

[Cite as *State v. Yoder*, 2011-Ohio-3308.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-653 (C.P.C. No. 09CR-07-4018)
Derek A. Yoder,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 30, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Heather B. Robinson*, for appellee.

*Todd W. Barstow*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Derek A. Yoder ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of aggravated murder, aggravated robbery, and tampering with evidence. For the following reasons, we affirm.

{¶2} Appellant was indicted on the above charges after an incident on June 20, 2009 involving the death of 27-year-old Dale Waters. Appellant pleaded not guilty to the charges, and a jury trial ensued.

{¶3} Joshua Blackman was a friend of Dale's and testified as follows. Dale was an "easy going, really nice" and "genuine" person who would "give you the shirt off his back." (Tr. Vol. II, 67.) Dale was not a violent person, but was instead even-tempered, "a little slow," and "naïve." (Tr. Vol. II, 86.)

{¶4} Blackman met Dale in high school, and they had been friends for ten years. Blackman went to Dale's apartment almost every weekend to watch movies or play video games. Dale did not smoke tobacco or drink alcohol, although he would occasionally smoke marijuana. He never participated in athletics.

{¶5} Appellant and Blackman were at Dale's apartment watching movies during the afternoon of June 20, 2009, and appellant and Dale were getting along. The next day, Dale's mother called Blackman and asked whether he had heard from her son, and Blackman told her he tried to call him earlier that day, but could not reach him. Later that evening, Blackman and a group of people, including Dale's mother, went to Dale's apartment and found him dead in a pool of blood in the bathroom and stripped to his underwear.

{¶6} Dale's mother, Cheryl Waters, testified as follows. On June 20, 2009, Dale made arrangement's to borrow her car for the next day because his car was not working. When Dale did not show up the next day, Cheryl became worried. She tried to call Dale, but he did not answer. She also went to his apartment several times, but

he did not come to the door. During one trip to Dale's apartment, Cheryl looked through a window and saw that her son's "bedroom furniture was all tore up and his mattress was against the wall." (Tr. Vol. II, 104.) This was uncharacteristic for Dale because he kept his apartment neat and clean. Cheryl confirmed that she was with the group that later found Dale dead inside his apartment.

{¶7} Dale's friend, Steven Hatfield, testified that the group entered Dale's apartment after he kicked down the front door, which was locked. He also said that Dale's bedroom "had been ransacked" with clothes pulled out of the dresser and the bed "flipped." (Tr. Vol. II, 175.) In addition, Hatfield testified that Dale was not aggressive or the type of person who would "fight at the drop of a hat." (Tr. Vol. II, 188.)

{¶8} Michael Flowers was Dale's uncle, and he testified as follows. Dale was a "real good kid" who was shy around people he did not know. (Tr. Vol. II, 152.) He would give Flowers his paycheck every payday in order for Flowers to pay the bills for him in a timely manner.

{¶9} Darla Koon was Dale's manager at work, and she testified as follows. Because of Dale's shyness, he would not, on his own initiative, join co-workers during lunch, but he was pleased when co-workers invited him to do so. Dale was never aggressive or violent at work, nor did he get into any fights. Appellant also worked for Koon, but he was fired on June 18, 2009 for repeatedly missing work. Because he had missed so many days of work, the paycheck he received upon being fired was only for \$29.80.

{¶10} Detective James Porter testified that he searched Dale's home for evidence. He saw blood splatter reaching five-feet high on the kitchen wall, and he found bloody handprints in several areas of the apartment. In the bathroom, where Dale was found, there was blood all over the toilet and bathtub.

{¶11} Dale's bedroom was in disarray. The mattress had been removed from the bed and leaned up against a wall, and every drawer was pulled completely out of the bureau and dumped onto the floor in the middle of the room. The drawers in the nightstand had likewise been pulled out and dumped.

{¶12} In the living room, Porter found an undisturbed glass of soda on the floor, a plate of pizza on the couch, and tennis shoes neatly placed side-by-side in front of the television. Also in the living room were undisturbed DVDs and video games in freestanding bookshelves.

{¶13} Porter suspected appellant of killing Dale, and Porter spoke with him on June 24, 2009. Appellant said that he had been told about Dale's murder, but he claimed to have had nothing to do with it. The only injury Porter saw on appellant was a half-inch scratch on his hand.

