

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

STATE OF OHIO.	:	APPEAL NO. C-110099
	:	TRIAL NO. B-1004908-B
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
KURT HOLOCHER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Kurt Holocher appeals the judgment of the trial court convicting him of robbery.

In Holocher's first assignment of error, he argues that the trial court erred by failing to instruct the jury as provided in R.C. 2923.03(D) regarding testimony of an accomplice. Because Holocher failed to request an instruction, or to object to the lack thereof, Holocher has waived all but plain error. *State v. Williams*, 1st Dist. No. C-081148, 2010-Ohio-1879, ¶ 17; Crim.R. 30(A). The trial court was required to instruct the jury as provided in R.C. 2923.03(D) because Holocher's accomplice, Regis Solomon, testified against Holocher. Although the trial court erred by failing to give an instruction on accomplice testimony, we cannot say that, but for the error, the outcome of the trial clearly would have been otherwise. Therefore, we overrule the first assignment of error.

In his second assignment of error, Holocher argues that the trial court erred by denying Holocher's request to admit the entirety of his taped statement to police after the trial court had allowed the prosecution to use parts of the statement during Holocher's cross-examination. Even if the trial court erred by failing to admit the statement, we determine that the error did not prejudice Holocher and was harmless beyond a reasonable doubt under Crim.R. 52(A), because the testimony of the victim, Solomon, the police, and Holocher's neighbors, and the other evidence admitted at trial provided overwhelming proof of Holocher's guilt. *State v. Simpson*, 1st Dist. No. C-100789, 2011-Ohio-4578, ¶ 22.

In Holocher's third and fourth assignments of error, he challenges the weight and sufficiency of the evidence adduced to support his conviction. When considering a sufficiency claim, we must determine, after viewing the evidence in the light most favorable to the state, whether a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Viewing the evidence in the light most favorable to the state in this case, a rational trier of fact could have found the elements of robbery beyond a reasonable doubt. Furthermore, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty; therefore, we determine that Holocher's conviction was not against the manifest weight of the evidence. *Id.* at 387. The third and fourth assignments of error are overruled.

In his fifth assignment of error, Holocher contends that he received ineffective assistance of counsel because his counsel failed to request the jury instruction under R.C. 2923.03(D). To succeed on an ineffective-assistance claim, a defendant must show that, but for counsel's deficient performance, the outcome of the trial would

have been different. *Strickland v. Washington*, 466 U.S. 668, 697, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As we determined in the resolution of Holocher's first assignment of error, the outcome would not have been different but for the failure to instruct the jury under R.C. 2923.03(D). Therefore, this assignment of error is overruled.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute 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., DINKELACKER and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on January 13, 2012  
per order of the court \_\_\_\_\_.  
Presiding Judge