[Cite as *State v. Hamilton*, 2012-Ohio-2995.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-981
v.	:	(C.P.C. No. 10CR-12-7199)
Eric J. Hamilton,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 29, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Clark Law Office, and *Toki Michelle Clark*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Eric J. Hamilton ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of voluntary manslaughter with a firearm specification and tampering with evidence. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted for murder and tampering with evidence after he killed Donald Damron. Both charges contained firearm specifications. Appellant pleaded not guilty to the charges, and a jury trial ensued.

{¶ 3} During trial, Nick Bartee testified that he worked with appellant at a warehouse and that, one evening at work, appellant threatened to kill another man. Next, Matthew Bowen testified as follows about events that occurred that evening. Damron and Bowen got into a car with Timothy Williams and Dustin Barker after their shift at the warehouse. Damron jumped out of the car as it drove past appellant in the parking lot. Damron did not have a weapon, and he raised his hands when he saw that appellant had a gun. Appellant called Damron a derogatory name and shot him.

{¶ 4} Williams, Barker, Kim Washington, and Lavita Brown also testified that appellant shot the unarmed Damron. In addition, Barker and Williams heard the derogatory name that appellant called Damron. The deputy coroner testified that Damron died from his gunshot wound. He said that the bullet entered Damron's chest, perforated his heart and severed his spinal cord.

{¶ 5} Lia Welch testified that appellant threw his gun in a river after the shooting and that the police arrested him at her house. Deputy Sheriff John Kirby testified that appellant was apprehended behind a refrigerator in Welch's basement, and Groveport Police Detective Mike Sturgill said that appellant's gun was never found.

{¶ 6} During an interview with police, appellant initially claimed that a man named Jordan Blake shot Damron, but he later admitted that he was the shooter. He described the shooting as follows. Damron and a group of men confronted him one evening while he was leaving work. He was scared and shot his gun. Although he did not aim or intend to shoot anyone, the bullet struck Damron. Appellant subsequently placed the gun in his truck, and he denied disposing of it. He noted that tension developed between him and Damron when Damron started dating his brother's girlfriend, Brianna Seymour. He admitted that Damron did not have any weapons during the altercation outside the warehouse.

{¶ 7} The prosecutor rested his case, and defense counsel moved for an acquittal pursuant to Crim.R. 29(A). The court denied the motion except as it pertained to the firearm specification that attached to the tampering with evidence charge.

{¶ 8} Next, Seymour testified as follows on appellant's behalf. Damron and Bowen confronted appellant in the warehouse parking lot one evening, and appellant pulled out a gun. Seymour walked away and heard a gunshot. She saw that Damron had been shot, and she left the scene with appellant.

{¶ 9} Defense counsel rested and requested an hour for closing argument. The court rejected his request and allowed each party 45 minutes to argue. During closing argument, defense counsel claimed that appellant shot Damron in self-defense. He also analyzed the exhibits and challenged the credibility of the prosecutor's witnesses. He was not interrupted during his argument, and he finished it without asking for more time.

{¶ 10} The jury found appellant guilty of voluntary manslaughter, with a firearm specification, as a lesser-included offense to murder. It also found appellant guilty of tampering with evidence.

II. ASSIGNMENTS OF ERROR

{¶ 11} Appellant filed a timely notice of appeal and now assigns the following as error:

> [I.] THE VERDICT OF GUILTY WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE.
>
> [II.] THE CONVICTION OF APPELLANT FOR VOLUNTARY MANSLAUGHTER IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> [III.] THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE DEFENDANT'S MOTION FOR ACQUITTAL.
>
> [IV.] A CRIMINAL DEFENDANT FAILS TO GET A FAIR TRIAL WHERE THE COURT PLACES AN UNREASONABLE TIME LIMITATION ON DEFENSE COUNSEL FOR CLOSING ARGUMENT.

III. DISCUSSION

A. Appellant's First and Third Assignments of Error: Sufficiency of the Evidence

{¶ 12} We address together appellant's first and third assignments of error, in which he argues that his voluntary manslaughter conviction is based on insufficient evidence and that the trial court erred by denying his Crim.R. 29(A) motion for acquittal on that charge. We disagree.

