

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

IN RE:

CASE NO. 1-13-24

R.A.G.,

ALLEGED DELINQUENT CHILD.

O P I N I O N

IN RE:

CASE NO. 1-14-34

R.A.G.,

ALLEGED DELINQUENT CHILD.

O P I N I O N

**Appeals from Allen County Common Pleas Court
Juvenile Division
Trial Court No. 2012 JG 30125**

Judgments Affirmed

Date of Decision: March 23, 2015

APPEARANCES:

***Amanda J. Powell* for Appellant**

***Kenneth J. Sturgill* for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant R.A.G., a minor child who has been adjudicated as delinquent, brings these appeals from the judgments of the Court of Common Pleas of Allen County, Juvenile Division. R.A.G. alleges several assignments of error and requests this court to vacate his adjudication of delinquency. For the reasons set forth below, the judgments are affirmed.

{¶2} On October 22, 2012, the victim, Roger Lewis (“Lewis”), was drinking at Lombardo’s Café. He went outside to smoke a cigarette and encountered three minor males. The boys were surrounding him and he feared for his safety, so Lewis left to return to the bar. When Lewis realized that he had left his cigarettes, he turned back to get them. R.A.G. then pulled out a gun and shot him. The boys then ran away and Lewis called for help. He was taken to the hospital and went through two surgeries to repair the damage and to remove the bullet from the spinal area.

{¶3} On November 12, 2012, Detective Kent Miller (“Miller”) of the Lima Police Department filed a complaint containing two counts. Doc. 1. The first count alleged that R.A.G., who was 17 years of age at the time of the shooting, was a delinquent child by reason of felonious assault, a felony of the second degree if committed by an adult in violation of R.C. 2903.11(A)(2). *Id.* This count contained a firearm specification. *Id.* Count II alleged that R.A.G. was a

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delinquent child by reason of carrying a concealed weapon, a felony of the fourth degree if committed by an adult in violation of R.C. 2923.12(A)(2), (F)(1). *Id.* On January 14, 2013, R.A.G. filed a motion for an expert computer technician to assist the defense counsel in opening the video files and in reducing them to hard copy pictures for trial. Doc. 26. The State filed its motion in opposition to the request on January 16, 2013, stating that the State had shown defense counsel how to access the pictures and video and that hard copies of the photos would not be necessary at trial. Doc. 28. The docket does not reflect that this motion was ever formally decided.

{¶4} On April 3 and 4, 2013, a hearing was held on the matter. Doc. 61. The trial court entered its judgment finding R.A.G. to be a delinquent child by reason of committing felonious assault and for carrying a concealed weapon. *Id.* The trial court then entered disposition ordering R.A.G. be remanded to the custody of the Ohio Department of Youth Services for an indefinite term of commitment of one year to a maximum of when R.A.G. turned 21. R.A.G. filed a notice of appeal from this judgment on April 16, 2013. Doc. 66. A second notice of appeal was filed on R.A.G.'s behalf by his new attorney on May 6, 2013. Doc. 77.

{¶5} On November 20, 2013, R.A.G. filed a petition to vacate his adjudication of delinquency. The State filed its response to the motion on

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December 4, 2013. Doc. 92. An amended petition for post-conviction relief was filed by R.A.G. on February 27, 2014. Doc. 98. The State filed a motion to dismiss the amended petition on March 14, 2014. Doc. 103. The State also filed a response to the motion and requested it be dismissed for failing to state a claim upon which relief could be granted. An evidentiary hearing on the merits was held on May 13, 2014. Doc. 110. On July 14, 2014, the trial court denied the amended petition for post-conviction relief. *Id.* On August 13, 2014, R.A.G. filed his notice of appeal. On August 22, 2014, this court *sua sponte* consolidated the appeals for the purpose of briefs and oral arguments. On appeal, R.A.G. raises the following assignments of error.

First Assignment of Error

The juvenile court abused its discretion by sub silentio denying R.A.G.'s Motion for Expert Computer Technician.

Second Assignment of Error

The [juvenile court] committed reversible error when it failed to properly record its proceedings.

Third Assignment of Error

The juvenile court violated R.A.G.'s right to due process of law when it adjudicated him delinquent of felonious assault with a firearm specification and carrying a concealed weapon in the absence of sufficient credible and competent evidence, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; Article I, Section 16, Ohio Constitution; and Juv.R. 29(E)(4).

