

[Cite as *State v. Massey*, 2012-Ohio-5771.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 12AP-122
v.	:	(C.P.C. No. 11CR-05-2627)
	:	
Jamaal A. Massey,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 6, 2012

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

R. William Meeks Co., L.P.A., and *David H. Thomas*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Jamaal A. Massey ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of murder with a firearm specification. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted on one count of aggravated robbery and one count of aggravated murder. Both counts contained firearm specifications. The charges stem from appellant killing Frank Turner. Appellant pleaded not guilty to the charges, and a jury trial ensued.

{¶ 3} At trial, Jennifer Hairston testified as follows. Hairston and Turner were engaged to be married and lived in the same apartment complex. Turner ran a "candy store" from his apartment. (Tr. Vol. IV, 323.) He sold candy, snacks, and soda, along with marijuana and crack cocaine. Hairston was at Turner's apartment one day when appellant stopped by, but Turner told him to leave. Later, Hairston returned to her apartment and heard a "loud boom." (Tr. Vol. IV, 341.) She went outside and saw Turner fighting with appellant and her friend, Joe Dortch, while another man, Mike Ford, was standing by the bushes. Appellant grabbed a gun and shot Turner, and he continued to fire at Turner while he fled the scene. Afterward, Hairston told the police that appellant shot Turner, and she identified appellant in a photo array that the police showed her. On cross-examination, Hairston acknowledged that, when she initially talked to the police, she failed to mention that Dortch was with appellant during the murder.

{¶ 4} Rodney Gates testified that he was visiting his daughter when he saw appellant and Dortch fighting with Turner. Appellant shot Turner, and Turner fell. Appellant fled while firing his gun several more times. Later, Gates identified appellant in a photo array during an interview with a detective. On cross-examination, Gates admitted that he did not talk with the detective until six months after the shooting, even though he had had an opportunity to do so earlier.

{¶ 5} Columbus Police Detective Zane Kirby examined a cell phone found at the murder scene, and he testified that the phone contained photographs of an African-American woman. Tyara Summerall, appellant's girlfriend, confirmed at trial that the pictures were of her. She also said that the cell phone belonged to appellant. Lastly, the parties stipulated that Franklin County Deputy Coroner Dr. An would testify that Turner died from a bullet that punctured his lung.

{¶ 6} At the close of the evidence, appellant moved for an acquittal pursuant to Crim.R. 29(A). The court granted the motion on the aggravated robbery count, and, because of that decision, it reduced the aggravated murder charge to murder. The court denied appellant's motion as it pertained to the reduced murder count, and the jury found appellant guilty of murder with a firearm specification.

II. ASSIGNMENTS OF ERROR

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

[I.] THE TRIAL COURT ERRED BY OVERRULING APPELLANT'S CRIM. R. 29 MOTION FOR JUDGMENT OF ACQUITTAL AS TO THE MURDER COUNT, AND THEREBY DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND COMPARABLE PROVISIONS OF THE OHIO CONSTITUTION.

[II.] THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION BY ENTERING VERDICTS OF GUILTY, AS THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. DISCUSSION

A. First Assignment of Error: Crim.R. 29(A)

{¶ 8} In his first assignment of error, appellant argues that the trial court erred by denying his Crim.R. 29(A) motion for acquittal on the murder charge. We disagree.

{¶ 9} 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).

{¶ 10} Appellant argues that Gates and Hairston were not credible when they testified that he murdered Turner. Questions of credibility are irrelevant to the issue of whether there is sufficient evidence to support a conviction, however. *State v. Ruark*, 10th Dist. No. 10AP-50, 2011-Ohio-2225, ¶ 21.

{¶ 11} Next, appellant claims that there was insufficient evidence linking him to the cell phone found at the murder scene. But Summerall testified that the cell phone belonged to appellant, who was her boyfriend, and pictures of Summerall were on the cell phone. The evidence sufficiently linked appellant to the cell phone found at the murder scene.

{¶ 12} For all these reasons, appellant has failed to establish that the trial court erred by denying his Crim.R. 29(A) motion for acquittal. We overrule appellant's first assignment of error.

B. Second Assignment of Error: Manifest Weight of the Evidence

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

{¶ 14} 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.

{¶ 15} Appellant argues that the weight of the evidence failed to link him to the cell phone found at the murder scene. But, for the reasons we have already discussed, it was within the province of the jury to conclude that the evidence established that link.

{¶ 16} Appellant also contends that Hairston was not credible given that she initially failed to disclose Dortch's name to the police. He also claims that the jury should not have believed Gates because of his reluctance to talk to the detective. But Gates and Hairston corroborated each other when they testified that appellant murdered Turner and when they implicated appellant in a photo array before trial. Also bolstering their testimony is that appellant's presence at the murder scene was proven by the fact that he left his cell phone there. And, appellant demonstrated furtive conduct reflective of a consciousness of guilt when he fled the scene. *See State v. Mitchell*, 10th Dist. No. 10AP-756, 2011-Ohio-3818, ¶ 29. Consequently, we conclude that the jury reasonably believed Gates and Hairston when they testified that appellant murdered Turner.

{¶ 17} In the final analysis, the trier of fact is in the best position to determine the credibility of the evidence. *State v. Cameron*, 10th Dist. No. 10AP-240, 2010-Ohio-6042, ¶ 43. The jury accepted evidence proving that appellant murdered Turner, and appellant has not demonstrated a basis for disturbing the jury's conclusion. Accordingly, we hold that appellant's conviction is not against the manifest weight of the evidence. We overrule appellant's second assignment of error.

IV. CONCLUSION

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

Judgment affirmed.

TYACK and SADLER, JJ., concur.
