

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2009-11-293  
 :  
 - vs - : OPINION  
 : 2/7/2011  
 :  
 JERRY ADAMS III, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR2009-02-0287

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**BRESSLER, J.**

{¶1} Defendant-appellant, Jerry Adams III, appeals from his conviction and sentence in the Butler County Common Pleas Court for aggravated murder, a firearm specification, a specification for purposely or knowingly causing the death of another by discharging a firearm from a motor vehicle, and having weapons while under disability. We affirm Adams' conviction and sentence for those offenses and specifications.

{¶2} In 2009, reputed drug dealer Raymond ("Ray Ray") Davis was shot in the chest at close range by the driver of a black Jeep Cherokee at the corner of Fifteenth Avenue and Vermont Street in Middletown, Butler County, Ohio. Davis died from his wounds shortly thereafter at a local hospital. The Middletown Police Department learned that the shooter was Jerry Adams and arrested him six days after the shooting.

{¶3} Adams was indicted by the Butler County Grand Jury for aggravated murder, an unclassified felony, in violation of R.C. 2903.01(A), with accompanying specifications under R.C. 2941.145 for using a firearm to facilitate the offense and R.C. 2941.146 for purposely or knowingly causing the death of another by discharging a firearm from a motor vehicle, and having weapons while under disability, a third-degree felony, in violation of 2923.13(A)(1).<sup>1</sup>

{¶4} Adams waived his right to a jury trial, and the case was tried to the bench. The trial court found Adams guilty of the charges and specifications set forth above and sentenced him to serve 25 years to life for his aggravated murder conviction. Adams received three years for his conviction on the firearm specification and five years for his conviction on the specification of purposely or knowingly causing the death of another by discharging a firearm from a motor vehicle, with his convictions on the specifications merged and with Adams ordered to serve the merged sentence consecutively to his sentence for aggravated murder. Adams was also sentenced to four years for his conviction for having weapons while under disability, to be served concurrently with his sentence for aggravated murder.

{¶5} Adams now appeals, assigning the following as error:

{¶6} Assignment of Error No. 1:

{¶7} "THERE WAS INSUFFICIENT EVIDENCE TO JUSTIFY A CONVICTION FOR

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1. Adams was also indicted for tampering with evidence, a third-degree felony, in violation of R.C. 2921.12(A)(1), but this charge was later dismissed.

AGGRAVATED MURDER."

{¶8} Adams argues the trial court erred in convicting him of aggravated murder, because the state failed to present sufficient evidence to prove beyond a reasonable doubt that he was the person who shot Davis and that he caused Davis' death, purposely and with prior calculation and design. We disagree.

{¶9} "When a court reviews a record for sufficiency, '[t]he 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.' *State v. Jenks* (1991), 61 Ohio St.3d 259, \*\*\* paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781 \*\*\*. '[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.' *State v. DeHass* (1967), 10 Ohio St.2d 230 \*\*\* , paragraph one of the syllabus." *State v. Fry*, 125 Ohio St.3d 163, 186, 2010-Ohio-1017, ¶146.

{¶10} R.C. 2903.01(A) states, "No person shall purposely, and with prior calculation and design, cause the death of another[.]" In order to convict a defendant for aggravated murder or any other offense, the state must prove beyond a reasonable doubt that the accused is the person who actually committed the crime with which he or she has been charged. *State v. Raleigh*, Clermont Nos. CA2009-08-046, 2009-08-047, 2010-Ohio-2966, ¶45. Such proof may be established by direct or circumstantial evidence. Id. "[C]ircumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, ¶75, quoting *State v. Heinisch* (1990), 50 Ohio St.3d 231, 238.

{¶11} In this case, the state presented overwhelming evidence, both direct and circumstantial, to prove beyond a reasonable doubt that Adams was the person who fatally

shot Davis. Ohio State Highway Patrol Trooper Jeremy Wickman testified that on July 15, 2008, he engaged in a high-speed pursuit of a vehicle on Dixie Highway in Middletown. Davis was traveling as a passenger in that vehicle. The chase ended when the driver of the vehicle got out and fled while the vehicle was still moving. Davis, who had remained in the vehicle, turned off the vehicle's ignition and surrendered. Trooper Wickman placed Davis in the back of his cruiser and asked him who had been driving, and Davis told him that "AJ" had been driving. Trooper Wickman relayed this information to the Middletown Police Department, which immediately knew that "AJ" was William Wofford. Trooper Wickman testified that Wofford was subsequently charged with operating a motor vehicle under the influence, fleeing and eluding, driving under suspension, and other minor traffic charges. Later, a video recording of Davis' remarks to Trooper Wickman came into Adams' possession.

