

[Cite as *State v. Cammon*, 2018-Ohio-3183.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106056

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SONYA CAMMON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-17-613903-B

**BEFORE:** Jones, J., Kilbane, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** August 9, 2018

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LARRY A. JONES, SR., J.:

{¶1} After a joint jury trial with three codefendants, defendant-appellant Sonya Cammon (“Cammon”) was convicted of tampering with evidence, obstructing justice, and carrying a concealed weapon. She now challenges her convictions and the trial court’s failure to merge the charges for the purpose of sentencing. For the reasons that follow, we reverse.

### **I. Procedural History**

{¶2} Cammon, along with Howard Lester (“Lester”), Robert Shepard (“Shepard”), and Vernell Jordan (“Jordan”), was charged in a February 2017 indictment. The indictment contained 20 counts; only Counts 10, 11, and 12 charged Cammon. Count 10 charged tampering with evidence; Count 11 charged obstructing justice; and Count 12 charged carrying a concealed weapon. The indictment alleged that the date of the offenses in Counts 10 through 12 occurred on October 24, 2016. Some of the other charges against the codefendants were also alleged to have occurred on October 24, 2016, and the remaining charges were alleged to have occurred on October 7, 2016.

{¶3} Prior to trial, Cammon filed a motion for severance, seeking to have her counts severed from the indictment and proceed to trial separately from her codefendants. The trial court denied her motion, and the case proceeded to a jury trial with all the defendants. At the conclusion of the state’s case, Cammon sought a Crim.R. 29 judgment of acquittal, which was denied. After its deliberations, the jury found her guilty on all three counts. The trial court sentenced Cammon to one year of community control sanctions with conditions. Cammon now appeals, and raises the following assignments of error for our review:

I. The trial court erred by denying defendant’s pretrial motion to relieve her from prejudicial joinder of defendants at the same trial pursuant to Crim.R. 14.

II. The state failed to produce evidence as to each and every element of the offenses charged against the defendant and the trial court erred by not granting defendant's motion for acquittal.

III. The defendant's convictions were against the manifest weight of the evidence.

IV. The trial court committed plain error in not finding that the defendant's convictions were allied offenses of similar import.

## **II. Facts**

{¶4} The trial testimony established that there was an October 7, 2016 shooting outside a Cleveland bar; the victims were James Jones ("Jones") and Lauren Campbell. Cammon had no involvement in the incident, and we describe the events concisely only to give context to this case.

{¶5} Earlier in the evening, Jones and codefendant Lester had an argument. Jones left, but then returned to the bar around 2:00 a.m., when the bar was closing. Jones had intended on confronting Lester. Jones saw codefendants Jordan and Shepard exit the bar; Jordan "pulled out guns," and Lester pulled up in a truck. Jones testified that all three men — Jordan, Shepard, and Lester — had guns, and shots were being fired, although he could not say who exactly was firing.

{¶6} An investigation by the Cleveland police ensued in the days following the shooting. On October 24, 2016, Officer David Price ("Officer Price") responded to MetroHealth Hospital because the police department received information that a witness to the shooting was at the hospital. The witness was Lester. The officer put Lester in the back of his police cruiser while he was waiting for another law enforcement official to arrive to get a statement from him.

{¶7} Officer Price testified that while they were waiting, appellant Cammon arrived on scene and walked up to the back window by where Lester was seated; the officer rolled the window down. Lester handed Cammon a phone through the window. Cammon held the phone for a minute and then returned it to Lester and asked him to unlock it. Lester unlocked the phone and handed it back to Cammon, but this time, he also handed her a “do-rag” underneath the phone.

{¶8} Cammon then started walking away from the police car, but Officer Price immediately exited the police car, approached her, and asked her what was underneath the phone.

She gave him the phone and do-rag, which had a handgun wrapped up in it. The police learned that Lester was under disability and arrested him on the scene; Cammon was arrested as well. The gun at issue in this case was ruled out as a weapon used during the October 7 shooting.

{¶9} At trial, the state sought, and the trial court granted, permission for the jurors to hold the gun wrapped in the do-rag.<sup>1</sup>

{¶10} On this testimony, Cammon was convicted of tampering with evidence, obstructing justice, and carrying a concealed weapon.

