IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-250336 TRIAL NO. B-2006456
Plaintiff-Appellee,	:	
vs.	:	
BRYAN JONES,	:	
Defendant-Appellant.	:	*JUDGMENT ENTRY*

ZAYAS, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Bryan Jones was charged with two counts of special felony murder with gun specifications, one count of attempted murder with gun specifications, five counts of felonious assault with gun specifications, and one count of having weapons while under a disability ("WUD"). The charges arose from a shooting in the Cincinnati neighborhood of Clifton that left one person deceased and two others injured. After a jury trial, Jones was acquitted of one of the murder charges and all of the gun specifications and convicted of all of the remaining charges. The trial court found him guilty of the WUD.

In his first and second assignments of error, Jones contends that the trial court committed plain error by instructing the jury on complicity, and his trial counsel

rendered ineffective assistance of counsel for failing to object to the complicity instruction. Jones acknowledges that he did not object to the instruction, and therefore, has forfeited all but plain error. *See* Crim.R 30(A); Crim.R. 52(B). Under R.C. 2923.03(F), the State may charge complicity in terms of the complicity statute or in terms of the principal offense, even when the charge is drawn in terms of the principal offense, where the evidence permits it.

Jones contends that he had no notice that he could have been held as an aider and abettor. However, the record reflects that the State filed two requests for a jury instruction regarding complicity prior to the trial, and Jones was served with both notices and did not respond or object. Thus, Jones was provided notice that the State was proceeding on an alternative theory of complicity. Moreover, there was sufficient testimony to support a complicity instruction where the evidence established that either Jones was the shooter or his gun jammed and the person he was with fired the gun that struck the victims. Because the evidence supported a complicity instruction, trial counsel was not ineffective for failing to object to the instruction.

We overrule the first and second assignments of error.

In the third and fourth assignments of error, Jones argues that the trial court committed plain error by admitting out-of-court testimonial statements and counsel was ineffective for failing to object. As Jones concedes, plain error is the proper standard of review because he did not object to the testimony at trial. Jones bears the burden of establishing that an error occurred, the error was plain, and the error affected the outcome of the trial. *State v. Graham*, 2020-Ohio-6700, ¶ 31.

Here, G.J., a material witness who was unavailable for trial, provided deposition testimony five days prior to trial pursuant to Crim.R. 15. Jones and his counsel were present at the deposition, and counsel cross-examined G.J. Jones

contends his confrontation rights were violated by the detective's identification of Jones in the video because G.J. did not testify about Jones's clothing and shoes. However, G.J. was questioned by both parties about Jones's clothing and shoes when he returned home after the shooting. Jones had the opportunity to question G.J. regarding a description of the clothing and shoes that Jones wore that evening.

"A defendant's failure to cross-examine a witness does not mean that the witness was not available for such cross-examination or that the Confrontation Clause has not been satisfied." *State v. Gray*, 2012-Ohio-4769, ¶ 48 (12th Dist.) Because Jones had the opportunity to question G.J., his right of confrontation was satisfied. *See Bullcoming v. New Mexico*, 564 U.S. 647, 658 (2011); *State v. Smith*, 2024-Ohio-886, ¶ 20 (3d Dist.); *Gray* at ¶ 48. Jones has failed to establish the existence of error, let alone plain error, in admitting the detective's testimony.

Jones further argues that the detective's identification testimony was based on inadmissible hearsay. The detective did not testify regarding any out-of-court statements when identifying the persons in the video, and therefore, the testimony was not hearsay. *See State v. Wingfield*, 2019-Ohio-1644, ¶ 38 (8th Dist.) (detective's testimony identifying the defendant in the video was not hearsay because the detective did not testify "regarding an out-of-court statement" or "about what someone said, wrote, or did."). Because Jones failed to establish that the admission of the detective's testimony was plain error Jones cannot demonstrate that his counsel's failure to object constituted ineffective assistance of counsel.

We overrule the third and fourth assignments of error.

In his fifth assignment of error, Jones contends that the trial court erred by overruling his motion to suppress the photo line-up identifications where the line-up was suggestive and demonstrated insufficient indicia of reliability. Appellate review

of a motion to suppress presents a mixed question of law and fact; we accept the factual findings if supported by competent, credible evidence and independently determine whether the facts satisfy the applicable legal standard. *State v. Burnside*, 2003-Ohio-5372, ¶ 8.

"Due process requires suppression of pre-trial identification of a suspect only if the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification." *State v. Thomann*, 2022-Ohio-4264, ¶ 13 (1st Dist.), quoting *Neil v. Biggers*, 409 U.S. 188, 196-197 (1972). Here, Jones argues that the lineup was unduly suggestive because the background of Jones's photo was darker than the other photos. As Jones acknowledged in his brief, a lineup is not unduly suggestive due to different background colors. *See State v. Carter*, 2006-Ohio-2823, ¶ 33 (2d Dist.). Any questions as to the reliability of the identifications go to the weight of the identification, and no further inquiry into the reliability of the identifications is required. *Thomann* at ¶ 13.

Accordingly, we overrule the fifth assignment of error.

In his sixth and seventh assignments of error, Jones contends his convictions were based on insufficient evidence and against the weight of the evidence. A challenge to the sufficiency of the evidence questions whether any rational trier of fact could have found all the essential elements of the crime proved beyond a reasonable doubt, after viewing the evidence in the light most favorable to the state. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. In a challenge to the weight of the evidence, the issue is whether the jury created a manifest miscarriage of justice in resolving conflicting evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 386-387 (1997).

Jones incorporates his argument regarding complicity and contends that the State failed to prove that a principal committed the offense, and therefore, the evidence was insufficient to convict him as an accomplice. He further argues that his conviction for WUD was unsupported by the evidence because the State provided no evidence that a principal offender possessed a gun. As previously discussed, the record contains sufficient evidence to support a conviction as an accomplice or a principal.

Jones further argues that the identification of Jones as the shooter by the surviving victims was not credible, rendering the convictions against the weight of the evidence. "Appellate courts must defer to the fact-finder's credibility determinations." *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 38. Here, the record shows that the jury did not lose its way or create a manifest miscarriage of justice, and the convictions are not against the weight of the evidence.

We overrule the sixth and seventh assignments of error.

Accordingly, having overruled Jones's seven assignments of error, we affirm the judgment of the trial court.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

CROUSE and **MOORE, JJ.,** concur.

To the clerk:

Enter upon the journal of the court on 9/11/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge