

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-317
Plaintiff-Appellee,	:	(C.P.C. No. 11CR-08-1158)
v.	:	
	:	(REGULAR CALENDAR)
Michael Knight,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on April 11, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellee.

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for  
appellant.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, Michael Knight, from a judgment of the Franklin County Court of Common Pleas following a jury trial in which appellant was found guilty of attempted murder, felonious assault, tampering with evidence, and having a weapon while under disability.

{¶ 2} On August 8, 2011, appellant was indicted on one count of attempted murder, in violation of R.C. 2903.02 and 2923.02, one count of felonious assault, in violation of R.C. 2903.11, one count of tampering with evidence, in violation of R.C. 2921.12, and one count of having a weapon while under disability, in violation of R.C. 2923.13. The indictment arose out of a shooting incident on July 29, 2011, occurring

outside an apartment building in which Edward Hart was wounded by a single discharge from a shotgun fired by appellant.

{¶ 3} The matter came for trial before a jury beginning February 6, 2012. The first witness for the state was the shooting victim, Hart. In July 2011, Hart, age 49, resided with his girlfriend at an apartment complex located at 505 Broad Meadows Boulevard, apartment No. 202. The three-level apartment complex has an outside patio area with picnic tables, and Hart was on the patio area during the evening of July 29, 2011. Hart had consumed "about one and a half beers" that evening. (Tr. 36.) Two other apartment residents, Fred Riccardi and Traci Boyd, as well as Mike Harris, a friend of Riccardi, were also outside at the time.

{¶ 4} Appellant was also a resident of the apartment complex and was out on the patio area that evening with a friend, John. Appellant seemed upset about "the management" at the apartment. (Tr. 40.) Appellant "kept ranting and raving about shooting somebody or something," and Hart "just chalked it up to him having a few drinks or whatever." (Tr. 41.) Later, appellant and his friend John got up and walked to the back door of the apartment building.

{¶ 5} As Hart was sitting and talking with Riccardi and Harris, appellant came out of the back door of the building carrying a gun. Boyd was walking her dog, and said: "Oh, my God, he has a gun." (Tr. 42.) Hart "looked up and there [appellant] was coming towards me with a gun." (Tr. 42.) Hart got up and "was trying to talk to him and I seen him take aim, and that is when I sort of tried to duck or dive down." (Tr. 42.) Appellant "leveled the gun" and "took aim." (Tr. 75.) According to Hart, appellant was "aiming it right at me." (Tr. 43.) Hart "was hit in the neck with a shot." (Tr. 42.)

{¶ 6} Hart felt a stinging sensation and a ringing in his ears; he was bleeding from the neck area, and Boyd rushed over to help him. Hart was able to get out his cell phone and place a 911 call, reporting that he had been shot. He was subsequently transported to the hospital for treatment but doctors were unable to remove the shotgun pellets from his neck area because of their proximity to his spine. On the date of the incident, Hart told police officers that Michael Knight had shot him. Hart identified a photograph of appellant as his assailant.

{¶ 7} At trial, the state introduced a tape recording of the 911 call in which Hart told the dispatcher that he had been shot by "Mike Knight." (Tr. 51.) The state also introduced x-rays depicting pellets in Hart's neck area from the shooting incident. Hart identified the state's exhibit No. 31 as the weapon used in the shooting.

{¶ 8} Boyd resides at the same apartment complex and is familiar with appellant. On the night of the incident, Hart "was out there running his mouth belligerently." (Tr. 81.) Appellant had not been upset that evening until Hart "came out and \* \* \* started running his mouth." (Tr. 82.) Boyd then went inside to her apartment.

{¶ 9} At approximately 1:00 a.m., Boyd heard a "pop" sound. (Tr. 84.) Boyd came out of her apartment and appellant "walks by me. He has this cute grin on his face." (Tr. 85.) Appellant said to Boyd: "I guess I'm going to jail tonight." (Tr. 85.) Appellant then walked inside the apartment building.