{¶14} Appellant was arrested on June 29, 2009, and Porter interviewed appellant again. At first, appellant denied any involvement, but he eventually confessed to stabbing Dale during an argument. Appellant explained that when he went to Dale's apartment on the evening of June 20, 2009, Dale confronted him over \$30 appellant owed him. The confrontation turned physical, and they wrestled all over the apartment, including the living room. They threw punches at one another. Dale grabbed a kitchen

knife and swung it at appellant and scratched his hand. When Dale swung the knife a second time, appellant grabbed his arm and retrieved the knife. Dale kicked at appellant and "grabbed something and went to hit [him] with it," and appellant stabbed Dale once or twice. (Tr. Vol. III, 57.) Appellant insisted that he was acting in self-defense.

{¶15} Porter asked appellant if he stripped Dale to his underwear or stole anything. Appellant initially denied those acts, but later admitted that he stripped the shorts off of Dale and searched the pockets. He was looking for money, but did not find any. He also admitted that he stole a video game player and games from Dale's apartment. He said that he sold the games to a video store and that he did not remember what happened to the game player.

{¶16} Appellant initially told Porter that he walked home after the incident, but later told Porter that his girlfriend, Kathy Spradling, took him home. He also first claimed that he did not lock the door behind him, but later admitted to locking the door. Likewise, appellant first denied leaving with the knife he used to kill Dale, but he retracted that statement and said that he threw the knife in a dumpster along with his clothes.

{¶17} Spradling testified that she knew Dale and had never seen him be violent. Spradling also admitted to taking appellant to Dale's apartment on the evening of June 20, 2009. Appellant told Spradling to stay in the car, and appellant returned over an hour later. Spradling asked appellant what took so long, and appellant said, " 'I think I killed him.' " (Tr. Vol. IV, 143.) Spradling asked if appellant wanted to go back inside

Dale's apartment to see if he was alright, but appellant declined. He was calm and acting like nothing really happened.

{¶18} Spradling took appellant to his home. She followed him into the bathroom, where he took a shower. Although she saw no cuts on appellant, she noticed that he had blood on his left arm and a little blood on his stomach and side. He also had speckles of blood on his clothes. Afterward, he went outside and threw a bag in the dumpster.

{¶19} The next day, Spradling and appellant attended a birthday party for appellant's son, and appellant was acting normal. A few days later, Spradling asked appellant what happened at Dale's apartment, and appellant said that he was upset with Dale for calling Spradling names. Another day, he asked Spradling to tell police that she was present during the altercation at Dale's apartment and that she saw appellant act in self-defense. Lastly, Spradling testified that one of appellant's friends told her that appellant had sold him a stolen video game player.

{¶20} Franklin County Deputy Coroner Dr. Tae An testified as follows. Dale had been stabbed 18 times and lost a "massive amount of blood." (Tr. Vol. II, 143.) He also had multiple bruises on his face. His lung was punctured, and three of the stab wounds to the neck were independently fatal, including one that completely severed the carotid artery. He had defensive wounds to his fingers, which were slashed to the bone. The deputy coroner summarized that Dale died from one of the following: (1) multiple stab wounds, one of which lacerated Dale's left carotid artery; (2) multiple incise wounds; (3) multiple abrasions and bruises of the skin; or (4) a punctured lung, which caused

him to drown in his own blood. The autopsy report noted that Dale was five-feet-seven inches tall and weighed 156 pounds.

{¶21} The prosecution rested its case, and appellant testified as follows on his own behalf. He and Dale were good friends, and Dale would buy marijuana from him. On June 19, 2009, Dale gave appellant \$30 for marijuana, but appellant was unsuccessful in getting the drugs from his supplier. Appellant was at Dale's apartment during the afternoon on June 20, 2009, but the subject of the marijuana never came up. Appellant left the apartment after watching a movie.

{¶22} Around 9:30 p.m., Dale called appellant and asked him to come back to his apartment. Spradling gave appellant a ride to the apartment, but he went in alone. Dale was upset over the money he had given appellant. Appellant told Dale that he would give back the money in a few days. Dale grew angrier, however, and grabbed appellant by the shoulder. They started to wrestle. Appellant admitted that he was the first to throw a punch because Dale was overpowering him. Dale grabbed a knife from the kitchen and lunged at appellant. Appellant grabbed Dale's wrist and "got his arm behind his back and then proceeded to pull the knife out of [Dale's] hand" and stab him. (Tr. Vol. V, 39.) Appellant confirmed that this first stab wound was one of the fatal wounds.

