

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 14AP-796
Plaintiff-Appellee,	:	(C.P.C. No. 13CR-2345)
v.	:	
	:	(REGULAR CALENDAR)
Antonio M. Jones,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 11, 2015

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

*Brian J. Rigg*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Antonio M. Jones, appeals from a judgment entry of the Franklin County Court of Common Pleas finding him guilty of two counts of murder, one count of tampering with evidence, and one count of having a weapon while under disability. For the following reasons, we affirm.

**I. Facts and Procedural History**

{¶ 2} By indictment filed May 2, 2013, plaintiff-appellee, State of Ohio, charged Jones with one count of murder, in violation of R.C. 2903.02, an unclassified felony, with an accompanying firearm specification and repeat violent offender specification; one count of felony murder, in violation of R.C. 2903.02, an unclassified felony, with an accompanying firearm specification and repeat violent offender specification; one count of tampering with evidence, in violation of R.C. 2921.12, a third-degree felony, with an

accompanying firearm specification; and one count of having a weapon while under disability, in violation of R.C. 2923.13, a third-degree felony, with an accompanying firearm specification. All the charges related to the shooting death of James Edward Lane on April 20, 2013. Jones entered a plea of not guilty to all charges.

{¶ 3} Jones elected to waive his right to a jury trial for Count 4 of the indictment, having a weapon while under disability, and have a bench trial for that charge only. As to the other three charges contained in the indictment, a jury trial commenced June 23, 2014. Officer Trevor Wolfe of the Columbus Division of Police testified that on the night of April 20, 2013, he responded to a dispatch of a shooting to 764 St. Clair Avenue, the location of the Happy Family Bar. When he arrived, he saw Lane with an obvious gunshot wound lying on the ground near a food truck parked at the bar's patio, and Officer Wolfe called for a medic. Officer Wolfe secured the scene until the detectives arrived.

{¶ 4} Darren Cunningham, who worked security for the Happy Family Bar, was working the night of the shooting. Though he did not witness the actual shooting, Cunningham testified that an hour prior to the shooting, Jones came into the bar wearing a New York Yankees jacket, was "very amped up," and did not want Cunningham to pat him down. (Tr. Vol. II, 54.) At that time, Cunningham said Jones did not have a weapon on him. Cunningham said that he kept a close eye on Jones while he was in the bar because Jones "kept running back and forth in and out of the door," and he did that "about five or six times consecutively in maybe a ten-minute period." (Tr. Vol. II, 55.) Cunningham said a man inside the bar kept telling Jones to "just calm down." (Tr. Vol. II, 56.) Cunningham described Jones' behavior while he was inside the bar as "very agitated." (Tr. Vol. II, 56.) When Jones left the bar for the last time, Cunningham followed him outside, but he did not see Jones in the parking lot, so he assumed Jones had left for good. Approximately 20 minutes later, Cunningham saw a large crowd of people "stampede in the back door," so Cunningham went outside and saw Lane lying outside on the ground by the patio's back gate. (Tr. Vol. II, 56.)

{¶ 5} Vernice Hill, Jones' cousin, testified that she knew Lane as a friend of her mother's, and that she learned that Lane had been shot on April 21, 2013 because her mother told her. Hill said that approximately 24 hours after the shooting, Jones came to her house wearing a New York Yankees jacket, "sweating real bad," and told her that he

"shot somebody" at the Happy Family Bar. (Tr. Vol. II, 92.) Jones did not tell Hill who he had shot, but he indicated he "had some problems with another man." (Tr. Vol. II, 94.) Hill testified that Jones did not say anything to her about anyone pointing a gun at him or threatening his life before the shooting. Jones told Hill he planned to go to Georiga "to get away from him doing the shooting." (Tr. Vol. II, 94.) While he was at her home, Jones placed a gun in a cabinet under Hill's kitchen sink. He also took off his New York Yankees jacket and placed it on the back of a chair. Jones asked Hill if he could take a shower at her house, and Hill agreed. When Jones was in the shower, Hill went over to her mother's house, and then she returned to her house where Jones was "starting to lay on the couch." (Tr. Vol. II, 99.) Around 7:00 in the morning, Hill went back to her mother's house where she called the police. Police came to Hill's house and arrested Jones. Following Jones' arrest, the police searched Hill's home and recovered the gun and the jacket.

{¶ 6} Christopher Lewis, who was operating a food truck outside of the Happy Family Bar on April 20, 2013, testified that prior to the shooting, he saw Jones wearing a New York Yankees jacket, and he saw him get a gun out of the trunk of a car and place it in his pants. Lewis said Jones then went through the patio gate and into the bar. A few minutes later, Lane came to Lewis' food truck and ordered some food. Lewis had just turned around to face Lane when he saw Jones with the gun and then heard "maybe five, six shots." (Tr. Vol. II, 121.) Lewis testified he did not hear any arguments or threats just prior to the shooting. Lewis hid behind his barbeque smoker for a brief time, then came out and saw Lane on the ground saying "I'm hit, I'm hit." (Tr. Vol. II, 124.) Lewis saw Jones run away from the parking lot after the shooting toward St. Clair Avenue. Lewis did not see anyone other than Jones with a gun and said no one else fired a gun that night. On cross-examination, Lewis said it was possible he was mistaken about how many shots he heard that night.

{¶ 7} Detective Lowell Titus of the Columbus Division of Police's assault squad testified he responded to the Happy Family Bar the night of the shooting because homicide detectives initially thought Lane had stabilized and would survive his injuries. Detective Titus said he spoke with the owner of the Happy Family Bar in order to obtain the surveillance video of the inside of the bar, the patio, and the parking lot. Detective Titus testified he spoke with Hill, and based on the information Hill provided to him,

Detective Titus filed a warrant for Jones' arrest. After reviewing the surveillance video from both inside and outside the bar, Detective Titus said he did not see anyone pull a gun on Jones. The state played the surveillance video of the parking lot and patio area in court for the jury to see. The video showed Jones walking toward a group of three people, then Jones walking away from the group. The video further showed that Jones was facing away from the direction he ultimately fired when he pulled the gun out, and he then turned back around with the gun before firing. Detective Titus could not tell from viewing the video how many times Jones fired his gun.

{¶ 8} During Detective Titus' testimony, the state played the audio recording of Detective Titus' interview with Jones following his arrest. Jones said during the interview that he had problems with a man at the Happy Family Bar. Jones said that 25 or 30 minutes before the incident occurred, the man pulled a gun on him. He said that he was outside when the man "jumped" him, so Jones reached for his gun and shot the man, though Jones said "the bullet wasn't meant for the dude" and that he hit the wrong guy. (Tr. Vol. III, 182.) Jones said he only fired his gun one time. Jones told Detective Titus that the man he had been aiming for took off running after Jones fired his weapon. Jones said he did not know who any of the men were that he argued with at the bar. Jones said he stashed his gun in the bushes while he was inside the bar, then retrieved it from the bushes when he needed it.

{¶ 9} Kenneth Gerston, M.D., a deputy coroner with the Franklin County Coroner's Office, testified that Lane died from a gunshot wound. The bullet entered Lane's body through his right arm and traveled into the right side of his chest. Mark Hardy, a forensic scientist with the Columbus Division of Police, testified that he analyzed the spent projectile recovered from Lane's body and that the spent projectile matched the gun police recovered from underneath Hill's sink.

{¶ 10} Jones testified in his own defense. Jones stated he had often been on the receiving end of violence, saying he had been shot 12 times, stabbed 3 times, and run over by a vehicle 1 time, resulting in many hospitalizations. Turning to the events of April 20, 2013, Jones testified that he was arguing with someone at the Happy Family Bar and that the man showed him a pistol. Because of his history of being a victim of violence, Jones said he did not want to leave after seeing the man's gun because he was "scared." (Tr. Vol.

IV, 264.) Instead of leaving, Jones said he went outside and retrieved his own gun and "put it on [his] waistline." (Tr. Vol. IV, 265.) When he encountered the man again, Jones said the man told him "I'm going to kill you." (Tr. Vol. IV, 265.) Jones said he started to walk away but he saw the man reaching and he saw a "brown handle," so Jones grabbed his gun and fired a shot because he has "been going through a lot in [his] lifetime and [he] learned about turning [his] back." (Tr. Vol. IV, 265.) He said he "wasn't trying to hurt nobody," but that his "life was on the line," so he did "what [he] had to do." (Tr. Vol. IV, 265.) Jones denied ever telling Hill he planned to get out of Columbus after the shooting. On cross-examination, Jones said he "hit the wrong guy" when he fired his gun. (Tr. Vol. IV, 292.)

{¶ 11} Following deliberations, the jury returned guilty verdicts for both murder counts and the tampering with evidence count, as well as the accompanying firearm specifications. The parties stipulated to Jones' prior convictions, and the trial court found Jones guilty of having a weapon while under disability and the repeat violent offender specifications. Following a sentencing hearing on September 12, 2014, the trial court merged Count 2, felony murder, into Count 1, murder, and sentenced Jones to an aggregate sentence of 33 years to life. The trial court journalized Jones' convictions and sentence in a September 15, 2014 judgment entry. Jones timely appeals.

## **II. Assignment of Error**

{¶ 12} Jones assigns the following error for our review:

The verdict is against the sufficiency and manifest weight of the evidence.

## **III. Discussion**

{¶ 13} In his sole assignment of error, Jones argues his convictions for murder, tampering with evidence, and having a weapon while under disability were not supported by sufficient evidence and were against the manifest weight of the evidence. We disagree.

### **A. Sufficiency of the Evidence**

{¶ 14} Whether there is legally sufficient evidence to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Sufficiency is a test of adequacy. *Id.* The relevant inquiry for an appellate court is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any

rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt. *State v. Mahone*, 10th Dist. No. 12AP-545, 2014-Ohio-1251, ¶ 38, citing *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37.

### **1. Murder**

{¶ 15} In order to convict a defendant of murder in violation of R.C. 2903.02(A), the state must prove the defendant purposely caused the victim's death. "A person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature." R.C. 2901.22(A).

{¶ 16} With respect to his convictions for murder and felony murder, Jones does not argue that the state presented insufficient evidence to establish the elements of those offenses. Instead, Jones argues the evidence supporting his claim of self-defense should overcome the evidence supporting the murder convictions.

{¶ 17} To the extent Jones raises self-defense in his challenge to the sufficiency of the evidence, his argument is misplaced. Self-defense is an affirmative defense under Ohio law. *State v. Calderon*, 10th Dist. No. 05AP-1151, 2007-Ohio-377, ¶ 30, citing *State v. Williford*, 49 Ohio St.3d 247, 249 (1990). The "'due process "sufficient evidence" guarantee does not implicate affirmative defenses, because proof supportive of an affirmative defense cannot detract from proof beyond a reasonable doubt that the accused had committed the requisite elements of the crime.'" *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 37, quoting *Caldwell v. Russell*, 181 F.3d 731 (6th Cir.1999), *abrogated by statute on other grounds*. Thus, we address Jones' self-defense contentions in our analysis of the manifest weight of the evidence.

### **2. Tampering With Evidence**

{¶ 18} R.C. 2921.12(A)(1) defines tampering with evidence and provides: "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall \* \* \* [a]lter, destroy, conceal, or remove any \* \* \* thing, with purpose to impair its value or availability as evidence in such proceeding or investigation." To convict Jones of tampering with evidence, the state needed to submit sufficient evidence for the trier of fact to conclude Jones knew or should have known an

investigation was forthcoming but nevertheless purposely took steps to conceal the gun used to shoot Lane so as to impair its availability in the investigation.

{¶ 19} "[T]he law has long recognized that intent, lying as it does within the privacy of a person's own thoughts, is not susceptible of objective proof." *State v. Garner*, 74 Ohio St.3d 49, 60 (1995), citing *State v. Carter*, 72 Ohio St.3d 545, 554 (1995). The trier of fact may consider the entire set of circumstances surrounding the event and infer intent from those facts. *State v. Loughman*, 10th Dist. No. 10AP-636, 2011-Ohio-1893, ¶ 47, citing *State v. Grant*, 67 Ohio St.3d 465, 478 (1993).

{¶ 20} The state presented Hill's testimony that Jones came to her house, told her he shot somebody, told her that he might flee to another state, and that he took the gun and hid it in a cabinet underneath Hill's kitchen sink. Having admitted to Hill that he shot someone, the jury could conclude that Jones knew his conduct would have triggered an investigation. Also from Hill's testimony, the jury could have concluded Jones' purpose in removing the shell casings and bullets from the gun and placing the gun under Hill's kitchen sink was to conceal the gun from the police. Thus, construing the evidence in the light most favorable to the prosecution, the state presented sufficient evidence to allow a rational trier of fact to find, beyond a reasonable doubt, that Jones purposely concealed evidence pivotal to the investigation into the shooting.

### **3. Having a Weapon While Under Disability**

{¶ 21} R.C. 2923.13(A)(2) provides, in relevant part, that "[u]nless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if \* \* \* [t]he person is under indictment for or has been convicted of any felony offense of violence."

{¶ 22} Jones does not develop an argument with respect to the sufficiency of the evidence presented to convict him of having a weapon while under disability. The record, however, indicates the state presented sufficient evidence that Jones was under a disability by virtue of his prior criminal record, and that he knowingly acquired, had, carried, or used a firearm.

{¶ 23} Construing the evidence in the light most favorable to the prosecution, the state presented sufficient evidence to allow a rational trier of fact to find, beyond a reasonable doubt, that Jones committed the offenses of murder, tampering with evidence,

and having a weapon while under disability. We next consider Jones' arguments with respect to the manifest weight of the evidence.

### **B. Manifest Weight of the Evidence**

{¶ 24} When presented with a manifest weight argument, an appellate court engages in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdict. *State v. Salinas*, 10th Dist. No. 09AP-1201, 2010-Ohio-4738, ¶ 32, citing *Thompkins* at 387. "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, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). Determinations of credibility and weight of the testimony are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Thus, the jury may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part, or none of a witness's testimony." *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67 (1964).

{¶ 25} An appellate court considering a manifest weight challenge "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." *State v. Harris*, 10th Dist. No. 13AP-770, 2014-Ohio-2501, ¶ 22, citing *Thompkins* at 387. Appellate courts should reverse a conviction as being against the manifest weight of the evidence only in the most "exceptional case in which the evidence weighs heavily against the conviction." *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 26} Jones argues the jury clearly lost its way when it determined Jones did not establish self-defense. "Self-defense is an affirmative defense, and the burden of going forward with the evidence of self-defense, as well as the burden of proof for demonstrating self-defense, rests with the accused." *State v. Rankin*, 10th Dist. No. 10AP-1118, 2011-Ohio-5131, ¶ 24, citing *State v. Palmer*, 80 Ohio St.3d 543 (1997); R.C. 2901.05(A).



{¶ 27} A defendant must prove self-defense by a preponderance of the evidence. *State v. Martin*, 21 Ohio St.3d 91, 93 (1986). To establish self-defense, a defendant must prove: (1) he was not at fault in creating the situation giving rise to the affray, (2) he had a bona fide belief that he was in imminent danger of death or great bodily harm and his only means of escape was the use of such force, and (3) he did not violate any duty to retreat or avoid the danger. *State v. Robbins*, 58 Ohio St.2d 74 (1979), paragraph two of the syllabus. A defendant may use only as much force as is reasonably necessary to repel the attack. *State v. Harrison*, 10th Dist. No. 06AP-827, 2007-Ohio-2872, ¶ 25, citing *State v. Jackson*, 22 Ohio St.3d 281 (1986). The elements of self-defense are cumulative, and "[i]f the defendant fails to prove *any one* of these elements \* \* \* he has failed to demonstrate that he acted in self-defense." (Emphasis sic.) *Jackson* at 284.

{¶ 28} To establish his claim of self-defense, Jones relies on his own trial testimony. Jones testified that he did not start the argument with the group of men inside the bar, and that the other man showed him a gun and told Jones he was going to kill him. Jones relied on his testimony regarding his past experiences as a victim of violent crimes to explain why he was so frightened by the man showing him a gun. Jones said he was afraid to turn his back on the man in light of his past experiences, and he said he pulled his weapon and fired because the other man reached for his gun first.

{¶ 29} The state's evidence undermined Jones' version of events. The surveillance camera footage showed that the three men were already outside when Jones left the bar, even though Jones testified that the men followed him out of the bar. The video further shows Jones having some sort of interaction with the three men, at one point talking to them at very close range. Despite testifying that he was afraid to turn his back on the men, Jones then turned away from the men and pulled his gun out, then turned back around to fire the weapon before walking away. Additionally, the security guard testified that Jones was "amped up" as soon as he came into the bar, and no other witness testified that anyone else had a gun, pulled a gun on Jones, or threatened Jones' life.

{¶ 30} Further, when Jones went to Hill's house, he told his cousin that he had been having "problems with another man at the bar," but he made no mention that anyone threatened him or that he feared for his life. See *State v. Ajumu*, 8th Dist. No. 95285, 2011-Ohio-2520, ¶ 29 (overruling a defendant's manifest weight challenge to his

murder conviction, finding the defendant's credibility suffered in his claim for self-defense because he failed to mention to his girlfriend immediately after the shooting that he acted in self-defense, "a claim that would appear to be immediately obvious from the circumstances that he claimed existed"). Similarly, during his interview with Detective Titus, Jones initially denied having any knowledge of the shooting, and he only raised his claim of self-defense when Detective Titus informed him the police had surveillance footage of the shooting.

{¶ 31} Given the conflicting evidence, we cannot say the jury clearly lost its way and created a manifest miscarriage of justice in determining Jones did not act in self-defense. When presented with the state's version of events, the jury did not find Jones' version to support self-defense by a preponderance of the evidence. Such a decision was within the province of the jury as the trier of fact.

{¶ 32} With regard to the tampering with evidence charge, Jones argues that conviction is against the manifest weight of the evidence because he testified that he did not know that he had actually hit anyone with a bullet when he went to his cousin's house, so he could not have been acting purposely when he hid the gun and removed his jacket. However, Hill testified that, as soon as he came into her home, Jones told her he shot someone. In light of the conflicting testimony, we cannot say the jury clearly lost its way in concluding Jones acted purposely in hiding the gun at his cousin's house.

{¶ 33} Finally, with respect to the having a weapon while under disability charge, Jones does not develop any argument as to the manifest weight of the evidence supporting that conviction.

{¶ 34} Following our independent review of the record, we conclude the jury did not clearly lose its way and create a manifest miscarriage of justice in finding Jones guilty of murder and tampering with evidence. Similarly, Jones' conviction for having a weapon while under disability is not against the manifest weight of the evidence. Because both the sufficiency and manifest weight of the evidence support Jones' convictions, we overrule Jones' sole assignment of error.

**IV. Disposition**

{¶ 35} Based on the foregoing reasons, both the sufficiency and manifest weight of the evidence support Jones' convictions. Having overruled Jones' sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

DORRIAN and BRUNNER, JJ., concur.

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