{¶ 10} Boyd observed Hart bleeding and, when she asked what had happened, Hart responded: "Mike shot me." (Tr. 86.) Boyd retrieved a towel and placed it against Hart's neck. Hart was talking on his cell phone, and Boyd took the phone and reported that they needed an ambulance.

{¶ 11} Harris, who resides in Gahanna, is a friend of Riccardi and Chris Clark, both residents of the apartment complex at Broad Meadows Boulevard. On the evening of July 29, 2011, Harris was seated out on the patio area of the apartment talking with Hart and Riccardi. Appellant was also outside at the time, and it "seemed like he was talking like some people do when they get drunk." (Tr. 100.) Appellant was "mentioning things about family." (Tr. 101.) Hart "was just sitting there." (Tr. 101.) Later, appellant and another individual, John, got up and left.

{¶ 12} Harris thought appellant "went inside for the night," but he returned "and Eddie got up, and I just seen a gun go off, and I think he had a sleeve to put it in." (Tr. 102.) Appellant did not say anything as he approached with the weapon. Harris did not observe any type of confrontation between appellant and Hart. After the incident, Harris told a detective that he was not sure if appellant was aiming at any one person, but that Hart was the individual who was shot.

{¶ 13} On the evening of July 29, 2011, Riccardi, who resides at the apartment complex, was seated outside on the patio area with several other individuals, including

appellant, Harris, Hart, and an individual named John, when Hart "got into an argument" with appellant. (Tr. 123.) At one point, Hart said: "I'm a black belt in karate. I'll take you on." (Tr. 123.) Appellant and his friend John then got up and went to the side door of the apartment building. Both appellant and Hart were drinking that evening.

{¶ 14} A short time later, Riccardi "looked to the left of me and here comes Michael Knight \* \* \* and he had this rifle, and he dropped this cover off of it." (Tr. 124.) Riccardi said: "He's got a gun." (Tr. 124.) Hart stood up and said: "What are you going to do, shoot me?" (Tr. 124.) Appellant raised the weapon and pulled the trigger. Appellant then "came around the table and he pointed the gun at [Riccardi]." (Tr. 125.) Riccardi told appellant: "Listen, I don't want to get involved with whatever you guys are doing. And so he kind of put the gun down. He knew he was wrong. Then he went into the building." (Tr. 125.)

{¶ 15} Shortly after the shooting, Columbus Police Officer Nicole Barnes was dispatched to the scene at 505 Broad Meadows Boulevard. Upon arriving, Officer Barnes observed an individual, later identified as Hart, "sitting at a picnic table with a lady holding a towel to his neck." (Tr. 139.) Witnesses informed the officer of the shooting, and that the suspect was inside an apartment.

{¶ 16} Columbus Police Officer Ronald Moss, a member of the Columbus Police Department SWAT unit, testified that the SWAT unit responded to the scene and initially surrounded apartment No. 208. After determining that appellant was not inside that apartment, new information led the unit to apartment No. 103, the residence of Joanne Simpson, and officers placed several calls to the apartment. Simpson answered the phone and told the officers "everything is okay, she is the only one there, we don't need to come in." (Tr. 148.) A second call was placed, and Simpson "said there is nobody in the apartment, that that person was at another location." (Tr. 148.) Because of inconsistent statements by Simpson, the officers believed she was being held hostage. SWAT officers observed a man sitting on a chair at a table, and the door was chained. Around the time calls were being made, members of the SWAT team yelled into the apartment to attempt to get the suspect to come out. After announcing their presence, SWAT officers broke down the door to the apartment and took appellant into custody.

{¶ 17} Following appellant's arrest, Columbus Police Detective Delbert Chapman conducted a weapons search. Simpson signed a consent-to-search form, and told the detective that the shotgun was in her bedroom closet. The shotgun was located in a green lawn chair bag in the closet; there was a spent shotgun shell inside the chamber of the weapon.