### **III. Law and Analysis**

#### **Sufficiency of the Evidence**

{¶11} In her second assignment of error, Cammon contends that the evidence was insufficient to sustain the convictions. We agree, and therefore the second assignment of error is dispositive of this appeal.

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<sup>1</sup>The gun had been made inoperable prior to the jurors handling it.

{¶12} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Driggins*, 8th Dist. Cuyahoga No. 98073, 2012-Ohio-5287, ¶ 101, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶13} 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. Vickers*, 8th Dist. Cuyahoga No. 97365, 2013-Ohio-1337, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

### **Carrying a Concealed Weapon**

{¶14} Cammon was charged under R.C. 2923.12(A)(2) for carrying a concealed weapon.

The section provides in relevant part that “[n]o person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand \* \* \* [a] handgun \* \* \* [.]” Cammon contends that the state failed to produce any evidence that she “knowingly” possessed the handgun.

{¶15} R.C. 2901.22(B) defines knowingly:

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.

### **Obstruction of Justice**

{¶16} Cammon was convicted of obstruction of justice under R.C. 2921.32(A)(4), which provides in relevant part that,

No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime \* \* \* shall \* \* \* [d]estroy or conceal physical evidence of the crime or act \* \* \* [.]

{¶17} In regard to the “purposely” mental state,

A person acts purposely when it is the person’s 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 the offender’s specific intention to engage in conduct of that nature.

### **Tampering with Evidence**

{¶18} Cammon’s tampering with evidence conviction was under R.C. 2921.12(A)(1), which provides that,

No 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[.]

### **Analysis**

{¶19} When the disputed issue is the defendant’s culpable mental state, such as a defendant’s intent, proof often must be derived from circumstantial evidence, because direct evidence will seldom be available. *State v. Lott*, 51 Ohio St.3d 160, 168, 555 N.E.2d 293 (1990). Accordingly, it is well settled that the state may rely on circumstantial evidence to prove an essential element of an offense, because “circumstantial evidence and direct evidence inherently possess the same probative value[.]” *State v. Jenks*, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991), paragraph one of the syllabus. In reaching its conclusion, the trier-of-fact must weigh all the evidence, circumstantial or direct, against the standard of proof of beyond a reasonable doubt. *Id.* at 272.

{¶20} Officer Price provided the sole testimony relative to Cammon, and it did not include any direct evidence that Cammon knew she was receiving a gun from Lester. We further find that the circumstantial evidence was insufficient to support a finding that she knew she was receiving a gun. The only conversation Cammon had with Lester was to ask him to unlock the phone. The officer described the gun as “little” and “small,” and admitted that it could not be seen through the do-rag. He also testified that upon seeing the do-rag underneath the phone, he “immediately” approached Cammon and asked for the items.

{¶21} As mentioned, the jury was allowed to hold the gun wrapped in the do-rag, as Cammon held it on the date in question. The state explained to the court the necessity for the demonstration as follows:

Your Honor, one of the crucial issues for these counts related to the phone and the firearm is Miss Cammon’s knowledge of what she had in her hands. And so letting the jury feel these items, feel the firearm and the do-rag, \* \* \* as they were when they were in her hands immediately before they were seized is extremely probative of the extent of her knowledge about what was wrapped up in that do-rag.

{¶22} We are not convinced by the state’s logic. Rather, we believe the evidence needed to demonstrate that Cammon had knowledge *prior* to receiving the do-rag that a gun was wrapped up in it. There simply was no evidence presented to that effect. Moreover, because Cammon was “immediately” approached by the officer upon receiving the phone and do-rag, the evidence shows that she did not have time to develop the knowledge that she was in possession of a gun, let alone the mind-set to conceal, tamper with, or hinder its discovery.

{¶23} On this record the state’s evidence was insufficient to sustain the convictions, and the second assignment of error is sustained. The remaining assignments of error are therefore moot.



{¶24} Convictions reversed; case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee 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.

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

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LARRY A. JONES, SR., JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR