

[Cite as *State v. Golson*, 2010-Ohio-63.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92443

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DESHON GOLSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-499947

BEFORE: Jones, J., Gallagher, A.J., and Kilbane, J.

RELEASED: January 14, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Deshon Golson (“Golson”), appeals his conviction. Finding no merit to the appeal, we affirm.

{¶ 2} In 2007, Golson was charged with one count each of aggravated murder, murder, felonious assault, tampering with evidence, and two counts of abuse of a human corpse. The aggravated murder, murder, and felonious assault charges were accompanied by notices of prior conviction and repeat violent offender specifications.

{¶ 3} Golson was placed on the court’s specialized mental health docket and found competent to stand trial. The matter proceeded to a trial by jury. Before the trial began, however, Golson waived his right to a jury on the notices of prior conviction and repeat violent offender specifications.

{¶ 4} The following evidence was adduced at trial.

{¶ 5} Golson lived in a group home for people with mental disabilities. The home housed up to 13 residents in six separate apartments and three men or women lived in each apartment. Golson roomed with Floyd Herold (“Herold”) and the deceased victim, David Hunter (“Hunter”).

{¶ 6} On August 7, 2007, one of the group home’s employees went to Golson’s apartment to speak with him about an alleged violation of house rules. Golson answered the door and the caseworker noticed another non-resident person was in the apartment, in violation of house rules. She told Golson to wait for her to return with a supervisor. When the caseworker and supervisor returned to the apartment, there was no answer at the door. They entered the apartment and

noticed that Hunter's bed was stripped of any sheets, a wet mop and bucket were in the dining area, and there were streaks on the floors as if they had just been cleaned.

{¶ 7} Three residents informed the caseworkers that they had heard the building's dumpsters being moved around in the middle of the night and one resident identified Golson with another man near the dumpsters. One of the caseworkers went downstairs to investigate and found Hunter's bloody pants on the outside stairs. The employee went outside to the dumpster area and found Hunter, deceased and wrapped in his bed sheets, at the bottom of the dumpster.

{¶ 8} A resident testified that she saw Golson and his overnight guest, Deangelo Jones ("Jones"), out by the dumpsters wearing only their boxer shorts. She testified that she saw the men take bags of garbage out of the dumpsters, then she went to get something to eat. When she returned to her apartment window, she saw the men put the garbage bags back into the dumpster. Later that day, she saw Golson at the bus stop holding a full garbage bag.

{¶ 9} Another resident testified that she saw Golson and Jones drag the dumpster to the back door of the building.

{¶ 10} Herold testified that he had been arguing with Golson early in the morning the day Hunter was killed. Herold testified that he awoke to find his floor fan missing and when he went out into the common area of the apartment, Golson started to hit and punch him and threatened to kill him, stating he had killed before. Herold noticed that Golson's friend, Jones, was wet and only in his boxer shorts. Herold went back into his bedroom and Jones followed, asking if he had hydrogen

peroxide. Herold gave him a bottle of hydrogen peroxide and saw Jones take it to the dining area. Herold then left the apartment and called the house's emergency number from a payphone.

{¶ 11} Jones, who agreed to plead guilty to reduced charges and testify against Golson, testified that on the day of the murder, he was with Golson in his apartment when Golson got into an argument with Hunter. Golson began to beat Hunter, who tried unsuccessfully to defend himself. Golson and Jones then left the apartment. They returned to the apartment later that night with a woman and began to smoke marijuana. The woman testified that when she got to the apartment she sat on the couch and talked with Golson. She could hear "beating" noises coming from Hunter's bedroom.

{¶ 12} Jones testified that after the woman left, Golson heard Hunter say something from his bedroom, got upset, and went into Hunter's bedroom and began to beat him again. Eventually he stopped his assault, and went back into the living room. Jones testified he heard Hunter snoring and went through his room looking for money. Jones left the apartment for about fifteen minutes, and when he returned Hunter was still snoring. Then about five minutes later, Jones testified that Hunter stopped snoring. When Jones went to check on him, he was no longer breathing.