{¶ 18} Appellant, age 49, testified on his own behalf. On July 29, 2011, appellant resided at 505 Broad Meadows Boulevard, apartment No. 208; his neighbor, Hart, lived on the second floor of the apartment building. John Ford is a friend of appellant, and Ford's girlfriend resides at the apartment building. Appellant was outside on the evening of July 29, 2011 with other individuals, including Ford, Hart, Boyd, Riccardi, and Harris. Earlier in the day, Hart had become upset that some neighborhood children were near the patio. Later that evening, Hart started threatening appellant, talking about how "he will take me on." (Tr. 188.) Appellant and his friend John then walked back to the apartment building. As appellant got up to leave, Hart slapped appellant in the back of the head.

{¶ 19} Appellant went to his bedroom and retrieved a weapon. Appellant "came back out with the weapon to scare Mr. Hart." (Tr. 189.) Appellant returned to the picnic area to "show Ed that I had a weapon so he wouldn't keep threatening me." (Tr. 191.) Appellant hoped to scare Hart from the premises. Appellant had the gun pointing down and "[n]ext thing I know Ed stands up and he starts walking towards me lunging at me. I raised the gun, the gun went off. Evidently my finger had to be on the trigger because the gun went off." (Tr. 191-92.)

{¶ 20} After the shotgun discharged, appellant walked to Simpson's residence, apartment No. 103, and gave her the weapon. He did not recall walking past Boyd after shooting Hart. Appellant did not know why he took the weapon to Simpson's residence. He denied taking Simpson hostage and testified that he was unaware that SWAT officers were outside the apartment until they knocked on the door. He also denied intending to shoot Hart.

{¶ 21} Following deliberations, the jury returned verdicts finding appellant guilty of attempted murder, felonious assault, and tampering with evidence. The trial court separately found appellant guilty of having a weapon while under disability. The court

sentenced appellant by judgment entry filed March 21, 2012; the felonious assault count was merged with the attempted murder count for purposes of sentencing.

{¶ 22} On appeal, appellant sets forth the following single assignment of error for this court's review:

The judgment of the trial court is against the manifest weight of the evidence.

{¶ 23} Under his sole assignment of error, appellant challenges the judgment of the trial court as against the manifest weight of the evidence. Appellant argues that the greater weight of evidence indicates he did not intentionally shoot Hart.

{¶ 24} In *State v. McEwen*, 10th Dist. No. 12AP-419, 2013-Ohio-672, ¶ 20-21, this court noted the applicable standard in considering a manifest weight challenge as follows:

When presented with a manifest weight challenge, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and 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. An appellate court should reserve a conviction as being against the manifest weight of the evidence for only the most "exceptional case in which the evidence weighs heavily against the conviction."

Consequently, although 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.

(Citations omitted.)

{¶ 25} Appellant's primary contention is that the facts do not support the state's claim that he intentionally shot the victim; rather, appellant argues, the shooting was an accident. Appellant points to his own testimony that he was unaware the weapon was loaded, and that he retrieved the weapon only to scare Hart.

{¶ 26} In order to establish the elements of attempted murder, "the state must prove that the defendant engaged in conduct that, if successful, would have resulted in

purposely causing the death of another." *State v. Helms*, 7th Dist. No. 08 MA 199, 2012-Ohio-1147, ¶ 27, citing R.C. 2903.02(A); 2923.02(A). In order to establish the elements of felonious assault, "the state must prove that the defendant knowingly caused or attempted to cause physical harm to another by means of a deadly weapon." *Id.*, citing R.C. 2903.11(A)(2). Tampering with evidence is defined under R.C. 2921.12(A), which states in part: "No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall \* \* \* conceal, or remove any \* \* \* thing, with purpose to impair its \* \* \* availability as evidence in such proceeding or investigation."

{¶ 27} As noted, appellant points to his own testimony that he "didn't know \* \* \* whether [the shotgun] was loaded or not." (Tr. 208.) The jury, however, heard evidence that appellant had been in possession of the shotgun for a year (having received it from his father), and could have found less than credible appellant's claim that he had never checked the weapon during the year it was in his control. Further, the trier of fact could have reasonably concluded that appellant, who testified he was upset and felt threatened by Hart, would not have confronted Hart without first checking to see if the weapon was loaded.

