

[Cite as *State v. Christopher*, 2009-Ohio-3897.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91732

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARLOS CHRISTOPHER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-510541

BEFORE: Rocco, J., Cooney, A.J., and Dyke, J.

RELEASED: August 6, 2009

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. II, Section 2(A)(1).

KENNETH A. ROCCO, J.:

{¶ 1} Defendant-appellant Carlos Christopher appeals from his convictions after a three-judge panel found him guilty of four counts of aggravated murder, two counts of aggravated robbery, and two counts of aggravated burglary.

{¶ 2} Appellant presents one assignment of error, arguing that his convictions are not supported by sufficient evidence. This court disagrees with his argument. Therefore, appellant's assignment of error is overruled.

{¶ 3} Appellant's convictions result from the July 29, 2007 killings of Richard Messina and his long-time fiancée, Sandra Cover, inside their South Euclid, Ohio home. The killings stem from a progression of incidents that took place over the evening hours of July 28, 2007, through the night, and into the next morning.

{¶ 4} According to the testimony presented by the state's witnesses, on Friday, July 27, 2007, Richard Messina's eighteen-year-old daughter, Tabitha Messina, came to stay with him and Cover for the weekend. Tabitha lived with her mother in Cleveland that summer, but planned to see her boyfriend, Jason

Gaylord, on Saturday. That day, Jason was returning to his parents' South Euclid home from a long visit to the state of Georgia.

{¶ 5} On Saturday evening, Richard drove Tabitha to the South Euclid "Home Days"¹ celebration held at Bexley Park. Tabitha joined her friends, Jason and Tammy Tabak. Eventually, appellant also arrived.

{¶ 6} Appellant at that time was Tammy's boyfriend, but he and Tabitha had once been close. That evening, Jason proposed marriage to Tabitha, and she agreed. This prompted appellant to propose to Tammy; Tammy accepted. The four friends left the park and walked to a nearby school to "hang out."

{¶ 7} After midnight, Tabitha received a call on the cell phone she carried. The conversation became heated. When it was over, she indicated that her father "wanted the cell phone back that she had borrowed and she didn't want to go to give it back." Tabitha asked appellant to take the phone to her father's house.

{¶ 8} While the other young people waited at the school, appellant ran to the Messina house. He returned a short time later, telling them "he had gotten into a physical altercation with Mr. Messina." Appellant's experience led Tabitha to seek "a private discussion" with him, which the two held as they walked from the school to another house on Stonehaven Road. The girls left

¹Quotes indicate testimony given by a witness at trial.

briefly at 1:25 a.m.² to obtain some cigarettes, and then rejoined their boyfriends.

{¶ 9} At 1:22 a.m., the South Euclid police received a call to respond to the Messina residence; Richard Messina reported that someone was “bothering his vehicles” parked in the driveway. Several police officers responded to Messina’s call, including Officer Chris Khoenle.

{¶ 10} After speaking with Messina, who indicated he “didn’t want [appellant] around the property anymore,” Khoenle and the other officers drove in the area, looking for the young people. They soon were located outside a house on Stonehaven. The officers stopped to talk with them, and then Khoenle took Tabitha back to the Messina house to “pick up some property.”

{¶ 11} At her father’s house, Tabitha collected her dog and driver’s license. She also engaged in an argument with Richard Messina. According to Khoenle, “Richard said he didn’t want her back at the house.” Khoenle returned Tabitha to her friends, whereupon he advised “all parties * * * not to return” to the Messina residence. While Khoenle spoke to them, Tammy’s mother came to take her home.

{¶ 12} Jason, Tabitha, and appellant remained together only a short time before Tabitha told Jason she and appellant would “go and get” Tammy back.

²A video recorder fixed the time of this event.

Tabitha and appellant left together; they were gone for several hours. Their absence was so prolonged that Jason called Tammy at 3:30 a.m. Tammy indicated she had not seen them.

{¶ 13} At approximately 4:00 a.m., South Euclid police officer Dustin Smoot observed appellant and Tabitha sitting together on the sidewalk in front of the school, “holding hands and talking with each other.” Appellant wore “bright green” shorts, a gray “muscle shirt,” and a hat.

{¶ 14} When appellant and Tabitha eventually returned to Jason, appellant “had a cut underneath his eye,” and Tabitha had a cut on her hand. The hat, which was Jason’s, was gone. Jason asked for an explanation for their lengthy absence, but they “lied to [him] and said they went to Tammy’s house but they couldn’t find her.”

