



104024453

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

Case No: CR-17-622972-A

Judge: JOHN P O'DONNELL

MERLIN T JOHNSON
Defendant

INDICT: 2903.01 AGGRAVATED MURDER /FRM1 /FRM3 /FR54
2903.02 MURDER /FRM1 /FRM3 /FR54
2903.11 FELONIOUS ASSAULT /FRM1 /FRM3 /FR54 /NPC /RVOS
ADDITIONAL COUNTS...

JOURNAL ENTRY

JUDGMENT ENTRY AFTER A BENCH TRIAL. O.S.J.

SENTENCING SET FOR 06/21/2018 AT 09:00 AM.

05/30/2018
CPJPO 05/30/2018 10:27:54

Judge Signature

Date

[Handwritten Signature]
5/30/2018

CLERK OF COURTS
CUYAHOGA COUNTY

2018 MAY 30 P 3:26

FILED

HEAR
05/30/2018

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO)	CASE NO. CR 17 622972 A
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY AFTER</u>
)	<u>A BENCH TRIAL</u>
MERLIN T. JOHNSON)	
)	
Defendant.)	

John P. O'Donnell, J.:

Jonathan Singletary was shot and killed on an East Cleveland street in the early morning hours of October 26, 2017. Defendant Merlin T. Johnson and his co-defendant Eric G. Wilson were indicted on November 15 with seven crimes arising from Singletary's death, and co-defendant Latifah N. Stewart was charged with obstructing justice for hindering the investigation of Johnson and Wilson.

Johnson and Wilson are accused of aggravated murder, murder, felonious assault, aggravated robbery, discharge of a firearm over prohibited premises, tampering with evidence and one count each of having a weapon while under disability.

All three defendants were set for a jury trial on April 30, 2018. Stewart did not appear for the trial and Wilson's attorney did not show up. A warrant was issued for Stewart's arrest for violating the requirement of her bond that she appear for trial, and because Wilson could not be

tried without his counsel, the trial went forward on the charges against Johnson only. Johnson waived a jury trial and his case was tried to the court, concluding on May 2. This judgment follows.

Sources of the evidence

Six witnesses testified for the plaintiff at trial and the prosecution admitted 45 exhibits into evidence. The defendant called no witnesses and admitted no exhibits. The witnesses were: Isis Dalton, Johnson's girlfriend; Talica Green, Dalton's friend and co-worker; John Hartman and Jonathan Portis, East Cleveland patrol officers; Dr. Erica Armstrong, a forensic pathologist who performed an autopsy on Singletary; and Kenneth Lundy, an East Cleveland detective. Among the exhibits are two digital video discs – plaintiff's exhibits 61 and 62 – containing interviews of Johnson by Lundy at the East Cleveland police station on November 9 and 13, 2017.

What follows are my conclusions, beyond a reasonable doubt, about the facts of what happened leading up to and after Singletary's killing, based upon the credible direct evidence of record plus reasonable inferences drawn from it.

The evidence

Isis Dalton and Merlin Johnson – who is called Marion by Dalton and everybody else who knows him – have been in a dating relationship since 2012 at Shaw High School. On October 5, 2017, Johnson moved into Dalton's apartment at 17740 Lakeshore Boulevard. Eric Wilson and Latifah Stewart, who were dating, moved into the apartment at the same time.

As of October 2017 Dalton was a child care worker at a day care center in the area of Superior Avenue and East 70 where her best friend, Talica Green, also worked. Since Dalton had a car and Johnson did not, Johnson would typically drive Dalton, in her car, to and from

work so that he would have the use of her car during the day. On October 25, 2017, Johnson, riding with Wilson and Stewart, picked up Dalton from work at about 7:00 p.m. and the four of them returned to the apartment on Lakeshore Boulevard and ordered pizza. Johnson and Wilson left in Dalton's car later in the evening, telling Dalton they were going out "to pick up some weed." Johnson also took Dalton's cell phone, which used the number 216-512-3475. According to Dalton, Johnson was the only person she would ever allow to borrow her car and phone.

Just after midnight, the East Cleveland police received a call to go to the area of Orinoco and Manhattan Avenues to respond to a call about a "male down" and in need of assistance. Manhattan runs generally north and south and Orinoco runs generally east and west, with its eastern terminus at Manhattan. Patrol officer John Hartman arrived to find a Chrysler PT Cruiser, in gear and with the engine running, stopped at a concrete wall separating the eastern edge of Manhattan from a railroad embankment. The driver was unconscious and staring straight up with a bullet hole in the left side of his chest. The driver was subsequently identified as Jonathan Singletary and he was pronounced dead at a hospital a short time later. An autopsy revealed the cause of death as a "gunshot wound of the trunk with visceral and soft tissue injuries." The pathologist who did the autopsy, Erica J. Armstrong, M.D., used the appearance of stipple-like abrasions at the bullet's entrance wound – marks made by unburnt gunpowder expelled from the barrel of a gun when it is shot – to estimate the distance from the muzzle of the gun to Singletary at about three feet.

A search of Singletary's car revealed a loaded .40 caliber Luger on the driver's side floor between his feet. Near the gun was a bag of marijuana. A digital scale was in the console between the front seats and another quantity of marijuana was on the rear driver's side floor.

Three cell phones – one with a credit card reader – were also found in Singletary's car. A search of Savannah Avenue – the next east-west street down from Orinoco – turned up a spent 9 mm shell casing in front of 14615 Savannah and a cell phone in front of 14623 Savannah. These houses are about six or seven lots west of Manhattan. A live .40 caliber round was discovered in the street on Manhattan.

One of Singletary's phones had the number 216-799-2701. Call records show that beginning at 12:02 a.m. on October 26, the night he was killed, five of the last seven calls on his phone were to or from Isis Dalton's number, 216-512-3475, and all of them took place over an approximately seven-minute span. The final call ended at 12:09 a.m. and the police received the 9-1-1 call about six minutes later.

Back at Dalton's, she was awakened by Johnson when he returned to the apartment, alone, at about 1:00 in the morning. He told Dalton and Stewart, who was also still at the Lakeshore Boulevard apartment, that he and Wilson arranged to meet somebody who would sell them marijuana. Then, when the deal was about to be transacted on Orinoco Avenue in East Cleveland, Wilson tried to rob the drug dealer. When Wilson realized the dealer had his own gun, Wilson shot him. Johnson did not say whether the man Wilson shot was still living when they left the scene. He did tell Dalton that if she were ever questioned she should say he was with her the whole evening. He also told her that he "tossed" her cell phone because it was used to arrange the drug deal but that she should tell anybody who asked that she lost it at a friend's house.

Dalton eventually went to sleep but was awakened before 7:00 a.m. by her sister, Imani, who yelled to her from the apartment's parking lot that the police were at their mother's house looking for Isis because her cell phone was the last number to call an East Cleveland murder

victim. Dalton hid to her family's home where two East Cleveland police detectives were waiting. She initially gave the police a statement consistent with the story Johnson asked her to tell because she wanted to protect him, but after she was jailed she told what she now says is the truth because "I decided to take my freedom over his."

At around the same time Dalton was talking to the East Cleveland detectives, Johnson called Talica Green and asked if she could meet him outside her work to talk for a few minutes. By then Dalton's mother had called Green about five times that morning looking for her daughter – who was not answering calls to her phone from her mother and Green – so Green agreed to talk to him. Johnson was a "little jittery," not his usual "chill self," and was "talkative more than normal" during the conversation. He told Green that if she were ever asked about Johnson's whereabouts the night before she should say that "we" got to Dalton's in the early evening after work, went out together to get pizza, returned to Dalton's, then made a trip to the gas station and stayed in the rest of the night. At this point Green was not aware that Dalton, through her phone, was implicated in a murder. Later that morning Dalton's mother advised Green that Dalton was not at work because of a family emergency. Before the morning was over, Johnson called Green again asking if she had spoken to Dalton yet.

Toward the end of that work day Johnson, Wilson and Stewart showed up at the day care center and spoke to Green with the intention of using Green to get Dalton's car back to her apartment. Green, still unaware of the killing, had grown suspicious based on the events of the day and asked Johnson if he had committed a crime. His answer perplexed her: "You're going to have to ask Isis that." It was not until after then that Green was called by an East Cleveland detective. Thinking she was going to be asked why she had Dalton's car, she was surprised to be questioned about a homicide.

