[Cite as *State v. McClendon*, 2011-Ohio-6235.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-354
v.	:	(C.P.C. No. 09CR-07-4061)
Virgil H. McClendon, III,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 6, 2011

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

Blaise G. Baker, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Virgil H. McClendon, III ("appellant"), appeals from jury verdicts convicting him on charges of aggravated murder, murder, attempted murder, and felonious assault, with firearms and criminal gang specifications attached to each charge. For the reasons that follow, we affirm.

{¶2} This case arose from a shooting that occurred on June 14, 2009 at Mock Park in Columbus, Ohio. On that day, there were several parties being held in the park, including graduation parties and children's birthday parties; a large group of people were in attendance at these various parties. Late in the day, multiple gunshots were fired in the

parking lot area of the park. Bernard Hawkins ("Hawkins") was struck in the head by one of these shots and killed. Wesley Whitehead ("Whitehead") was shot in the hip and was treated for his wound at Ohio State University Hospital after fleeing the park.

{¶3} Appellant was arrested in connection with the shooting and indicted on charges of aggravated murder, murder, attempted murder, felonious assault, and having a weapon while under disability. The aggravated murder, murder, attempted murder, and felonious assault charges included additional specifications based on use of a firearm during the crimes and criminal gang activity. These charges were tried to a jury and appellant was convicted on all charges and specifications. The charge of having a weapon while under disability was tried by the court, and appellant was also convicted of that charge.

{¶4} Appellant appeals the jury verdicts, setting forth the following assignments of error for this court's review:

> Assignment of Error No. 1: The trial court erred in that Appellant's convictions were against the manifest weight of the evidence and were not supported by the sufficiency of the evidence in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and Article 1, Sections 1, 10, and 16 of the Ohio Constitution.
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> Assignment of Error No. 1(a): The trial court erred in that the evidence was legally insufficient to support Appellant's convictions of murder and felonious assault and the verdict was against the manifest weight of the evidence.
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> Assignment of Error No. 1(b): The trial court erred in that the evidence was legally insufficient to support Appellant's conviction on the criminal gang specification and the verdict was against the manifest weight of the evidence.

{¶5} In substance, appellant offers two assignments of error: first, that his convictions for murder and felonious assault were not supported by sufficient evidence and were against the manifest weight of the evidence, and second, that his convictions on the criminal gang specifications were not supported by sufficient evidence and were against the manifest weight of the evidence. Thus, we begin by considering the legal standards applicable to challenges based on the sufficiency of the evidence and the manifest weight of the evidence.

{¶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. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶36, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing a challenge to the sufficiency of the evidence, an appellate court must determine "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by constitutional amendment on other grounds as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102, 1997-Ohio-355.

{¶7} "While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief." *Cassell* at ¶38, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, citing *Thompkins* at 386. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony."

Thompkins at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 2220. " 'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Thompkins*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. This discretionary authority " 'should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶8} In his first assignment of error, referred to in appellant's brief as assignment of error number "1(a)," appellant argues that his convictions for murder and felonious assault were not supported by sufficient evidence and were against the manifest weight of the evidence. Appellant was convicted of aggravated murder, a felony in violation of R.C. 2903.01, murder, a felony in violation of R.C. 2903.02, attempted murder, a felony in violation of R.C. 2923.02, and felonious assault, a felony of the second degree in violation of R.C. 2903.11. For purposes of sentencing, the aggravated murder and murder convictions merged.

{¶9} The aggravated murder statute provides, in relevant part, that "[n]o person shall purposely, and with prior calculation and design, cause the death of another." R.C. 2903.01(A). The murder statute provides, in relevant part, that "[n]o person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of [R.C.] 2903.03 or [R.C.] 2903.04." R.C. 2903.02(B). The state argued that appellant was guilty of murder by causing the death of Hawkins as a

result of attempting to commit felonious assault. The attempt statute prohibits an individual from purposely or knowingly engaging in conduct that, if successful, would result in the underlying offense. R.C. 2923.02(A). The state asserted that appellant was guilty of attempted murder by engaging in conduct which, if successful, would have purposely caused Whitehead's death. Finally, the felonious assault statute provides, in relevant part, that no person shall knowingly "[c]ause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance." R.C. 2903.11(A)(2).

{¶10} Appellant does not argue that the state failed to establish the substantive elements of the crimes charged against him. Rather, appellant's argument focuses on the issue of identification and argues that the identification evidence failed to establish that he was the individual who committed these acts. Although appellant purports to challenge both the sufficiency and the manifest weight of the evidence presented against him, his arguments focus primarily on the weight of the evidence. However, we will first consider whether the verdicts were supported by sufficient evidence.

{¶11} At trial, Darez Harris ("Harris") testified that he went to Mock Park on June 14, 2009 with Darwan Stone ("Stone") and appellant in Stone's Chevrolet TrailBlazer. Harris stated that, at some point after arriving at the park, he witnessed appellant shooting a gun in the parking lot. Harris testified that appellant fired nine or more shots from what he believed to be a .40 caliber Smith & Wesson pistol. On cross-examination, he testified that he had seen the gun in appellant's lap while they were driving to the park. Harris stated that, after the shooting, appellant got into Stone's TrailBlazer and left the park. Harris testified that appellant was wearing a white shirt and

blue jean shorts on the day of the shooting.

{¶12} Other witnesses who were at Mock Park on the day of the shooting provided testimony tending to corroborate Harris's testimony. Although Stone testified that he did not see the shooter, he also admitted that he was not with appellant when he heard the shots fired. Stone's description of appellant's attire was similar to Harris's testimony, stating that appellant wore a plain white t-shirt, basketball shorts, and possibly a hat. Stone testified that he drove a silver Chevrolet TrailBlazer to the park and that after the shooting, appellant got into the passenger seat and they drove away.

{¶13} Keysha Pruitt ("Pruitt") testified that she heard gunshots and saw the shooter but did not get a good look at his face. However, Pruitt testified that the shooter was an African-American male wearing a white shirt and a hat. Pruitt further testified that, after the shooting, the man who fired the shots got into a silver-colored SUV and left the park. Similarly, Brian Granger ("Granger"), described the shooter as a tall, slender African-American male, wearing a white t-shirt, blue jeans, and possibly a light-colored ball cap. He stated that the shooter fired a chrome pistol. Granger testified that the shooter got into the passenger side of a silver or tan Chevrolet TrailBlazer and sped off after the shooting. Granger identified photos of Stone's car as being the same make and color of the vehicle that he saw the shooter get into.

{¶14} The state presented evidence from the crime scene tending to corroborate Harris's testimony regarding the type of weapon appellant used to commit the shooting. Detective Kevin Jackson ("Detective Jackson") testified that shell casings from a .40 caliber Smith & Wesson were recovered from the scene of the shooting. Mark Hardy ("Hardy"), a forensic scientist with the Columbus Division of Police, testified that he tested

a spent projectile recovered from Hawkins' skull and determined that it was a .40 caliber bullet fragment. Hardy testified that a .40 caliber Smith & Wesson handgun could have fired the bullet fragment, although he was unable to make a definitive determination because he did not have a specific weapon to match the projectile with. Hardy also testified that all the bullet casings recovered from the scene were .40 caliber ammunition and were fired from the same weapon.

{¶15} There was also evidence establishing the injuries inflicted on the victims, Hawkins and Whitehead. The parties stipulated to the coroner's report indicating that Hawkins was killed by a gunshot wound to the head. The parties also stipulated that the bullet fragment submitted into evidence was the same fragment removed from Hawkins' skull by the coroner. Aliceona Bell ("Bell") testified that, after the shooting, she and a friend picked up Whitehead and others in a car and drove Whitehead to the hospital. Bell testified that Whitehead had been shot in the hip. Officer Stephen Oboczky ("Officer Oboczky"), testified that he spoke to Whitehead at the hospital and observed that he had been shot in the leg.

{¶16} Finally, Charles Walker ("Walker") testified that appellant admitted that he had shot at Hawkins and Whitehead before fleeing the park with Stone. Walker testified that appellant told him the shooting arose from a dispute between rival gangs. Walker claimed that appellant said he was the "shot caller" for his gang and that he had declared "shoot on sight" against members of the rival gang. Walker stated that appellant shared this information with him while they were serving time in the same cell in the Franklin County jail.

{¶17} As discussed more fully below, appellant challenges the credibility of Harris and Walker, as well as the details of the testimony of other witnesses from the park. However, these credibility challenges are more directly addressed to the manifest weight of the evidence rather than the sufficiency of the evidence. See *Columbus v. Miller*, 10th Dist. No. 09AP-770, 2010-Ohio-1384, ¶26, citing *Thompkins* at 387 ("Unlike a challenge to the sufficiency of the evidence, which attacks the adequacy of the evidence presented, a challenge to the manifest weight of the evidence attacks the credibility of the evidence presented."). Reviewing the evidence presented at trial, and viewing the evidence in the light most favorable to the prosecution, we conclude that "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Jenks*, paragraph two of the syllabus.

{¶18} With respect to the charge of felonious assault against Whitehead, there was sufficient evidence for the jury to conclude that appellant caused physical harm, in the form of a gunshot wound to the hip, by means of a handgun, which is a deadly weapon. The law provides that "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will be of a certain nature." R.C. 2901.22(B); *State v. Beatty*, 10th Dist. No. 08AP-52, 2008-Ohio-5063, ¶12. The jury could conclude that appellant acted knowingly because he was aware that firing a handgun at or near Whitehead would probably result in physical harm to Whitehead. Likewise, the jury could have concluded that appellant was guilty of attempted murder based on firing the gun at Whitehead. The jury could conclude that appellant acted with purpose and that the shots could have resulted in Whitehead's

death. Thus, the jury could have found appellant guilty of attempted murder and felonious assault.

{¶19} Under similar reasoning, the jury could conclude that appellant committed felonious assault toward Hawkins. Felonious assault is generally a felony of the second degree. R.C. 2903.11(D)(1)(a). Therefore, the jury could have found appellant guilty of murder because he caused Hawkins' death as a proximate result of committing felonious assault against Hawkins. Similarly, the jury could conclude that appellant purposely caused Hawkins' death with prior calculation and design, based on Walker's testimony regarding the "shoot on sight" declaration toward rival gang members. Thus, the jury could conclude that appellant was guilty of aggravated murder in the death of Hawkins.

{¶20} Finally, there was sufficient evidence for the jury to conclude that appellant was the shooter. Harris testified that he saw appellant firing a gun in the parking lot of the park. Walker testified that appellant admitted to being the shooter. This evidence, if believed, would permit the jury to conclude beyond a reasonable doubt that appellant was the shooter.

{¶21} For all these reasons, we conclude that appellant's convictions for aggravated murder, murder, attempted murder, and felonious assault were supported by sufficient evidence.

{¶22} Appellant's argument that his convictions for murder and felonious assault were against the manifest weight of the evidence relies mainly on attacking the credibility of Harris and Walker. "[A]lthough an appellate court must act as a 'thirteenth juror' when considering whether the manifest weight of the evidence requires reversal, it must give

great deference to the fact finder's determination of the witnesses' credibility." *State v. Spires*, 10th Dist. No. 10AP-861, 2011-Ohio-3312, ¶18.