{¶12} Davis' father, Van Davis, testified that in September or October 2008, Adams came to his house. Also present at Van's house that day were Raymond Davis' girlfriend, Karmen Bankston, and his cousin, Marvin Davis. Adams showed them the video of the high-speed chase and Raymond's statements to Trooper Wickman, and remarked, "[A]in't that something, he [Raymond] the police." Adams offered copies of the video to Van and Marvin, encouraged them to show the videos to others, and told them that Raymond would have "to pay" for being a "snitch." The next day, Adams came to Marvin's house, bringing Wofford with him. Adams again told Marvin that Raymond would have to pay for cooperating with the police and that he was going to put copies of the video of Raymond's statements to Trooper Wickman on the internet and pass them out in the nearby city of Hamilton.

{¶13} Dana "Smurf" Johnson testified that on February 10, 2009, he went with Adams in Adams' black Jeep Cherokee to buy some marijuana. As Adams was driving, he spotted Raymond Davis talking to Bankston at the corner of Vermont and Fifteenth and said, "There

go that snitch ass nigger, Ray-Ray, right there." Adams drove to his father's house and stayed there for about 15 to 20 minutes. After Adams returned to the vehicle, he and Johnson continued to circle the block. At some point, Adams pulled out a .40-caliber handgun from the vehicle's glove compartment and placed it on his lap.

{¶14} Adams again circled the block and parked near the corner of Fifteenth and Vermont where Davis was standing. Johnson pleaded with Adams not to shoot Davis but to fight him instead, because Davis' act of cooperating with the police on the earlier, unrelated crime involving Wofford "wasn't that serious for no gun." However, when Johnson asked Adams, "Why you got that gun out?" Adams replied, "Fuck that nigger, I'm about to check this nigger." Adams rolled down his window about 6 to 9 inches and waived Davis over to his car, hiding his handgun under a jacket on his lap. When Davis came over to Adams' vehicle, Adams asked him, "What the fuck you still doing out here knowing you're on DVD, snitching and all that?" According to Johnson's testimony, Davis began to stutter and trip over his words, trying to talk himself out of the situation. Adams pulled out his .40-caliber handgun, pointed it at Davis through the open window of his vehicle, and ordered him to back up. When Davis backed up about a foot, Adams shot Davis in the chest and "calmly" drove away.

{¶15} Adams argues Johnson lacked credibility as a witness because Johnson has prior convictions for possession of cocaine, trafficking in cocaine, and having weapons while under disability; Johnson took no steps to prevent the shooting other than telling Adams he should fight Davis rather than shoot him; and Johnson stayed with Adams even after the shooting. Adams also asserts that Johnson's testimony regarding how Adams shot Davis is inconsistent with the testimony of the pathologist who performed Davis' autopsy, since Johnson testified that Adams tilted the handgun sideways and pointed it through the open window at eye level, but the pathologist testified the bullet entered Davis' right, upper chest

and traveled backwards and downward.

{¶16} However, the state's evidence, including the forensic pathologist's testimony, showed that Johnson's testimony was consistent with the actual circumstances of the shooting. Moreover, Johnson tried to have Adams drop him off after the shooting but Adams refused to do so. Johnson also indicated in his testimony that he was afraid of Adams after he had shot Davis, explaining, "This man [Adams] just shot somebody, so I'm going to be real reasonable." The trial court, acting as the trier of fact in this case, was in the best position to determine whether Johnson's testimony was truthful, see *Fry*, 2010-Ohio-1017 at ¶146, and the trial court found Johnson's testimony credible.

{¶17} The state also presented the testimony of Julia Robinson. Robinson testified that she grew up in Middletown and knew both Adams and Davis. Robinson testified that as she was parked near the corner of Fifteenth and Vermont, she saw Adams shoot Davis through the driver's open side window. Adams claims that Robinson's credibility was called into question by the fact that other witnesses had testified that the windows of the black Jeep Cherokee from which the fatal shots were fired were heavily tinted, and therefore it would have been impossible for anyone to see inside the vehicle. However, it is obvious that the shooter had to lower the window to speak with and shoot Davis and that would have enabled someone in Robinson's position to see inside the black Jeep Cherokee and identify the driver and shooter.