Fourth Assignment of Error

The juvenile court violated R.A.G.'s right to due process when it adjudicated him delinquent of felonious assault with a firearm specification and carrying a concealed weapon when the evidence was contradictory, inconsistent, and illogical in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; and Article I, Section 16, Ohio Constitution.

Fifth Assignment of Error

The [juvenile court] abused its discretion when it denied R.A.G.'s first claim for post-conviction relief.

Sixth Assignment of Error

The [juvenile court] abused its discretion when it prohibited the testimony of Robert S. White at the post-conviction hearing and denied R.A.G.'s second claim for post-conviction relief.

{¶6} In the first assignment of error, R.A.G. claims that the trial court erred by denying his motion for an expert computer technician. Although the motion was not specifically ruled upon by the trial court, a motion that is not ruled upon prior to the final judgment is presumed to be denied for purposes of appellate review. *Sabbatis v. Burkey*, 166 Ohio App.3d 739, 2006-Ohio-2395, 853 N.E.2d 329 (5th Dist.). A denial of a motion for funds to hire an expert witness is reviewed under an abuse of discretion standard. *State v. Herculson*, 6th Dist. Wood No. WD-11-080, 2013-Ohio-1838, ¶ 6.

{¶7} The motion was scheduled to be addressed at a hearing before the trial court on January 23, 2013. Doc. 121. However, the parties had resolved the issue,

so no hearing was held. *Id.* According to the trial court, R.A.G.'s attorney had been able to access the media with the assistance of the Court's technology coordinator. *Id.* Additionally, counsel for the State had agreed to assist trial counsel for R.A.G. in accessing any content. *Id.* At no point was an expert identified and the fee requested was no more than a guess as to what it would cost. *Id.* The motion itself only asked for assistance in opening the files and printing photos from the files. The record does not indicate how the failure to have an expert to assist counsel in opening the files, a feat which was accomplished by counsel after assistance from the court, was prejudicial. On the contrary, the record indicates that the issue upon which the request was based was satisfactorily resolved. Thus, this court sees no abuse of discretion by the trial court in the denial of the motion. The first assignment of error is overruled.

{¶8} In the second assignment of error, R.A.G. argues that the trial court erred by failing to properly record its proceedings.

The juvenile court shall make a record of adjudicatory and dispositional proceedings in abuse, neglect, dependent, unruly, and delinquent cases; permanent custody cases; and proceedings before magistrates. In all other proceedings governed by these rules, a record shall be made upon request of a party or upon motion of the court. The record shall be taken in shorthand, stenotype, or by any other adequate mechanical, electronic, or video recording device.

Juv.R. 37(A). A review of the record in this case shows that two volumes of transcript were filed with the appellate court. The transcripts contain a certificate

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that the volumes filed are a “true and complete transcript as transcribed by [the court reporter] of the proceedings conducted in that court on the 3rd and 4th days of April 2013 * * * and I do further certify that I was personally present in the courtroom during all of the proceedings so transcribed.” Tr. 327. These transcripts are identified as the adjudicatory and dispositional hearings in this matter. Thus, the trial court clearly made a record of the proceedings as required by the Juvenile Rules. R.A.G. does not deny this occurred. R.A.G. instead argues that the trial court erred because the record was inadequate because the record does not indicate which camera view was being played and what was being played at various times. However, it is the job of trial counsel to make a clean appellate record during the presentation of the evidence, not that of the trial court. Additionally, the videos were provided to the court which shows the views from both camera 2 and camera 3. This video along with the testimony is sufficient for this court to adequately review the evidence. Since the proceedings were recorded as required by Juvenile Rule 37(A) and the record is adequate for review, the second assignment of error is overruled.

{¶9} In the third and fourth assignments of error, R.A.G. argues that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. A claim of sufficiency of the evidence raises a due process question concerning whether the evidence is legally sufficient to support

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the verdict as a matter of law. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, ¶219, 954 N.E.2d 596 (citing *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541). “On review of the sufficiency of the evidence to support a criminal conviction, ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶34, 840 N.E.2d 1032 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560).