{¶ 15} By this time, Jason was too tired to press the issue. Appellant and Tabitha left again with the promise that they would “be right back.” They returned at approximately 7:00 a.m. with Richard Messina’s two vehicles, a Corvette and a GMC Jimmy, along with Messina’s other two dogs. They also wore different clothing.

{¶ 16} Appellant then indicated he needed to go to his motel room “to pick up some stuff.” He drove the Corvette while Tabitha and Jason followed in the truck. During the drive, Tabitha told Jason “she wanted to get married right

away,” and suggested they leave for Georgia. Jason noticed Tabitha seemed “upset.”

{¶ 17} When appellant retrieved his things, he stated he “wanted to start his life over,” and thought it would be a good idea to go along. Tabitha contacted Tammy to invite her; they stopped to purchase “prepaid phones and drinks,” then proceeded to Tammy’s house. Jason also noticed Tabitha “had a lot of money on her.”

{¶ 18} Tammy, however, had misgivings about the plan. She requested to say a personal goodbye to some friends in Painesville, Ohio, and, once there, told appellant and the others she wanted to stay. One of her friends, Dustin Hruby, decided to go in her place. By late morning, appellant, Tabitha, Jason, and Dustin left in the two vehicles; they were on their way to Georgia.

{¶ 19} Jason’s mother, Renee Vlana, became worried when she had not heard from him by the afternoon of July 29, 2007. Since she knew he was in Tabitha’s company, Vlana tried calling the Messina house, but received no answer.

{¶ 20} Eventually, at approximately 4:00 p.m., Vlana drove with her daughter to the Messina residence. It appeared deserted, but lights were on inside the house. They checked and discovered a screen on the rear porch had

been cut, and the glass on the door to the house was broken. Vlna called the police.

{¶ 21} The police arrived to find both Messina and Cover dead in the master bedroom. Messina lay on the floor immediately next to the right side of the bed in a twisted position, with bedclothes placed over his face, and a cell phone and a crucifix by his head. Cover lay on the floor in a pool of blood near the left side of the bed, on her front, clad only in a sleep shirt.

{¶ 22} The subsequent autopsy of Messina's body revealed he had suffered "six * * * chop wounds to the right side of his head and neck and several other blunt force injuries * * * on his head, right shoulder, and * * * right leg." In part, he had suffered "a fracture of the fifth cervical vertebra with the transection of the vertebral artery and spinal cord contusion * * *." None of the wounds seemed "consistent with the defense-type wound."

{¶ 23} Cover had suffered numerous injuries. Her body bore "lacerated defects which [were] consistent with a blunt force object"; these appeared on the back of her head, neck, and legs. There were nine "patterned abrasions" to her back that might have been caused by a crowbar, her left arm had anterior contusions as if she had sought to ward off blows, and her left index finger was fractured. The assistant coroner estimated the interval of time between her injuries and her death was four to six hours.

{¶ 24} During the investigation of the murders, the police discovered in the master bedroom “a small strongbox safe * * * open” in front of the closet door, an open floor safe containing papers inside the closet, and a large jewelry box on a dresser with its drawers empty. A hatchet lay on the bed in Tabitha’s room. Since the glass in the framed poster above the bed was broken, the hatchet appeared to have been thrown to where it landed.

{¶ 25} Cover’s purse was in the dining room. Although the purse contained Richard Messina’s wallet, neither the wallet nor the purse contained any money.

{¶ 26} Outdoors, the police found in the shrubbery a hat and “gray muscle shirt and a white female tank type shirt that had wrapped within them a steak knife.” Several garden tools, including a shovel, also lay in the yard. Light bulbs removed from the outdoor floodlights were “placed out neatly” on the ground.

{¶ 27} The discovery of the bodies led to telephone calls to Tabitha’s friends. In turn, the friends telephoned Jason and Dustin. By that time, appellant, Tabitha, Jason, and Dustin had stopped in West Virginia for a break.

{¶ 28} Jason and Dustin, upon hearing of the discovery of the bodies, confronted their two companions, then turned back for Cleveland, driving the Corvette. On Monday morning, July 30, 2007, a North Carolina sheriff’s deputy apprehended appellant with Tabitha.

{¶ 29} Appellant subsequently was indicted with Tabitha on twelve counts. Counts one and two named Richard Messina as the victim and charged appellant with aggravated murder in violation of both R.C. 2903.01(A) and (B). Counts three and four named Sandra Cover as the victim and charged appellant with aggravated murder in violation of both R.C. 2903.01(A) and (B). All four counts contained a “course of conduct” and two felony murder specifications.

{¶ 30} Counts five and six named Richard Messina as the victim and charged appellant with aggravated robbery in violation of both R.C. 2911.01(A)(1) and (A)(3). Counts seven and eight named Sandra Cover as the victim and charged appellant with aggravated robbery in violation of both R.C. 2911.01(A)(1) and (A)(3).

{¶ 31} Counts nine and ten named Richard Messina as the victim and charged appellant with aggravated burglary in violation of both R.C. 2911.11(A)(1) and (A)(2). Counts eleven and twelve named Sandra Cover as the victim and charged appellant with aggravated burglary in violation of both R.C. 2911.11(A)(1) and (A)(2). Counts five through twelve each contained two firearm specifications.

{¶ 32} Appellant pleaded not guilty and waived his right to a jury trial. After the state presented its case, the three-judge panel granted appellant’s

motion for acquittal as to all the firearm specifications, and as to counts ten and twelve.

{¶ 33} Ultimately, the panel found appellant guilty of counts one through four, six, eight, nine and eleven. Appellant was found not guilty on counts five and seven. Appellant received a prison sentence of life without the possibility of parole on counts one through four, to be served concurrently with five years on each of the other counts.

{¶ 34} Appellant presents the following assignment of error for review.

{¶ 35} **“The verdicts finding the appellant guilty of aggravated murder were violative of due process as they were based upon legally insufficient evidence.”**

{¶ 36} Appellant argues his convictions on counts one through four should be reversed. He asserts that the state failed to prove he committed the murders “with prior calculation and design” in violation of R.C. 2903.01(A). He further asserts the state’s evidence failed to establish that he was the “principal offender,” or that the murders occurred during the course of an aggravated burglary or an aggravated robbery, in violation of R.C. 2903.01(B). However, his assertions are unsupported by the record.

{¶ 37} This court is required to view the evidence adduced at trial, both direct and circumstantial, in a light most favorable to the prosecution to

determine if a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 1997-Ohio-372; *State v. Jenks* (1991), 61 Ohio St.3d 259. Viewing the evidence adduced at appellant's trial in a light most favorable to the state leads to the conclusion each count was supported by sufficient evidence.

{¶ 38} In considering an argument concerning prior calculation and design, the test is whether the evidence "reveals the presence of sufficient time and opportunity for the planning of an act * * * , and the circumstances * * * show a scheme designed to implement the calculated decision to kill * * * ." *State v. Cotton* (1978), 56 Ohio St.2d 8, paragraph 3 of the syllabus; see, also, *State v. Moreland* (1990), 50 Ohio St.3d 58; *State v. Taylor*, 78 Ohio St.3d 15, 1997-Ohio-243.

{¶ 39} The evidence in this case demonstrated the murders were planned. The private conversations between Tabitha and appellant, the length of time the two of them were away from Jason in the hours between approximately 3:00 a.m. and 6:00 a.m., the removal of the lightbulbs from the outdoor fixtures, the careful placement of the garden tools they decided not to use, and the stealth involved in order to enter the master bedroom without waking the sleeping and half-naked victims all indicate the necessary "studied analysis" of a plan and

method of attack. *State v. McClain* (Jan. 14, 1993), Cuyahoga App. No. 61541; cf., *State v. Jenkins* (1976), 48 Ohio App.2d 99.

{¶ 40} Moreover, the evidence also demonstrated both appellant and Tabitha were “principal offenders.” Two distinct weapons were involved in the attack. The forensic testimony supports a conclusion that one person chopped at Messina with an axe, killing him before he woke, while the other struck Cover with a “blunt object” such as a crowbar. Cover managed to arise from the bed, thereby sustaining some defensive-type injuries from two different objects, before she finally succumbed to the attack and eventually died.

{¶ 41} The testimony of Jason and Khoenle proved that neither Tabitha nor appellant had any privilege to enter the Messina house after the police escorted Tabitha away from it. Furthermore, the witnesses who knew the victims proved that the victims kept some valuables inside the home; these were missing after the murders, and appellant was inside Richard Messina’s truck, carrying Richard Messina’s lighter, when he was arrested. *State v. Biros* (1997), 78 Ohio St.3d 426, 451.

{¶ 42} In short, when viewed in a light most favorable to the prosecution, there was consistent, credible evidence to prove not only that appellant actively participated in the burglary and the robbery, but also that he wielded one of the

tools used against the victims during the killings. *State v. Rembert*, Cuyahoga App. No. 88300, 2007-Ohio-2499.

{¶ 43} Consequently, appellant's convictions are supported by sufficient evidence. His assignment of error, accordingly, is overruled.

{¶ 44} Appellant's convictions are affirmed.

It is ordered that appellee recover from 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.

KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, A.J., and
ANN DYKE, J., CONCUR