{¶23} Nevertheless, according to appellant, Dale pulled the knife out of his wound and swung at him. Appellant "wrestled [Dale] up against the kitchen wall," grabbed the knife, and "got [Dale's] neck a couple times with it." (Tr. Vol. V, 42.) Next, Dale hit appellant in the head with the telephone, and appellant stabbed Dale in the

neck again. Appellant dropped the knife and tried to leave, but Dale grabbed the knife and ran after appellant. Dale caught up with appellant, and they wrestled "into the bathroom." (Tr. Vol. V, 44.) Appellant and Dale were wrestling on the bathroom floor until appellant "dropped [his] weight on [Dale] and pushed the knife down \* \* \* into the side of [Dale's] neck." (Tr. Vol. V, 44-45.) Dale did not fight back, and appellant thought that Dale was going to die. Afterward, appellant took Dale's video game player and games, and when he left the apartment, he locked the door behind him. Appellant said that he felt scared, angry, and shocked during the altercation and that his adrenaline "was kind of rushing." (Tr. Vol. V, 46.)

{¶24} On cross-examination, appellant admitted that, in speaking with family and friends from jail, he had provided three different versions of what happened in Dale's apartment. In one version, he claimed that someone named Shannon Saunders killed Dale, and in another he claimed that Spradling was the murderer. In his third version, appellant said that he found Dale dead in the apartment.

{¶25} Appellant denied killing Dale to obtain money, yet admitted telling his mother, in reference to the murder, " 'I wanted money. I just wanted some money.' " (Tr. Vol. V, 74.) Furthermore, appellant conceded that Dale was "probably not" a threat at the moment before the first stabbing because appellant was in possession of the knife and held Dale's arm behind his back.

{¶26} Before deliberations, the trial court granted the defense's request to allow the jury to consider voluntary manslaughter as an alternative to the aggravated murder

charge. Afterward, the trial court found appellant guilty of aggravated murder as well as aggravated robbery and tampering with evidence.

{¶27} Appellant appeals, raising the following assignment of error:

I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF AGGRAVATED MURDER, AGGRAVATED ROBBERY, AND TAMPERING WITH EVIDENCE AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶28} In his single assignment of error, appellant first contends that his convictions are based on insufficient evidence. We disagree.

{¶29} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See

*Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶30} The jury convicted appellant of aggravated robbery, which involves a person inflicting serious physical harm on another while attempting or committing a theft offense. See R.C. 2911.01(A)(3). Appellant was also convicted of aggravated murder for purposely killing Dale while committing aggravated robbery. See R.C. 2903.01(B). We now determine whether sufficient evidence supports those convictions.

{¶31} The evidence establishes that appellant committed a theft offense during the June 20, 2009 incident that resulted in Dale's death. Specifically, appellant admitted to taking Dale's video game player and games. The record also establishes that appellant purposely killed Dale during that incident. A person acts purposely when it is his specific intention to cause a certain result. R.C. 2901.22(A). Here, the extent of Dale's stab wounds allowed the jury to infer that appellant had a purpose to kill. See *State v. Strodes* (1976), 48 Ohio St.2d 113, 116, death penalty vacated (1978), 438 U.S. 911, 98 S.Ct. 3135. Dale was stabbed 18 times, and three of his stab wounds were independently fatal. It was reasonable for the jury to infer that appellant had a purpose to kill Dale given that he stabbed Dale in the neck. Appellant also showed no concern for Dale's well-being after the stabbings.

{¶32} Given the proof that appellant purposely killed Dale in the commission of a theft offense, we conclude that sufficient evidence supports appellant's convictions for aggravated murder and aggravated robbery. We also conclude that sufficient evidence support's appellant's conviction for tampering with evidence because he admitted to

Porter that he disposed of his bloody clothes and the knife he used to kill Dale. See R.C. 2921.12.

{¶33} Next, appellant argues that his convictions are against the manifest weight of the evidence. We disagree.

{¶34} In determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.' " *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we determine "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." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact \* \* \* unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶35} Appellant contends that the weight of the evidence proves that he committed voluntary manslaughter, not aggravated murder. Pursuant to R.C. 2903.03(A), voluntary manslaughter occurs when an individual knowingly causes the death of another "while under the influence of sudden passion or in a sudden fit of rage,

either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force." We apply an objective standard when determining whether the provocation is reasonably sufficient to bring on sudden passion or a sudden fit of rage. *State v. Shane* (1992), 63 Ohio St.3d 630, 634. That is, the provocation "must be sufficient to arouse the passions of an ordinary person beyond the power of his or her control." *Id.* at 635. If that standard is met, the inquiry shifts to the subjective component of whether the defendant actually was under the influence of sudden passion or in a sudden fit of rage. *Id.* at 634.

