

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-654 (C.P.C. No. 09CR-06-3490)
Javon H. Redman,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 19, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH , J.

{¶1} Defendant-appellant, Javon H. Redman, appeals a judgment of the Franklin County Court of Common Pleas, which convicted him of murder, kidnapping, aggravated burglary, aggravated robbery, and having a weapon while under disability. For the following reasons, we affirm.

{¶2} On June 12, 2009, a Franklin County Grand Jury indicted appellant on one count of aggravated murder in violation of R.C. 2903.01, one count of murder in violation of R.C. 2903.02, one count of kidnapping in violation of R.C. 2905.01, one count of aggravated burglary in violation of R.C. 2911.11, one count of aggravated robbery in violation of R.C. 2911.01, and one count of having a weapon while under disability in violation of R.C. 2923.13. All but the weapon under disability count contained firearm specifications pursuant to R.C. 2941.145.

{¶3} Appellant pleaded not guilty to the charges, waived his right to a jury trial on the weapon under disability count, and tried the remainder of the charges to a jury. The jury returned a verdict finding appellant not guilty of aggravated murder, but guilty of murder, kidnapping, aggravated burglary, and aggravated robbery and the accompanying firearm specifications. The trial court found appellant guilty of the weapon under disability count. The trial court sentenced appellant to 15 years to life on the murder count, ten years each on the kidnapping, aggravated burglary, and aggravated robbery counts, three years on the weapon under disability count, with an additional three years on each of the firearm specifications. The trial court merged the sentences on the firearm specifications and ordered the sentences on the murder, kidnapping, aggravated robbery, and weapon under disability counts to be served consecutive to one another and concurrent with the sentence on the aggravated burglary count. In sum, the trial court sentenced appellant to 41 years to life.

{¶4} Appellant timely appeals his conviction and sentence, raising two assignments of error:

I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF MURDER, KIDNAPPING, AGGRAVATED ROBBERY, AND AGGRAVATED BURGLARY, AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUISITE FACTUAL FINDINGS; THEREBY DEPRIVING APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION SIXTEEN OF THE OHIO CONSTITUTION.

{¶5} In his first assignment of error, appellant argues that his convictions for murder, kidnapping, aggravated robbery, and aggravated burglary are based upon insufficient evidence and are against the manifest weight of the evidence. We disagree.

{¶6} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state provided beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the

evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶7} In contrast, in determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.' " *Thompkins* at 387, quoting *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 2220. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we determine " 'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.* Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶8} With these standards in mind, we turn to the evidence presented in this case.

{¶9} On June 19, 2007, 17-year old Jeremy Dudley and 16-year old Brittany Boggan devised a plan to rob Alu Jeter, a local rap music producer and drug dealer. The plan was for Boggan to enter Jeter's house as a guest, unlock the front door, and then call Dudley, who would enter the house and complete the robbery.

{¶10} Dudley recruited two of his friends, appellant, also known as "Von," and Clifton Young, to participate in the robbery. Dudley told appellant he would split the proceeds of the robbery with him; he told Young he would pay him a small sum of money to provide a getaway car. Dudley did not reveal his friends' names to Boggan. Appellant thereafter contacted his cousin, Aaron Manns, and asked him if he would supply a gun for use in the robbery.

{¶11} On the afternoon of June 21, 2007, Boggan set the plan in motion. She called Jeter and asked if he wanted to "hang out." (Tr. 168.) Jeter agreed to transport Boggan and her 15-year old friend, Keira Long, to his house. It is undisputed that Boggan did not inform Long of the planned robbery. Jeter picked up Boggan and Long, purchased some liquor, and drove them to his house. The three began drinking, and Jeter eventually propositioned both Boggan and Long for sex. Boggan declined, but Long agreed, and she and Jeter went upstairs to Jeter's bedroom. Boggan unlocked the front door and used Jeter's cell phone to call Dudley and provide Jeter's address.

{¶12} After receiving Boggan's call, Dudley called Young. Young picked Dudley up at his house, and the two drove to a designated intersection to meet appellant. Manns was with appellant. When appellant got into Young's car, he reported that Manns would not supply the gun unless he could participate in the robbery. The group agreed to Manns' condition, and he thereafter got into the car armed with a gun.

{¶13} Young drove the group to Jeter's house. Young remained in the car, which he had parked on the street a few houses away. Manns gave appellant the gun, and he, Dudley, and appellant exited the car and walked to Jeter's house. Boggan let them in the house and told them Jeter was upstairs with Long. Dudley instructed Boggan to go to the

basement, and she complied. Manns, Dudley, and appellant went upstairs and found Jeter having sex with Long. Appellant pointed the gun at Jeter, ordered him to the floor, and asked where he kept his drugs and money. Jeter responded that he kept money in the kitchen stove. Manns took the chain Jeter was wearing around his neck, and the three men forced Jeter downstairs at gunpoint. Long remained in the bedroom.

{¶14} Dudley retrieved the drugs from the stove; he also found a box of bullets, but no gun, in one of the cabinets. Dudley then went outside to search Jeter's car for a gun. Manns took the gun from appellant so appellant could continue searching the kitchen. When Jeter attempted to wrestle the gun away from Manns, Manns lost his glasses. Manns eventually gained control of the gun and gave it to appellant. Appellant fired one shot at Jeter, who was charging toward him. The bullet hit Jeter in the chest. Manns and appellant ran out of the house.

{¶15} Dudley observed appellant and Manns run out of Jeter's house toward Young's car. Assuming that "[s]omething went wrong," Dudley also ran to Young's car. (Tr. 95.) Dudley, Manns, and appellant all got into Young's car and told Young to drive away. Dudley asked appellant and Manns what had happened. Appellant replied, in a frantic tone, that Jeter had attacked him, so he had to "pop" [shoot] Jeter. (Tr. 336.) Appellant indicated, however, that everything was " 'cool' " because he only shot Jeter in the shoulder. (Tr. 337.) Sometime after the incident, appellant told Dudley he had thrown the gun he used to shoot Jeter into the river.

{¶16} During the altercation between Jeter, Manns, and appellant, Long came downstairs. She heard a gunshot followed by people running toward the front door. She ran downstairs to the basement with Boggan. After the shooting, Boggan and Long

emerged from the basement and discovered Jeter face down on the back porch. The two remained in the house while a neighbor called 911.

{¶17} Columbus Police Officer Joshua McAllister responded to the 911 call and found Jeter dead on the back porch. An autopsy revealed that Jeter died from a single gunshot wound to the chest.

{¶18} Columbus Police Detective James Day, the lead detective assigned to the investigation, interviewed Boggan at the scene. Boggan told Day she was not involved in the robbery. Sometime later, Dudley told Boggan that a person named "Von" was involved in the robbery and that Jeter had been shot during it. In an August 2007 interview with Day, Boggan admitted her role in the robbery. She also informed Day that Dudley told her that " 'Von had to shoot [Jeter].' " (Tr. 242.)

{¶19} Day also interviewed Dudley, who at first denied any involvement in the robbery. Because Boggan had implicated Dudley, however, and because Dudley's phone number appeared in Jeter's cell phone record, Day arrested Dudley and charged him with murder. Several months later, Dudley agreed to proffer a statement, in which he admitted his involvement in the robbery and implicated appellant, Young, and Manns. Although Dudley first stated that appellant drove the getaway car, he later amended his statement to aver that Young was the driver. Dudley identified appellant and Young from photo arrays.

{¶20} Day also interviewed Young, who provided a full statement regarding the robbery, including the fact that appellant had admitted that he shot Jeter. Young identified appellant and Manns from photo arrays.

{¶21} DNA recovered from a pair of glasses found in Jeter's kitchen matched that of Manns. Other items recovered from Jeter's house were compared against appellant's DNA, but no matches were found. Crime scene investigators discovered \$900 in cash in a boot inside Jeter's bedroom closet, along with a gun and suspected crack cocaine inside a television set in the living room.

{¶22} Dudley, Boggan, and Manns all pleaded guilty to involuntary manslaughter, with a three-year firearm specification, and aggravated robbery. Young pleaded guilty to aggravated robbery without a firearm specification. At the time of appellant's trial, Dudley had been sentenced, upon joint recommendation, to ten years in prison. Boggan had not been sentenced, and no agreement had been reached regarding her sentence. Manns had not been sentenced; however, the state had agreed to recommend a prison term between 15 and 18 years. Young had not been sentenced; however, the state had agreed to recommend a four-year prison term with the possibility of judicial release after one year. Long was not charged.

{¶23} Upon this evidence, the jury found appellant guilty of murder, kidnapping, aggravated robbery, and aggravated burglary, with the accompanying firearm specifications. As noted, appellant argues that the evidence was insufficient to support the verdict and was against the manifest weight of the evidence, and we disagree.

{¶24} The state's evidence sufficiently supported appellant's convictions. Although the witnesses disagreed somewhat in their precise versions of what occurred at Jeter's house, Dudley, Manns, and Young all testified that appellant was present and participated in the robbery. Dudley and Manns testified that appellant secured the gun used in the robbery. Although Boggan could not identify appellant, she testified that

Dudley told her that "Von" was one of the robbers and shot Jeter during the robbery. Both Dudley and Manns testified that they called appellant "Von." Manns testified that he witnessed appellant shoot Jeter. Both Dudley and Young testified that appellant admitted to shooting Jeter as they were driving away from the scene. Despite the absence of physical evidence connecting appellant to the scene, the foregoing testimony, if believed, sufficiently proves that appellant was an integral part of the robbery and fatally shot Jeter. To the extent appellant argues that the evidence is insufficient because these witnesses lacked credibility, we note that credibility challenges are not relevant to a sufficiency of the evidence claim. See *Yarbrough* at ¶79.

{¶25} Appellant's challenge to the credibility of the state's witnesses is, however, relevant to his manifest weight of the evidence claim. See *Thompkins* at 387. Appellant argues that his conviction rests upon unreliable and non-credible evidence from "admitted co-conspirators, all of whom engaged in an elaborate deception and deceit campaign with the police and the prosecutor's office prior to receiving incredibly generous plea bargains [in exchange] for their testimony against Appellant."

{¶26} When considering a manifest weight of the evidence argument, we must "bear in mind the [jury's] superior, first-hand perspective in judging the demeanor and credibility of witnesses." *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶55, quoting *State v. Mickens*, 10th Dist. No. 08AP-626, 2009-Ohio-1973, ¶30. Accordingly, we afford great deference to the jury's determination of witness credibility. *Jennings* at ¶55, citing *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28.

{¶27} Appellant first contends that the testimony of Dudley, Boggan, and Manns regarding appellant's involvement in the robbery was not credible because they lied during their initial encounters with the police. At trial, however, all three candidly admitted that they lied to the police. In addition, Dudley and Boggan provided reasons for their lies. Dudley testified that he initially told the police that appellant drove the getaway car in order to protect Young. Boggan averred that she initially lied to the police because she was too scared to tell the truth. The jury heard and considered all this testimony. The jury was not prevented from believing these witnesses " 'simply because [they] may have been, to some degree, uncooperative with the **police.**' " *Jennings* at ¶56, quoting *State v. Darthard*, 10th Dist. No. 07AP-897, 2008-Ohio-2425, ¶14 (emphasis sic).

{¶28} Appellant further contends that Dudley, Boggan, Young, and Manns were not credible witnesses because they received favorable plea agreements in exchange for testifying against appellant. The jury heard the details of the plea agreements and was free to assess the witnesses' credibility in light of those plea agreements. It was within the jury's purview to conclude that the plea agreements did not diminish the witnesses' credibility. *State v. Cameron*, 10th Dist. No. 10AP-240, 2010-Ohio-6042, ¶38.

{¶29} Without question, the credibility of Dudley, Boggan, Young, and Manns was subject to challenge. Three of them admitted that they lied to the police, and all four pleaded guilty to charges stemming from the incident in exchange for lighter sentences and testimony against appellant. Despite these credibility issues, the jury apparently believed their testimony regarding appellant's involvement in the robbery and shooting of Jeter, and, accordingly, returned a verdict against appellant. We also note that the trial court instructed the jury to view these witnesses' testimony with "grave suspicion" and to

weigh their testimony "with great caution." (Tr. 741.) We presume the jury followed these instructions. *State v. Anderson*, 10th Dist. No. 08AP-1071, 2009-Ohio-6566, ¶41, citing *State v. Stallings*, 89 Ohio St.3d 280, 286, 2000-Ohio-164. After reviewing the entire record, we conclude that appellant's convictions are not against the manifest weight of the evidence.

{¶30} Having determined that appellant's convictions are based upon sufficient evidence and are not against the manifest weight of the evidence, we overrule appellant's first assignment of error.

{¶31} Appellant's second assignment of error asserts that the trial court erred by imposing consecutive sentences without making the factual findings required by R.C. 2929.14(E)(4). We disagree.

{¶32} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court of Ohio excised as unconstitutional certain provisions of Ohio's felony sentencing scheme, including R.C. 2929.14(E)(4), which obligated a trial court to make certain factual findings before imposing consecutive sentences. In *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, the United States Supreme Court held that state sentencing provisions requiring judicial fact-finding before imposing consecutive sentences are not unconstitutional. Appellant contends that *Ice* abrogated *Foster* and effectively revived R.C. 2929.14(E)(4).

{¶33} Initially, we note that appellant did not advance this argument before the trial court, nor did he object to the imposition of consecutive sentences, even though *Ice* had been decided more than one year prior to the date of appellant's sentencing. Accordingly, appellant has waived all but plain error. Crim.R. 52(B). A party claiming

plain error must demonstrate that the outcome of the proceeding would have been different absent the alleged error. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶17.

{¶34} We find no error, plain or otherwise, in the trial court's imposition of consecutive sentences in this case. During the pendency of this appeal, the Supreme Court of Ohio decided *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, which held that "[t]he United States Supreme Court's decision in *Oregon v. Ice* * * * does not revive Ohio's former consecutive-sentencing statutory provisions, R.C. 2929.14(E)(4) and 2929.41(A), which were held unconstitutional in *State v. Foster*." *Id.* at paragraph two of the syllabus. Accordingly, pursuant to *Hodge*, the trial court did not err when it imposed consecutive sentences without making the findings required by former R.C. 2929.14(E)(4). See *State v. Cayne*, 10th Dist. No. 10AP-772, 2011-Ohio-1609. At oral argument, appellant conceded that *Hodge* is dispositive of his argument.

{¶35} Having concluded that the trial court did not err in imposing consecutive sentences, we overrule appellant's second assignment of error.

{¶36} For the foregoing reasons, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and DORRIAN, J., concur.