{¶23} Appellant argues that Harris's testimony is unreliable because he was a close personal friend of Hawkins. However, the jury was aware of this relationship and could consider it in evaluating Harris's credibility. As this court noted in *State v. Ruark*, 10th Dist. No. 10AP-50, 2011-Ohio-2225, the jury could conclude that a personal relationship with the victim provided Harris with an extra incentive to *correctly* identify Hawkins' killer, not merely to identify appellant as the shooter, regardless of whether he was actually guilty. Id. at ¶26. Appellant also asserts that Harris "inexplicably waited more than a year and a half to come forward." (Appellant's brief, 19.) However, the trial transcript indicates that this was not inexplicable at all; in fact, Harris explained the reason that he had not come forward earlier on direct examination and was further questioned about it on cross-examination. Harris testified that he did not come forward because of the "code of the streets." (Tr. 236.) Again, the jury was aware of this explanation and had the opportunity to determine if it found Harris to be credible. We cannot find that the jury clearly lost its way in believing Harris's testimony.

{¶24} Similarly, appellant asserts that Walker's testimony was "extremely unreliable" because he did not personally witness the events in the park and because Walker admitted that he had testified as a witness, or a "snitch," in other criminal cases. In *State v. Coleman*, 10th Dist. No. 10AP-265, 2011-Ohio-1889, this court considered a claim that a conviction was against the manifest weight of the evidence in part based on challenges to the credibility of "jailhouse informants." Id. at ¶37. We noted that "it was

within the province of the jury to believe or disbelieve [the jailhouse informant's] testimony," including statements that amounted to a confession of guilt. Id.

{¶25} Appellant's counsel sought to impeach Walker's credibility through several methods on cross-examination, including suggesting that Walker learned the details of appellant's case by going through appellant's documents while appellant was out of the jail cell. Appellant's counsel also established that Walker had previously testified as an informant in other cases and suggested that appellant would have been unlikely to talk about his case with a known snitch. Appellant's counsel also attacked Walker's credibility by raising an issue of whether Walker might receive beneficial treatment in another prosecution as a result of testifying against appellant. In *State v. Hunter*, 10th Dist. No. 10AP-599, 2011-Ohio-1337, we rejected a similar attempt to discredit the testimony of a co-defendant who testified against the appellant in that case. We noted that "the jury was fully apprised of [the] alleged motivation for testifying against appellant and could assess his credibility accordingly." Id. at ¶33. The same conclusion applies here because the jury heard testimony about the alleged benefit Walker might receive and could consider it accordingly in weighing Walker's testimony.

{¶26} Appellant called a witness, Clifton Jefferson ("Jefferson"), who had been in the same jail cell with appellant and Walker. Jefferson testified that he never heard appellant discuss his case with Walker and that he saw Walker go through another inmate's possessions. Jefferson further testified that he had never discussed his own case with Walker but that Walker appeared as a witness against him in his criminal case. Although this testimony may be sufficient to raise questions about Walker's credibility, we

cannot conclude that the jury clearly lost its way in relying on Walker's testimony to convict appellant.

{¶27} Finally, appellant argues that his convictions were against the manifest weight of the evidence because there was only one eyewitness who testified against him. Appellant cites to three recent decisions of this court, *State v. Johnson*, 10th Dist. No. 07AP-538, 2008-Ohio-590, *State v. Grisson*, 10th Dist. No. 08AP-952, 2009-Ohio-5709, and *State v. Donaldson*, 10th Dist. No. 09AP-399, 2009-Ohio-6988, in which we upheld convictions against sufficiency and manifest weight challenges. Appellant argues his case is distinguishable from those decisions because there was only one eyewitness who testified at trial identifying him as the shooter; whereas, the convictions in *Johnson*, *Grisson*, and *Donaldson* were each based on the testimony of multiple witnesses. Similar to the present case, *Johnson* involved a gang-related shooting. In *Johnson*, we overruled the appellant's sufficiency and manifest weight challenges, noting that there were two eyewitnesses to the shooting, as well as numerous other witnesses whose testimony corroborated the eyewitnesses' testimony. *Johnson* at ¶33. *Grisson* involved a drive-by shooting, and again we noted that several witnesses were able to identify the appellant as the shooter. *Grisson* at ¶36. In *Donaldson*, this court rejected sufficiency and manifest weight challenges to a burglary conviction. In that case, only one eyewitness identified the appellant as the individual who had entered the burglarized residence, but there was additional corroborating testimony from the investigating police officer and the owner of the stolen items. *Donaldson* at ¶18. However, the fact that the convictions in these prior decisions were based on testimony from multiple witnesses does not, in itself, invalidate appellant's conviction.

{¶28} We have previously noted that "the testimony of one witness, if believed by the jury, is enough to support a conviction." *State v. Strong*, 10th Dist. No. 09AP-874, 2011-Ohio-1024, ¶42. In *Strong*, the defendant was convicted of aggravated robbery with a firearm specification. Id. at ¶1. At trial, the state presented evidence from four witnesses: the victim of the robbery, a police officer, a police detective, and a representative of a cellular phone company who testified regarding certain call records. Id. at ¶3, 12. We noted that the state's case was mostly premised on the victim's testimony. Id. at ¶41. The defendant focused on attacking the victim's credibility and arguing that his testimony was not believable. Id. We concluded that it was within the province of the jury to assess the victim's credibility and determine which parts of his testimony to believe. Id. at ¶42. Despite some inconsistencies in the victim's testimony, we could not find that the jury had lost its way in crediting his testimony and convicting the defendant. Id. at ¶45. Similarly, in *State v. Carr* (Aug. 23, 2001), 10th Dist. No. 00AP-1235, this court overruled sufficiency and manifest weight challenges to a murder conviction "based essentially upon the testimony of a single eyewitness." Id. See also *State v. Fisher*, 10th Dist. No. 01AP-1199, 2002-Ohio-3324, ¶27-38 (affirming conviction based on testimony from single eyewitness who identified appellant as driver of the vehicle that struck the victim, along with other corroborating testimony and evidence). Thus, we reject appellant's argument that his convictions were not supported by sufficient evidence or were against the manifest weight of the evidence solely because only one eyewitness testified at trial that appellant committed the shooting.

{¶29} After reviewing the evidence presented at trial, we find that there was sufficient evidence to allow a reasonable jury to conclude that appellant committed the

crimes of murder, aggravated murder, and felonious assault. We also conclude that the jury did not clearly lose its way in concluding that appellant committed these crimes. Accordingly, appellant's first assignment of error is without merit and is overruled.

{¶30} In his second assignment of error, referred to in appellant's brief as assignment of error number "1(b)," appellant argues that his convictions on the criminal gang specifications attached to his convictions for murder, aggravated murder, attempted murder, and felonious assault were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶31} At the time of appellant's conviction, R.C. 2929.14(I) provided that "[i]f an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years."[1] Under R.C. 2941.142(A), "[i]mposition of a mandatory prison term of one, two, or three years * * * upon an offender who committed a felony that is an offense of violence while participating in a criminal gang is precluded unless the indictment, count in the indictment, or information charging the felony specifies that the offender committed the felony that is an offense of violence while participating in a criminal gang."

{¶32} R.C. 2923.41 provides the following definitions relevant to the criminal gang activity specification:

[1] The General Assembly amended R.C. 2929.14 after the date of appellant's conviction. Am.Sub.H.B. 86 (2011). The amendment redesignated the former division (I) of R.C. 2929.14 as division (G) of the same

> (A) "Criminal gang" means an ongoing formal or informal organization, association, or group of three or more persons to which all of the following apply:
>
> (1) It has as one of its primary activities the commission of one or more of the offenses listed in division (B) of this section.
>
> (2) It has a common name or one or more common, identifying signs, symbols, or colors.
>
> (3) The persons in the organization, association, or group individually or collectively engage in or have engaged in a pattern of criminal gang activity.
>
> (B)(1) "Pattern of criminal gang activity" means, subject to division (B)(2) of this section, that persons in the criminal gang have committed, attempted to commit, conspired to commit, been complicitors in the commission of, or solicited, coerced, or intimidated another to commit, attempt to commit, conspire to commit, or be in complicity in the commission of two or more of any of the following offenses:
>
> (a) A felony or an act committed by a juvenile that would be a felony if committed by an adult;
>
> (b) An offense of violence or an act committed by a juvenile that would be an offense of violence if committed by an adult;
>
> (c) A violation of section 2907.04, 2909.06, 2911.211, 2917.04, 2919.23, or 2919.24 of the Revised Code, section 2921.04 or 2923.16 of the Revised Code, section 2925.03 of the Revised Code if the offense is trafficking in marihuana, or section 2927.12 of the Revised Code.
>
> (2) There is a "pattern of criminal gang activity" if all of the following apply with respect to the offenses that are listed in division (B)(1)(a), (b), or (c) of this section and that persons in the criminal gang committed, attempted to commit, conspired to commit, were in complicity in committing, or solicited, coerced, or intimidated another to commit, attempt to commit, conspire to commit, or be in complicity in committing:

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statute. However, the legislation did not alter the substance of this portion of the statute. Accordingly, here we refer to the version of the statute in effect at the time of appellant's conviction.

> (a) At least one of the two or more offenses is a felony.
>
> (b) At least one of those two or more offenses occurs on or after January 1, 1999.
>
> (c) The last of those two or more offenses occurs within five years after at least one of those offenses.
>
> (d) The two or more offenses are committed on separate occasions or by two or more persons.

{¶33} Appellant argues that there was insufficient evidence to establish that he committed the crimes of murder and felonious assault "while participating in a criminal gang" as required under R.C. 2929.14(G). Appellant claims that no testimony was presented showing that the shooting was gang related and that none of the eyewitnesses referred to any gang-related activity associated with the shooting. Although appellant is correct that none of the eyewitnesses testified to gang-related indicators on the day of the shooting, Walker testified that appellant stated he was the "shot caller" for the Windsor Terrace Posse. Walker also stated that appellant told him that appellant had declared a "shoot on sight" condition against members of the Short North Posse. Walker testified that "Short North is a gang that [appellant] declared beef on, that they was going at each other." (Tr. 283.)

{¶34} Officer Oboczky, who serves as a patrol officer in the neighborhood where the Windsor Terrace Posse operates, testified that he had frequently seen appellant interact with members of the Windsor Terrace Posse. The state also presented evidence from Detective Mitchell Seckman ("Detective Seckman"), a member of the criminal information unit, or "gang unit," of the Columbus Division of Police's strategic response bureau. Detective Seckman explained how the gang unit identifies criminal gangs and documents members of criminal gangs using the criteria provided in the Ohio Revised

Code. He testified that the Windsor Terrace Posse and the Short North Posse are two of the identified gangs in Columbus. Detective Seckman stated that appellant was a documented member of the Windsor Terrace Posse and reviewed the evidence compiled to support that documented membership. Detective Seckman further testified that Hawkins and Whitehead were considered to be associates of the Short North Posse. He explained that "associates" of gangs are individuals who have been identified as being with members of a gang, but who have not been fully documented as members of the gang. Detective Seckman indicated that, in many cases, these "associates" are ultimately documented as gang members. Detective Seckman further explained that, although both the Windsor Terrace Posse and the Short North Posse are considered to be "Crips" gangs or "sets," it is possible for two Crips sets to be in conflict.

{¶35} Considering the evidence in a light most favorable to the prosecution, a reasonable jury could have concluded that appellant was a member of the Windsor Terrace Posse and that Hawkins and Whitehead were affiliated with the Short North Posse. The jury also could have found that these two gangs were involved in a conflict at the time of the shooting and that the shooting arose from that conflict. Thus, there was sufficient evidence for the jury to conclude that appellant committed these crimes while participating in a criminal gang.

{¶36} Appellant further asserts that the evidence was insufficient to establish that the Windsor Terrace Posse is a criminal gang as defined under R.C. 2923.41(A) because there was no "pattern of criminal gang activity" established. Although Detective Seckman testified that the Windsor Terrace Posse is an identified gang, appellant argues that there was no testimony proving that members of the Windsor Terrace Posse committed any of

the crimes listed in R.C. 2923.41(B)(1) or that those crimes met the criteria set forth in R.C. 2923.41(B)(2). Further, appellant argues that there was no proof that appellant had committed two or more felony offenses on separate occasions to establish a "pattern of criminal gang activity" under R.C. 2923.41(B)(2)(d). The state argues that this constitutes "invited error" because at trial the appellant stipulated that the charged offenses could serve as the predicate to establish a pattern of criminal gang activity.

{¶37} "Under the 'invited-error' doctrine, a party may not take advantage of an error which he invited or induced." *State v. Griffin*, 10th Dist. No. 10AP-902, 2011-Ohio-4250, ¶16, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶75. Pursuant to this doctrine, a party cannot claim that a trial court erred by accepting the party's own stipulation. *State v. J.G.*, 10th Dist. No. 08AP-921, 2009-Ohio-2857, ¶16, citing *State v. Gilfillan*, 10th Dist. No. 08AP-317, 2009-Ohio-1104, ¶91. At the trial in this case, appellant agreed to a stipulation that the charged offenses could form the predicate to satisfy the "pattern of criminal gang activity" requirement under the statute. The jury was instructed accordingly that the indicted offenses could be used to satisfy the "pattern of criminal gang activity" element. After appellant agreed to this stipulation, the state refrained from introducing additional testimony about other crimes committed by members of the Windsor Terrace Posse. Appellant's claim on appeal that the indicted offenses are insufficient to establish a pattern of criminal gang activity when he stipulated to the contrary at trial violates the invited-error doctrine. Accordingly, we reject appellant's claim that the evidence was insufficient to establish a pattern of criminal gang activity.

{¶38} Finally, appellant argues that the manifest weight of the evidence demonstrates that the shooting was not related to gang activity. Appellant bases this

argument on the fact that none of the eyewitnesses claimed there were any gang-related statements made or gang signs displayed at the time of the shooting. Appellant also points to testimony from Stone that appellant and Whitehead had previously had a personal dispute in 2008 but that they were "cool" by 2009. (Tr. 220.) We note that Stone also testified that he was not aware of any tension between people who lived in the Short North area and people who lived in the Windsor Terrace area at the time of the shooting.

{¶39} However, Walker testified that appellant admitted that the shooting was gang related. Walker also testified that appellant stated that the "W" and "T" tattoos on his arms stood for "Windsor Terrace" but that if asked he would tell people that they stood for his mother's and sister's names. The jury could have concluded that this testimony was corroborated by Stone, who testified that the tattoos on appellant's arms stood for the initials of appellant's mother and sister. As discussed above, appellant raised issues regarding Walker's credibility, and those issues were before the jury in determining whether to credit his testimony.

{¶40} The state's argument that the shooting was gang related was also supported by the testimony of Detective Seckman. In addition to explaining that appellant was a documented member of the Windsor Terrace Posse, Detective Seckman testified regarding a series of photographs of appellant. Detective Seckman explained that these photographs depicted appellant making various gang-related hand signals and, in some cases, wearing clothing that would indicate his affiliation with a gang. Some of these photographs also contained superimposed graphics bearing various gang-related sayings or slogans. This evidence tends to establish that appellant was an active member of a

gang and bolsters Walker's testimony that appellant admitted the shooting was gang related. Detective Seckman testified that committing various crimes would increase a gang member's standing within the gang. The jury could have concluded that this provided a possible gang-related motivation for committing the shooting.

{¶41} After reviewing the evidence presented, we find that there was sufficient evidence to support the criminal gang activity specifications. We cannot conclude that the jury clearly lost its way in finding that appellant committed the shootings while participating in a criminal gang. Accordingly, appellant's second assignment of error is without merit and is overruled.

{¶42} For the foregoing reasons, both of appellant's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and TYACK, JJ., concur.

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