{¶18} The state also presented several witnesses, including Middletown Police Officers John D. Rawlins and Ryan Morgan who testified that, at the time of the fatal shooting, Adams drove a black Jeep Cherokee. Officer Rawlins testified that, in December 2008, he stopped Adams' 1999 black Jeep Cherokee because the tint on the vehicle's windows was "extremely dark." Officer Ryan Morgan testified that, in January 2009, he stopped Adams' black "Jeep, SUV" when Adams ran a stop sign.

{¶19} The state also presented several witnesses who testified that a dark colored SUV was in the area at the time Davis was shot, including Bankston, who testified that she noticed a black Jeep Cherokee circling the block as she was speaking with Davis shortly before he was shot. Dwight Bailey testified that, as he was looking towards Fifteenth and Vermont, he saw someone in a dark colored vehicle shoot a black male "almost exactly a block from [his] house." Van Davis testified that just moments before the shooting, he saw Adams driving a "black Cherokee" or "dark Cherokee" on Sixteenth Avenue. Marvin Davis testified that he saw Adams in a "dark blue or black Cherokee" on the day of the shooting.

{¶20} The state also presented the testimony of Sundreya Hooks, who lives near the location at which Davis was shot. Hooks testified that, at the time of the shooting, she saw Davis talking with Bankston, and that a dark colored Jeep Cherokee, which she has known Davis to drive, was parked on the corner of Fifteenth and Vermont. Hooks testified that, as she was standing in her home, she heard someone from the Jeep Cherokee call Davis over. She saw Davis walk over to the Jeep Cherokee, lean in, and talk to either the vehicle's driver or passenger. She saw Davis stand up and then heard a gunshot, at which point she saw Davis fall to the ground. In shock, Hooks walked over to Davis, who had tried to get up but had fallen back down. Davis, who was breathing heavily, told Hooks that "a Gary or a Jerry had shot him."

{¶21} The state's evidence also provided overwhelming proof that Adams *purposely* caused Davis' death when he fatally shot him. "A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." R.C. 2901.22(A). While use of a deadly weapon is not *conclusive* evidence of purpose to cause the death of another, such purpose may be inferred from the use of such a weapon. See *State v. Coley*,

93 Ohio St.3d 253, 269, 2001-Ohio-1340. See, also, *State v. Widner* (1982), 69 Ohio St.2d 267, 270 ("[A] firearm is an inherently dangerous instrumentality, the use of which is likely to produce death"); and *State v. Johnson* (1978), 56 Ohio St.2d 35, 39 ("[A] person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts").

{¶22} The state's evidence showed that Adams shot Davis in the chest from close range with a high-caliber handgun that he hid from Davis' view when Adams lured him over to his black Jeep Cherokee. Several months earlier, Adams had told Van and Marvin Davis that Raymond had "to pay" for his cooperation with police regarding an earlier, unrelated crime involving Adams' acquaintance, Wofford. This evidence provided overwhelming proof that when Adams shot Raymond Davis, he was purposely causing his death. Adams points out that Johnson testified that after Adams shot Davis, Adams almost immediately began expressing regret, saying, "Damn, Ray-Ray, don't die on me" and telling Johnson, "I should have just got the weed like you said." However, contrary to what Adams contends, this does not show that Adams did not purposely cause Davis' death when he shot him in the chest at close range; rather, it merely shows that Davis began to regret killing Johnson almost immediately after he had done so.

{¶23} The state also presented overwhelming evidence to establish that Adams acted with "prior calculation and design" when he fatally shot Raymond Davis. "There is no bright-line test to determine whether prior calculation and design are present[,] and "each case must be decided on a case-by-case basis." *State v. Braden*, 98 Ohio St.3d 354, 364-365, 2003-Ohio-1325, ¶61, citing *State v. Taylor*, 78 Ohio St.3d 15, 18-20, 1997-Ohio-243. "Where evidence adduced at trial reveals the presence of sufficient time and opportunity for the planning of an act of homicide to constitute prior calculation, and the circumstances surrounding the homicide show a scheme designed to implement the calculated decision to kill, a finding by the trier of fact of prior calculation and design is justified." *Braden*, quoting

*State v. Cotton* (1978), 56 Ohio St.2d 8, paragraph three of the syllabus.

{¶24} The factors to be considered in determining the existence of prior calculation and design, include:

{¶25} "(1) [W]hether the accused and victim knew each other, and, if so, whether their relationship was strained, (2) whether the accused gave thought or preparation to choosing a murder weapon or murder site, and (3) whether the act was drawn out as opposed to being an almost instantaneous eruption of events. A finding that these circumstances existed supports the conclusion that the crimes were committed with prior calculation and design." *Braden* at ¶62, citing *Taylor*, 78 Ohio St.3d at 19, citing *State v. Jenkins* (1976), 48 Ohio App.2d 99, 102.