{¶ 28} The jury also could have discredited appellant's claims that the shooting was an accident, and that he had no intent to harm the victim, as conflicting testimony was presented at trial. Both Hart and appellant testified as to the events leading up to the shooting, including the fact that Hart and appellant had engaged in an argument. Appellant testified that Hart had threatened him that evening. A short time later, appellant went inside the apartment complex to retrieve a shotgun. When asked why he did not just remain in the apartment, appellant responded: "I guess I was a little upset at the time." (Tr. 189.) Appellant testified that he was just raising the weapon up in the air when the "gun went off." (Tr. 192.)

{¶ 29} Hart, on the other hand, testified that appellant pointed the weapon directly at him prior to shooting him in the neck. Another witness, Riccardi, testified that appellant raised the weapon and pulled the trigger; after shooting Hart, appellant came around the table and pointed the gun at Riccardi. While appellant testified he was not happy about having fired the weapon, appellant's neighbor, Boyd, testified that he was

smiling after shooting Hart, and that he told Boyd: "I guess I'm going to jail tonight." (Tr. 85.)

{¶ 30} As indicated above, Hart testified that appellant pointed the weapon directly at him prior to firing, and the victim suffered wounds to his neck from the shotgun blast. Ohio courts have recognized that the location of a wound may be probative of intent to kill. *State v. Goodwin*, 7th Dist. No. 99 CA 220 (Sept. 24, 2001). *See also State v. Harris*, 10th Dist. No. 99AP-1380 (Sept. 26, 2000) (jury could have inferred intent to kill based upon use of deadly weapon and location of wounds). Additionally, the state presented evidence that appellant, instead of returning to his apartment after firing the shotgun, went to a neighbor's apartment where the weapon was subsequently discovered in a closet; after his arrest, appellant told officers he had nothing to do with the shooting. It was within the province of the jury to determine whether appellant's actions evinced consciousness of guilt. *See State v. Rankin*, 10th Dist. No. 10AP-1118, 2011-Ohio-5131, ¶ 31, quoting *State v. Brown*, 8th Dist. No. 52593 (July 28, 1998) (appellant's attempt to hide weapon used in shooting suggests guilt, "as 'attempts to alter or destroy evidence \* \* \* can serve as admissions by conduct to a consciousness of guilt' ").

{¶ 31} In addition to the evidence presented by the state, the jury could have found appellant's own testimony less than credible. Following the shooting, appellant did not offer assistance to Hart or call for help; rather, he left the scene and went to a neighbor's apartment. When asked why he did not return to his own apartment, appellant responded: "I really don't know." (Tr. 193.) Columbus SWAT officers responded out of fear that appellant was holding his neighbor hostage. Appellant claimed he was unaware that police or SWAT officers were outside the apartment for several hours until they knocked on the door; according to appellant, he did not hear anything because "[t]he TV was on." (Tr. 215.) He also did not recall hearing the phone ring on two occasions while in Simpson's apartment. When questioned by a detective shortly after the incident, appellant told the detective he did not know anything about the shooting.

{¶ 32} Upon review, the state presented sufficient, competent, credible evidence that, if believed, supported the convictions. While appellant testified that he was unaware the weapon was loaded or that he did not intend to injure Hart, it was within the province of the trier of fact to believe or disbelieve any witnesses and to weigh the credibility of all



of the witnesses. *State v. Griffin*, 7th Dist. No. 01 CA 151, 2002-Ohio-6900, ¶ 25 ("it is the jury's province as fact-finder to judge the credibility of varying stories; they are entitled to believe the three state's witnesses and disbelieve the defendant even where some evidence supports the defendant's version of events"). In the present case, the trier of fact, in resolving the conflicts in evidence, did not lose its way and create a manifest miscarriage of justice such as to require a new trial. Accordingly, the verdict is not against the manifest weight of the evidence.

{¶ 33} Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

*Judgment affirmed.*

KLATT, P.J., and McCORMAC, J., concur.

McCORMAC, J., retired of the Tenth Appellate District,  
assigned to active duty under authority of the Ohio  
Constitution, Article IV, Section 6(C).

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