[Cite as *State v. Bradley*, 2015-Ohio-2496.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 14AP-774
v.	:	(C.P.C. No. 14CR-371)
Leroi W. Bradley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 23, 2015

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

Thompson Steward, LLC, and *Lisa F. Thompson*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Leroi W. Bradley, appeals from the judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's conviction is not against the manifest weight of the evidence, and appellant's trial counsel was not ineffective, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} On January 23, 2014, appellant was indicted for one count of attempted murder, in violation of R.C. 2923.02 and 2903.02, and one count of felonious assault, in violation of R.C. 2903.11, both with a corresponding firearm specification, as well as one count of having a weapon while under disability, in violation of R.C. 2923.13. The

indictment arose out of the shooting of Tony Dobson early in the morning on July 26, 2013 on Oakland Park Avenue in Columbus. Appellant entered a plea of not guilty to all charges. The case proceeded to a jury trial on the counts of attempted murder and felonious assault. Appellant voluntarily waived his right to a jury trial on the count of having a weapon while under disability, instead electing for that count to be tried by the judge.

{¶ 3} During voir dire, the court noted that each prospective juror was a registered voter, and during general questioning, several jurors noted originally living outside of the United States. Juror Mavis Forson stated to the court, "I'm from Ghana. I've been here for nine years." (Tr. 37-38.) Juror Chris Joseph stated, "Moved down from Toronto about 16 years ago." (Tr. 42.) Defense counsel made no further inquiry or objection to either statement. Forson ultimately was selected to serve on the jury, while Joseph was selected as the second alternate juror. The plaintiff-appellee, State of Ohio, then produced the following relevant evidence in its case-in-chief.

{¶ 4} At trial, the victim of the shooting, Tony Dobson, testified that he first met appellant approximately seven or eight months prior to the shooting incident when Dobson's daughter, who was eight months pregnant, gave both men a ride in her two-door rental car. During the ride, Dobson sat next to appellant in the back seat, and Dobson's nephew sat in the front passenger seat. When they arrived at appellant's destination, Dobson testified that appellant attempted to exit the vehicle through the driver-side door, pushing the driver's seat forward in the process. Concerned for his daughter's pregnancy, he yelled at appellant to exit through the passenger-side door.

{¶ 5} Appellant exited the passenger-side door, followed by Dobson. While out of the car, the men exchanged heated words, with appellant allegedly shouting "I'll whip your ass" and "I'll kick your ass," and Dobson responding "Yeah. I got something for you" in reference to the pocket knife that he carried. (Tr. 163-64.) At the urging of his daughter and nephew, Dobson got back in the car. Before they drove away, Dobson recalled appellant saying "Don't worry. I catch your ass later. I'll see your ass later." (Tr. 164.) Dobson did not know appellant's name at the time.

{¶ 6} Dobson did not see or hear anything about appellant over the next seven or eight months, until the evening he was shot. In the hours leading up to the shooting,

Dobson said he attended a barbeque at his parents' house and then later that night was dropped off outside of a friend's apartment located in the Oakland Park neighborhood. His friend was not home, so Dobson walked around the street to kill time. At approximately 2:45 a.m., Dobson ran into his friend's niece walking with appellant along a dark stretch of Oakland Park Avenue. His friend's niece recognized him and then Dobson recalled appellant saying "Who is that? That's Dopp? That's Dopp? * * * Didn't I tell you I will see your [sic] again? Remember all that shit I was talking last time you was with your daughter? Told you I'd get your ass." (Tr. 169-70.) Dobson testified he recognized appellant as the acquaintance of his daughter with whom he had had the altercation previously, but still did not know his name.

{¶ 7} According to Dobson, appellant then pulled out a revolver, and the friend's niece pushed appellant and told him not to shoot. Dobson testified that he put his hands in the air, but appellant shot him in the head and walked east toward Westerville Road. Dobson could see and feel blood on his head, but was still able to walk.[1] As he ran out of the area, Dobson heard appellant fire another shot at him, but the bullet did not strike him. Dobson made his way to a nearby fast-food restaurant on Cleveland Avenue, where employees called 911. Medics arrived and transported him to a hospital. At the hospital, Dobson was eventually able to track down appellant's street name, "Skee-Bop," and later learned appellant's real name. Dobson testified that he was "positive, a hundred percent sure" that appellant was the man who shot him. (Tr. 185.)

{¶ 8} On cross-examination, Dobson testified that he carried his pocket knife with him "[a]ll the time," but forgot the knife at home on the evening of the shooting. (Tr. 190.) Dobson admitted he had been drinking the evening of the shooting and had used cocaine within the previous few days, but denied using cocaine the evening of the shooting incident. Dobson also admitted he had been convicted of several crimes of violence in the past. Dobson denied that a confrontation had ensued where Dobson charged appellant with a knife after appellant allegedly hit him in the head with a gun.

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[1] Photographs taken at the hospital show a bullet entrance wound just above Dobson's left eye, wounds consistent with a bullet track wrapping around the side of his head, and an exit wound at the back of his head. The bullet never penetrated Dobson's skull.

{¶ 9} Officer Jared Barsotti of the Columbus Division of Police testified that he responded to a police dispatch stating a man had been shot and, upon arriving at the Cleveland Avenue fast food restaurant location, viewed Dobson lying on the ground with an injury to his face. Barsotti said when asked who shot him, Dobson pointed in a direction and replied that "somebody had walked up to him and said, 'I told you I was going to get you,' and shot him." (Tr. 217.)

{¶ 10} Officer Delbert Chapman of the Columbus Division of Police testified to investigating the shooting of Dobson. Chapman made contact with Dobson at the hospital and observed wounds on Dobson's face consistent with a gunshot. Chapman took pictures of the wounds and later responded to the scene where the shooting occurred. On cross-examination, Chapman confirmed that police collected one spent projectile from the shooting scene and also agreed that he never ruled out that some of Dobson's eye swelling could have been a result of being hit by a gun.

{¶ 11} Officer James Howe of the Columbus Division of Police homicide unit and lead investigator on the Dobson shooting case testified that he was able to conduct an interview with Dobson after he arrived at the hospital. According to Howe, Dobson told him that a person he knew from a prior incident had shot him and that Dobson could find out the shooter's name from his daughter. Five days later, Howe conducted a follow-up telephone interview with Dobson in which Dobson gave Howe appellant's street name and described the prior car ride altercation in more detail. Dobson later contacted police to provide appellant's real name. Howe described recovery of one bullet from the scene of the shooting, the police work in canvassing the area for witnesses, and Dobson's positive identification of appellant in a photo line-up. Howe further testified that police were unable to locate the woman who walked with appellant and witnessed the shooting.

{¶ 12} Howe also described a taped conversation that he had with appellant a month after the shooting. In this conversation, appellant denied shooting Dobson, knowing Dobson or his daughter, being in the area the night of the shooting, knowing anyone in the area of the shooting, or ever even being in the Oakland Park neighborhood in his life. According to Howe, appellant could not identify exactly where he was the evening of the shooting, but said he was probably asleep. Howe testified that appellant never contended he acted in self-defense.

{¶ 13} Also during the conversation, appellant provided Howe with an incorrect cell phone number, but Howe was eventually able to track down appellant's correct cell phone number in order to examine his phone records. Howe determined that appellant's cell phone accessed the cell tower located in the general Oakland Park crime scene vicinity a couple of times prior to the shooting and did not access the tower during the actual time of the crime.

{¶ 14} The state admitted several exhibits, including Dobson's medical records, the crime scene photographs, photographs of Dobson at the hospital, a photo array, a rights waiver, and the projectile collected from the crime scene. The state then rested its case-in-chief.

{¶ 15} The defense stipulated to the issue of identity, admitting that appellant was the person who shot Dobson. Appellant then testified on his own behalf that he acted in self-defense. Appellant stated that, as a result of being stabbed during an unrelated incident in 2004 and almost dying from those wounds, he carried a gun for protection. According to appellant, when he came across Dobson on Oakland Park Avenue, Dobson became belligerent and advanced toward appellant with a knife. Appellant testified that he stepped back, pulled out a gun, and used the gun to hit Dobson on the head, causing Dobson to fall to the ground. He then fired one shot to try to scare Dobson away, but Dobson instead "jump[ed] up immediately" and charged him with the knife. (Tr. 334.) Appellant testified that he aimed the gun toward Dobson and, in a panic, shot him. Appellant said he saw Dobson fall down and then appellant fled the scene.

{¶ 16} According to appellant, he shot Dobson because he feared serious injury to himself. He was particularly wary of knife fights because of his 2004 stabbing and particularly wary of Dobson because of his aggressive conduct during their prior car altercation which, in appellant's version of events, included Dobson acting belligerent and pulling a knife on him over an overwhelming need for more beer. Appellant testified that he had six bullets in his gun, but did not fire them because he just wanted to get Dobson away from him. Appellant also explained that he did not tell the police he acted in self-defense because he was afraid that police would charge him with a crime, and he generally wanted nothing to do with the police.

{¶ 17} On cross-examination, appellant admitted he was intoxicated on the night of the shooting, he had been previously convicted of dealing cocaine, and he was not supposed to be carrying a weapon. Appellant confirmed that after shooting Dobson, he went to an after-party where he drank beer and did not call an ambulance or the police. Appellant also admitted that he repeatedly lied to police throughout the investigative process.

{¶ 18} Each party then rested its case. After deliberations, the jury returned a verdict of not guilty on the attempted murder with specification count and guilty on the felonious assault with specification count. The judge found appellant guilty of having a weapon while under disability. A sentencing hearing was held on September 4, 2014, after which the judge sentenced appellant to 4 years of incarceration for the felonious assault charge, plus a consecutive mandatory 3 years of incarceration for the firearm specification, and 36 months of incarceration for the weapons count to be served concurrently with the felonious assault sentence.

II. ASSIGNMENTS OF ERROR

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

> [I.] The trial court violated Leroi Bradley's rights to due process and a fair trial when it entered a judgment of guilt against him, when that finding was against the manifest weight of the evidence.
>
> [II.] Leroi Bradley's attorney provided him with the ineffective assistance of counsel and violated his right to due process and a fair trial where defense counsel failed to object to the impaneling of jurors.

III. DISCUSSION

A. First Assignment of Error

{¶ 20} Appellant's first assignment of error asserts that his convictions were against the manifest weight of the evidence because appellant proved the affirmative defense of self-defense by a preponderance of the evidence. We disagree.

{¶ 21} 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. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), 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. "A conviction is not against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version." *State v. Klinkner*, 10th Dist. No. 13AP-469, 2014-Ohio-2022, ¶ 51, *appeal not allowed*, 140 Ohio St.3d 1453, 2014-Ohio-4414. *See also State v. Seals*, 2d Dist. No. 04CA0063, 2005-Ohio-4837, ¶ 47-48 (trial court did not lose its way in rejecting claim of self-defense where testimony conflicted regarding how fight started and jury believed the victims' version of events).

{¶ 22} In conducting a manifest weight of the evidence review, an appellate court 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.

{¶ 23} Furthermore, while the state bears the burden of proving the elements of a crime beyond a reasonable doubt, it is the defendant who must prove, by a preponderance of the evidence, the affirmative defense of self-defense. R.C. 2901.05(A); *State v. Martin*, 21 Ohio St.3d 91, 94 (1986), *aff'd*, 480 U.S. 228 (1987). 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 from such danger was the use of such force, and (3) he must not have violated any duty to retreat or avoid the danger. *State v. Robbins*, 58 Ohio St.2d 74 (1979), paragraph two of the syllabus. 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.) *State v. Jackson*, 22 Ohio St.3d 281, 284 (1986), *cert. denied*, 480 U.S. 917 (1987) . In defending oneself, a person may only use as much force as is reasonably necessary to repel the attack. *Id.*; *State v. Thomas*, 77 Ohio St.3d 323, 329-30 (1997).

{¶ 24} To establish his claim of self-defense, appellant relies on his own trial testimony. Appellant testified that Dobson initially approached him belligerently and with a knife drawn, so appellant struck Dobson in the head with the gun, causing Dobson to fall to the ground. Appellant testified that when Dobson was on the ground, appellant fired a shot to scare Dobson away, but Dobson instead jumped up and charged at appellant with the knife.

{¶ 25} Dobson's testimony contradicted appellant's testimony in most respects. Dobson testified that appellant referenced the prior car altercation and shot him even after Dobson raised his hands to show he was unarmed. If believed, Dobson's testimony established that appellant was at fault in creating the situation giving rise to the altercation and that appellant did not believe he was in danger but shot at Dobson deliberately over the prior car altercation. Dobson's consistent statements to police strengthen the believability of Dobson's version of the incident. Minutes after being shot, Dobson told responding Officer Barsotti that "somebody had walked up to him and said, 'I told you I was going to get you,' and shot him." (Tr. 217.) Since that point, his story has not waivered. Conversely, appellant's version of events changed dramatically, from claiming to have never been in the neighborhood in his life to admitting, for the first time at trial, that he was the person who shot Dobson. Appellant's testimony that he repeatedly lied to police and gave a false cell phone number to police further marred appellant's credibility.

