom mirror, the metal jacket from the bullet, and an additional bullet on the rim of the sink. Six days after the incident, a gun was discovered by a Mentor road maintenance employee near a fence line on Market Street in Mentor. The weapon was turned over to Mentor Police Department and later Detective Levicki took custody of the firearm. The gun, its magazine containing two bullets, as well as the bullet and metal jacket recovered from the crime scene were sent for forensic testing at the Lake County Crime Laboratory. Ray Jorz, a forensic firearm examiner, determined the firearm was operable and opined, to a reasonable degree of scientific certainty, that the metal jacket and bullet found at the Pagan residence were fired from the weapon.

{¶14} With the assistance of the ATF, Detective Levicki was ultimately able to locate the individual to whom the firearm was registered, Eddie Ray Johnson of Erie, Pennsylvania. Johnson informed the detective that he had owned a firearm matching the detective's description, but had not seen the weapon since 2007. Johnson stated he was living with his girlfriend, Claudia Poole, at the time the weapon went missing. He asserted he confronted Poole about the missing firearm, and she acknowledged her involvement in the removal.

{¶15} Detective Levicki located Poole, who confirmed she was living with Johnson in 2007 at a residence she owned. She further confirmed she removed the firearm from the residence because she did not want the weapon in her home. She eventually took the firearm to the home of a friend, Sheika Tate, appellant's sister. According to Poole, Sheika Tate knew a man named "Rilla," who might be interested in the firearm. Poole, who knew appellant in 2007, and, at Detective Levicki's request, identified appellant via photo lineup in 2010, stated that, in 2007, Rilla was appellant's boyfriend. Poole later viewed a photo of Allen and stated he was not Rilla.

{¶16} Appellant was later indicted on four counts each of Complicity to Aggravated Robbery, felonies of the first degree, in violation of R.C. 2911.01(A)(1) and (3) and R.C. 2923.04(A)(1) and (2); Complicity to Aggravated Burglary, felonies of the first degree, in violation of R.C. 2911.11(A)(1) and (2) and R.C. 2923.03(A)(1) and (2); and Complicity to Kidnapping, felonies of the first degree, in violation of R.C. 2905.01(A)(2) and R.C. 2923.03(A)(1) and (2). Firearm and forfeiture specifications were attached to each count in the indictment. Appellant waived her right to be present at her arraignment, and the court entered a plea of "not guilty" on her behalf.

{¶17} After a trial by jury, a verdict was entered finding appellant guilty on all counts and specifications. She was sentenced to concurrent prison terms of eight years on each count with concurrent three-year prison terms for two of the firearm specifications for an aggregate sentence of 11 years imprisonment.

{¶18} For her first assignment of error, appellant alleges:

{¶19} "The trial court erred to the prejudice of the defendant-appellant when it permitted a witness to speculate regarding the ownership path of the gun used in the

case at bar where the testimony was based upon hearsay and should have been excluded because it created unfair prejudice, confused the issues, and misled the jury, in violation of the defendant-appellant's state and federal constitutional rights to fair trial, due process, and witness confrontation."

{¶20} Under her first assignment of error, appellant argues the trial court committed reversible error when it permitted the state to introduce unfairly prejudicial, hearsay testimony of witness Claudia Poole. In particular, appellant maintains the admission of the testimony violated Evid.R. 403 because, although relevant, its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and its potential to mislead the jury. Appellant also asserts Ms. Poole's testimony violated evidentiary rules prohibiting non-excepted hearsay because she was permitted to testify to the out-of-court statement of a party not called to testify, and the statement was offered to prove the truth of the matter asserted. Based upon this testimony, the jury was able inferentially to connect the firearm used in the underlying crimes to appellant in violation of her right to a fair trial.¹

{¶21} Decisions relating to the admissibility of evidence are within the broad discretion of a trial court and such rulings will not be upset save an abuse of the court's discretion. *State v. Ricco*, 11th Dist. No. 2008-L-169, 2009-Ohio-5894, at ¶17. An abuse of discretion occurs where the trial court's judgment comports with neither the record nor reason. *Id.*, citing *State v. Ferranto* (1925), 112 Ohio St. 667, 676-678.