{¶36} Appellant asserts that Dale provoked him into using deadly force by coming after him with a knife. He claims his testimony that he was afraid, angry, and shocked confirms that he was provoked.

{¶37} Despite appellant's testimony, it was within the province of the jury to conclude that appellant was lying when he claimed that Dale provoked him into using deadly force. Dale's friends and relatives testified that Dale was an even-tempered, shy person who was neither aggressive nor violent nor someone who would "fight at the drop of a hat." (Tr. Vol. II, 188.) Appellant's girlfriend testified that she had never seen Dale act violently. Koon testified that in the three years Dale worked for her, he was never aggressive or violent, nor had he been in any fights. Additionally, Dale was described as "a little slow" and naïve. (Tr. Vol. II, 86.) He was not physically imposing—he was five-feet-seven-inches tall and weighed 156 pounds, and he never participated in athletics. Moreover, although appellant claimed that Dale was angry

over a \$30 debt, Blackman said that there was no hint of animosity between Dale and appellant earlier that day.

{¶38} Appellant also gave inconsistent accounts of what happened. He first denied to Porter that he had anything to do with Dale's death, and then retracted that statement in the very same interview. He also initially told Porter that he did not pull Dale's shorts off or steal anything, but he retracted those claims, too. In addition, he provided inconsistent statements to Porter as to whether he locked the door behind him, whether he took the knife with him, and whether he walked home. He gave contradictory statements to family and friends. He also asked Spradling to lie to police.

{¶39} Also undermining appellant's credibility is that he told Porter that he wrestled with Dale in the living room. The record does not support this claim, however, because a glass of soda on the living room floor was undisturbed, Dale's tennis shoes were found neatly placed side-by-side in front of the television, there was still a plate of pizza on the couch, and the DVDs and video games in Dale's freestanding bookcases remained intact. It was also reasonable for the jury to reject appellant's credibility about the killing given his dubious testimony that Dale pulled the knife out of his fatal wound in order to continue the fight. The jury could disbelieve appellant's claim that Dale was the aggressor given that appellant came out of the struggle with barely a scratch, and yet Dale was stabbed 18 times, had multiple bruises to his face, lost a "massive" amount of blood, and had his fingers slashed to the bone from his attempt to defend himself. (Tr. Vol. II, 143.)

{¶40} Even under his own version of events, appellant admitted that there were several times that he had control over Dale. In particular, appellant testified that he was in possession of the knife and had Dale's arm behind his back before the first stabbing and that he had his weight on Dale before the final stabbing. Because appellant proceeded to stab Dale during these instances, it was reasonable for the jury to conclude that appellant committed the killing in a cold, calculated manner. Finally, Spradling testified that appellant was calm when he left Dale's apartment, refuting appellant's claim that he was provoked into using deadly force in a sudden passion or fit of rage. For all these reasons, we conclude that appellant's conviction for aggravated murder is not against the manifest weight of the evidence.

{¶41} Next, we reject appellant's claim that his tampering with evidence conviction is against the manifest weight of the evidence given his own admission to disposing of his bloody clothes and the knife. We also reject appellant's claim that his aggravated robbery conviction is against the manifest weight of the evidence, given his admission to stealing Dale's video game player and games. Also weighing in favor of appellant's conviction for aggravated robbery is that the record proves that he was motivated to commit the offense for money. See *State v. Henry*, 10th Dist. No. 04AP-1061, 2005-Ohio-3931, ¶42 (noting that motive is generally relevant in all criminal trials, even though the prosecution need not prove it in order to secure a conviction). Specifically, appellant sold Dale's video game player and games, after having recently been fired from his job and only receiving a paycheck for \$29.80. He also told Porter

that he searched Dale's pockets for money, and he told his mother, " 'I wanted money. I just wanted some money.' " (Tr. Vol. V, 74.)

{¶42} In summary, we conclude that appellant's convictions are not based on insufficient evidence and are not against the manifest weight of the evidence. We overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and KLATT, JJ., concur.

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