{¶ 26} The jury here, in exercising its entitlement to weigh credibility and resolve conflicts in evidence, believed Dobson's version of events over appellant's version of events. Based on this record, this is not the exceptional case in which the evidence weighs

heavily against the conviction such that the jury clearly lost its way and created such a manifest miscarriage of justice.

{¶ 27} Accordingly, the jury's rejection of appellant's claim of self-defense was not against the manifest weight of the evidence, and, therefore, appellant's first assignment of error is overruled.

B. Second Assignment of Error

{¶ 28} In his second assignment of error, appellant asserts that he received ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, appellant must show that (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced appellant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶ 29} In order to show counsel's performance was deficient, appellant must prove that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* The operative test evaluates whether "counsel's performance fell below an objective level of reasonable representation." *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133. The appellant must overcome the strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. *Strickland* at 689. To show prejudice, appellant must establish that there is a "reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different." *Jackson* at ¶ 133.

{¶ 30} Appellant argues that his trial counsel's conduct was deficient because counsel "fail[ed] to object to the impaneling of two jurors [Forson and Joseph] without inquiring first whether those jurors possessed the requisite [citizenship] qualifications to serve." (Appellant's Brief, 12.) According to appellant, had counsel not made these errors, "the outcome would have been different [because] [t]he jury pool would have had a different mixture of jurors who, as a panel, would have likely * * * found [appellant] not guilty." (Appellant's Brief, 16.)

{¶ 31} "In evaluating a claim of ineffective assistance of counsel based on counsel's failure to file a motion or make an objection, we must consider whether such an objection would have been meritorious." *State v. Cashin*, 10th Dist. No. 09AP-367, 2009-Ohio-

6419, ¶ 12, citing *State v. Lott*, 51 Ohio St.3d 160 (1990). Where the claim of ineffective assistance of counsel is brought on direct appeal and the record does not provide an evidentiary basis to make this determination, the assignment of error must be overruled. *State v. Belcher*, 10th Dist. No. 86AP-982 (Sept. 15, 1987); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980) ("When * * * the reviewing court has nothing to pass upon * * * as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm."); *State v. Murphy*, 91 Ohio St.3d 516, 539 (2001) ("[s]ince the burden of showing attorney error is on appellant, we cannot presume such error"). Furthermore, " '[s]peculation as to what additional evidence might have revealed is insufficient to succeed on an ineffective assistance of counsel claim.' " *State v. Kovacic*, 11th Dist. No. 2010-L-065, 2012-Ohio-219, ¶ 51, quoting *State v. Pruiett*, 9th Dist. No. 21889, 2004-Ohio-4321, ¶ 32.

{¶ 32} The Ohio Revised Code requires a person to be a United States citizen in order to qualify as a juror. *State v. Montiero*, 189 Ohio App.3d 655, 2010-Ohio-4076, ¶ 7-10 (12th Dist.); R.C. 2313.06; R.C. 3503.01(A). The record reveals that during voir dire, juror Forson stated she was originally from Ghana and alternate juror Joseph stated he was originally from Toronto, which arguably could refer to Toronto, Canada. Nonetheless, the record does not provide an evidentiary basis to sustain appellant's assignment of error. Both stated that they currently live and work in Ohio and have for many years. Nothing in the record suggests they did not later gain citizenship in the United States. To the contrary, at the outset of voir dire, the trial judge stated that all the prospective jurors were "registered voters." (Tr. 17-18.) The Ohio Constitution and statutes pertaining to voter qualification and registration require voters to be United States citizens. Ohio Constitution, Article V, Section 1; R.C. 3503.01(A) and 3503.07. Therefore, the record supports only that Forson and Joseph were United States citizens.

{¶ 33} Additionally, we are unable to evaluate from this record whether the jurors' answers to citizenship questioning by counsel would have resulted in a successful challenge to the juror qualifications. Likewise, no record evidence suggests the reasonable probability that the presence of another juror in place of the regular juror, Forson, would have produced a finding of not guilty, as appellant speculates. The removal of Joseph would have had no impact on case outcome since, as the second alternate juror,

he did not serve on the regular jury and would not have been placed on the regular jury even if Forson had been excused.

{¶ 34} Without record evidence that further inquiry or objection would have been meritorious and produced a different result, appellant has not demonstrated a deficiency in his trial counsel's performance which resulted in prejudice to him. Accordingly, appellant has not met the *Strickland* standard, and appellant's second assignment of error is overruled.

IV. CONCLUSION

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

Judgment affirmed.

TYACK and LUPER SCHUSTER, JJ., concur.