1. Although appellant's assigned error asserts the introduction of the alleged hearsay also violated her right to confrontation, she fails to specifically argue this point in her appellate brief in violation of App.R. 16(A)(7). Even if she set forth a specific argument in support of this proposition, however, it is clear that the out-of-court statement of Sheika Tate was non-testimonial in nature as it was made to Poole and not during the course of a police inquiry. The statement, therefore, was not subject to the requirements of the Confrontation Clause. See, e.g., *Davis v. Washington* (2006), 547 U.S. 813, 822.

{¶22} During the state's case-in-chief, Claudia Poole testified that, in 2007, she resided with her then-boyfriend, Eddie Ray Johnson. Johnson owned a handgun that he kept in the couple's residence. Poole testified she did not like the weapon in the home, so she removed it and gave it to a friend, Sheika Tate. In the course of Poole's testimony, the following exchange took place:

{¶23} "[Prosecutor]: Let's go back and talk about that handgun again. You took it out of the house. You talked to Sheika, Michelle Tate's sister, what did you do with the handgun then?

{¶24} "[Poole]: Sheika suggested that - -

{¶25} "[Defense Counsel]: Objection.

{¶26} "[Poole]: - - maybe - -

{¶27} "[The Court]: Hang on a second. Sustained. He asked you what you did next.

{¶28} "[Prosecutor]: Asking what you did with the handgun. You talked to Sheika about it?

{¶29} "[Poole]: Yeah.

{¶30} "[Prosecutor]: After you talked to Sheika about it, what did you do with the handgun?

{¶31} "[Poole]: I - - if I remember, I left it there if I'm not mistaken.

{¶32} "[Prosecutor]: Why did you leave it there?

{¶33} "[Poole]: Because she said that there was - -

{¶34} "[Defense Counsel]: Objection.

{¶35} "[The Court]: Overruled. Go ahead. Explain why she did something.

{¶36} “[Poole]: She said there was someone that may be interested in the gun.

{¶37} “[Prosecutor]: Who was that someone?

{¶38} “[Poole]: Somebody by the name of Rilla.

{¶39} “[Prosecutor]: ‘Rilla,’ is that a street name?

{¶40} “[Poole]: I’m assuming so. I never knew of any other name.

{¶41} “[Prosecutor]: Rilla has some relationship with Michelle Tate?

{¶42} “[Poole]: As far as I know they were boyfriend and girlfriend.”

{¶43} During her testimony, Poole viewed the firearm used in the incident and testified the weapon generally appeared to be the firearm Johnson owned; however, she also conceded, she could not be positive.

{¶44} We shall first address appellant’s contention that the admission of the foregoing testimony violated Evid.R. 403. Unless otherwise prohibited, evidence is relevant and admissible if it has any tendency to make a consequential fact more or less probable. Evid. 401 and Evid.R. 402. A trial court, however, is required to exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.” Evid.R. 403; *State v. Boggs* (1992), 63 Ohio St.3d 418, 422.

{¶45} Appellant contends Poole’s testimony was premised upon a tenuous and speculative link between Poole and a woman she alleged was appellant’s sister who was purportedly connected to a man Poole claimed was appellant’s boyfriend in 2007. Because Poole did not testify appellant kept the firearm, let alone gave the firearm to her alleged boyfriend, appellant claims the probative value of the evidence was

substantially outweighed by the danger of unfair prejudice, misleading the jury, or confusing the issues. We do not agree.

{¶46} The state called Poole to testify to provide a tenable link, via circumstantial evidence, between appellant and the firearm used in the robbery. The sequence of events demonstrated that, after the weapon was discovered, it, along with the bullet and metal jacket recovered from the crime scene, were sent to the Lake County Crime Laboratory. Forensic firearm examiner Ray Jorz testified the copper jacket found at the crime scene was fired from the subject pistol. He further testified that the lead bullet core recovered from the crime scene was not only consistent with the ammunition fired from such a firearm, but, in his view, was specifically shot from that firearm. Jorz also compared a bullet that was in the firearm's magazine to the copper jacket and bullet core recovered from the scene and concluded each were consistent with one another.

{¶47} Next, after the investigating officer traced the firearm to Johnson, Johnson testified Poole had taken the weapon from him in 2007. Poole subsequently testified she took the firearm because she did not want it in her home and eventually left the weapon with her friend, Sheika Tate. It was undisputed that Sheika Tate was appellant's sister. Poole finally testified, to her recollection, she left the firearm with Tate because appellant's boyfriend may be interested in the weapon.

{¶48} The foregoing evidence provides a logical chain of events from which the jury could conclude appellant had access to, and ultimately came into possession of, the weapon that was purportedly used in the robbery. The testimony was therefore relevant to the state's theory of the case and tended to establish the proposition it was offered to prove; namely, that appellant was complicit in the underlying home invasion.

The inferential chain is clear and, as a result, the testimony cannot be reasonably viewed as confusing or misleading to the jury.

{¶49} Moreover, we fail to see how Poole's testimony created any danger of unfair prejudice. Although the circumstantial inferences that can be drawn from Poole's testimony are not favorable to appellant, "[u]nfavorable evidence is not equivalent to unfairly prejudicial evidence." *State v. Bowman* (2001), 144 Ohio App.3d 179, 185. Moreover, excluding evidence on the basis of "unfair prejudice" requires more than a balance of mere prejudice; otherwise, any admission adversely affecting a defendant's case would be excludable pursuant to Evid.R. 403. *State v. Crotts*, 104 Ohio St.3d 432, 437, 2004-Ohio-6550. Consequently, significant emphasis must be placed upon the word "unfair." *Id.*

{¶50} A defendant may suffer unfair prejudice when the admission of evidence could result in an improper basis for the jury's verdict. *State v. Broadnax* (Feb. 16, 2001), 2d Dist. No. 18169, 2001 Ohio App. LEXIS 564, *8, citing *State v. Allard* (1996), 75 Ohio St.3d 482. "The underlying premise of the Rule is that certain relevant evidence should not be admitted to the trier of fact where the admission would have an adverse impact upon the effectiveness or integrity of the fact finding process." *Broadnax*, *supra*, quoting Weissenberger's Ohio Evidence, Treatise, Section 403.1, at 81-82. Courts have held that evidence that tends to arouse a jury's emotions, evoke, in the jury, a sense of horror, or rouses an instinct to punish, may be considered "unfairly prejudicial." *Crotts*, *supra*; see, also, *State v. Norman*, 4th Dist. Nos. 08CA3059 and 08CA3066, 2009-Ohio-5458, at ¶54; *State v. Harris*, 7th Dist. No. 04 JE-44, 2006-Ohio-

3520, at ¶91; *State v. Lloyd* (Mar. 31, 1999), 2d Dist. No. 15927, 1999 Ohio App. LEXIS 1256, *39.

{¶51} In this case, Poole's testimony simply explained how she acquired the weapon, why she gave it away, and the circumstances that prompted her to leave it with Sheika Tate. Defense counsel cross-examined Poole on her testimony and, in doing so, established that appellant's co-defendant was not the individual Poole identified as appellant's boyfriend in 2007 and that Poole could not be certain the weapon at issue was the gun she left with Sheika Tate. Nothing in Poole's testimony compromised the integrity of the judicial process nor could the content of the testimony have evoked an unseemly emotional reaction in a rational trier-of-fact. We therefore hold the probative value of Poole's testimony was not outweighed, let alone substantially outweighed, by the danger of unfair prejudice. Appellant's argument in this regard is overruled.

{¶52} We shall next address appellant's hearsay argument. Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). The Supreme Court of Ohio has held that testimony is not hearsay "**** if it explains the actions of a witness to whom a statement was directed, such as to explain the witness' activities ***. Likewise, it is non-hearsay if an out-of-court statement is offered to prove a statement was made and not for its truth." *State v. Maurer* (1984), 15 Ohio St.3d 239, 262; see, also, *State v. Thomas* (1980), 61 Ohio St.2d 223, 232.

