

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

STATE OF OHIO,	:	APPEAL NO. C-170684
	:	TRIAL NO. C-17CRB-10759
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JAMIE SMITH,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, Jamie Smith was convicted of theft for stealing an auxiliary cord from Walmart. The court sentenced Smith to 180 days in jail and ordered him to pay court costs and \$34.28 in restitution.

In his first assignment of error, Smith argues that the trial court erred by admitting the hearsay identification of him by an accomplice, in violation of Evid.R. 802 and his right to confront the witnesses against him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

The prosecutor elicited testimony from a police officer that an accomplice had identified Smith as the person who was with her at the store. The defense objected.

The prosecutor explained that the statement was offered to show how police had come to know of Smith. The court overruled the objection.

The accomplice's statement was testimonial because there was no ongoing emergency and the statement was the result of a police interrogation whose primary purpose was to establish or prove past events potentially relevant to later criminal prosecution. *See State v. Ricks*, 136 Ohio St.3d 536, 2013-Ohio-3712, 995 N.E.2d 1181, ¶ 17. The statement was not admissible as nonhearsay because it connected the defendant with the crime charged. *Id.* at ¶ 27. The officer's testimony that the accomplice had identified Smith was hearsay because it was offered to prove the truth of the matter asserted (that Smith was the person with her) rather than simply to explain police conduct. *Id.* at ¶ 45. Therefore, the admission of the testimonial statement by the accomplice violated Smith's rights under the Confrontation Clause. *Id.*

Even though the court's admission of the statement was constitutional error, such error can be harmless if it was harmless beyond a reasonable doubt. *Id.* at ¶ 46. "[T]he question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *Id.*, citing *Chapman v. California*, 386 U.S. 18, 23, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

In this case, the admission of the statement was harmless beyond a reasonable doubt. At trial, Smith did not contest that it was him on the surveillance video. *See State v. Goshade*, 1st Dist. Hamilton No. C-120586, 2013-Ohio-4457, ¶ 18. The loss-prevention employee, found to be credible by the trial court, testified that he saw Smith take an auxiliary cord from the electronics department and place it under his accomplice's purse. As he continued to surveil Smith, he saw Smith conceal the cord in his pocket, eventually leaving the store. The employee identified Smith in court as the

person who had stolen the item and then fled the store when the employee confronted him. Based on this testimony, there is no reasonable possibility that the hearsay statement contributed to Smith’s conviction. *See State v. Clinton*, Slip Opinion No. 2017-Ohio-9423, ¶ 138. As the trial court pointed out, the accomplice had only provided Smith’s name, and any issue raised by the defense was “defeated by the testimony of [the loss-prevention employee] who testified clearly that he observed the defendant personally and identified him on the [store’s surveillance] video, identified himself on the video, and identified him here in court.” Therefore, we overrule the first assignment of error.

In his second assignment of error, Smith, relying on *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, argues that the trial court violated Crim.R. 43(A) by imposing court costs in the sentencing entry without informing him during the sentencing hearing. But *Joseph* is no longer good law. *See State v. Beasley*, Slip Opinion No. 2018-Ohio-493, ¶ 263. Because R.C. 2947.33 was amended to allow a trial court to waive court costs at any time, Smith does not need us to remand this matter in order for him to file a motion to waive costs. *See id.* at ¶ 265. Therefore, we overrule the second assignment of error and affirm the trial court’s judgment.

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.

MOCK, P.J., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on August 17, 2018
per order of the court _____.
Presiding Judge