{¶26} Applying the *Braden* factors to this case, the evidence shows that Adams and Davis knew each other and their relationship was seriously strained. The evidence also shows Adams' deliberation and planning to exact revenge on Davis, as Adams told Davis' father (Van), cousin (Marvin) and others that Davis "would have to pay[,] and even offered them copies of Davis' statement to Trooper Wickman. Finally, this was not an impulsive shooting, as Adams had made it clear more than seven months before the shooting that he believed that Davis would have to pay for cooperating with the police, and Adams had ample time on the day of the shooting to reflect on his actions before he made the final decision to shoot and kill Davis. In light of the foregoing, the state presented overwhelming evidence of Adams' guilt on all material elements of the offense of aggravated murder under R.C. 2903.01(A), and therefore the trial court did not err in convicting Adams of that offense.

{¶27} Consequently, Adams' first assignment of error is overruled.

{¶28} Assignment of Error No. 2:

{¶29} "THE COURT ERRED IN USING TATTOO EVIDENCE FOR AN IMPROPER PURPOSE."

{¶30} Adams argues the trial court committed reversible error in using evidence of certain tattoos he has as proof that he purposely caused Davis's death when he shot him in the chest. We disagree.

{¶31} One of the state's witnesses was Middletown Police Detective Richard Bush, who was the lead detective assigned to this case. During Detective Bush's testimony, the state had admitted into evidence, without objection, photographs of Adams' multiple tattoos, one of which showed a hand clenching a revolver and had lettering that read, "Keep A Revolver Save A lot Of Problems," and another that read, "All I Have In This World Is My Balls And My Word. I Don't Break Those For Nobody."

{¶32} Detective Bush testified that when he and Detective Swartzel interviewed Adams following his arrest for Davis' shooting, Adams told them that "he didn't mess with guns and he didn't like guns[.]" However, the detectives had seen Adams' tattoos when they booked him, and when Detective Swartzel said to Adams that he "thought you didn't mess with guns, what about the tattoos[?]" Adams admitted, "you got a good point."

{¶33} In its decision finding Adams guilty of aggravated murder, the trial court stated:

{¶34} "The tattoos are evidence of the defendant's philosophy regarding justice and honor and reflect that the defendant embraces violence and the use of guns. The defendant's attorney suggested in argument that the defendant's use of only one shot to the chest, and not the head, indicates the defendant did not possess a purpose to cause death. It is just as reasonable to infer that the defendant believed himself to be proficient with the use of a firearm and that a purposeful execution would have greater style and impact if accomplished by one clean shot through the heart and other vital organs. Given the evidence in this case it is difficult for the Court to infer that he acted reasonable or logical given his unreasonable fixation to see that Raymond Davis 'pay' for talking to police."

{¶35} Adams did not object to the admission of the evidence regarding his tattoos at

trial, nor does he object to it on appeal. Indeed, he implicitly concedes that such evidence was relevant and therefore properly admitted, particularly, in light of his statements to police that he did not mess with guns and did not like guns. Nevertheless, Adams, citing Evid.R. 404(B), asserts that the trial court erred by using evidence of his tattoos to infer that he has a propensity for violence and then using that inference as proof that he *purposefully* caused Davis' death when he shot him. He also contends that the trial court's reasoning in the paragraph quoted immediately above amounted to an improper "stacking" of inferences under Ohio evidentiary law. See, e.g., *State v. Cowans*, 87 Ohio St.3d 68, 78, 1999-Ohio-250.

{¶36} However, the inferences the trial court drew from Adams' tattoos merely amounted to cumulative evidence that Adams purposefully caused Davis' death when he shot Davis in the chest at close range with a high-caliber handgun, and therefore any error the trial court may have committed in drawing those inferences was harmless, as the state presented overwhelming evidence of Adams' guilt on every material element of the aggravated murder charge of which he was convicted, including the element of *purposefully* causing the death of another. See *State v. Hensley*, Warren CA2009-11-156, 2010-Ohio-3822, ¶23.

{¶37} Accordingly, Adams' second assignment of error is overruled.

{¶38} Judgment affirmed.

YOUNG, P.J., and RINGLAND, J., concur.

[Cite as *State v. Adams*, 2011-Ohio-536.]