

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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| State of Ohio,       | : |  |
| Plaintiff-Appellee,  | : |  |
| v.                   | : | No. 10AP-1118<br>(C.P.C. No. 10CR-03-1370) |
| Devin D. Rankin,     | : | (REGULAR CALENDAR)                         |
| Defendant-Appellant. | : |  |

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D E C I S I O N

Rendered on October 4, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Stephen Dehnart*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Defendant-appellant, Devin D. Rankin, appeals from a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to jury verdict, of murder in violation of R.C. 2903.02, with a firearm specification pursuant to R.C. 2941.145, and tampering with evidence in violation of R.C. 2921.12. Because sufficient evidence and the manifest weight of the evidence support the jury's verdict finding

defendant guilty of murder with the specification and of tampering with evidence, we affirm.

### **I. Facts and Procedural History**

{¶2} On the evening of February 21, 2010, Officer Shea Higgins and Officer Mary Praither of the Columbus Police Department discovered John Parker, II, lying facedown on the side of Rathmell Road. Parker had severe head wounds consistent with gunshots and was unresponsive to the officers' verbal and physical attempts to rouse him. Paramedics soon arrived and pronounced Parker dead.

{¶3} Once notified of her son's death, the victim's mother provided Detective Steven Eppert, the primary detective in the ensuing investigation, with the phone numbers of people the victim might have been with on the night of his death. Defendant was among those named. When Eppert contacted him the same night, defendant informed the detective that he picked up Parker from a friend's house with the intention of heading to another friend's apartment. While on their way, Parker received a phone call and requested that he be dropped off in front of a store on 17th Avenue. Defendant told the detective that Parker exited defendant's vehicle at the requested stop and climbed into the passenger seat of a waiting Dodge Neon that someone defendant did not know was driving.

{¶4} Within hours of Parker's death, witnesses driving in the area informed Detective Eppert they observed a car pulled over on Rathmell Road near the spot where Parker's body was later discovered. One potential match to the observed car was a Taurus that defendant's girlfriend owned. Tracing the car's registration to 400 Saul Street, Detective Eppert sent officers to that address in the early morning hours of February 22.

{¶5} While police waited outside the Saul Street residence for authorization to enter, two females, later identified as Ashley Kelly and Jennifer Sloan, exited the house, were secured in a police vehicle and were transported to Columbus police headquarters for interviewing. A short time later, two males, defendant and his cousin Jerron King, came out of the home, and police took them also to headquarters.

{¶6} Upon questioning at police headquarters, Sloan, Kelly, and defendant told investigators they drove Sloan's Taurus to a local residence the night before and picked up the victim. Defendant was driving at the time, Sloan was sitting in the front passenger seat, and Kelly sat in the back with a four-year-old girl in Sloan's care. All three stated Parker requested to be dropped off on 17th Avenue, defendant complied, and the group watched Parker get into a Dodge Neon and drive off. As the early morning interviews progressed, however, first Sloan and then Kelly changed their stories, claiming that defendant shot Parker but acted in self-defense. Although defendant, interviewed separately, continued to insist that Parker parted with the group on 17th Avenue and got into the Dodge Neon, investigators arrested defendant and charged him with John Parker's murder based upon the statements of Sloan and Kelly.

{¶7} The next morning, February 23, defendant contacted the homicide office, requesting that Detective Eppert come to the jail to speak with him. When the detective arrived, defendant told him he acted in self-defense. According to defendant, he pulled the car over because Parker said he was going to get sick. When defendant approached to help, Parker "popped up with a gun in his hand." (Tr. 282.) Defendant stated he "was able to slap the gun out of" Parker's hand, a "scuffle" ensued, and defendant "was able to retrieve the gun" and fire twice. (Tr. 282.) At some point during the February 23 interview,

defendant also informed Detective Eppert he placed the gun used in Parker's shooting inside the wall at 400 Saul Street. Later in his investigation, Detective Eppert discovered Sloan received a call from the jail in the early evening hours of February 22, the day after the murder.

{¶8} By indictment filed on March 4, 2010, defendant was charged with one count of murder, an unclassified felony, with a firearm specification, and one count of tampering with evidence, a felony of the third degree. Defendant pled not guilty to both charges, and a jury trial commenced on October 18, 2010. Defendant moved under Crim.R. 29 for acquittal at the close of the state's case-in-chief and again after the presentation of all evidence. The trial court denied both motions.

{¶9} On October 26, 2010, the jury returned a verdict, finding defendant guilty of murder with a firearm specification and of tampering with evidence. The trial court sentenced defendant on October 29, 2010 to 15 years to life for murder and three years for tampering with evidence, with an additional three years for the firearm specification. The court ordered that all sentences be served consecutively for a total term of 21 years to life.

## **II. Assignments of Error**

{¶10} Defendant appeals, assigning the following errors:

First Assignment of Error: The evidence was legally insufficient to support appellant's convictions for Murder and Tampering with Evidence.

Second Assignment of Error: The court erroneously overruled appellant's motions for acquittal pursuant to Criminal Rule 29.

Third Assignment of Error: Appellant's convictions were against the manifest with of the evidence.

### **III. First and Second Assignments of Error - Sufficiency of the Evidence and Crim.R. 29**

{¶11} Defendant's first and second assignments of error contend the state failed to present sufficient evidence to support defendant's convictions for murder and tampering with evidence, and, as a result, the trial court erred in denying defendant's Crim.R. 29(A) motions for acquittal. Because the same standard of review applies to sufficiency of the evidence and Crim.R. 29(A) motions for acquittal, we consider defendant's first two assignments of error together. *State v. Messer-Tomack*, 10th Dist. No. 07AP-720, 2008-Ohio-2285, ¶7-8.

#### *A. Sufficiency of the Evidence - Standard of Review*

{¶12} Whether evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. On review for sufficiency, we construe the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found each of the essential elements of the offense proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Conley* (Dec. 16, 1993), 10th Dist. No. 93AP-387. An appellate court thus assesses not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Thompkins* at 390.

#### *B. Sufficiency of the Evidence - Murder*

{¶13} To convict defendant of murder in violation of R.C. 2903.02(A), the state was required to prove defendant purposefully caused the victim's death. A person acts

purposely when "it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." R.C. 2901.22(A).

{¶14} The state's witness, Ashley Kelly, positively identified defendant at trial as the person who drew a gun and shot Parker while the group was standing around a car parked on the side of the road. Kelly's testimony, construed in the state's favor, demonstrates defendant shot the victim and, coupled with additional uncontested evidence that the shots resulted in the victim's death, caused the victim's death. The remaining issue is whether the state submitted sufficient evidence that defendant acted "purposely."

{¶15} "[T]he law has long recognized that intent, lying as it does within the privacy of a person's own thoughts, is not susceptible of objective proof." *State v. Garner*, 74 Ohio St.3d 49, 60, 1995-Ohio-168, citing *State v. Carter*, 72 Ohio St.3d 545, 554, 1995-Ohio-104. Such intent "may be deduced from all the surrounding circumstances, including the instrument used to produce death, its tendency to destroy life if designed for that purpose, and the manner of inflicting a fatal wound." *State v. Robinson* (1954), 161 Ohio St. 213, paragraph five of the syllabus. Within those parameters, the Supreme Court of Ohio repeatedly has held the infliction of multiple close-range gunshots to a vital area of the body tends to demonstrate a purpose to kill. See *State v. Treesh*, 90 Ohio St.3d 460, 484-85, 2001-Ohio-4; *State v. Palmer*, 80 Ohio St.3d 543, 562, 1997-Ohio-312; *State v. Otte*, 74 Ohio St.3d 555, 564, 1996-Ohio-108.

{¶16} Here, the state presented such testimony from Franklin County physician and pathologist Dr. Tae Lyong An, who confirmed that Parker sustained two gunshot wounds to the head, one through the cheek, and the other through the nose. According to Dr. An, at least one of the bullet wounds exhibited tiny abrasions, or "stippling," around its edges, an effect that, because it "is usually seen when the firing range is within 22 inches," corroborated Kelly's testimony that defendant and Parker were within arm's reach of each other at the time of the shooting. (Tr. 367.) In view of the testimony concerning the cause of Parker's wounds and death, and the state's evidence allowing the jury to conclude they were inflicted with the purpose to kill, the record contains sufficient evidence supporting the jury's verdict that defendant committed murder in violation of R.C. 2903.02.

{¶17} To the extent defendant raises self-defense in his challenge to the sufficiency of the evidence, the argument is misplaced. Under Ohio law, self-defense is an affirmative defense. *State v. Calderon*, 10th Dist. No. 05AP-1151, 2007-Ohio-377, citing *State v. Williford* (1990), 49 Ohio St.3d 247. The "due process 'sufficient evidence' guarantee does not implicate affirmative defenses, because proof supportive of an affirmative defense cannot detract from proof beyond a reasonable doubt that the accused had committed the requisite elements of the crime." *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶37, quoting *Caldwell v. Russell* (C.A.6, 1999), 181 F.3d 731. Defendant's self-defense contentions thus are addressed in our analysis of the manifest weight of the evidence.

*C. Sufficiency of the Evidence - Tampering with Evidence*

{¶18} R.C. 2921.12(A) defines tampering with evidence and provides "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted shall \* \* \* [a]lter, destroy, conceal, or remove any \* \* \* thing, with purpose to impair its value or availability as evidence in such proceeding or investigation." Pursuant to the statute, the state needed to submit sufficient evidence for the trier of fact to conclude defendant knew or should have known an investigation was forthcoming but nevertheless purposely took steps to conceal the gun used to shoot Parker so as to impair its availability in the investigation.

{¶19} To that end, the state presented Detective Richard Bair's testimony detailing the recovery of the gun used to kill Parker. According to Detective Bair, investigators "had information that there was supposed to be a handgun hidden in there, in that particular place" between the wall to the living room and wall to the bedroom at 400 Saul Street. (Tr. 412.) Despite having relatively precise information as a guide, searchers "weren't having any luck, looking through the holes" they made in the walls. (Tr. 413.) Eventually an officer was able to reach her hand around a corner inside one of the holes and pull the gun from the wall. Based upon the location of the gun and the difficulty in discovering it despite some guidance, a trier of fact reasonably could conclude that defendant was actively concealing the gun with the purpose to impair law enforcement efforts to investigate the shooting, as opposed to merely attempting to keep it out of reach of a child to prevent an accident.

{¶20} Construing the evidence in the light most favorable to the prosecution, the state presented sufficient evidence to allow a rational trier of fact to find, beyond a

reasonable doubt, that defendant purposely caused the death of Parker with an operable firearm and concealed evidence pivotal to the murder investigation.

*D. Crim.R. 29*

{¶21} Because the state presented sufficient evidence of murder and tampering with evidence, we also reject defendant's claim that the trial court erred in denying his Crim.R. 29(A) motions. See *State v. Hernandez*, 10th Dist. No. 09AP-125, 2009-Ohio-5128, ¶6; *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37 (applying the same standard of review to both Crim.R. 29 motions and sufficiency of the evidence).

{¶22} Defendant's first and second assignments of error are overruled.

#### **IV. Third Assignment of Error - Manifest Weight of the Evidence**

*A. Manifest Weight of the Evidence - Standard of Review*

{¶23} Defendant's third assignment of error challenges the manifest weight of the evidence used to convict him of murder and tampering with evidence. Sufficiency of the evidence and manifest weight of the evidence are distinct concepts; they are "quantitatively and qualitatively different." *Thompkins* at 386. When presented with a challenge to the manifest weight of the evidence, an appellate court engages in a limited weighing of the evidence to determine whether the jury's verdict is supported by sufficient competent, credible evidence to permit reasonable minds to find guilt beyond a reasonable doubt. *Conley; Thompkins* at 387 (noting that "[w]hen a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony"). A reviewing court may not substitute its judgment for that of the jury unless it is manifestly clear that the jury lost its way. *State*

*v. Green*, 10th Dist. No. 03AP-813, 2004-Ohio-3697, ¶25, citing *State v. Williams*, 2d Dist. No. 20039, 2004-Ohio-1939, ¶14. In order for an appellate court to reverse the judgment of a trial court on manifest-weight grounds, the appellate court must unanimously disagree with the jury's resolution of the conflicting evidence. *Thompkins* at 387.

*B. Manifest Weight of the Evidence - Murder*

{¶24} Defendant asserts his murder conviction is against the manifest weight of the evidence because the jury clearly "lost its way in determining that Mr. Rankin had not proven self-defense by a preponderance of the evidence." (Appellant's brief, 11.) Self-defense is an affirmative defense, and the burden of going forward with the evidence of self-defense, as well as the burden of proof for demonstrating self-defense, rests with the accused. *Palmer* and R.C. 2901.05(A).

{¶25} To establish his claim of self-defense, defendant relies on his own trial testimony. Defendant testified that, as he was driving the group toward their destination on Saul Street, Parker appeared "tipsy, drunk" and indicated he might be sick. (Tr. 529-34.) Defendant pulled over the car to the berm. Parker exited the vehicle and bent over as if preparing to vomit, but when defendant approached to help, Parker "popped up with a gun in his hand." (Tr. 282.) Defendant stated he "was able to slap the gun out of" Parker's hand, and a struggle followed; defendant "was able to retrieve the gun" and fire twice. (Tr. 282.) Defendant further supports his argument with the statements of Kelly and Sloan, who after abandoning their original account of Parker's driving off in a Dodge Neon, related a scenario similar to defendant's self-defense testimony.

{¶26} The state's evidence undermined defendant's version of the events. When Officers Higgins and Praither discovered Parker and determined he was not capable of

responding to their commands, Higgins performed a "hand check" in order to ensure Parker was not carrying anything that might pose a safety risk. Because Parker was situated on his stomach with both arms underneath his torso, the hand check required the officer to move Parker's body. Higgins testified that "it would appear \* \* \* when he was shot, both hands were inside his pockets." (Tr. 42.) Officer Praither's testimony corroborated that of Higgins, stating that Parker's "hands were jammed in his pockets." (Tr. 57.) Moreover, the state's DNA expert concluded Parker could be excluded as a contributor to the DNA recovered from the trigger of the gun, a result that calls into question defendant's assertion that the gun was Parker's and Parker first attempted to shoot defendant. Similarly, the multiple shots fired at Parker "undercuts a claim of self-defense." *State v. Hall*, 10th Dist. No. 04AP-17, 2005-Ohio-335, ¶40, reversed on other grounds, *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109, citing *State v. Brown*, 10th Dist. No. 03AP-858, 2004-Ohio-5064, ¶31.

{¶27} The state also presented the testimony of three witnesses who saw the scene of the murder immediately preceding Parker's death, all of whom came forward while authorities took steps to secure the area surrounding Parker's body. Each witness was driving westbound on Rathmell Road, observed a group of people "standing around" a dark-colored Ford Taurus on the opposite side of the road, and then heard two to three gunshots come from the vicinity of the car. (Tr. 325.) The state asked the witnesses whether they saw signs of a struggle prior to hearing the shots fired, and all indicated they had not. As one witness stated, "It didn't seem like anyone was arguing or had any kind of problem. It looked like they had car trouble." (Tr. 82.) Another testified that "it seemed like they were looking at a tire or something." (Tr. 106.)

{¶28} Although recognizing the contradictory testimony he and the state presented, defendant highlights the credibility problems of the state's key witness, Kelly. Defendant claims a reasonable juror could not believe Kelly's testimony because she received a sentencing benefit from the state on an unrelated crime and "only told the story that she did immediately after being offered a plea deal." (Appellant's brief, 11.) During cross-examination, however, Kelly acknowledged that (1) prior to trial, she provided police with several different and inconsistent versions of the events surrounding Parker's death, (2) she was offered a plea deal on unrelated receiving stolen property and identity fraud charges in exchange for her truthful testimony in this case, and (3) she struggled with some memory loss surrounding the night in question because of doctor-prescribed medication.

{¶29} Even if defendant's cross-examination of Kelly presented the jury with reasons to question her testimony, an accused is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the defendant's version. *State v. Gale*, 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, although an appellate court acts as a "thirteenth juror" when considering the manifest weight of the evidence, it also must give

due deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston*, 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶30} Moreover, the state and Kelly acknowledged the plea deal and made known to the jury the details of the agreement, Kelly testifying she understood she would receive a favorable sentencing recommendation from the prosecution in her own case in exchange for testifying truthfully in this case. The jury members thus were free to determine whether Kelly's testimony was credible in light of the consideration she received for testifying. *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶56, discretionary appeal not allowed, 125 Ohio St.3d 1416, 2010-Ohio-1893, citing *State v. Bliss*, 10th Dist. No. 04AP-216, 2005-Ohio-3987, ¶26 (concluding the jury was free to assess the witnesses' credibility where the details of a witnesses' plea agreement were revealed); *Covington* at ¶28.

{¶31} The jury also had reason to find defendant less than credible. He significantly changed his story between his arrest and his call to the homicide office to request another interview. The evidence indicated that in the interim, while defendant was being processed at the jail, he spoke with Sloan on her cell phone for approximately six and a half minutes, suggesting defendant learned that Sloan and Kelly had changed their version of the events, and defendant did likewise. See *Williams* at ¶54, citing *State v. Johnson* (1989), 46 Ohio St.3d 96, 100 (noting an accused's lies are admissible evidence from which the jury could infer consciousness of guilt). Similarly, defendant's attempt to hide the gun he used to shoot Parker suggests guilt, as "attempts to alter or destroy

evidence \* \* \* can serve as admissions by conduct to a consciousness of guilt." *State v. Brown* (July 28, 1988), 8th Dist. No. 52593.

{¶32} In the end, inconsistencies between defendant's testimony and that of the state's witnesses, were the jury's to resolve, and none of the factors defendant cite alters that prerogative. We cannot say the jury lost its way in finding the state's key witness to be more credible than defendant or in concluding the aggregate evidence the state offered was more compelling than the evidence supporting defendant's self-defense claim. The position of Parker's hands, the accounts of the citizens who observed a peaceful scene immediately before shots were fired, the results of the DNA analysis, defendant's own duplicitous actions, as well as the testimony of Kelly, provided the jury with sufficient, competent, and credible evidence on which to find defendant guilty of murder beyond a reasonable doubt.

*C. Manifest Weight of the Evidence - Tampering with Evidence*

{¶33} Defendant contends that, even if the state presented sufficient evidence to support the charge of tampering with the evidence, the jury's verdict is against the manifest weight of the evidence. Although defendant claimed at trial that a simple desire to keep the firearm away from a young girl motivated him to place the gun out of harm's way, the state offered the testimony of investigators who described the lengths to which they had to go to find the gun at 400 Saul Street.

{¶34} Further supporting the tampering with evidence charge, the state, through cross-examination of defendant, provided evidence that defendant, almost immediately after Parker's shooting, sought to wash the clothes he was wearing during the incident. Defendant, in fact, admitted to placing the clothes into the washing machine, but claimed

that he simply removed his shirt because he did not wear a shirt when "in the house." (Tr. 581.) See *State v. Putnam* (Jan. 13, 1988), 9th Dist. No. AP4236 (noting defendant's presence in house while the clothes were being washed, his admission that there was probably some blood on his shirt, and a witness's testimony that defendant inquired about the clothes in the washer constitute adequate evidence to support a trial court's finding for tampering with evidence).

{¶35} Lastly, to the extent defendant contends he did not know an investigation was ongoing, the record reveals defendant observed an ambulance and police vehicles at the scene of the shooting when he drove by about 30 minutes after Parker's death. Although defendant had placed the gun in the wall before the drive following Parker's death, he repositioned it in the area behind the wall after the drive.

{¶36} The hidden gun, the investigators' discovery of defendant's clothing still in the washing machine at 400 Saul Street, and defendant's knowledge of the ongoing investigation support the jury's finding that defendant tampered with evidence. Although defendant offered reasons for his actions regarding the gun and clothes, the jury was charged with resolving the divergent testimony. We cannot say the jury lost its way in so doing.

{¶37} Because competent, credible evidence supports the jury's verdict finding defendant guilty of murder and of tampering with evidence, defendant's third assignment of error is overruled.

## **V. Disposition**

{¶38} Having determined sufficient evidence and the manifest weight of the evidence support defendant's convictions for murder and tampering with evidence, and

having overruled defendant's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and KLATT, JJ., concur.

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