{¶53} Appellant asserts that Poole's testimony regarding Sheika Tate's out-of-court statements were inadmissible hearsay because they were offered to prove the

truth of the matter asserted; namely, that the firearm was connected to appellant by her sister, who gave it to appellant's alleged former boyfriend. We do not agree.

{¶54} A careful reading of the testimony demonstrates that the prosecutor was inquiring into *why* Poole left the firearm in Sheika Tate's possession. Defense counsel objected *to this question*. After overruling the objection, Poole was permitted to explain her motivation for purportedly leaving the weapon with Tate; to wit, because Tate "**** said there was someone that may be interested in the gun." The testimony was not offered to show that Rilla was actually interested in the firearm, but to explain why Poole left the weapon with Sheika Tate. Given the nature of the question that elicited Poole's response, we conclude the testimony was offered to explain Poole's actions, not to prove the truth of the content of the declarant's assertion. We therefore hold the challenged testimony was not hearsay and the trial court did not abuse its discretion in admitting the same.

{¶55} Appellant's first assignment of error is overruled.

{¶56} As her second and third assignments of error are related, we shall consider them together. They provide:

{¶57} "[2.] The trial court erred to the prejudice of the defendant-appellant when it denied her motion for acquittal made pursuant to Crim.R. 29(A).

{¶58} "[3.] The trial court erred to the prejudice of the defendant-appellant when it returned a verdict of guilty against the manifest weight of the evidence."

{¶59} A challenge to the sufficiency of the evidence invokes an inquiry into due process and examines whether the state introduced adequate evidence to support the verdict as a matter of law. *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082,

1994 Ohio App. LEXIS 5862, *13. Generally speaking, a “sufficiency” argument raises a question of law as to whether the prosecution offered some evidence concerning each element of the charged offense. *State v. Windle*, 11th Dist. No. 2010-L-0033, 2011-Ohio-4171, at ¶25. The proper inquiry is, after viewing the evidence most favorably to the prosecution, whether the jury could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Troisi*, 179 Ohio App.3d 326, 329, 2008-Ohio-6062, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, 273.

{¶60} Alternatively, a manifest weight challenge concerns:

{¶61} “[T]he inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the [finder of fact] that the party having the burden of proof will be entitled to [its] verdict, if, on weighing the evidence in [its] mind[], [it] shall find the *greater amount of credible evidence* sustains the issue which is to be established before [it]. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.” (Emphasis sic.) *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, citing Black’s Law Dictionary (6th Ed. 1990).

{¶62} It is well-settled that “[c]ircumstantial evidence and direct evidence inherently possess the same probative value. ***.” *Jenks*, supra, paragraph one of the syllabus. Circumstantial evidence is defined as “testimony not grounded on actual, personal knowledge or observation of the facts in controversy, but from other facts from which inferences are drawn, showing indirectly the facts sought to be established.” *State v. Windle*, 11th Dist. No. 2010-L-033, 2011-Ohio-4171, at ¶34, citing *State v. Nicely* (1988), 39 Ohio St.3d 147, 150. An inference is “a conclusion which, by means

of data founded upon common experience, natural reason draws from facts which are proven.” *State v. Nevius* (1947), 147 Ohio St. 263. It therefore follows that “*** when circumstantial evidence forms the basis of a conviction, that evidence must prove collateral facts and circumstances, from which the existence of a primary fact may be rationally inferred according to common experience.” *Windle*, supra.

{¶63} In this case, appellant was found guilty of complicity to aggravated robbery, aggravated burglary, and kidnapping. Appellant does not dispute that the underlying crimes were committed by the principal, Alphonso Allen; rather, she asserts the state failed to meet its burden of proving she was complicit in the commission of the crimes. In particular, appellant argues that her convictions were based upon insufficient evidence or, in the alternative, against the manifest weight of the evidence because: (1) there was no evidence she was at the crime scene; (2) Allen left her car and she was unaware of his whereabouts for 10 minutes; (3) neither the firearm nor the \$150 were recovered from the vehicle; (4) she was not aware that the black, hooded sweatshirts and the latex glove were in the vehicle; and (5) she was cooperative with police.

