

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

STATE OF OHIO,	:	APPEAL NO. C-090153
	:	TRIAL NO. B-0807208(B)
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
KRISTEN OLDENDICK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In three assignments of error, defendant-appellant Kristen Oldendick appeals her conviction for robbery.² We affirm.

On September 3, 2008, Arthur Lemmon cashed a check at Cincinnatus Savings and Loan. Kristen Oldendick was there. The 89-year-old Lemmon then proceeded to a nearby Wendy's restaurant and ordered a lunch. Oldendick was there as well. As Lemmon walked home, a man named Justin Garvey hit him and took his money. Oldendick was not there, but she was nearby. Garvey was Oldendick's boyfriend, and Oldendick was turning the car around nearby. After robbing Lemmon, Garvey returned to the car, and he and Oldendick left the area.

After reviewing security footage from the bank, police focused on Oldendick. Investigators testified that Oldendick told them that she had been at the bank. She had also said that, before she could conduct her business, Garvey had come in and told her that they had to leave. After leaving the bank, she said, she had needed to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2911.02(A)(2).

stop for a drink because her blood sugar was low. Garvey happened to suggest that they stop at Wendy's. He had insisted that she go into the restaurant, rather than going through the drive-through. After this, Garvey had told Oldendick to follow Lemmon. After a short drive, Garvey got out of the car and followed Lemmon on foot. Oldendick told police that she knew that Garvey was probably going to "do something" to Lemmon. She turned the car around and waited for him to return. He then got into the car, and the two left the area.

At trial, she denied knowing that they had been following Lemmon, saying that Garvey had driven the entire time. She testified that the reason that Garvey had gotten out of the car was that the couple had gotten into a fight and Garvey just got out in the middle of the street. She said that the only reason that she was still nearby when Garvey returned was that she was stuck at a traffic light.

In her first two assignments of error, Oldendick argues that her conviction was based upon insufficient evidence and was against the manifest weight of the evidence. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.³ On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁴

Here, Oldendick denied that she was involved in the robbery of Lemmon. But based on this record, the trial court could—and did—conclude beyond a reasonable doubt that she was an accomplice. To establish that she was an accomplice, the state was required to prove, beyond a reasonable doubt, that she had acted with the culpability level

³ See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

⁴ See *id.* at 387.

required for the commission of robbery, and that she had assisted, encouraged, cooperated with, advised, or incited another to commit the offense.⁵ The record contains sufficient evidence to support a conclusion that the state had met its burden of proof, and the trial court did not clearly lose its way or create a manifest miscarriage of justice in so concluding. Oldendick's first two assignments of error are overruled.

In her third assignment of error, Oldendick argues that counsel was ineffective for failing to call witnesses to testify about Oldendick's good character. But the record contains no evidence that such witnesses were available to counsel. Therefore, her ineffective-assistance claim is unsupported by the record.⁶ Oldendick's third assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 13, 2010

per order of the Court _____
Presiding Judge

⁵ R.C. 2923.03(A)(2); see, also, *State v. Lowery*, 160 Ohio App.3d 138, 2005-Ohio-1181, 826 N.E.2d 340, at ¶17, citing *State v. Johnson*, 93 Ohio St.3d 240, 2001-Ohio-1336, 754 N.E.2d 796, syllabus.

⁶ See, e.g., *State v. Owens*, 7th Dist. No. 07 MA 153, 2008-Ohio-3246, at ¶11 (in a silent record, the presumption of competence prevails).