

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-10-037
 :
 - vs - : OPINION
 : 10/12/2010
 :
 RICHARD CURTIS, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. CR2009-041

Jessica A. Little, Brown County Prosecuting Attorney, 200 East Cherry Street,
Georgetown, Ohio 45121, for plaintiff-appellee

Julie D. Steddom, 134 North Front Street, Ripley, Ohio 45167, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Richard Curtis, appeals his conviction for aggravated murder from the Brown County Court of Common Pleas. We affirm.

{¶2} On the evening of August 13, 1996, appellant contacted the private security staff at Lake Waynoka, the private gated community where appellant lived. Appellant stated that he needed help, claiming that his wife "Linda has shot herself again." Appellant then called 911. Officer Doug Henize, a ranger from the Lake Waynoka staff, was first on the scene. Officer Henize observed Linda Curtis in bed and

bleeding from the side of her head. He noted that her bedroom was quite cold from the air conditioning unit. He determined that she had been shot in the left temple. She was positioned on her back with her legs pulled up to her body and her knees in the air. Henize testified that she was covered by a blanket which was tucked around her so her hands were not visible. No weapon was found near the body. He noted a pillow with a bullet hole in it "laying along side the bed." The pillow, which matched the bed linens from appellant's separate bedroom, had blast damage consistent with a firearm being held in direct contact with the pillow at the time of discharge. Henize left the bedroom, secured the residence, and awaited the arrival of officers from the Brown County Sheriff's Office ("BCSO").

{¶13} Soon after, the life squad, officers from the BCSO, and coroner arrived at the scene. The BCSO conducted a search of the scene and found no signs of forced entry or burglary. A search of the house produced two shotguns and a rifle, but no handguns.

{¶14} The coroner found that death was due to a contact range gunshot wound to the head. Because no weapon was found, the manner of death was listed as "undetermined." The coroner concluded the time of death as "morning." The Montgomery County Coroner's Office performed the forensic autopsy for Brown County, finding that the time of death to be "late morning to early afternoon." Subsequent lab analysis indicated no gunshot residue on Linda's hands or feet. The bullet fragment recovered from Linda's head was identified as a ".38 Special .357 Magnum caliber, hollow-point design, a nylon-coated lead."

{¶15} The lead investigator from the BCSO and the coroner interviewed appellant on the night of Linda's death to gather information regarding the manner and time of death. Appellant stated that he had gone to bed a little before midnight in his

bedroom, which was across the hall from Linda's room. He told the coroner that he had been awakened briefly around 3:30 a.m. by what sounded like Linda arguing on the phone with someone. When he left for work that morning at 7:30 a.m., Linda's bedroom door was closed and he did not look in on her. Before going to work, appellant went to his mother's home in New Vienna, about an hour away. Appellant saw his brother and family shortly after 9:00 a.m. outside a bank in New Vienna, inquiring as to where his mother was. He then went to work. Appellant arrived home from work shortly after 7:30 p.m. He brought in groceries he had purchased and called for Linda. After hearing no response, he found her in bed. Appellant told the coroner that, because Linda had attempted suicide four months earlier by shooting herself twice in the stomach, he believed she had killed herself. Appellant denied ever seeing a gun. No arrests were made.

{¶6} The investigation was re-opened in 2001. The coroner filed an amended death certificate indicating the manner of death as "homicide" after receiving information that there had been no gunshot residue on Linda's hands. Once again, no arrests were made.

{¶7} In 2008, the BCSO re-opened the investigation, reviewing prior reports, retesting some items, checking the background of appellant, and interviewing about 50 individuals about the case. The coroner was asked to try to narrow the time of death. Noting that Linda's bedroom was very cool, combined with the fact that the body was in full rigor at the time he conducted the examination, the coroner estimated that death had occurred between 2:00 a.m. and 8:00 a.m. on August 13, 1996.

{¶8} During the course of the investigation, the BCSO discovered that appellant had numerous civil judgments against him in the year before Linda's death. Appellant was listed as the beneficiary on Linda's life insurance policy, although she had made

efforts to change the designation to her children before she died. Linda's children and others reported that Linda feared appellant would kill her. She had filed a domestic violence complaint against appellant in 1995, but dismissed it. The BCSO also received information that appellant had owned a Smith & Wesson .357 that was capable of firing a .38 round. The other potential suspect, Ruth Hunter, Linda's alleged lesbian lover, had died in the interim.

{¶19} BCSO Detective Carl Smith and Chief Deputy John Schadle traveled to Florida in November 2008 to interview appellant at his home. Appellant was cooperative and spoke with them for 56 minutes, but maintained his innocence. Based upon the BCSO investigation, appellant was arrested in Marion County, Florida.

{¶10} While waiting in the intake area of the Marion County jail, appellant allegedly struck up a conversation with Gerald Payne, an inmate at the jail awaiting an evidentiary hearing on the appeal of his 2007 sentence for burglary, kidnapping, and aggravated assault with a deadly weapon. Payne notified jail officers that he had information about appellant's case. According to Payne, appellant told him of his marriage to Linda; that she had been in an accident and was addicted to medication; she tried to kill herself twice before; she suffered from depression; one of her friends had died shortly before her death; and that he was tired of taking care of her and wanted away from her. Appellant allegedly told Payne that "he had disposed of the gun and no one would find it." Payne asked appellant if he relieved Linda of her suffering. Payne admitted that appellant did not outright confess to killing Linda, but hung his head down and shook his head in the affirmative.

{¶11} Appellant was charged with aggravated murder in violation of R.C. 2903.01(A) and murder in violation of R.C. 2903.02(A), both with a firearm specification. The case proceeded to jury trial.

{¶12} Officer Henize testified that when appellant returned from work around 7:30 p.m. on the evening of August 13, 1996, appellant drove into the Lake Waynoka community through the front gate, honked the horn of his car, and waived to the security personnel as he drove by. The officer testified that this was extremely rare because appellant always came through the unmanned gate on the other side of Lake Waynoka. The investigator testified that it was much closer and convenient for appellant to get to his residence from the grocery store using the back gate.

{¶13} Linda's daughter testified at trial. According to her, the Curtis' marriage was loveless. Appellant slept in a separate bedroom from Linda and the couple did not speak much. Linda's children also testified about several incidents of domestic violence by appellant against Linda in addition to the complaint filed in 1995. In the year preceding Linda's death, appellant moved to Florida for over six months. Linda's daughter testified that Linda was planning to divorce appellant. Following her attempted suicide, Linda told numerous people that she was afraid of appellant and she thought that he would kill her. She specifically told her friend, Teresa Enfinger, that if anything happened to her, "point your finger at Dick." Appellant returned to Florida following Linda's death.

{¶14} Appellant submitted two witnesses in defense, who claimed that Linda may have been seen at McDonald's drive-thru on the day or near the day she was killed and that she was afraid of Ruth Hunter. Hunter died years before and was at one time considered a possible suspect.

{¶15} The jury found appellant guilty as charged. Concluding that Count II was a lesser included offense of Count I, the trial court merged the offenses. Appellant was sentenced to life in prison with parole eligibility after 20 years with a consecutive three-year term for the gun specification. Appellant timely appeals, raising one assignment of

error:

{¶16} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HIS MOTION FOR ACQUITTAL BECAUSE THE EVIDENCE AGAINST HIM WAS INSUFFICIENT TO SUPPORT A CONVICTION, THEREBY DENYING HIM HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION."

{¶17} In his sole assignment of error, appellant submits arguments challenging the sufficiency and manifest weight of the evidence. Appellant argues that no physical evidence exists connecting him to the crime and no murder weapon was ever discovered. Further, appellant disagrees with many inferences presented at trial. Appellant argues it was impermissible to infer that because he was home during part of the time that Linda could have died, he did in fact kill her. Also, appellant claims it was impermissible to infer that, merely because he sold the marital residence following her death and returned to Florida, he was guilty of murdering Linda. Appellant notes that he gave all proceeds of the insurance policy to Linda's children. Appellant urges that the coroner's changed time of death "12 years after the fact" should not be credited. Additionally, appellant suggests that Ruth Hunter was responsible for the crime and a hole in the investigation exists because the police never questioned her. Finally, appellant argues that the jailhouse confession is not credible.

{¶18} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. See *State v. Carroll*, Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing the sufficiency of the

evidence underlying a criminal conviction, the appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *Carroll* at ¶117. In reviewing a record for sufficiency, "the 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." *Id.*

{¶19} While the test for sufficiency requires a determination as to whether the state has met its burden of production at trial, a manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *Id.*, citing *State v. Wilson*, Warren App. No. CA2006-01-007, 2007-Ohio-2298, ¶34. In determining whether a conviction is against the manifest weight of the evidence, the appellate court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. *Carroll*, 2007-Ohio-7075 at ¶118. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide. *Id.*; *State v. Ligon*, Clermont App. No. CA2009-09-056, 2010-Ohio-2054, ¶23.

{¶20} "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency. Thus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Carroll* at ¶119, quoting *Wilson* at ¶35.

{¶21} To convict a defendant of "aggravated murder" under R.C. 2903.01(A), the

state must prove that the defendant purposely, with prior calculation and design, cause the death of another. "Murder" under 2903.02(A) is defined as "no person shall knowingly cause the death of another * * *." Prior calculation and design is not required. Id.

{¶22} After review of the record, we cannot say the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. Although much of the evidence against appellant was circumstantial, a conviction based on purely circumstantial evidence is no less sound than one based on direct evidence. *Michalic v. Cleveland Tankers, Inc.* (1960), 364 U.S. 325, 330, 81 S.Ct. 6. Circumstantial evidence and direct evidence have the same probative value, and in some instances, certain facts can only be established by circumstantial evidence. *State v. Mobus*, Butler App. No. CA2005-01-004, 2005-Ohio-6164, ¶51, citing *Jenks*, 61 Ohio St.3d at 272.

{¶23} The state presented evidence establishing that appellant had the means, motive, and opportunity to murder Linda. By his own admission, appellant was in the home during the time frame provided by the coroner. The coroner estimated that the time of death occurred between 2:00 a.m. and 8:00 a.m. Appellant admitted being at the house during much of this time, claiming he left around 7:30 a.m. According to testimony presented at trial, appellant had a history of domestic abuse toward Linda. Although the murder weapon was never recovered, the state presented testimony that appellant had owned a .357 magnum handgun that was capable of shooting a .38 caliber round similar to the bullet that was used to kill Linda. Further, the pillow used to muffle the sound of the gun shot was covered with bed linens matching those in appellant's bedroom.

{¶24} The state established prior calculation and design by the fact that the

pillow from appellant's bedroom was placed between the gun and the victim, showing that appellant entered Linda's bedroom with the intent to shoot her. Additionally, the state submitted testimony that Linda feared appellant would kill her. According to her friend Teresa Enfinger, Linda stated that, if anything happened to her, "point your finger at Dick." Appellant also established a residence in Florida prior to the murder, where he returned following Linda's death.

{¶25} Evidence was presented that, after appellant left the residence, his actions appeared to be that of a man attempting to create an alibi. He traveled to New Vienna and spoke to his brother, inquiring about his mother. Although appellant's brother did not think about it at the time, he testified that this was not normal conduct for appellant. When he returned to Lake Waynoka after work around 7:30 p.m., appellant took the long way around the lake by entering the front gate. He honked the horn of his car and waived to the official at the gate. According to the security officer, appellant typically used the rear entrance to the gated community, not the manned front gate. The state urged that appellant's conduct was out of character because he wanted to be seen in the morning and returning home in order to establish an alibi.

{¶26} Finally, the jury had the opportunity to observe Gerald Payne. Payne claimed that appellant admitted disposing of the gun and acknowledged that he relieved Linda of "her suffering." We find no indication that this evidence was the determining factor in the jury's decision or that the jury improperly weighed Payne's testimony.

{¶27} Based upon the foregoing, we find sufficient evidence to establish the conviction. In addition, appellant's conviction is not against the weight of the evidence. The state provided proof of each element of the charges brought against appellant. The jury weighed the evidence and came to the conclusion, beyond a reasonable doubt, that appellant was responsible for the murder of Linda Curtis. The jury chose to credit the

witnesses presented by the state and believe the prosecution's version of the events. The jury was in the best position to hear the witnesses speak and view their demeanor. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 231. We find no indication that the jury lost its way or that the state's evidence was not credible.

{¶28} Appellant's sole assignment of error is overruled.

{¶29} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.