

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-546 (C.P.C. No. 13CR-785)
Edward J. Williams,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 26, 2015

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

Gerald T. Sunbury, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Edward J. Williams, appeals from the judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} On February 14, 2013, appellant was indicted for one count of murder, in violation of R.C. 2903.02, with a corresponding firearm specification, one count of attempted murder, in violation of R.C. 2923.02 and 2903.02, with a corresponding firearm specification, one count of felonious assault, in violation of R.C. 2903.11, with a corresponding firearm specification, and one count of having a weapon while under

disability, in violation of R.C. 2923.13. The indictment arose out of the shooting death of Willie Kimbro that occurred on January 31, 2013 at approximately 8:45 p.m. Appellant entered a plea of not guilty to all charges, and the first three counts proceeded to a jury trial. For the fourth count, appellant voluntarily waived his right to a jury trial, instead electing for that count to be tried by the judge. The plaintiff-appellee, State of Ohio, then produced the following relevant evidence in its case-in-chief.

{¶ 3} Officer Benjamin Leppla of the Columbus City Police Department testified that during his shift on the evening of January 31, 2013, he was dispatched to a shooting at 2405 West Broad Street, a building he was familiar with due to the numerous incidents of crime that had occurred there throughout his eight-year tenure as a patrol officer in the Hilltop area. Officer Leppla arrived at the building within a few minutes of the call and was one of the first officers at the scene. He proceeded to the back door of the apartment building, which he knew from previous experience was usually propped open atop a full flight of exterior stairs. Officer Leppla observed a person lying on his back near the bottom of the back stairs with apparent gunshot wounds to his head and chest. The injured person was alive, but bleeding "a lot" and unresponsive. (Tr. 28.) He rendered aid to the victim until medics arrived, then remained at the scene for two or three hours to help secure and tape off the crime scene. He did not observe anyone entering or exiting the back of the building throughout the entire response time.

{¶ 4} Officer Leppla also testified regarding his experience with witness cooperation in the vicinity of the crime scene. According to Officer Leppla, witnesses may not want to speak to police at all because they fear for their lives or do not want to "snitch" or may wait awhile to come forward with information so they are not observed talking to the police. (Tr. 34.) He described retaliation against witnesses in that area to include threatening and harassing witnesses in a "nonstop" manner, having their houses "shot up," and actually assaulting witnesses. (Tr. 34-35.)

{¶ 5} Detective Daniel Douglas of the Columbus Police Department's Crime Scene Search Unit testified to being called to 2405 West Broad Street as part of a unit to photograph the scene, label and collect evidence, and measure and diagram the scene to reflect the location of evidence. Detective Douglas described the photographs taken of the scene that evening and the police diagram of the scene documenting evidence locations.

The photographs and sketch illustrated the building layout, which included a convenience store on the ground floor with an entrance on Broad Street and loft apartments on the second floor accessed by two stairwells: one interior stairwell leading down to Broad Street on the front of the building and one exterior fire escape-like stairwell leading down to a parking lot in the back of the building. The photographs showed the second floor interior hallway, which connected the front and back doors. The hallway provided direct access to four apartments situated on the east side of the building and included two alcoves accessing clusters of apartments on the west side of the building.

{¶ 6} The photographs and police diagram also documented the physical evidence found at the scene. According to Officer Leppla, six total shell casings were found: four 9mm casings were located in a jagged line between the southern alcove and just beyond the midway point of the main hallway, and two additional shell casings of an unidentified type were located toward the front of the building next to the northern alcove. A large pool of blood and several items of evidence, including a washcloth with a bullet fragment, a cell phone, keys, a baggie with pills, and a black baseball cap were located in between the two alcoves. Bullet fragments were found on the front landing, the door of apartment 202, and the wall corner of the southern alcove.

{¶ 7} On cross-examination, Detective Douglas testified that, in his opinion, two different guns would have had to have been fired to produce the two distinct shell casings and that the bullet fragment pulled from the door of apartment 202, which overlooked Broad Street, appeared as though it was fired from a "straight-on shot," but he did not know whether the door was open or closed. (Tr. 111.) On redirect, Detective Douglas said nothing indicated whether the bullet had or had not bounced off of something before hitting the door.

{¶ 8} Detective Paul Callahan of the Columbus City Police Department's Homicide Squad testified that he attempted to interview the residents of the apartments on the second floor that same night, but encountered "minimal" cooperation from those that spoke with him and generally gave short statements without insight into what transpired or who was involved. (Tr. 134.)

{¶ 9} Gayle Smith testified that she was a former resident of the apartment building and a witness to the shooting. At the time of the shooting, Smith said she lived

with her girlfriend and her dog at 2405 West Broad Street in apartment 210, which was located off of the northern alcove and overlooked Broad Street. Smith described her 20-plus year addiction to drugs and said that on January 31, 2013, she spent her day drinking alcohol and using crack. She recalled starting drug use early that morning and using "a little throughout the day" while also drinking alcohol. (Tr. 143.) Smith thought she last used drugs "over an hour, maybe [a] couple hours" prior to the shooting incident and believed the drug use did not affect her ability to see the shooting incident. (Tr. 145.) She also did not think she was drunk. Smith further stated that at the time of the incident, she was on probation for a forgery and drug case and ended up serving six months of jail time for those two charges, but never contacted the state prosecutor in the homicide case for help on those charges. Smith confirmed that she had been off of drugs for ten months prior to trial and also held a regular part-time job.

{¶ 10} Smith testified that on the day of the homicide, she left her apartment often to visit people, buy drugs, and go to the store. According to Smith, that evening she came out of her apartment and saw a man whom she recognized as "Messiah," a drug dealer, standing about four or five steps down from the top of the front stairwell with his back parallel to the wall opposite her. (Tr. 149.) She thought Messiah had a "funny look on his face," which made her turn to follow his gaze down the hallway toward the back stairs. (Tr. 150.) Smith testified that she saw three men walking down the hallway toward her, and she recognized one as appellant, whom she had seen "[o]ff and on" throughout the day at the store. (Tr. 157.) She did not know the other two men. According to Smith, one of the men she did not know kept walking down the hallway, and she did not see him again and did not know where he went. She testified that appellant spoke to the remaining man she did not know, but she could not tell if they were arguing. Smith said the pair stopped, and when the other man turned and started to walk away, appellant "pulled out a gun and shot him." (Tr. 154.) Smith stated the victim fell down, and appellant shot him "[m]aybe three or four" more times. (Tr. 161.) She testified to hearing approximately six shots total. She did not recall seeing a gun with the victim or with Messiah and did not think Messiah had fired any shots because she thought he "took off" during the shooting. (Tr. 161.) Smith then testified that appellant shot in her direction, but she was unsure whether he was aiming at her or someone else. At that point, Smith

said she banged on her apartment door and when her girlfriend opened it, her dog slipped past her, so she chased and grabbed the dog and ran down the front stairs and into the store. She recalled hearing the victim moaning as she fled, but she did not look back down the hallway at the victim and did not see where appellant went.

{¶ 11} Smith further testified that when police arrived at the store, she told them she saw who killed the victim. When interviewed later that night at police headquarters, Smith said she gave police a description of the shooter. A few days later, after police showed her photographs excerpted from video surveillance footage showing her talking with appellant on the day of the shooting, Smith also gave police the appellant's street name, "E," along with information that could help track him down. (Tr. 177.) According to Smith, she held back on providing appellant's name during the first police interview because she was scared for her safety. She also identified in front of the jury the grey jacket with large red lettering and matching hat that she said appellant wore during the shooting.

{¶ 12} During cross-examination, Smith said that she bought drugs from Messiah and that he would make deliveries to her apartment hallway. She testified that she had not left her apartment to meet Messiah that evening, but was going to the store to get a lighter in order to smoke crack. She said that after the shooting, Messiah was gone by the time she grabbed her dog at the top of the stairs, and she only later learned from police that Messiah had been shot. As to the particulars of the homicide, Smith stated that she thought appellant and the victim were standing side by side in the hallway, with the victim a little bit more toward her, and she thought that immediately prior to the first shot, the victim turned away from appellant toward her and not toward the back of the building. She agreed that she did not tell police the name of the shooter until after seeing the crime camera photographs and also admitted that she was an alcoholic at the time of the incident. Smith also stated that she had preferred to smoke crack, which gives a high that does last longer than snorting the drug. On redirect, Smith testified that she believed she told police the shooter wore a grey jacket with red lettering on it and a matching hat during the first interview before she saw the surveillance video stills. She also stated that she had not had any kind of problem with appellant in the past.

{¶ 13} Detective Timothy Huston of the Columbus City Police Department's Criminal Intelligence Unit, an expert on gangs, testified that he assisted lead investigators with identifying and locating the individuals involved in the crime. Detective Huston identified "Messiah" as Anthony Jones, but was unable to locate him. (Tr. 223.) Using information stemming from appellant's incarcerated stepson, Detective Huston also identified the street name "E" as "Edward Williams" and matched appellant's prior mug shot to surveillance footage. (Tr. 230.)

{¶ 14} Detective Larry Shoaf of the Columbus City Police Department's Crime Scene Search Unit testified to conducting a search warrant at 1827 Schrock Road, the residence where police arrested appellant. Detective Shoaf said the search yielded a coat and hat matching the description of appellant's clothing on the day of the murder, and he identified those items in front of the jury. On cross-examination, Detective Shoaf agreed that police did not locate guns or other evidence at the residence.

{¶ 15} Detective James Porter of the Columbus City Police Department's Homicide Squad testified that he was the lead investigator of the homicide and conducted multiple interviews with Smith, whom he described as "a very, very good witness." (Tr. 251.) Detective Porter recalled first speaking to Smith at the store below her apartment approximately one hour after the incident. He said this initial interaction was brief, and he learned she had witnessed the shooting. According to Detective Porter, Smith did not exhibit signs of alcohol or drug influence, which he was familiar with observing, but rather was lucid and could relay the story in detail and in chronological order. Detective Porter stated that police drove Smith and her dog to the police headquarters that same evening, where he personally interviewed her more extensively. Detective Porter again said Smith did not display signs of intoxication during this first interview and gave a physical description of the shooter and his clothing, specifically a dark jacket with large red lettering across the chest and a matching hat, but did not provide the name of the shooter.

{¶ 16} Detective Porter testified that after he interviewed Smith, he was able to view surveillance footage from the store's camera and observed a person matching Smith's description of the shooter and a person matching her description of Messiah. A few days later, Detective Porter stated he was able to review footage from the crime camera and viewed Smith talking with appellant in the video. Detective Porter

interviewed Smith a second time and this time Smith did provide appellant's street name and admitted she had known appellant for a year.

{¶ 17} Detective Porter also reviewed the video surveillance evidence, which was admitted into evidence, in front of the jury. He testified that footage from multiple video surveillance cameras placed appellant around and in the building on the evening of the homicide. The store surveillance footage showed appellant wearing a dark jacket with large red lettering and matching hat in the store at 5:05 and 6:40 p.m. The crime camera footage also showed appellant "wandering" and "loitering" outside of the store and entering and exiting the store and apartment for several hours prior to the homicide. (Tr. 272.) At 7:11 p.m., about one and one-half hours prior to the shooting, the crime camera footage showed appellant entering the front entrance of the apartment. Detective Porter testified that from that point on, no camera showed appellant exiting the building. Shortly before the shooting, the crime camera showed Messiah entering the apartment building from the front entrance, and the store surveillance cameras showed the victim pulling up in a white car, accompanied by another unidentifiable person. A few minutes later, cameras showed Messiah running out through the front entrance holding his shoulder, while moments later an unidentifiable person appeared from behind the building and crossed South Wayne Avenue. About one minute later after Messiah left, the crime camera showed Smith exiting the front apartment entrance, holding her dog, and entering the store.