East Cleveland detective Kenneth Lundy spoke to Johnson over the phone within a day or two of the shooting and Johnson agreed to give an interview but never voluntarily showed up. Wilson was arrested before Johnson; Johnson was with Wilson when the co-defendant was arrested, but Johnson fled on foot. Johnson was eventually found and arrested in East Cleveland on November 9. While in custody he gave two video recorded statements, the first on November 9 and the next on November 13. Those statements did not have the virtues of consistency and coherence – he gave essentially three conflicting versions of things – but he did admit to meeting Singletary earlier in the day with Wilson at an East Cleveland Sunoco station and two of Johnson's stories – not to mention his conversation with Dalton – placed him at or very close to the scene of Wilson shooting Singletary. He also put himself in the general vicinity of the murder by variously claiming to have been at his sister's on Orinoco Avenue at the time of the crime or in East Cleveland with a person he named only as D.J.

Discussion

Pursuant to section 2901.05(A) of the Ohio Revised Code, the prosecutor has the burden of proving the crimes charged beyond a reasonable doubt. Reasonable doubt exists where the fact finder cannot say he is firmly convinced of the truth of a charge. R.C. 2901.05(E).

The elements of count four for aggravated robbery in violation of R.C. 2911.01(A)(1) are that Johnson, while attempting or committing a theft offense against Jonathan Singletary or in fleeing immediately thereafter, had a deadly weapon – namely, a gun – and used it during the crime. In turn, the elements of count one for aggravated murder are that he purposely caused the death of Jonathan Singletary while committing or attempting to commit the aggravated robbery, or during the flight thereafter. In short, the aggravated robbery has to be proved in order for the aggravated murder to be proved.

The prosecutor was explicit in his closing argument that he does not seek to prove beyond a reasonable doubt that Johnson himself attempted to rob and then shot Singletary. Instead, he argues that Johnson was at least complicit in the crimes committed on October 26 and therefore just as guilty as if he had pulled the trigger himself.

The complicity statute in Ohio's criminal code is found at R.C. 2923.03. It provides, in pertinent part, that no person, acting with the kind of culpability required for the commission of an offense, shall aid or abet another in committing the offense. To aid is to assist; to abet is to incite or encourage. *State v. Sims*, 10 Ohio App. 3d 56, 58 (8th Dist. 1983). An aider and abettor is one who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent to, such design or purpose. *Id.* Furthermore, the fact that the charges against Wilson have yet to be proved does not preclude a finding that Johnson is guilty of complicity because it is not a defense to a charge of complicity that no person has been convicted as a principal offender. R.C. 2923.03(B). Finally, a person guilty of complicity shall be prosecuted and punished as if he were a principal offender. R.C. 2923.03(F).

Johnson left Dalton's apartment with Wilson and in possession of Dalton's cell phone. That phone made five calls to and from Singletary in the minutes before he was killed. Singletary was most likely killed on Savannah, just one street from Johnson sister's house on Orinoco, one location he claimed to be at the time of the homicide. Johnson fled from the crime scene instead of assisting Singletary, calling for an ambulance or waiting to help the police solve the crime. Less than an hour after the shooting, Johnson admitted the theft attempt on Singletary to Dalton. He told Dalton he got rid of her cell phone, implying a purpose to prevent its discovery as evidence against him. He spent much of the next day trying to prevent the police from discovering these facts, and he was in the company of Wilson for at least some of that

following day. Johnson ran when Wilson was arrested, and when he was arrested flitted among different versions of events and alibis. All of these things constitute strong evidence pointing to Johnson as at least complicit in an aggravated robbery of Singletary.

Yet the investigation and evidence have left some unanswered questions. Was Singletary in fact a drug dealer? Who owned the gun found in his car? Did he have any cash on him? Were his hands tested for gunshot residue? What kind of tests were done on the shell casing and live round discovered near the scene to see if one or both were somehow connected with Singletary's gun? Where are the call logs for Singletary's other phones? What is the meaning of the various column headings and notations in the call logs admitted as exhibits? Why was there no testimony by a cell tower triangulation expert to explain about where Dalton's and Singletary's phones were when the five calls were made? Whose phone was found in the street on Savannah? Did Wilson own a phone and, if so, where are the call records for it?

But while answers would eliminate some unknowns, it seems unlikely that they would serve to undermine the essence of the evidence, namely that: Johnson had the cell phone used to communicate with Singletary and get him to come to the area of Savannah and Orinoco, near Johnson's sister house; Johnson fled from the crime scene; he admitted the robbery to Dalton; he made great efforts to manufacture a cover story; he evaded arrest and, once arrested, gave divergent explanations for what happened. These all suggest his active participation and consciousness of guilt, either as a principal or an accomplice.

Considering all of the facts in evidence and reasonable inferences therefrom, I find beyond a reasonable doubt that Johnson was at least complicit in a theft attempt against Singletary on October 26, 2017. I further find that a firearm was used during the crime. I do not find beyond a reasonable doubt that Johnson himself used the gun to facilitate the offense –

although that is certainly within the range of possibilities – but I do find beyond a reasonable doubt that its use is imputed to him as an aider and abettor. Accordingly, having found all of the elements of aggravated robbery as charged in count four beyond a reasonable doubt, I find Johnson guilty of aggravated robbery.

Count four also includes several firearm specifications. The first is for having a firearm while committing a crime and the second is for using it. R.C. 2941.141(A) and 29141.145(A). Since those two things are elements of the underlying offense of aggravated robbery I have already found them beyond a reasonable doubt, and I further find that Johnson is subject to these two specifications even as an aider and abettor because it is well settled that an unarmed accomplice can be convicted of an underlying felony, together with a firearm specification, based on an aider and abettor status. *State v. Howard*, Cuyahoga App. No. 97695, 2012-Ohio-3459, ¶24. The third and fourth firearm specifications are pursuant to R.C. 2941.145(D) and incorporate the elements of the first two firearm specifications – namely, having and using a firearm during the crime – plus the element of a previous conviction for a firearm specification. The first two components of these third and fourth specifications have already been proved as discussed. As to the final element, the state’s trial exhibits 68 and 69 are certified judgment entries of conviction and sentence in Cuyahoga County Court of Common Pleas case numbers 570713 (ex. 68) and 570610 (ex. 69). Johnson is the defendant in both of the cases. In number 570713 he was convicted of robbery and felonious assault, each with an R.C. 2941.141 one-year firearm specification, and in 570610 he was convicted of robbery with a one-year firearm specification. Based on that evidence, the two R.C. 2941.145(D) firearm specifications have also been proved beyond a reasonable doubt.

The final components of count four are a notice of prior conviction under R.C. 2929.13(F)(6) and a repeat violent offender specification pursuant to R.C. 2941.149. The notice of prior conviction eliminates the possibility of a community control sentence for any felony of the first or second degree where a defendant previously was convicted of any first or second degree felony. Exhibits 68 and 69 prove that Johnson has three previous second degree felony convictions, thus he is ineligible for a community control sentence on count four. A repeat violent offender includes a defendant 1) with a prior conviction for an offense of violence that is a first or second degree felony who 2) is being sentenced for a first or second degree felony offense of violence. Johnson meets both prongs: his past convictions for felonious assault and two robberies are all second degree felony offenses of violence, and aggravated robbery in this case is a first degree felony offense of violence. Johnson is therefore eligible on count four, under R.C. 2929.14(B)(2)(a)(i), for an additional definite prison term of one to ten years over the maximum sentence for a first degree felony.

Having found Johnson guilty of count four, I now consider the elements of count one for aggravated murder. As mentioned, the elements of aggravated murder can be summarized as purposely causing Singletary's death during the aggravated robbery. There is no doubt that Singletary's death was caused by being shot by Johnson or Wilson, leaving only the question of the shooter's purpose. All of the evidence points to a purpose to kill. According to Dr. Armstrong, Singletary was shot from within three feet. The fact that he was killed in his car during a robbery supports an inference that the shooter was at close range, and the proximity to the target marginalizes the possibility that the person pulling the trigger intended only to warn or wound Singletary. The fact that he was shot in the center of his body where vital organs and a significant amount of vasculature are found further supports the intention to kill. And although

Singletary had a gun in his car there is no evidence, either direct or circumstantial, that his killing was committed as an act of self-defense.

I find beyond a reasonable doubt that Johnson is guilty of aggravated murder as charged in count one and the four firearm specifications to that count, which are the same as the specifications charged in count four.

Count one for aggravated murder is the most serious charge against Johnson and, as mentioned, a decision on that count necessitated a consideration of the elements of count four for aggravated robbery. Having detailed at length my view of the evidence supporting those charges it will add nothing to repeat the same analysis for most of the remaining charges in the indictment, notwithstanding the fact that they are all serious crimes. I will therefore address each of them with limited additional comment on the evidence.

On count two, murder in violation of R.C. 2903.02(B) (also known as "felony murder") and on count three, felonious assault in violation of R.C. 2903.11(A)(2) (also known as "deadly weapon" felonious assault), I find Johnson guilty beyond a reasonable doubt. The elements of the felonious assault were complete once the gun was fired and before the bullet struck Singletary, and Singletary's death was a result of that same conduct. On both counts I find the same firearm specifications charged in counts one and four beyond a reasonable doubt, and on count three I find in favor of the state on the notice of prior conviction and repeat violent offender specifications also contained in count four.

On count five, tampering with evidence in violation of R.C. 2921.12(A)(1), I find Johnson guilty beyond a reasonable doubt, based mostly on his admission to Dalton that he "tossed" the cell phone used before the murder to get Singletary to the scene.

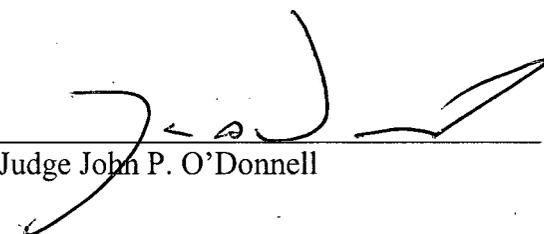
On count six, discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3), I find Johnson guilty beyond a reasonable doubt. Singletary was in his car on a public road when he was shot and killed from outside his car. I also find Johnson guilty of the four firearm specifications appended to this count.

Johnson is charged in count seven with having a weapon under disability in violation of R.C. 2923.13(A)(2). The legally disabling event alleged for this count is his conviction for robbery in case number 570713. That conviction was proved and even if Johnson never held the gun himself he was complicit in its use, and is thus guilty of count seven. He is also guilty of the firearm specification, which is a permissible addition to a charge of having a weapon under disability because it only has the effect of enhancing his punishment for the underlying crime, not being a conviction for a separate crime involving identical conduct. *State v. Broadus*, 14 Ohio App. 3d 443, 445 (10th Dist. 1984).

Counts eight and nine do not apply to Johnson.

A sentencing hearing is scheduled for June 21, 2018, at 9:00 a.m. The parties are ordered to file briefs before then addressing whether any of these charges and specifications are allied offenses of similar import.

IT IS SO ORDERED:



Judge John P. O'Donnell

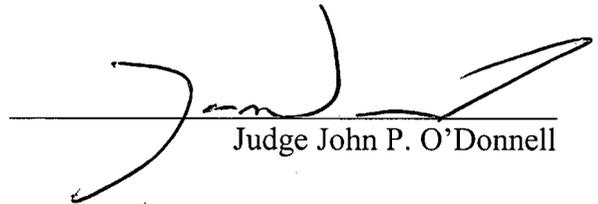
Date: May 30, 2018

SERVICE

A copy of this judgment entry was emailed to the following on May 30, 2018:

Maxwell Martin, Esq.
mmartin@prosecutor.cuyahogacounty.us
Attorney for the plaintiff State of Ohio

Donald Butler, Esq.
BUTDON@AOL.COM
Henry J. Hilow, Esq.
HHILOW@MGHSLAW.COM
Attorneys for defendant Merlin T. Johnson



Judge John P. O'Donnell