{¶ 13} A motion for acquittal under Crim.R. 29(A) is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37. That standard tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶ 192. 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 proved beyond a reasonable doubt the essential elements of the crime. *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001). 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. *State v. Lindsey*, 190 Ohio App.3d 595, 2010-Ohio-5859, ¶ 35 (10th Dist.). *See also State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶ 14} Appellant was convicted of voluntary manslaughter, pursuant to R.C. 2903.03(A), for knowingly killing Damron "while under the influence of sudden passion or in a sudden fit of rage." Appellant argues that the evidence does not establish that he acted knowingly. "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶ 15} Here, based on the prosecutor's witnesses, appellant fired a gun at Damron with sufficient aim for the bullet to penetrate his chest and strike his heart and

spinal cord. That evidence proved that appellant knowingly killed Damron. *See State v. Mallory*, 10th Dist. No. 08AP-942, 2009-Ohio-2401, ¶ 25. In addition, appellant demonstrated furtive conduct reflective of a consciousness of guilt when he fled the shooting scene, threw his gun in the river, and hid from the police in Welch's basement. *See State v. Mitchell*, 10th Dist. No. 10AP-756, 2011-Ohio-3818, ¶ 29.

{¶ 16} Next, appellant contends that he is not culpable for voluntary manslaughter because he shot Damron in self-defense. But this court considers self-defense in a manifest weight challenge rather than in a sufficiency of the evidence review. *State v. Rankin*, 10th Dist. No. 10AP-1118, 2011-Ohio-5131, ¶ 17.

{¶ 17} Accordingly, we conclude that appellant's conviction for voluntary manslaughter is based on sufficient evidence and that the trial court did not err by denying his motion for acquittal on that charge. We overrule appellant's first and third assignments of error.

B. Appellant's Second Assignment of Error: Manifest Weight of the Evidence

{¶ 18} In his second assignment of error, appellant argues that his voluntary manslaughter conviction is against the manifest weight of the evidence. We disagree.

{¶ 19} When presented with a manifest weight challenge, we weigh the evidence to determine whether 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. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, ¶ 220. The trier of fact is afforded great deference in our review. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 26. And we reverse a conviction on manifest weight grounds for only the most exceptional case in which the evidence weighs heavily against a conviction. *Lang* at ¶ 220.

{¶ 20} First, appellant contends that Williams, Barker, and Bowen were biased against him because of their friendship with Damron. But the jury was able to believe their testimony given that it was corroborated by independent witnesses Washington and Brown.

{¶ 21} Next, appellant argues that his voluntary manslaughter conviction cannot stand because he shot Damron in self-defense. To support that defense, he relies on his statement to police, in which he said that he fired his gun in a state of fear. But the jury need not have believed appellant because he was inconsistent about the shooting, and he falsely denied disposing of his gun. In addition, the jury heard evidence that undermines appellant's claim that fear motivated him to shoot Damron. For instance, it is undisputed that Damron was unarmed. Appellant called Damron a derogatory name before he shot him. And, even before the altercation, appellant made a remark that the jury could have reasonably construed as a threat to kill Damron.

{¶ 22} For all these reasons, we conclude that appellant's voluntary manslaughter conviction is not against the manifest weight of the evidence. We overrule appellant's second assignment of error.

C. Fourth Assignment of Error: Closing Argument

{¶ 23} In his fourth assignment of error, appellant contends that it was improper for the trial court to limit defense counsel's closing argument to 45 minutes. We disagree.

{¶ 24} We need not disturb a trial court's time limit on closing argument absent an abuse of discretion. *State v. Ferrette*, 18 Ohio St.3d 106, 110 (1985). An abuse of discretion connotes more than an error of law or judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). With that standard in mind, we determine whether the trial court abused its discretion when it limited defense counsel's closing argument to 45 minutes.

{¶ 25} As an initial matter, we note that the limit was only 15 minutes less than the one hour that defense counsel requested when he discussed closing argument with the court. In fact, during his argument, defense counsel did not indicate that he needed more time, and he was able to analyze the evidence and address the critical issues. The court imposed the limit equally on both parties, and it allowed defense counsel to use his time without interruption. Given these circumstances, we conclude that the trial court did not abuse its discretion when it limited defense counsel's closing argument to 45 minutes. We overrule appellant's fourth assignment of error.

IV. CONCLUSION

{¶ 26} Having overruled appellant's four assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.