{¶ 13} Jones testified that he helped Golson strip Hunter, drag him to the rear of the apartment, threw Hunter's body over the banister and down some steps, and put him into the dumpster. He then assisted Golson with mopping the floor.

{¶ 14} Jones was arrested two weeks later and made a detailed written statement regarding his involvement in the homicide.

{¶ 15} Golson's mother testified that her son came to her house and confessed to her that he had killed someone and put him in a dumpster. She called the police and gave them the garbage bag full of bloody clothes. A friend of the mother testified that Golson also confessed to her that he had killed a man and put him in a dumpster.

{¶ 16} The coroner testified that Hunter was intoxicated when he died, did not have any defensive wounds, died from multiple blunt impacts to the head, trunk, and upper extremities, and that it took Hunter at least 20 minutes to die after receiving injuries from the severe beating.

{¶ 17} After the state presented its evidence, the trial court amended the aggravated murder count to murder and dismissed one of the counts for abuse of a human corpse. The jury acquitted Golson of the amended murder charge but convicted him of the lesser included offense of involuntary manslaughter and further found him guilty of the rest of the charges: murder, felonious assault, tampering with evidence, and abuse of a human corpse.

{¶ 18} The trial court sentenced Golson to a total sentence of 20 years-to-life in prison.

{¶ 19} Golson now appeals his convictions, raising four assignments of error for our review. They are:

"1. The trial court erred in denying appellant's motion for acquittal as to the charges when the state failed to present sufficient evidence against appellant.

“II. Appellant’s convictions are against the manifest weight of the evidence.

“III. The trial court denied appellant his [due process] rights when it did not permit cross examinations of [the co-defendant] about a prior offense of violence, which had similar circumstances to the homicide in the instant case.

“IV. The trial court erred by ordering convictions and a consecutive sentence for separate counts of murder and felonious assault because the offenses are allied offenses pursuant to R.C. 2941.25 and they are part of the same transaction * * * .”

Sufficiency and Manifest Weight of the Evidence

{¶ 20} Although they involve different standards of review, the first and second assignments of error will be discussed together because they involve the same evidence.

{¶ 21} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The 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, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 22} In evaluating a challenge to the verdict based on the manifest weight of the evidence, a court sits as the thirteenth juror, and intrudes its judgment into

proceedings that it finds to be fatally flawed through misrepresentation or misapplication of the evidence by a jury that has “lost its way.” *Thompkins*. As the Ohio Supreme Court stated:

{¶ 23} “Weight of the evidence concerns the ‘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 jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.’ * * *

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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 24} In *State v. Bruno*, Cuyahoga App. No. 84883, 2005-Ohio-1862, this court observed that the reviewing court must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. A reviewing court will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a reasonable doubt. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132. Moreover, in reviewing a claim that a conviction is against the manifest weight of the evidence,

the conviction cannot be reversed unless it is obvious that 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. *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814.

{¶ 25} Golson was convicted of murder in violation of R.C. 2903.02(B), which provides that “[n]o person shall cause the death of another as a proximate result of the offender’s committing or attempting to commit an offense of violence that is a felony of the first or second degree * * * .”

{¶ 26} Golson was convicted of involuntary manslaughter in violation of R.C. 2903.04(A), which provides that “[n]o person shall cause the death of another or the unlawful termination of another’s pregnancy as a proximate result of the offender’s committing or attempting to commit a felony.”

{¶ 27} Golson was also convicted of felonious assault in violation of R.C. 2903.11(A)(1), which states that “no one shall knowingly cause serious physical harm to another” and abuse of a human corpse, in violation of R.C. 2927.01(B), which states that “no one shall treat a human corpse in a way that would outrage reasonable community sensibilities.”

{¶ 28} Finally, Golson was convicted of tampering with evidence in violation of R.C. 2921.12(A)(1), which states that “[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall * * * [a]lter, destroy, conceal, or remove any record, document, or thing, with

purpose to impair its value or availability as evidence in such proceeding or investigation * * *.”