{¶10} In this case, R.A.G. was alleged to have engaged in conduct which would constitute felonious assault if he was an adult and of having carried a concealed weapon upon his person. To find R.A.G. delinquent due to having committed a felonious assault, the State had to prove that R.A.G. knowingly caused or attempted to cause physical harm to the victim. R.C. 2903.11(A)(2). This charge contained a gun specification, so the State also had to prove that R.A.G. used a firearm to do so. R.C. 2941.145. The testimony of Lewis was that a young man pulled out a gun and fired three shots at him. Tr. 44-46. One of the shots struck him. Tr. 46. Lewis identified the shooter as the defendant. Tr. 43-44, 62. Lewis also identified Exhibit 2, camera view 3 as showing the events of his shooting, including the shooter lifting his arm and firing at him. Tr. 54. Lewis testified that he did not see any other weapons other than the revolver that he saw

the defendant holding. Tr. 44-45. Lewis also testified that he was physically harmed by R.A.G.'s actions and identified Exhibit 9 as his medical bills. Tr. 63-67. Viewing this evidence in a light most favorable to the prosecution, the evidence is sufficient to show that R.A.G. knowingly caused physical harm to Lewis and that he used a firearm to do so. Thus, the trial court did not err in finding R.A.G. to be delinquent for committing what would be a felonious assault with a firearm if he were an adult.

{¶11} R.A.G. was also charged with carrying a concealed weapon. The State was required to prove that R.A.G. had a handgun concealed on his person and that the handgun was loaded. R.C. 29.23.12(A)(2) & (F)(1). Marc Troy (Troy) testified that he saw the defendant in Lombardo's Café earlier and that he was wearing an Office Depot jacket, which was unzipped. Tr. 31, 35-36. Troy did not see a gun in the waistband of the defendant's pants at that time. Tr. 36. Lewis testified that he did not see the gun on the defendant until he pulled it out of his pants and dropped it. Tr. 43-44, 46-47. Lewis testified that he could not see the gun "[b]ecause he had his coat, in his coat, you know, stuff, it kind of hang down so I couldn't see nothing like that." Tr. 47. Lewis identified the gun he saw as a .22 caliber revolver. Tr. 45. Based upon this testimony, the evidence was sufficient to find that the defendant was concealing a handgun on his person. The evidence also showed that the gun was loaded as it was fired three times at Lewis

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and he was struck by a bullet. Tr. 46, 51. Lewis identified Exhibit 8 as a picture of the hole where he was shot. Tr. 58. Lewis also testified that he underwent a surgery to remove a bullet from his spine. Tr. 66. This evidence is sufficient to show that the handgun, which had been concealed on the defendant's person, was loaded at that time. Thus, the trial court did not err in finding R.A.G. delinquent on the grounds that he would have been guilty of carrying a concealed weapon if he had been an adult.

{¶12} “A reviewing court may find a verdict to be against the manifest weight of the evidence even though legally sufficient evidence supports it.” *State v. Group*, 98 Ohio St.3d 248, 2002-Ohio-7247, ¶76, 781 N.E.2d 980.

A reviewing court considering a manifest-weight claim “review [s] the entire record, weighs the evidence and all reasonable inferences, [and] considers the credibility of witnesses.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 20 OBR 215, 485 N.E.2d 717. The question for the reviewing court is “whether in resolving conflicts in the evidence, the [fact-finder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against conviction.” *Id.* See *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541.

Id. at ¶77. Although the appellate court may weigh the evidence, it still must give due deference to the findings made by the fact-finder.

The fact-finder * * * occupies a superior position in determining credibility. The fact-finder can hear and see as well as observe the body language, evaluate voice inflections, observe hand

gestures, perceive the interplay between the witness and the examiner, and watch the witness' reaction to exhibits and the like. Determining credibility from a sterile transcript is a Herculean endeavor. A reviewing court must, therefore, accord due deference to the credibility determinations made by the fact-finder.

State v. Risch, 3d Dist. Wyandot No. 16-10-14, 2011-Ohio-3633, ¶ 5 (quoting *State v. Thompson* (1998), 127 Ohio App.3d 511, 529, 713 N.E.2d 456).

{¶13} As discussed above, the evidence was sufficient to support a finding that R.A.G. was the person who pulled a gun out of his waistband and fired three shots at Lewis, striking him with the bullet. The question now is whether the verdict is against the weight of the evidence. As discussed above, the victim identified the defendant as the person who shot him. Benjamin Stoner (“Stoner”) testified that on the morning of October 23, 2012, he found a .22 revolver lying outside of a building. Tr. 95. Stoner then gave the gun to a deputy sheriff, Chuck Ganson (“Ganson”). Tr. 97. Stoner also testified that the gun was found two or three blocks away from Main Street. Tr. 100. Ganson verified that Stoner had given him the revolver. Tr. 107. Ganson rendered the firearm safe by removing the cylinder and turned it in to Deputy Matt Morgan (“Morgan”). Tr. 108-109. Ganson testified that when he disassembled the weapon, there were three live rounds and three empty casings. Tr. 110. Ganson then identified Exhibit 13 as the three live rounds that were taken from the gun. Tr. 110-113. Morgan testified that he collected the gun and the bullets from Ganson and entered them into evidence.