{¶ 18} On cross-examination, Detective Porter conceded that Smith's account of the incident to him did fluctuate from seeing two men arguing in the hallway to seeing three men talking in the hallway. Detective Porter also stated that, while the investigation was not complete after hearing Smith's account, he definitely focused on appellant as the suspect and did not try to interview other apartment residents, did not fingerprint the white car the victim pulled up in to find out the identity of the person he arrived with, and did not locate and interview Messiah even though Messiah had an unrelated court date since the shooting. Detective Porter also agreed that two guns were fired, possibly by two shooters or by one shooter with two guns. He confirmed that police failed to find weapons matching the casings. In response to questioning, Detective Porter also said

there was "[s]ome indication" of a drug deal "gone bad," namely the bag of pills on the ground near the large pool of blood. (Tr. 318.)

{¶ 19} On redirect, Detective Porter testified that in his experience shell casings do not reliably indicate where shootings actually occur because they bounce around and behave erratically. He said he had the impression Smith was not protecting Messiah as her drug dealer because she was very forthcoming with information and volunteered his name as being present at the crime scene. He also elaborated that indications of a drug deal gone bad also included Smith's indication that drug deals happened frequently in the hallway and that the victim had \$2,000 cash and some pills in his clothing.

{¶ 20} Dr. Jan Gornick of the Franklin County Coroner's office testified regarding the autopsy of the victim. She said the victim suffered from four gunshot wounds. A right forearm gunshot wound travelled front to back, right to left, and downward. A left forearm gunshot wound travelled front to back, left to right, and without variation in the vertical axis. Both arms had exit wounds, and Dr. Gornick did not recover projectiles from either arm. A gunshot wound near the top of the victim's forehead travelled right to left and without variation in the vertical axis. The bullet perforated the scalp and then fractured but did not enter the skull. Dr. Gornick found soot on the outside of the skull, indicative of a close-range shot of less than 12 inches. She recovered a bullet jacket from the scalp. A fourth gunshot wound was located at the top of the victim's chest. The bullet travelled front to back and slightly right to left through the left clavicle and upper lobe of the left lung to the posterior ribs. Dr. Gornick did not find an exit wound and recovered a "severely deformed non-jacketed small caliber bullet" from the victim's back. (Coroner's Report, 2.) In addition to the four gunshot wounds, the victim also had a blunt trauma wound on his forehead. Dr. Gornick opined that the wounds would not have been instantly fatal, and it would not have been unusual for a victim with such wounds to be able to get up and move. She testified that the chest wound ultimately caused the victim's death.

{¶ 21} Amy Amstutz, a forensic scientist in the firearms identification section of the Columbus Police Department's Crime Laboratory, testified regarding the shell casings recovered at the scene, fragments recovered, and guns discovered at a nearby residence. Amstutz determined that two "380 auto[matic]" shell casings were Winchester

ammunition brand and fired from the same gun, and four "9mm" casings were "Hornet A" brand and were fired from the same gun. (Tr. 391, 393-94.) Amstutz also determined the jacket fragment recovered from the door of apartment 202 was a "38 caliber." (Tr. 403.) She used the fragment from apartment 202 as a comparison model to determine that the bullet jacket recovered from the victim was also 38 caliber and, in her opinion, fired from the same gun as the bullet recovered from the door to apartment 202. On cross-examination, Amstutz clarified that although 9mm and 380 automatic ammunition were both a part of the same 38 caliber family, they could not necessarily be fired from the same gun. On redirect, Amstutz specified that a 9mm bullet cannot be fired in a 380 automatic gun, but that a 380 automatic bullet could be fired from a 9mm Luger. She also said that the silver-tipped metal fragment recovered from the victim is more consistent with the design of Winchester's 380 automatic bullets.

{¶ 22} The state admitted into evidence the crime scene photographs and diagram, store surveillance video and crime camera footage, three stills from the store video footage, the coroner's report and autopsy photographs, and Smith's signed identification of appellant's photograph. Regarding the weapon under disability count, the parties stipulated, outside of the presence of the jury, to appellant's prior conviction for domestic violence.

{¶ 23} Each party then rested its case. After deliberations, the jury returned a verdict of guilty on Count 1, murder with a corresponding firearm specification, in violation of R.C. 2903.02, and not guilty on Counts 2 and 3, attempted murder with specification, in violation of R.C. 2923.02 and 2903.02, and felonious assault with specification, in violation of R.C. 2903.11. The judge found appellant guilty of Count 4, having a weapon while under disability, in violation of R.C. 2923.13. After a sentencing hearing, the judge sentenced appellant to life with a possibility of parole after 15 years for the murder charge plus a consecutive mandatory 3 years of incarceration for the firearm specification, and 12 months of incarceration for the weapons count to be served concurrently with the murder sentence.

II. ASSIGNMENTS OF ERROR

{¶ 24} Appellant raises the following assignments of error for our review:

[I.] Defendant-Appellant's convictions are not supported by sufficient, credible evidence.

[II.] Defendant-Appellant's convictions are against the manifest weight of the evidence.

III. DISCUSSION

A. First Assignment of Error

{¶ 25} Appellant's first assignment of error challenges the sufficiency of the evidence to support his convictions. Appellant contends "[t]he only evidence" came from the testimony of Gayle Smith, an admitted heavy drug user who "was protecting her own drug supplier, Anthony 'Messiah' Jones," and that the state produced no other evidence that could support appellant's convictions. (Appellant's Brief, 16-17.) We find these arguments unpersuasive.

{¶ 26} Sufficiency of the evidence is a legal standard that tests whether the evidence is legally adequate to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law, not fact. *Id.* In determining whether the evidence is legally sufficient to support a conviction, " '[t]he relevant inquiry is 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. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 27} In a sufficiency of the evidence inquiry, appellate courts do not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence supports the conviction. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified

truthfully and determines if that testimony satisfies each element of the crime"). Further, "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.

{¶ 28} A jury convicted appellant of murder with a corresponding firearm specification, in violation of R.C. 2903.02, and the judge convicted appellant of having a weapon while under disability, in violation of R.C. 2923.13. Ohio's murder statute, R.C. 2903.02(A), states "[n]o person shall purposely cause the death of another," and the weapons under disability statute, R.C. 2923.13(A)(2), states in pertinent part, "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply: * * * [t]he person * * * has been convicted of any felony offense of violence."

{¶ 29} The state presented the testimony of Smith, an eyewitness to the murder. Smith testified that "[appellant] pulled out a gun and shot him." (Tr. 154.) She identified appellant in the courtroom and multiple times prior to trial as the person who shot the victim. Any credibility determination regarding Smith is premature under a sufficiency analysis, where we must assume her testimony to be true.

{¶ 30} Moreover, circumstantial evidence supplemented Smith's testimony. Surveillance video evidence also placed appellant at the scene of the crime around the time of the shooting. The victim's four gunshot wounds, including one from less than 12 inches away, and multiple gunshot projectiles and casings collected from the hallway support a purposeful, rather than accidental, shooting. The coroner testified that the gunshot wound to the chest ultimately caused the victim's death.

{¶ 31} Viewing the above evidence in a light most favorable to the state, it was reasonable for the trier of fact to conclude beyond a reasonable doubt that appellant purposely caused the death of the victim and used a firearm while having been previously convicted of domestic violence. Consequently, we reject appellant's assertion that the evidence was insufficient to support his convictions and overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶ 32} Appellant's second assignment of error challenges the weight of evidence supporting his convictions. Specifically, appellant asserts that Smith's testimony lacked the credibility to sustain the convictions because she was under the influence of drugs, had a "motive to fabricate and protect" her drug dealer, Messiah, and initially denied knowing appellant. (Appellant's Brief, 17.) Additionally, appellant argues that because the state failed to present evidence beyond Smith's testimony, specifically incriminating statements by appellant and forensic or physical evidence, appellant's conviction "fail[s]." (Appellant's Brief, 17.) We disagree.

{¶ 33} 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. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). An appellate court should reserve reversal of 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.' " *Id.*, quoting *Martin* at 175.

{¶ 34} In conducting a manifest weight of the evidence review, we may consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting such review, "we are guided by the presumption that the jury, or the trial court in a bench trial, 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). "Accordingly, we afford great deference to the jury's determination of witness credibility." *State v. Albert*, 10th Dist. No. 14AP-30, 2015-Ohio-249, ¶ 14. "Mere disagreement over the credibility of witnesses is not a sufficient reason to reverse a judgment on manifest weight grounds." *State v. Harris*, 10th Dist. No. 13AP-770 (June 10, 2014), *appeal not allowed*, 140 Ohio St.3d 1455, 2014-Ohio-4414, citing *State v. G.G.*, 10th Dist. No. 12AP-188, 2012-Ohio-5902, ¶ 7.

{¶ 35} The state presented Smith as an eyewitness to the shooting and, as stated before, Smith identified appellant as the shooter. Appellant attacks the credibility of Smith and suggests she had a motive to fabricate the story to protect Messiah. The jury heard the testimonies of Smith and Detective Porter, including extensive discussions of her drug and alcohol use, her relationship with Messiah, and why she only described, rather than named, appellant during the first interview. The jury was in the best position to determine Smith's credibility and determined her account supported the convictions. We agree with the jury's assessment. Smith was forthcoming about her drug and alcohol addictions. She said that she smoked crack over one hour prior to witnessing the shooting and had been drinking, but that the drug and alcohol use did not affect her ability to see the events in the hallway. Her self-assessment was buttressed by the testimony of Detective Porter, who was experienced in working with impaired people, and testified that he did not think Smith acted impaired either at the store or during the first interview. He recalled that she was "lucid" and able to recount her story in detail and generally labelled Smith "a very, very good witness." (Tr. 251, 253.)

{¶ 36} Furthermore, Smith's story was corroborated by the video surveillance evidence, the coroner's report, and evidence found in the hallway. The surveillance videos confirmed that Smith saw appellant throughout the day around the store and apartment building, that appellant entered the apartment wearing a dark coat with large red lettering and a matching hat, that Messiah entered the front entrance and ran out after the shooting, and that she ran out the front entrance and into the store carrying her dog. The coroner's report documenting the victim's injuries is consistent with Smith's belief that appellant shot the victim approximately four or five times, while the shell casings found at the scene are consistent with Smith's belief that approximately six total shots were fired.

{¶ 37} As to appellant's theory that Smith was protecting Messiah, Smith volunteered Messiah's name to police and consistently told police that he was present at the scene of the crime. Because of Smith's forthright manner, Detective Porter testified that he did not believe she was protecting Messiah. Furthermore, appellant presented no evidence supporting such motive beyond Smith's admission that she had previously bought drugs from Messiah.

{¶ 38} Further, Smith's inconsistencies in her prior statements are not material to appellant's convictions. Whether two or three people were in the hall or whether two guns were present does not change Smith's identification of appellant as the person who shot the victim. And while she did not identify appellant by name at the first interview, Detective Porter did testify that she specifically described his clothing at that time and has repeatedly identified appellant as the shooter since then. Multiple detectives expressed that fearful behavior from witnesses in the Hilltop community was both common and warranted due to harsh retaliation.

{¶ 39} Finally, although the state did not present forensic evidence tying appellant to the murder, as stated above, the state presented the testimony of an eyewitness along with corroborating video surveillance footage. Smith's eyewitness testimony at trial, if believed by the jury, clearly established that appellant shot the victim, and we have held that the lack of physical evidence connecting appellant to the scene of the shooting in such a case does not render the jury's conviction against the manifest weight of the evidence. *State v. Peeples*, 10th Dist. No. 13AP-1026, 2014-Ohio-4064, ¶ 22.

{¶ 40} Based on this record, we cannot conclude that 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. Accordingly, appellant's convictions are not against the manifest weight of the evidence, and his second assignment of error is overruled.

IV. CONCLUSION

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

Judgment affirmed.

KLATT and BRUNNER, JJ., concur.
