

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1172

Appellee

Trial Court No. CR0201001002

v.

Jerome Nobles

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Nicole I. Khoury, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jerome Nobles, appeals from his conviction in the Lucas County Court of Common Pleas on one count of murder with a gun specification in violation of R.C. 2903.02(A) and R.C. 2929.02. For the reasons that follow, we affirm.

{¶ 2} Appellant was indicted for the murder of Curtis James on January 4, 2010. A jury found him guilty on May 20, 2010. He was sentenced to 18 years in prison. Appellant now appeals setting forth the following assignments of error:

{¶ 3} "I. The conviction was not sufficiently supported by credible evidence and was against the manifest weight of the evidence.

{¶ 4} "II. The court erred in denying defendant/appellant's motion to suppress statements, as said statements were not made knowingly, intelligently, and voluntarily as required by law."

{¶ 5} In his first assignment of error, appellant contends that his conviction is against the manifest weight of the evidence and is not supported by sufficiently credible evidence. Appellant's challenge centers around his identification as the man who shot Curtis Jones.

{¶ 6} The "weight of the evidence" refers to the jury's resolution of conflicting testimony. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. In determining whether a verdict is against the manifest weight of the evidence, the appellate court sits as the "thirteenth juror" and "* * * weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered ." *Id.* An appellate court must defer to the factual findings of the jury regarding the weight to be given the evidence and credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of

the syllabus. When examining witness credibility, "[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan* (1986), 22 Ohio St.3d 120, 123. The factfinder is free to believe all, part, or none of the testimony of each witness appearing before it. *State v. Brown*, 11th Dist. No.2002–T–0077, 2003–Ohio–7183, ¶ 53.

{¶ 7} In contrast, "sufficiency" of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *Thompkins*, supra, at 386. When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court must examine "the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. A conviction that is based on legally insufficient evidence constitutes a denial of due process, and will bar a retrial. *Thompkins*, supra, at 386–387.

{¶ 8} Appellant's trial commenced on May 24, 2010. Eric Lyons testified that he lives on Tecumseh Street in Toledo, Ohio. In the early morning hours of December 20, 2009, he heard a gunshot. He looked out his window and saw someone pointing a gun at another person. Lyons testified he called 911. When he looked out again, he saw the

gunman still pointing a gun at the other person. He then saw the other person fall down. The gunman then fired two shots into the other person and ran away. Lyons testified that he did not see the face of the gunman but he identified him as a black male because he saw the gunman's hand. He testified that the gunman was wearing a black hooded sweatshirt and black pants.

{¶ 9} Paul Fitzpatrick, also a Tecumseh Street resident and neighbor of Lyons, testified that on the evening on December 20, 2009, at approximately 12:15 a.m., his friend from across the street, Curtis James, called him. The two earlier had made plans to go to a bar and James was calling Fitzpatrick to see if he was ready to leave. Fitzpatrick told James he would be ready in a few minutes. Fitzpatrick testified that as he was brushing his teeth, he heard gunshots from outside. He ran to his door and saw an individual running to the left of his house. He then saw his friend, Curtis James, lying on the ground. He had been shot.

{¶ 10} Sergeant Kevin Smith of the Toledo Police Department testified that he was on duty in the early morning hours of December 20, 2009, when he responded to a call of shots fired on Tecumseh Street. When he arrived he found Curtis James leaning against a fence in the fetal position. Smith testified that he could see that James had been shot. An ambulance was called to take him to the hospital where he later died. Smith testified that neighbors reported seeing the gunman, a black male, run in a northwesterly direction toward Junction Street and Nebraska Avenue. Smith looked towards that direction and saw fresh footprints in the newly fallen snow.

{¶ 11} Toledo Police Officer Scott Bailey testified he was also called to the scene of the Tecumseh Street shooting on December 20, 2009. His job was to preserve the crime scene. Bailey testified that he noticed a set of footprints "running on an angle" from where James was found. He followed the prints in a northerly direction through some yards, across some streets to where they eventually stopped in the rear of a home at 1436 Belmont. Bailey testified that the prints were also visible on the back steps of the home as if the person had entered the home.

{¶ 12} Bailey, now accompanied with other officers, testified that he knocked on the door of the home and Jerry Parrish answered. He told the officers that he had not recently exited or entered the house, but that one of his friends had. The officers received permission to enter the home. Once inside, Bailey testified that he immediately noticed a pair of wet shoes near the door. One of the shoes was flipped over and Bailey recognized the tread from the set of footprints he had just followed. He then heard a noise from the bathroom and saw someone peeking out from the door. Bailey raised his weapon and ordered the person to come out. At that point, appellant emerged from the bathroom. He was wearing socks, boxer shorts and a tee-shirt. Bailey also testified that appellant's legs were covered in mud.

{¶ 13} Sergeant John Palmer of the Toledo Police Department testified that he was with Officer Bailey at the Belmont residence. He testified that both Parrish and appellant were handcuffed for safety reasons as the officers were investigating a recent shooting. Appellant was taken out on the front porch to be interviewed. Palmer testified that he

asked appellant why he was in his underwear covered in mud and appellant told him it was because he had been thrown out of his own house and he had to walk to the Belmont residence from another side of town. Appellant told him he did not have any shoes or pants with him even though it was a cold, snowy night.

{¶ 14} Detective Jerry Shriefer of the Toledo Police Department testified he went into the basement of 1436 Belmont to search for evidence. He noticed an open crawl space near a washing machine. The top of the washing machine was covered with dirt that appeared to come from the crawl space. He testified that in the basement he found a black hooded jacket and black sweat pants. Both items of clothing had dirt on them. The jacket ultimately tested positive for gun residue. When asked why there was dirt on the washing machine, Betty Smith, a resident of the home, stated she did not know why there was dirt on the machine and that there had not been any there before. Detective Shriefer then decided that he should search the crawl space for any sign of a weapon. Following a lengthy search, Shriefer recovered a .38 Smith and Wesson gun later determined to be operable. He testified that the dirt in the crawl spaced had been smoothed over as if someone else was recently in there.

{¶ 15} Jerry Parrish testified that on the evening of December 19, 2009, he was at home at the Belmont residence. At approximately 8:00 p.m., appellant and his brother came over to the home. They played a video game until 9:00 p.m. Parrish testified that appellant, wearing a black sweat suit, left the home around 9:00 p.m. At about 12:20 a.m., appellant returned to the home, still wearing the sweat suit. Parrish testified that the

two watched television and Parrish fell asleep. He was awoken when the police came to the door about an hour later. Parrish also testified that the wet shoes found by the police near the door belonged to appellant.

{¶ 16} Betty Smith testified that she lives at 1436 Belmont and that she is the mother of Jerry Parrish. On December 19, 2009, at approximately 4:00 p.m., she left her home to go to a party. When she left, she testified, her son, appellant, and appellant's brother were in the home. When she returned at approximately 8:00 p.m., she testified that appellant was not present. She testified that appellant was still not in the house when she went upstairs to watch television at approximately 12:30 a.m.

{¶ 17} Daniel Davison, a forensic scientist for the Ohio Bureau of Criminal Identification and Investigation, testified that he examined the photos taken of the footprints, in the snow, leading from the crime scene to the Belmont residence and the photos taken of the tread on the wet shoes found inside the Belmont residence. Specifically, he compared ten photos of footprints to the tread of the shoes found inside the Belmont residence. He testified that in his opinion, the footprints leading to the Belmont residence matched the tread of the shoes found inside the Belmont residence. The same shoes Jerry Parrish identified as belonging to appellant.

{¶ 18} Detective Jeffrey Clark of the Toledo Police Department testified that he interviewed Jerry Parrish, Jamal Nobles, appellant's brother, and appellant at the police station on December 20, 2009. The taped interview of appellant was admitted into evidence and played for the jury. In the interview, appellant claims he left his house in

the south end of town dressed only in a t-shirt, boxer shorts and socks on a cold, snowy, night. He stated he got a ride in a car and he and his brother went to the Belmont address. Appellant claims that after arriving, he never left the Belmont address. He stated that himself, his brother and Parrish played video games that night and then appellant stated he went to sleep. He denied ownership of the wet shoes that were found by the door and he denied ownership of the clothing found in the basement.

{¶ 19} "It is well settled that the state may rely on circumstantial evidence to prove an essential element of an offense, because circumstantial evidence and direct evidence inherently possess the same probative value. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph one of the syllabus. 'Circumstantial evidence' is the proof of certain facts and circumstances in a given case, from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind. *State v. Duganitz* (1991), 76 Ohio App.3d 363, quoting Black's Law Dictionary (5 Ed.1979) 221. Since circumstantial evidence and direct evidence are indistinguishable so far as the jury's fact-finding function is concerned, all that is required of the jury is that it weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d at 272. Although inferences cannot be based on inferences, a number of conclusions can result from the same set of facts. *State v. Lott* (1990), 51 Ohio St.3d 160, 168. Therefore, the [trier of fact] may employ a series of facts or circumstances as the basis for its ultimate conclusion. *Id.* * * * Identification can be proved by circumstantial evidence, just like every other element the state must prove."

State v. Allah, 8th Dist. No. 91955, 2009-Ohio-3887, ¶ 16, citing *State v. Kiley*, 8th Dist. Nos. 86726 and 86727, 2006-Ohio-2469.

{¶ 20} In this case, the evidence shows that fresh shoe prints in the snow led directly to the Belmont address. The tread on the wet shoes found near the door of the Belmont address sufficiently matched the footprints. Two witnesses from the Belmont residence testified that appellant left the home that night. Parrish testified that appellant left wearing a black sweat suit. The assailant was described by witnesses as wearing a black hooded sweatshirt and black sweat pants. A black hooded sweat shirt and black sweat pants were found in the basement of the Belmont residence. The clothing was covered in dirt as if someone had crawled on the ground. A gun was found deep in a dirt covered crawl space in the basement of the Belmont residence. Finally, appellant was the only person in the Belmont residence dressed only in his underwear. After viewing the entire record we find that appellant's conviction is not against the manifest weight of the evidence and we find that the circumstantial evidence in this case was sufficient to establish the identity of appellant as the person who shot Curtis James. Appellant's first assignment of error is found not well-taken.

{¶ 21} In his second assignment of error, appellant contends that the court erred in denying his motion to suppress statements he made to Detective Clark at the police station. Appellant contends that he did not knowingly, intelligently or voluntarily waive his Miranda rights because he suffers from mental illness.

{¶ 22} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez* (C.A.11, 1992), 949 F.2d 1117, 1119; *State v. Long* (1998), 127 Ohio App.3d 328, 332. During a suppression hearing, the trial court assumes the role of the trier of fact and is, therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills* (1992), 62 Ohio St.3d 357, 366; *State v. Hopper* (1996), 112 Ohio App.3d 521, 548. As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594. The reviewing court must then review the trial court's application of the law de novo. *State v. Russell* (1998), 127 Ohio App.3d 414, 416.

{¶ 23} Pursuant to the United States Supreme Court's decision in *Miranda v. Arizona* (1966), 384 U.S. 436, a person who is taken into custody or otherwise significantly deprived of his freedom and subjected to interrogation by law enforcement officials must be informed of certain constitutional rights "and make a knowing and intelligent waiver of those rights before statements obtained during the interrogation will be admissible" as evidence against him. *State v. Treesh* (2001), 90 Ohio St.3d 460, 470. The question of whether a waiver was knowing and intelligent is a factual issue that must be determined based on the totality of the circumstances including the age, mentality, prior criminal experience of the accused, the length, intensity and frequency of interrogation, the existence of physical deprivation or mistreatment, and the existence of

threat or inducement. *State v. Brewer* (1990), 48 Ohio St.3d 50, citing *State v. Edwards* (1976), 49 Ohio St.2d 31.

{¶ 24} "The totality of the circumstances analysis is triggered by evidence of police coercion. [*State v. Clark* (1988), 38 Ohio St.3d 252, 261.] '[C]oercive police activity is a necessary predicate to the finding' that a suspect involuntarily waived his Miranda rights and involuntarily confessed. [*Colorado v. Connelly* (1986), 479 U.S. 157, 167, 107 S.Ct. 515, 522, 93 L.Ed.2d 473, 484.] A suspect's decision to waive his Miranda rights * * * [is] made voluntarily absent evidence that 'his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct.' *Colorado v. Spring* (1987), 479 U.S. 564, 574, 107 S.Ct. 851, 857, 93 L.Ed.2d 954, 966; [*State v. Moore* (1998), 81 Ohio St.3d 22,] 32; *State v. Dailey* (1990), 53 Ohio St.3d 88, 91." *State v. Swopes*, 2nd Dist. No. 24044, 2011-Ohio-2072, ¶ 34, citing *State v. Phillips* (Aug. 11, 2000), 2nd Dist. No. 18049.

{¶ 25} "A defendant's mental condition may be a 'significant factor in the "voluntariness" calculus. But this fact does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional "voluntariness."' *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio- 6235, ¶ 34, quoting *Colorado v. Connelly*, supra. The burden is on the prosecution to prove by a preponderance of evidence that a defendant waived his Miranda rights voluntarily, knowingly, and intelligently. *Id.*

{¶ 26} When, during his interview, Detective Clark asked appellant if he takes any prescription medication, appellant responded that he takes medicine for paranoia and schizophrenia. Appellant contends that this answer should have alerted Detective Clark to the fact that his mental illness would prevent him from knowingly, intelligently and voluntarily waiving his rights.

{¶ 27} We have thoroughly reviewed the taped interview of appellant with Detective Clark. Appellant responds to each of Clark's questions and assures him that he is not under the influence of anything that might impair his judgment. Clark repeatedly offers appellant a beverage or food and each time appellant declines. Detective Clark carefully explains to appellant that he is investigating a shooting and he tells appellant about the footprints leading up to the Belmont home. Appellant then asks Clark some questions before he agrees to sign the waiver of his rights.

{¶ 28} When asked where he went to high school, appellant responded that he did not remember. Appellant cites this unusual response as evidence that he was too mentally impaired to voluntarily waive his rights. The tape, however, shows that appellant was able to answer other basic questions such as his address and his mother's name. Throughout the tape, there is no evidence that the interview was unusually coercive, combative or intense. There is no evidence of physical deprivation or mistreatment or threats on the part of Clark. Accordingly we find that the state sustained its burden to prove that appellant voluntarily waived his Miranda rights. Appellant's second assignment of error is found not well-taken.

{¶ 29} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