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Tr. 117-20. Morgan also testified that the location where the gun was found was five or six blocks from Lombardo's Cafe. Tr. 122.

{¶14} Kent Miller ("Miller") also testified for the State. Miller testified that he is a detective with the Lima Police Department. Tr. 128. Miller testified that Martrevius McGill ("McGill") had come forward and admitted that he was present during this shooting. Tr. 135. Based upon what McGill told him, Miller interviewed R.A.G. Tr. 135. R.A.G. told him that he was there, but stated that it was another person who did the shooting. Tr. 135. When Miller told R.A.G. that they had video footage, R.A.G. refused to come in to speak with them without a guarantee that he would be allowed to leave. Tr. 135. R.A.G. then left town and was later located in St. Louis, Missouri. Tr. 137. Miller testified that he was familiar with the appearance of each of the three young men in the video. Tr. 137. Miller identified McGill on the video identified as Exhibit 1 as wearing a black sweatshirt and baseball hat. Tr. 138. The second young man was identified as Idale Goins ("Goins") and was described as wearing a gray sweatshirt and stocking hat. Tr. 138. Miller then identified R.A.G. as wearing an Office Depot coat. Tr. 139. On cross-examination, Miller testified that when he spoke to Lewis on the night of the shooting, he was unsure who had shot him. Tr. 140.

{¶15} At this point, the parties agreed to postpone the State's case and allow R.A.G. to present his defense due to the unavailability of the State's expert

witness. Tr. 164. The first witness for R.A.G. was McGill. McGill testified that Lewis was drunk and they were arguing when Lewis pulled out a knife and started rushing toward them. Tr. 172. According to McGill, R.A.G. grabbed Lewis's bag to try and keep Lewis away from him and then Goins shot Lewis two times. Tr. 172-73. McGill testified that he was shocked when he heard the first shot because he did not know anyone had a gun. Tr. 176. When he turned toward the sound, he saw Goins holding a revolver. Tr. 176. The next day, Goins came to his house and bragged about shooting Lewis. Tr. 177. According to McGill, he personally saw Goins shoot Lewis and saw Goins with the revolver in his hands. Tr. 179-80. McGill testified that after the second shot, he took off. Tr. 180. McGill testified that at the time of shots, R.A.G. was off to the side and Goins was under the carport. Tr. 181.

{¶16} R.A.G. then testified that they were sitting outside and an argument broke out between Lewis and McGill. Tr. 193. Lewis started walking away and then returned and threatened them with a knife. Tr. 194. Goins and Lewis then faced off and "[e]verybody started backing up." Tr. 194. According to R.A.G., Lewis put his bag down on the table and started coming after them with the knife. Tr. 194. R.A.G. then picked up the bag and Lewis came at him with the knife. Tr. 194. R.A.G. testified that the knife hit the bag, so he turned and ran into the lot. Tr. 194. R.A.G. claimed that he was pointing at Lewis and telling him to back off

when he heard shots, and he “ducked and covered.” Tr. 194. When R.A.G. started to run, he turned and saw Goins firing the gun. Tr. 195. Goins then turned and ran with them and later told him that he had tossed the gun. Tr. 195. Goins told him he tossed the gun in some boxes near the school. Tr. 196. R.A.G. testified that when he called the detective, he was told that the detective believed that R.A.G. was the shooter, so R.A.G. likely would be arrested. Tr. 197. R.A.G. testified that he told the detective that Goins was the shooter. Tr. 197. According to R.A.G., his outstretched arm was just raised to try and keep Lewis back because Lewis was still holding the knife. Tr. 200.

{¶17} On cross-examination, R.A.G. admitted that the victim was watching him most of the time. Tr. 224. He also testified that there were three shots fired. Tr. 224. R.A.G. also admitted that when he found out he would be arrested, he went to St. Louis. Tr. 231. On redirect examination, a demonstration of R.A.G. holding the gun was done and R.A.G. testified as follows.

Q. Now, would you lift the gun up kind of like toward the TV?

A. (Witness complies.)

Q. Now, would you put the [sic] your finger on the trigger?

A. (Witness complies.)

Q. Now, would you put your finger on the hammer?

A. (Witness complies.)

Q. Now, that's the way that gun has to be shot, isn't it?

A. Yeah.

Q. That hammer has to be pulled back?

A. Yeah.

Q. To shoot, to make that gun shoot, you not only have to engage the trigger, you have to engage the hammer; is that right?

A. Yes.

Q. All right. So if you don't engage the hammer, then it's not going to shoot? Correct?

A. Yes.

Q. All right. Do this again toward the TV.

A. (Witness complies.)

Q. All right. Thank you.

Ms. McLeod: If the record would show the gun was visible in his hand, I would appreciate it.

The Court: So noted.

Tr. 233-34. R.A.G. testified that when he heard the gunshots, he took a defensive position because he did not know from where they were coming. Tr. 235.

{¶18} To conclude its case, the State called Heather Williams ("Williams") from the Ohio Bureau of Criminal Identification and Investigation ("BCII"). Tr. 258-59. Williams testified that she conducted an examination of the revolver and

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a ballistic comparison. Tr. 259. Williams testified that while firing the revolver, “the hammer would fall off of the single action cocking notch.” Tr. 262. The result was that when she pulled the trigger, there was not enough force to discharge the cartridge. Tr. 263. To fire the gun, Williams had to hold the hammer back, pull the trigger and release the hammer manually. Tr. 263. Williams also testified that she needed two hands to fire the gun and did not know if it could be done with one hand. Tr. 263-64. According to Williams, the bullet taken from Lewis was consistent with one fired from the revolver she examined. Tr. 266. However, she could not identify it specifically due to a lack of sufficient individual characteristics. Tr. 266. On cross-examination, Williams testified that one would likely see a flash when the gun was fired. Tr. 274. Williams also testified that the rifling on the spent cartridge could have come from the subject revolver or another one or even other firearms manufactured by different companies. Tr. 275.

{¶19} After reviewing the evidence before the trial court, including the video exhibits from each camera view, this court does not find that the fact-finder clearly lost its way or that a manifest injustice resulted which would require a new trial. While there was conflicting testimony as to who fired the shots and the video is less than clear on that matter, Lewis testified that he saw the gun in R.A.G.’s hand and that R.A.G. fired the shots. A reasonable fact-finder could

review all of the evidence and conclude that R.A.G. was the shooter in this case, that he caused physical harm to the victim and that he used a concealed firearm to do so. Therefore, the verdicts are not against the manifest weight of the evidence. The third and fourth assignments of error are overruled.

{¶20} The fifth assignment of error challenges the judgment denying R.A.G.'s petition for post-conviction relief. R.A.G. argues that the trial court erred by overruling his first claim for relief. The first claim for relief alleged that trial counsel was ineffective for failing to consult with a computer expert.

In evaluating whether a petitioner has been denied effective assistance of counsel, this court has held that the test is “whether the accused, under all the circumstances, * * * had a fair trial and substantial justice was done.” State v. Hester (1976), 45 Ohio St.2d 71, 74 O.O.2d 156, 341 N.E.2d 304, paragraph four of the syllabus. When making that determination, a two-step process is usually employed. “First, there must be a determination as to whether there has been a substantial violation of any of defense counsel’s essential duties to his client. Next, and analytically separate from the question of whether the defendant’s Sixth Amendment rights were violated, there must be a determination as to whether the defense was prejudiced by counsel’s ineffectiveness.” State v. Lytle (1976), 48 Ohio St.2d 391, 396–397, 2 O.O.3d 495, 498, 358 N.E.2d 623, 627, vacated on other grounds (1978), 438 U.S. 910, 98 S.Ct. 3135, 57 L.Ed.2d 1154.

On the issue of counsel’s ineffectiveness, the petitioner has the burden of proof, since in Ohio a properly licensed attorney is presumably competent. See Vaughn v. Maxwell (1965), 2 Ohio St.2d 299, 31 O.O.2d 567, 209 N.E.2d 164; * *915 State v. Jackson, 64 Ohio St.2d at 110–111, 18 O.O.3d at 351, 413 N.E.2d at 822.

State v. Calhoun, 86 Ohio St.3d 279, 289, 1999–Ohio–102, 714 N .E.2d 905.

{¶21} One of the allegations raised by R.A.G. was that a computer expert would have been able to present a higher quality video with more information. At the hearing, R.A.G. presented Exhibit G, which was allegedly a better video and included the embedded time and date stamp.¹ R.A.G. also provided still images as part of his motion and argued that if this additional information had been available, the result of the trial would have been different. Doc. 98. After reviewing the evidence presented by R.A.G. outside of the record, this court is not convinced that this additional evidence would have affected the outcome. As discussed above, there was still the testimony of Lewis that R.A.G. was the one with the gun and the one who shot him. Although the still images presented by R.A.G. may show that the shot that struck Lewis may not have been fired at the time when the photo was taken due to the angles that Lewis and R.A.G. were standing, there were three shots fired and only one struck the victim. The shot that struck him may have been fired at a different time. The video lacked sound and the video was not always clear as to what was happening, so there was no clear indication from the video as to when the shots were fired. Given the testimony before the trial court, the additional evidence cited by R.A.G. does not show that the outcome of the case would have been different if the evidence had been

¹ A review of the second video does not appear to have much improvement in the clarity of the images.

entered by trial counsel. Thus, trial counsel was not ineffective for failing to consult with a computer expert. The fifth assignment of error is overruled.

{¶22} Finally, R.A.G. claims that the trial court erred by limiting the scope of the expert testimony of Robert White (“White”), a forensic expert, at the evidentiary hearing for post-conviction relief. In the alternative, R.A.G. argues that White should have been able to testify as a lay witness. The admission of expert testimony is governed by Evidence Rule 702.

A witness may testify as an expert if all of the following apply:

(A) The witness’ testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness’ testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test or experiment, the testimony is reliable only if all of the following apply:

(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

(2) The design of the procedure, test, or experiment reliably implements the theory;

(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

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Evid.R. 702. “A ruling concerning the admission of expert testimony is within the broad discretion of the trial court and will not be disturbed absent an abuse of discretion.” *Scott v. Yates*, 71 Ohio St.3d 219, 221, 1994-Ohio-462, 643 N.E.2d

105. Evidence Rule 701 provides when lay witnesses may testify to an opinion.

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

Evid.R. 701. To be admissible, the lay testimony must assist the trier of fact in understanding the evidence. *State v. Scott*, 12th Dist. Warren No. CA2012-06-052, 2013-Ohio-2866, ¶44. “The admission of testimony by a lay witness as to opinions or inferences rests within the sound discretion of the trial court and will not be reversed by the reviewing court absent a showing of an abuse of discretion.” *State v. Sibert*, 98 Ohio App.3d 412, 426, 648 N.E.2d 861 (4th Dist. 1994).

{¶23} In this case, White testified that he was retired from the West Virginia State Police and worked since then as a forensic scientist. May 13, 2014 Tr. (“2Tr.”) 28. White testified that he typically works as a forensic chemist, primarily in the area of gunshot residue. 2Tr. 28. White’s degree was in chemistry. 2Tr. 29. White also testified that he has extensive training in firearms and that he has “fired almost every kind of gun that is available.” 2Tr. 30-31. The

trial court accepted White “as an expert in chemistry, gunshot residue, and firearms.” 2Tr. 36. However, the trial court did not allow White to testify as a reconstructionist of the incident as it did not find him qualified to do such. 2Tr. 36. R.A.G. did not argue that White was qualified as an expert, instead requesting that White be allowed to testify as a lay witness to that topic. 2Tr. 36. The trial court denied the request finding there had not been a proper foundation established for White to testify as a lay witness. 2Tr. 41. R.A.G. then proffered the testimony, which basically was to say that from the video, White did not believe that R.A.G. could have been the shooter because the victim was facing the wrong way for a bullet fired by R.A.G. to have entered the right side of the victim. This testimony was based solely on what White saw on the video, which was also viewed multiple times by the trial court. There is no evidence presented that White’s testimony would have assisted the trial court in understanding the evidence that the trial court itself viewed repeatedly. The trial court was capable of determining for itself what was shown by the video. Since the testimony was not necessary to assist the trier of fact in knowing what was being shown, the trial court did not abuse its discretion in denying the request to have White testify as a lay witness. The sixth assignment of error is overruled.

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{¶24} Having found no error in the particulars assigned and argued, the judgments of the Court of Common Pleas of Allen County, Juvenile Division, are affirmed.

Judgments Affirmed

ROGERS, P.J. and PRESTON, J., concur.

/jlr