{¶ 29} Golson argues that there was insufficient evidence to convict him of the crime of murder because the only evidence linking him to the crime was the testimony of his co-defendant, Deangelo Jones. We disagree and find that the state provided overwhelming evidence that Golson was guilty of the crimes for which he was convicted.

{¶ 30} Jones testified that Golson got in an argument with Hunter because Hunter had locked Golson out of the apartment. This testimony was confirmed by a resident of the group home, who testified that she saw Golson upset over being locked out of his apartment and also saw that Hunter was upset with Golson over leaving the door unlocked. Jones further testified about how Golson beat Hunter over a three hour time span. The coroner corroborated Jones’s testimony by testifying that Hunter died slowly from a combination of several severe injuries.

{¶ 31} Jones further testified that he and Golson took Hunter’s clothes off so as not to leave fingerprints and that they cleaned the apartment. Jones testified how they dragged Hunter’s body down the steps, dragged the dumpster over to the back door of the building, took garbage bags out of the dumpster, put Hunter’s body in the dumpster, and pushed the dumpster back into place. This testimony was corroborated by a witnesses who saw the two men moving the dumpster, unloading and loading trash bags, and a witness who testified that she saw Golson at the bus stop with a full garbage bag.

{¶ 32} Golson's mother testified that Golson came to her house with the garbage bag full of bloody clothes and confessed to the killing. The mother's friend testified that Golson also confessed to her.

{¶ 33} Even though Golson argues that Jones's testimony is not to be believed, determining the credibility of the witnesses is within the province of the initial fact-finder, not the reviewing court. Moreover, even though there were a few insignificant inconsistencies in the witnesses's testimony, these minor inconsistencies do not lead to the conclusion that there was insufficient evidence to support Golson's conviction or that his conviction was against the manifest weight of the evidence.

{¶ 34} Therefore, the first and second assignments of error are overruled.

Co-defendant's Testimony

{¶ 35} In the third assignment of error, Golson argues that he was denied his right to a fair trial because the court would not allow his counsel to elicit testimony from Jones regarding a separate assault Jones allegedly committed after Hunter was murdered.

{¶ 36} Evid.R. 404(A) sets forth the general rule of admissibility for evidence of a witness's character or character trait as follows:

“(A) Character Evidence Generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, subject to the following exceptions:

“* * *

“(3) Character of Witness. Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609.”

{¶ 37} Evid.R. 607 governs impeachment of a witness by a prior inconsistent statement. Evid.R. 609 controls impeachment by evidence of conviction of a crime. Evid.R. 607 and 609 are inapplicable to defense counsel’s attempt to discredit Jones by eliciting testimony of a specific act that occurred after the murder of Hunter. Defense counsel was not arguing that Jones made a prior inconsistent statement and Jones had not yet been convicted of the alleged assault that occurred after the murder.

{¶ 38} Evid.R. 608, which is pertinent to this case, provides as follows:

“(A) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, or untruthfulness and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness had been attacked by opinion or reputation evidence or otherwise.

“(B) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, * * * may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if clearly probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.”

{¶ 39} Thus, pursuant to Evid.R. 608(A), a witness's credibility may be impugned by opinion or reputation evidence. Character evidence, however, of a witness is limited to that which proves or disproves truthfulness. Testimony regarding the alleged assault that occurred after Hunter's death would not prove or disprove that Jones is a liar.

{¶ 40} Instead, Golson argues that he should have been allowed to elicit the testimony to show "Jones's propensity for violence." But pursuant to Evid.R. 404(A) and (B), evidence of Jones's propensity toward violence is not admissible to demonstrate that he perpetrated the sole act(s) of violence in causing Hunter's death. See *State v. Lawthorn* (Oct. 8, 1986), Hamilton App. No. C-850588.

{¶ 41} Therefore, the third assignment of error is overruled.

Allied Offenses of Similar Import

{¶ 42} In the fourth and final assignment of error, Golson claims that the trial court erred in sentencing him to consecutive sentences for felonious assault and murder. Specifically, he argues that his convictions for murder and felonious assault were allied offenses of similar import; therefore, he can only be convicted and sentenced for one of the crimes. We disagree.

{¶ 43} R.C. 2941.25 provides:

"(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

{¶ 44} “(B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.”

{¶ 45} This district has previously held that felony murder and felonious assault are allied offenses of similar import. *State v. Williams*, Cuyahoga App. No. 89726, 2008-Ohio-5286, discretionary appeal allowed by 120 Ohio St.3d 1504, 2009-Ohio-361; *State v. Miniffee*, Cuyahoga App. No. 91017, 2009-Ohio-3089, cf. *State v. Nesbitt*, Hamilton App. No. C-0800010, 2009-Ohio-972 (holding that felony murder and felonious assault are not allied offenses of similar import).¹

{¶ 46} Our analysis, however, does not end there. Even when the offenses are of similar import under R.C. 2941.25(A), subsection (B) requires us to review Golson’s conduct and permits convictions for two or more similar offenses if the

¹In *State v. Clark*, Mahoning App. No. 08-MA-15, 2009-Ohio-3328, the court noted that other districts, including ours, have more specifically held that the offense of felony murder under R.C. 2903.02(B) and the predicate offense are not allied offenses of similar import. See *State v. Marshall*, Cuyahoga App. No. 87334, 2006-Ohio-6271, ¶35 (felony murder and aggravated robbery); *State v. Henry*, Franklin App. No. 04AP-1061, 2005-Ohio-3931, ¶59-60 (felony murder and felonious assault); *State v. Brown* (Jan. 25, 2002), Montgomery Dist. No. 18643 (felony murder and aggravated arson); *State v. Gomez-Silva* (Dec. 3, 2001), Butler App. No. CA2000-11-230 (felony murder and felonious assault).

For a thorough discussion of this topic, see *Miniffee*, supra. A more in depth analysis is not warranted at this time, as we find the crimes in the instant case were committed with a separate animus.

offenses were either (1) committed separately, or (2) committed with a separate animus as to each. See *State v. Cabrales*, 118 Ohio St.3d 54, 57, 2008-Ohio-1625, citing *State v. Blankenship* (1988), 38 Ohio St.3d 116, 117, 526 N.E.2d 816. Thus, we review Golson's conduct to determine whether he can be convicted of both offenses. If we find either that the crimes were committed separately or that there was a separate animus for each crime, Golson may be convicted of both offenses. Id.

{¶ 47} In determining whether acts are committed separately or with a separate animus, a court may consider the facts and circumstances of the case. *State v. Hines*, Cuyahoga App. No. 90125, 2008-Ohio-4236. The trial court in this case found that the felonious assault count had a separate animus from the felonious assault that formed the predicate offense of the murder and involuntary manslaughter counts. The court stated that "there was a separate felonious assault that occurred in this case that was serious enough to render the person to have suffered serious physical harm. That subsided, in fact, terminated. The second felonious assault began; and unfortunately for everyone, resulted in the death of the individual. * * * [T]here is a separate animus. There is a separate time. And, I think, in fact, a separate intent that was proven in this case."

{¶ 48} After a review of the evidence presented in this case, we agree with the trial court. The record indicates that Golson initially started to beat Hunter and then stopped, left the apartment, and returned later to smoke marijuana with a woman and Jones. When he heard Hunter call out from his bedroom, Golson went in and

continued the assault. The coroner testified that Golson suffered multiple injuries that ultimately caused his death and that it took at least twenty minutes for him to die from his injuries.

{¶ 49} We find that the second and subsequent assault was separate and distinct from the initial assault and entailed a substantial independent risk of harm. See *Hines*, supra. Under these facts, a jury could find that Golson committed two separate crimes; the first assault that seriously wounded Hunter being a felonious assault, and the subsequent beating that killed Hunter being a murder. Therefore, we find that Golson could be convicted of both felonious assault and murder.

{¶ 50} Therefore, the fourth assignment of error is overruled.

{¶ 51} Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

**SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR**