[Cite as *State v. Daniels*, 2015-Ohio-2649.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 14AP-326
v.	:	(C.P.C. No. 13CR-06-3025)
Charles T. Daniels,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2015

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

Siewert & Gjostein Co., LPA, and *Thomas A. Gjostein*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Charles T. Daniels, appeals from a judgment of conviction entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} On May 21, 2013, a group of men gathered on Stoddart Avenue on the east side of Columbus, Ohio. This group included Demtrius Hunter, Tommy Lovely, and Andre Martin. All three men grew up in the neighborhood and were hanging out on the street because it was a nice day. Hunter's blue car was parked on the west side of the street.

{¶ 3} Later in the day, a second group of men, including appellant and his brother Dontay, drove to the same area on Stoddart Avenue. They parked on the east side of the street. This second group of men had also grown up in the neighborhood and knew men in the first group. An argument broke out between appellant and Martin. The argument turned physical. Appellant and Martin exchanged punches near appellant's car on the east side of the street.

{¶ 4} Other people present at the scene separated appellant and Martin. Subsequently, appellant's brother retrieved a gun from a car and either pretended to or was unable to fire the gun at Martin. Appellant took the gun from his brother and fired at Martin as Martin ran towards Hunter's car. Appellant, still shooting, followed Martin to the passenger side of Hunter's car, where Martin fell down. Lovely, who was in front of Hunter's car, started shooting at appellant. Lovely then fled when his gun malfunctioned. Lovely believed that appellant shot at him while he was running away.

{¶ 5} Martin was shot twice and died from one of the gunshot wounds. There were no bullets found in Martin's body. Police did find nine shell casings near Hunter's car. Testing revealed that one gun fired all of those casings. Police did not, however, find that gun. They did conclude that Lovely's gun, which they obtained during their investigation, did not fire the casings.

{¶ 6} As a result of these events, a Franklin County Grand Jury indicted appellant with one count of aggravated murder, with a firearm specification, in violation of R.C 2903.01 and one count of having a weapon while under disability in violation of R.C. 2923.13. Appellant entered a not guilty plea to the charges and proceeded to a jury trial.

{¶ 7} The state's witnesses testified to the above described events. Appellant presented a witness to the events, Maurice Moxley, who testified that the encounter began when Martin punched appellant in the face. Moxley then heard shots and saw Lovely shooting in front of Hunter's car at Martin and appellant. He did not see appellant with a gun. In closing arguments, appellant's trial counsel argued to the jury that appellant did not shoot Martin and that he only picked up a gun in self-defense after Lovely started to shoot at him. The jury rejected appellant's version of events and found him guilty of both charges and the trial court sentenced him accordingly.

II. The Appeal

{¶ 8} Appellant appeals and assigns the following errors:

> 1. The application of Criminal Rule 16(D) & (F), as permitted by the trial court undermined the appellant's Fourteenth Amendment right to Due Process, as well as his Sixth Amendment right to effective representation of counsel.
>
> 2. The trial court caused a violation of appellant's right to due process under the Fourteenth Amendment in refusing to rule that certain useful evidence was exculpable in being lost or destroyed after the state relinquished custody and control state (sic).
>
> 3. The trial court violated the appellant's rights pursuant to the compulsory process and confrontation clauses of the Sixth Amendment, as well as, the Fifth and Fourteenth Amendment rights of due process of the United States Constitution and Section 10, Article I of the Ohio Constitution in depriving the defendant his right to recall a witness already under subpoena for further cross-examination with favorable testimony.
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> 4. The state engaged in prosecutorial misconduct by improper inferences on cross-examination of a defense witness with a leading question designed to elicit impermissible hearsay which caused incurable prejudice to the jury and the failure to object by the defense counsel was ineffective assistance.
>
> 5. Trial court substantially violated the appellant's right to a fair trial under the Sixth Amendment and due process under Fourteenth Amendment of the United States Constitution and Article I of the Ohio Constitution and committed substantial prejudice and plain error in instructing on self-defense for having weapons while under a disability, but not for the aggravated murder charge.
>
> 6. The trial court improperly sentenced the appellant without the benefit of a presentence investigation which served to render the sentence as cruel and unusual under the Eighth Amendment to the United States Constitution.
>
> 7. Appellant's conviction was not supported by the sufficiency of the evidence in violation of the due process clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Sections 1 & 16 of the Ohio Constitution and the conviction was also against the manifest weight of the evidence.

A. Appellant's First Assignment of Error–Crim.R. 16 Nondisclosure

{¶ 9} Before trial, and pursuant to Crim.R. 16(D)(1), the state did not disclose certain documents to appellant. The documents in question appear to have been four summaries of witness interviews as well as a criminal investigation summary. The documents, however, were not made part of the record. The state alleged that disclosure of the documents would subject the witnesses to harm or a threat or risk of harm because the witnesses knew the individuals involved in the case and they were afraid of the defendant and his family. (Tr. 3-5.) Appellant requested an in camera hearing for the trial court to determine whether the state's nondisclosure was an abuse of discretion. Crim.R. 16(F).

{¶ 10} Following a hearing, the trial court concluded that the prosecutor's certification was not an abuse of discretion. The trial court noted evidence of one or two threats which justified the state's position. (Tr. 12.) In accordance with Crim.R. 16(F)(5), the trial court then ordered the state to disclose the nondisclosed material to appellant before the beginning of trial. Specifically, the trial court instructed the state to disclose the material no later than the morning before jury selection. The state complied with this order. (Tr. 25.)

{¶ 11} Appellant now contends the trial court's finding that the state did not abuse its discretion was in error. Because the nondisclosed materials were not made part of the record below, appellant did not preserve this issue for appellate review. We cannot review a trial court's decision if we lack the materials the trial court considered in making its decision. *State v. Darrah*, 12th Dist. No. CA2006-09-109, 2007-Ohio-7080, ¶ 29; *State v. Hebdon*, 12th Dist. No. CA2012-03-052, 2013-Ohio-1729, ¶ 54.

{¶ 12} Appellant also contends that the trial court's application of these rules violated his constitutional rights to due process and to the effective assistance of counsel. Appellant did not make any constitutional challenges in the trial court. Constitutional challenges not raised in the trial court are forfeited and may not be asserted in the first instance in this court. *State v. Kenney*, 10th Dist. No. 09AP-231, 2009-Ohio-5584, ¶ 11, citing *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. Accordingly, we decline to consider this constitutional challenge.

{¶ 13} For these reasons, we overrule appellant's first assignment of error.

B. Appellant's Second Assignment of Error–The Destruction of Evidence?

{¶ 14} A month after appellant's indictment, his trial counsel filed a "Motion to Preserve Evidence." The motion generally requested the state to preserve all discoverable evidence. On December 31, 2013, two months before trial, appellant filed a more specific motion, requesting that the state produce for inspection Hunter's blue Oldsmobile Intrigue that he parked on Stoddart Avenue the day of the shooting. The police had impounded the car and examined it, discovering several apparent bullet holes in the car. They did not find any projectiles in the car. After inspecting the car, the state released it to Hunter. That occurred months before appellant's December 31, 2013 specific request for the car. There is no indication regarding the location of the car at the time of trial.

{¶ 15} Appellant raised the issue of the state's failure to produce the car before trial. The state informed the trial court that it did not know where the car was located because it had been released to its owner. (Tr. 10.) The state did note that the police took photos of the car and also collected evidence from it. Appellant argued that the car itself was potentially exculpatory because the angles of the bullet holes in the car were never tested and it was not determined whether the bullet holes were old or new. Appellant asked the trial court to dismiss the charges based upon the state's failure to preserve the car. The trial court denied that request, instructing counsel to raise those issues in cross-examination. (Tr. 13-14.)

{¶ 16} Appellant argues that the state violated his due process rights by failing to preserve potentially useful evidence, the car, in bad faith. We disagree.

{¶ 17} Whether the state's failure to preserve evidence rises to the level of a due process violation depends on whether the lost or destroyed evidence involves "material exculpatory evidence" or "potentially useful evidence." *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, ¶ 73. Evidence is constitutionally material when it possesses "an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Id.* at ¶ 74, quoting *California v. Trombetta*, 467 U.S. 479, 489 (1984). If evidence is materially exculpatory, its suppression violates a defendant's

due process rights, and requires dismissal of the charge. *State v. Glunt*, 10th Dist. No. 09AP-962, 2010-Ohio-3024, ¶ 9, citing *State v. Johnston*, 39 Ohio St.3d 48 (1988). If the evidence in question is not materially exculpatory, but only potentially useful, the defendant must show bad faith on the part of the state in order to demonstrate a due process violation. *Powell* at ¶ 77, quoting *State v. Geeslin*, 116 Ohio St.3d 252, 2007-Ohio-5239, ¶ 10.

{¶ 18} Appellant argues that the state should have preserved the car so that it could have been inspected and tested for exculpatory or useful evidence. He claims that the bullet holes in the car could have been tested for trajectory angles and that the car could have been searched for other bullet holes and spent projectiles. In making this argument, appellant concedes that the car was potentially useful, not materially exculpatory. *Id.* at ¶ 79, citing *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988) (potentially useful evidence is that "which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant."). Therefore, appellant argues that the state's failure to preserve the car was done in bad faith. We disagree.

{¶ 19} Bad faith implies something more than mere bad judgment or negligence; rather, "[i]t imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud." *Glunt* at ¶ 16, qouting *State v. Benson*, 152 Ohio App.3d 495, 2003-Ohio-1944, ¶ 14 (1st Dist.) (citations omitted); *Powell* at ¶ 81. The defendant bears the burden of showing that the state acted in bad faith. *State v. Rivas*, 121 Ohio St.3d 469, 2009-Ohio-1354, ¶ 14.

{¶ 20} In the trial court, appellant did not argue that the state acted in bad faith. Here, appellant's argument in support of its claim of bad faith is based on this court's decision in *State v. Forest*, 36 Ohio App.3d 169 (10th Dist.1987), in which we recognized that the state has a constitutional duty to respond in good faith to a defense request to preserve specific items of evidence. *See State v. Woodson*, 10th Dist. No. 03AP-736, 2004-Ohio-5713, ¶ 30. In that case, we concluded that it was "probably quite likely" that the state acted in bad faith because it failed to preserve the evidence in question despite a specific request to preserve the evidence which was never answered. *Forest* at 172. We further held that upon such a showing of bad faith, the burden shifts to the state to prove that the evidence is not materially exculpatory. *Id.* at 173; *but see State v. Combs*, 5th

Dist. No. 03CA-C-12-073, 2004-Ohio-6574, ¶ 19 (noting the district's consistent rejection of the burden shifting analysis in *Forest*).

{¶ 21} This court has limited *Forest* to situations where a defendant requested a specific item of evidence and the state did not respond to that request prior to the destruction of that evidence. *State v. Groce*, 72 Ohio App.3d 399, 402 (10th Dist.1991) ("The burden-shifting remedy of *Forest* has limited application, and was applied in *Forest* where the state failed to respond in good faith to a defendant's request to preserve evidence."); *Woodson* at ¶ 31. *See also State v. Acosta*, 1st Dist. No. C-020767, 2003-Ohio-6503, ¶ 7 (distinguishing *Forest* because in that case, "defendant made an immediate, specific request for discovery and/or preservation of the evidence in question, which the state ignored"); *State v. Tarleton*, 7th Dist. No. 02-HA-541, 2003-Ohio-3492, ¶ 22 (same).

{¶ 22} Here, the police released the car months before appellant's specific request for the preservation of the car. Thus, appellant's reliance on *Forest* is misplaced. Additionally, there is nothing else that indicates the state acted in bad faith by releasing the car. The police released the car only after they had completed searching, inspecting, and taking pictures of it.

{¶ 23} Appellant has not demonstrated that the state acted in bad faith in failing to preserve potentially useful evidence. Accordingly, we overrule his second assignment of error.

C. Appellant's Third Assignment of Error–The Right to Recall a Witness

{¶ 24} Crystal Chambliss testified in the state's case-in-chief. She lived on Stoddart Avenue on May 21, 2013. She heard the commotion outside of her house that day and looked out her window to the street. She saw appellant shooting a gun at Martin. She also heard someone else shooting a gun but did not know who that was or where the shots were coming from.

{¶ 25} After her testimony, the state provided appellant's trial counsel with a CD that contained Chambliss' recorded police interview. Trial counsel objected to the untimely production and noted that the recorded interview would have been helpful in the cross-examination of the witness. The prosecutor claimed that they were not aware that

Chambliss' interview had been recorded until she testified. The prosecutor then obtained a copy of the recording. The prosecutor conceded that Chambliss could be recalled if there were any inconsistencies between her testimony and the recorded police interview. (Tr. 345.) After listening to the interview, appellant's trial counsel asked for Chambliss to be recalled for further cross-examination. The trial court ordered the state to bring her back the next day. (Tr. 441-42.)

