[Cite as *State v. Hallman*, 2016-Ohio-3465.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103675

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER S. HALLMAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-596983-B

BEFORE: S. Gallagher, J., Kilbane, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: June 16, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Christopher Hallman appeals his conviction for tampering with evidence. Upon review, we affirm.

{¶2} Appellant was charged under a three-count indictment with aggravated robbery, with one- and three-year firearm specifications, tampering with evidence, and having a weapon while under disability. The case proceeded to a bench trial. The trial court found appellant not guilty of aggravated robbery, and guilty on the other counts. The court imposed consecutive sentences for an aggregate prison term of four years.

{¶3} The pertinent underlying facts are as follows. Appellant and his girlfriend, Ashley Forest, were staying in an apartment with Justin Watkins and Watkins's girlfriend. The victim, Branden Davis, lived in an apartment next door. Davis's girlfriend had a drug debt owed to appellant after he shared drugs with her. She paid off part of the debt before she went to jail.

{¶4} On the date of the incident, appellant, Forest, and Watkins were "hanging out" with Davis in the living room of Davis's apartment. At some point, Davis and appellant went to Davis's bedroom.

{¶5} Davis testified that appellant asked for the rest of the drug debt. Davis made a call to someone to try to get some money. He testified that when he hung up the phone, he told appellant he could not get any money for a couple of days, and that he then heard a loud pop. He asked appellant "[d]id you just shoot that * * * gun in my apartment?"

Davis indicated that the gun went off in his direction, a little to the right, and out the window. He claimed appellant stated he wanted the rest of his money and "stuck the gun to my head." He further stated that appellant told him, "you're going to have to pawn some [stuff] or sell something[.]" Davis then told appellant to get out of the apartment "because the cops are coming now." Davis testified that Forest then entered the room and said to "grab the casing," that appellant said, "I got it," and then they took off. Davis stated that it was appellant who picked up the shell casing. He described appellant's demeanor as "[j]ust kind of frantic, you know, trying to get the casing, get out of there[.]" Davis also left the apartment. He claimed he went to a neighbor's and did not call the police because he had "to get out of my apartment because I had a bench warrant" and did not want to get arrested. Davis testified that at some point, appellant rummaged through Davis's apartment for things he could pawn for money. Davis did not object. Davis was eventually picked up on his own bench warrant and reported the incident. He testified he was not promised anything in exchange for his testimony.

{¶6} Forest testified to hearing what sounded like a small firecracker, "cherry poppers," going off. When Forest entered the bedroom, she observed appellant had a gun in his hand and had no expression, and Davis was sitting on the bed in shock. Forest testified that she "freaked out"; she said, "we need to leave in case the police come"; and she "picked up the shell" that was on the floor next to the bed. Upon further questioning, Forest testified that appellant said to "pick it up," that she picked it up, and that she threw it away in a garbage can at a nearby Shell gas station they went to after leaving the

apartment. She further testified they left the apartment within five minutes, they all went to the gas station to buy cigarettes, and then they all returned to the apartment. When asked why she went to the Shell gas station, she responded, "[b]ecause I thought the cops were going to get called so I was scared." During cross-examination, Forest read a statement she wrote during the investigation, in which she stated she "[s]aw the gun, freaked out, yelled to pick up the casing and we need to leave." She clarified that appellant told her to pick up the casing after she was already in the act of picking it up. Forest also provided testimony regarding items that were taken to a pawn shop for money to be applied to the drug debt Davis owed to appellant.

{¶7} Appellant testified that he went into Davis's room to hide his gun and that it accidentally went off because of a hand surgery. He denied that he was trying to collect money from Davis, and he did not offer any testimony as to the shell casing. Appellant testified they all went to the gas station and then went back to Davis's apartment.

{¶8} On appeal, appellant challenges his conviction for tampering with evidence. R.C. 2921.12(A)(1), tampering with evidence, provides as follows:

> (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
>
> (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation[.]

{¶9} The Ohio Supreme Court has acknowledged that there are three elements to the offense: "(1) the knowledge of an official proceeding or investigation in progress or likely to be instituted; (2) the alteration, destruction, concealment, or removal of the potential evidence; and (3) the purpose of impairing the potential evidence's availability or value in such proceeding or investigation." *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175, ¶ 11. A conviction for tampering with evidence requires "proof that the defendant intended to impair the value or availability of evidence that related to an existing or likely official investigation or proceeding." *Id.* at ¶ 19. "Likelihood is measured at the time of the act of alleged tampering." *Id.*

{¶10} The term "knowingly" is defined under R.C. 2901.22(B) as follows:

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

{¶11} The Ohio Supreme Court has explained that the statute requires the accused to actually "be *aware* that conduct will probably cause a certain result or will probably be of a certain nature or that circumstances probably exist." *State v. Barry*, Slip Opinion

No. 2015-Ohio-5449, ¶ 24. A person may be charged with knowledge of a particular fact "only if that person '*subjectively believes* that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.' (Emphasis added.)" *Id*., quoting R.C. 2901.22(B).

{¶12} Appellant raises two assignments of error for our review. Under his first assignment of error, appellant claims there was insufficient evidence to find him guilty of tampering with evidence. A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, "[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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶13} Appellant argues that the evidence fails to demonstrate that he acted with the intent to impair the casing's value as evidence knowing that an investigation was about to be or likely to be instituted. He claims that nobody called the police on the night of the incident and that the state did not present evidence to suggest that anyone was about to or likely to call the police. He further claims there was no evidence as to whether any neighboring apartments were occupied and that the probability that some unknown person was about to call the police was "not a high probability, but a guess."

{¶14} Viewing the evidence in a light most favorable to the prosecution, a reasonable inference could be made that appellant believed there was a high probability the discharge of his firearm in an apartment building was likely to lead to the police being summoned. *See State v. Smith*, 6th Dist. Lucas No. L-14-1224, 2016-Ohio-150, ¶ 24 (finding a reasonable inference could be made of knowledge that gunfire in a residential area would lead to a police investigation). The testimony in the case reflects that after appellant discharged the firearm, Davis told appellant to get out of the apartment "because the cops are coming now." Forest also told appellant, "we need to leave." Appellant's demeanor was frantic, and the parties fled the apartment within five minutes. Sufficient evidence was presented that at the time the shell casing was removed from the apartment, appellant acted with knowledge that an official proceeding or investigation was about to be or likely to be instituted.

{¶15} A reasonable inference could also be made from appellant's action, whether as a principal or as an aider and abetter, of picking up the shell casing and removing it from the scene was with purpose to impair the availability of evidence. *See id*. (finding it reasonable to infer that the actions of picking up spent shell casings from inside a home where a shooting had just taken place and throwing them outside into the snow was an attempt to impair the availability of evidence). Nevertheless, appellant claims that Ohio law does not recognize an accessory after the fact. He argues that the state only presented evidence that appellant encouraged a crime after its completion. Our review reflects otherwise.

{¶16} Davis testified that after the firearm discharged, Forest entered the room and said, "grab the casing," and that appellant said, "I got it," and they took off. Forest's testimony varied. On direct, she claimed appellant told her to pick up the casing and she did. During cross-examination, Forest read a statement wherein she stated that she yelled to pick up the casing. She then testified that appellant told her to pick up the casing after she was already in the act of picking it up.

{¶17} The evidence must be viewed in the light most favorable to the prosecution. *State v. Williams*, 79 Ohio St.3d 1, 10, 1997-Ohio-407, 679 N.E.2d 646. Although there were inconsistencies in the testimony, it was for the trier of fact to weigh the inconsistencies and assess the witnesses' credibility. *State v. Pickens*, 141 Ohio St.3d 462, 2014-Ohio-5445, 25 N.E.3d 1023, ¶ 197, citing *Williams* at 10. Further, a review of the entire record does not show that the testimony was inherently unreliable or unbelievable. *See Pickens* at ¶ 197. Viewing the evidence in a light most favorable to the prosecution, we find any rational trier of fact could find appellant was complicit in ensuring the casing was removed from the scene and acted with purpose to impair its value or availability as evidence.

{¶18} Upon our review, we find the conviction was supported by sufficient evidence. Appellant's first assignment of error is overruled.

{¶19} Under his second assignment of error, appellant claims his conviction for tampering with evidence was against the manifest weight of the evidence. When reviewing a claim challenging the manifest weight of the evidence, the court, reviewing

the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and 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. *Thompkins*, 78 Ohio St.3d at 387, 1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id*. A claim that a jury verdict is against the manifest weight of the evidence involves a separate and distinct test that is much broader than the test for sufficiency. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 193.

{¶20} Appellant raises the same challenges addressed above and asserts the trial court lost its way by focusing on the aggravated robbery charge. The trial judge, as factfinder, was free to believe all, some, or none of the testimony of each witness appearing before the court. *State v. Sharp*, 8th Dist. Cuyahoga No. 103445, 2016-Ohio-2634, ¶ 33. Here, the evidence shows that after appellant discharged the firearm, witnesses expressed concern to appellant that law enforcement would be coming, both appellant and Forest were panicked, and appellant was complicit in removing the shell casing from the scene. This is not the exceptional case in which the evidence weighs heavily against the conviction, and we are unable to find the conviction was against the manifest weight of the evidence. Appellant's second assignment of error is overruled.

{¶21} Judgment 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.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR