# CAPTION: STATE V. AKINS

**04-19-24**

APPEAL NO: C-230302

TRIAL NO: B-2100105

KEY WORDS: CONSTITUTIONAL LAW/CRIMINAL – VOIR DIRE – PEREMPTORY CHALLENGE – *BATSON V. KENTUCKY* – CONFRONTATION CLAUSE – EVIDENCE – MURDER – TAMPERING WITH EVIDENCE – HAVING A WEAPON WHILE UNDER A DISABILITY –COUNSEL – EVID.R. 609 – EVID.R. 404 – MISTRIAL – SUPPRESSION – JURY INSTRUCTIONS – PROSECUTORIAL MISCONDUCT – SENTENCING – CONSECUTIVE SENTENCES – PROPORTIONALITY

SUMMARY:

The trial court properly overruled defendant’s *Batson* challenge where the prosecutor provided a race-neutral explanation and defendant makes no argument as to why that explanation was pretextual beyond arguing that the explanation would not support striking the juror for cause: The trial court properly resolved the *Batson* challenge procedurally where the trial court allowed defendant to respond to the state’s race-neutral explanation and then clearly rejected the challenge on the record.

The trial court erred in admitting statements by a nontestifying witness in violation of the Confrontation Clause of the Sixth Amendment to the United State Constitution, but the error was harmless because the erroneously admitted testimony was cumulative to other testimony and the other evidence presented established defendant’s guilt beyond a reasonable doubt.

Defendant’s conviction for murder with a firearm specification was supported by sufficient evidence and not against the manifest weight of the evidence where, though a masked shooter murdered the victim and no witness could identify the shooter, the evidence supported a reasonable inference that defendant was the masked shooter because the shooter was shot while escaping, defendant arrived at a hospital shortly after the murder with gunshot wounds, and defendant’s pants were stained with the victim’s blood.

Defendant’s conviction for having a weapon while under a disability was supported by sufficient evidence and not against the manifest weight of the evidence where defendant’s conviction for murder with a firearm specification was supported by sufficient evidence and was not against the manifest weight of the evidence, defendant stipulated to having been convicted of a felony offense of violence and defendant stipulated that he was not relieved from the disability from that conviction.

Defendant’s conviction for tampering with evidence was supported by sufficient evidence and not against the manifest weight of the evidence where the evidence permitted an inference that defendant was the masked shooter and defendant threw his bloody clothes into a trash can, suggesting an intent to impair their ability to serve as evidence in the impending murder investigation.

Defendant was not deprived of his right to the effective assistance of trial counsel where his trial counsel did not move for a mistrial after being denied the ability to cross-examine the state’s cooperating witness based on a prior conviction because the existence and nature of the witness’s conviction were brought out on direct examination and Evid.R. 404 bars defendant from using that conviction to argue the witness committed the murder because he committed a similar offense in the past.

Defendant was not deprived of his right to the effective assistance of trial counsel where trial counsel failed to proactively attempt to suppress any evidence of defendant’s refusal to answer questions while in police custody because a failure to file a motion to suppress is not per se ineffective assistance and defendant was not prejudiced by trial counsel raising the issue during trial via an objection.

The trial court did not abuse its discretion by rejecting defendant’s proposed jury instructions concerning the credibility of the state’s cooperating witness and instead providing the Ohio Jury Instruction where defendant was not entitled to the special instruction and cites no authority that his proposed instructions were correct statements of law or that the provided Ohio Jury Instruction was an incorrect statement of law.

The state did not violate defendant’s right to a fair trial by calling defendant a contract killer during closing argument where the name-calling was improper and unnecessary but was one isolated comment during closing argument of a two-week long trial and the trial court promptly issued a curative instruction that the comment was not evidence.

The state did not violate defendant’s right to a fair trial by commenting during the rebuttal portion of closing argument that defendant did not ask follow-up questions to witnesses on the contested issue of the identity of the masked shooter where the statements did not imply defendant had a burden of proof, were fair comments in response to defendant’s closing argument on what the witnesses testimony did and did not say about the identity of the masked assailant, and the trial court instructed the jury that the state bore the ultimate burden of proof.

The trial court properly imposed consecutive sentences where the aggregate sentence of 21 years’ to life imprisonment was not disproportionate to defendant’s conduct and took into consideration defendant’s prior felony record and two prior prison terms.

JUDGMENT: AFFIRMED

JUDGES: OPINION by WINKLER, J.; ZAYAS, P.J., and CROUSE, J., CONCUR.