{¶64} R.C. 2923.03 provides, in relevant part:

{¶65} “(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

{¶66} “***

{¶67} “(2) Aid or abet another in committing the offense;”

{¶68} A defendant “aids or abets” when he or she assists or facilitates the commission of a crime or promotes its accomplishment. *State v. Lane*, 11th Dist. No. 2004-L-211, 2006-Ohio-1269, at ¶18. The mere presence of a defendant at the scene

of a crime is insufficient to demonstrate he or she aided or abetted the principal; “rather the state must establish that the offender ‘took some affirmative action to assist, encourage, or participate in the crime by some act, deed, word, or gesture.’” (Citations omitted.) *State v. Sims*, 11th Dist. No. 2001-L-081, 2003-Ohio-324, at ¶44. An overt act of assistance, such as driving a getaway car, if proven, is enough to show a defendant aided and abetted in an underlying crime. *State v. Hill*, 11th Dist. No. 2005-A-0010, 2006-Ohio-1166, at ¶26, citing *State v. Lett*, 160 Ohio App.3d 46, 2005-Ohio-1308, at ¶29.

{¶69} A brief summary of the evidence demonstrates the jury’s verdict was neither premised upon insufficient evidence nor against the manifest weight of the evidence. Testimony established that Isha Pagan left her home to go to a convenience store on the morning of April 20, 2010. As she drove down her street, she noticed a green Ford Explorer with Pennsylvania license plates pass her going in the opposite direction. And, returning from the store, she observed the same vehicle at the top of her street.

{¶70} Approximately 10 minutes after Ms. Pagan returned home, Allen entered the residence, dressed in a black hoodie and brandishing a firearm. Allen had a clear latex glove on his left hand and demanded money. Ms. Pagan gave the intruder \$150 in five-dollar denominations and, after discharging the firearm in the Pagans’ basement bathroom, Allen fled the home.

{¶71} After the home invasion, Mr. Pagan saw a green Ford Explorer similar to the vehicle identified by his ex-wife earlier and recognized appellant as the driver. The

Pagans knew appellant, and she had been in their home on several occasions. Mr. Pagan followed the Explorer, and the authorities were given the vehicle's information.

{¶72} After the vehicle was stopped and searched, police found two black, hooded sweatshirts and a latex glove. Officers also found \$35 in cash in five-dollar denominations in Allen's pocket. And, later, a pistol was found near a road on which appellant and Allen were traveling after they exited Route 2. The pistol was later connected to the home invasion and the evidence demonstrated that appellant may have had access to the weapon as it was left at her home by Claudia Poole in 2007.

{¶73} From the foregoing evidence, the jury could have concluded, beyond a reasonable doubt, that appellant was complicit in aggravated robbery, aggravated burglary, and kidnapping, by aiding and abetting Alphonso Allen in the commission of these crimes. The jury could conclude, given the circumstantial evidence, that appellant took some affirmative steps to assist Allen in committing the crimes by: (1) acquiring the firearm; (2) identifying the home to be robbed; and (3) driving the getaway vehicle after the incident. Notwithstanding appellant's protestations that Allen acted alone without her assistance, the circumstantial evidence was such that the jury could find, beyond a reasonable doubt, that appellant was an active participant in the incident. The verdict is supported by sufficient, credible evidence. We therefore hold the trial court did not err in overruling appellant's Crim.R. 29 motion and the jury did not lose its way in finding appellant complicit in the commission of the crimes of aggravated robbery, aggravated burglary, and kidnapping.

{¶74} Appellant's second and third assignments of error are overruled.

{¶75} For the reasons discussed in this opinion, the judgment of conviction entered by the Lake County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, J.,
THOMAS R. WRIGHT, J.,
concur.