{¶ 26} The next day, however, appellant's trial counsel told the trial court that she did not need to recall Chambliss because her concerns would be cured through the testimony of another witness, Detective Callahan, who interviewed Chambliss. (Tr. 613-14.) Appellant's trial counsel decided to ask Detective Callahan about his recollection of the interview with Chambliss and, as a result, did not need to recall Chambliss.

{¶ 27} Appellant now argues that the trial court erred by not permitting appellant's counsel to recall Chambliss. We disagree. Trial counsel told the trial court that she did not need to recall Chambliss. Instead, she questioned Detective Callahan about his interview of Chambliss. The trial court did not prevent appellant from recalling Chambliss. Appellant's trial counsel chose not to recall her. Therefore, we overrule appellant's third assignment of error.

D. Appellant's Fourth Assignment of Error–Prosecutorial Misconduct

{¶ 28} In appellant's case, his trial counsel called the defense's investigator, Robert Britt. During the state's cross-examination of that witness, the prosecutor asked Britt if he was aware that appellant had made a statement to the police in which he indicated that he fired a gun that day. Without objection, Britt answered that he had read appellant's statement and that appellant told the police that he fired a gun that day and that Martin was not firing a gun. Appellant claims that the prosecutor's question was impermissible because appellant's statement was inadmissible hearsay. We disagree.

{¶ 29} Because appellant's trial counsel did not object to this instance of alleged prosecutorial misconduct, appellant has waived all but plain error. *State v. Cunningham*, 105 Ohio St.3d 197, 2004-Ohio-7007, ¶ 82; *State v. Gripper*, 10th Dist. No. 12AP-396, 2013-Ohio-2740, ¶ 12. Under Crim.R. 52(B), plain errors affecting substantial rights may be noticed by an appellate court even though they were not brought to the attention of the

trial court. To constitute plain error, there must be: (1) an error, i.e., a deviation from a legal rule, (2) that is plain or obvious, and (3) that affected substantial rights, i.e., affected the outcome of the trial. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). Even if an error satisfies these prongs, appellate courts are not required to correct the error. Appellate courts retain discretion to correct plain errors. *Id.*; *State v. Litreal*, 170 Ohio App.3d 670, 2006-Ohio-5416, ¶ 12 (10th Dist.). Courts are to notice plain error under Crim .R. 52(B) " 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Barnes*, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of syllabus.

{¶ 30} We find no error in the prosecutor's question. The question concerned a statement appellant himself made to the police and was offered against him at trial. Such a statement is not hearsay and therefore admissible as an admission by a party-opponent pursuant to Evid.R. 801(D)(2)(a). *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, ¶ 112-13; *State v. Williams*, 10th Dist. No. 03AP-287, 2003-Ohio-6663, ¶ 17. Therefore, the admission of this testimony does not support appellant's prosecutorial misconduct argument.

{¶ 31} Similarly, we do not find that trial counsel's failure to object to the question constitutes ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, appellant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced him. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, (1984). The failure to make either showing defeats a claim of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989), quoting *Strickland* at 697. ("[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.").

{¶ 32} Because the testimony was admissible, trial counsel was not ineffective for failing to object. *State v. Hartman*, 93 Ohio St.3d 274, 298 (2001). Additionally, counsel's trial theory was to concede that appellant fired a gun at Lovely but did so in self-defense. Trial counsel further argued that it was Lovely who shot Martin. Thus, we fail to

see how appellant was prejudiced by the admission of a statement that he fired a gun that day.

{¶ 33} For all these reasons, we overrule appellant's fourth assignment of error.

E. Appellant's Fifth Assignment of Error–The Self-Defense Jury Instruction

{¶ 34} In this assignment of error, appellant contends that the trial court should have instructed the jury on self-defense for the aggravated murder charge. We disagree.

{¶ 35} Before trial, appellant filed proposed jury instructions that included self-defense instructions for both the aggravated murder charge and the having a weapon while under disability ("WUD") charge. Self-defense can be a proper defense to a WUD charge. *State v. Wilson*, 8th Dist. No. 86092, 2006-Ohio-1333, ¶ 23; *Gripper* at ¶ 25-26. During trial, however, appellant's trial strategy changed. Appellant's counsel argued that it was Lovely who shot Martin and that appellant only fired a gun at Lovely in self-defense.

{¶ 36} In deciding what instructions to give the jury, the trial court noted that most of the discussions centered around the self-defense instruction. Appellant requested that the trial court not instruct the jury on self-defense for the aggravated murder charge but to do so for the WUD charge. (Tr. 872-73.) An instruction on self-defense would have been inconsistent with appellant's contention that Lovely shot Martin.

{¶ 37} Appellant now argues that the trial court erred by not instructing the jury on self-defense for the aggravated murder charge. We disagree for two reasons. First, under the invited-error doctrine, appellant cannot complain of any alleged error because he requested the trial court not to provide the instruction. *State v. Bey*, 85 Ohio St.3d 487, 493 (1999). Second, even if we were to consider this argument on its merits, trial counsel did not request the self-defense instruction and has, therefore, forfeited all but plain error in this regard. *State v. Johnson*, 10th Dist. No. 08AP-652, 2009-Ohio-3383, ¶ 37. Where the failure to request a jury instruction was the result of a deliberate, tactical decision of trial counsel, it does not constitute plain error. *Id.*, citing *State v. Riley*, 10th Dist. No. 06AP-1091, 2007-Ohio-4409, ¶ 5. Here, it appears that counsel's decision not to request the self-defense instruction was a deliberate tactical decision. Counsel's trial theory was that appellant did not shoot Martin. Rather, it was Lovely who shot Martin. A self-

defense instruction on the aggravated murder charge would have been inconsistent with that theory because it would have been an admission that appellant shot Martin.

{¶ 38} For each of these reasons, the trial court did not err by not instructing the jury on self-defense for the aggravated murder charge. We overrule appellant's fifth assignment of error.

F. Appellant's Sixth Assignment of Error–Sentencing

{¶ 39} Appellant requested the trial court to sentence him immediately after the jury returned its verdicts. The trial court complied with the request and, following a lunch break, sentenced appellant. He now argues in this assignment of error that the trial court erred by sentencing him without the benefit of a presentence investigation ("PSI"). We disagree.

{¶ 40} First, appellant has not demonstrated that the trial court was required to have a PSI before sentencing him. Crim.R. 32.2 only requires a PSI before a trial court imposes community control sanctions or grants probation. The trial court could not impose community control for an aggravated murder conviction. R.C. 2929.03(A). The trial court sentenced appellant to prison. Therefore, the trial court did not need a PSI. *State v. Bowman*, 7th Dist. No. 03-BE-40, 2004-Ohio-6372, ¶ 21-25. *See also State v. Middlebrooks*, 6th Dist. No. L-08-1196, 2010-Ohio-2377, ¶ 43, citing *State v. Arios*, 8th Dist. No. 91506, 2009-Ohio-5814, ¶ 33 (noting that "presentence investigation reports are discretionary when a court sentences a felony offender to a prison term.").

{¶ 41} Even if the trial court had erred by sentencing appellant without a PSI, the doctrine of invited error again applies to this assignment of error. *State v. Campbell*, 90 Ohio St. 3d 320, 324 (2000). Appellant requested that the trial court sentence him immediately after the verdict and the trial court complied with that request. Appellant therefore invited any error that he now alleges. Accordingly, we overrule his sixth assignment of error.

G. Appellant's Seventh Assignment of Error–Sufficiency and Manifest Weight of the Evidence

{¶ 42} In this assignment of error, appellant contends that his convictions are not supported by sufficient evidence and are also against the manifest weight of the evidence. Although sufficiency and manifest weight are different legal concepts, manifest weight

may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's conviction is supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 43} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). When presented with a challenge to the manifest weight of the evidence, 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. *Id.* at 387. 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 *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 44} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our 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. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-

6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 45} Appellant does not present any argument under this assignment of error, other than to highlight the previous assignments of error which, he concludes, should make it "obvious to this jury that insufficient evidence existed" and that "reasonable doubt existed on the guilty verdicts by the court." We have already rejected the previous assignments of error.

{¶ 46} Additionally, there is substantial evidence to support the jury's verdict. Lovely, Hunter, and Chambliss each testified that appellant shot Martin and that Lovely only fired at appellant after Martin had been shot. Also, the casings found at the murder scene were all fired by the same gun. Those casings did not match Lovely's gun. The only other person who witnesses testified fired a gun was appellant, who had just gotten into a fight with Martin. It is clear that the jury did not lose its way or create a manifest miscarriage of justice. This resolution also disposes of appellant's argument that his convictions are not supported by sufficient evidence. *Gravely*.

{¶ 47} Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Accordingly, we overrule his seventh assignment of error.

III. Conclusion

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

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.