

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 30384

Appellee

v.

CHARLES DEEL

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 20 08 2154

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 16, 2023

STEVENSON, Judge.

{¶1} Defendant-Appellant, Charles Deel, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Someone shot W.C. outside a house on Kenmore Boulevard. Mr. Deel knew the man who lived there (“the male resident”) as well as a female who was staying there at the time (“the female resident”). He brought his vehicle to the house that day and parked in the driveway so the male resident could help him repair it. Sometime after 10:00 p.m., he entered the residence and spoke with the male resident and the female resident. At that time, they both saw a gun in Mr. Deel’s waistband. He left at the end of their conversation while the male resident and the female resident remained inside. Less than two minutes later, they heard gunshots. The female resident ran outside and found W.C. lying on the sidewalk. Neither she, nor the male resident saw anyone else outside. As the female resident attempted to render aid to W.C., she and the male resident

heard Mr. Deel's vehicle start. They watched as he rapidly accelerated out of the driveway, almost hit a parked vehicle, and sped away from the scene.

{¶3} When police officers arrived, they quickly identified Mr. Deel as the suspected shooter. They began searching for him and located his vehicle about an hour after the shooting. Although the vehicle was warm to the touch, Mr. Deel was not found nearby. Members of the Violent Fugitive Task Force tracked him down four days later in southern Ohio. They apprehended him after a standoff, during which Mr. Deel threatened to kill himself with a gun. The police confiscated the gun and had it tested. A ballistics expert matched the gun to two spent casings found at the scene of the murder and two spent casings found inside W.C.'s vehicle. The expert also confirmed that the type bullets found inside the gun were consistent with the bullet fragments extracted during W.C.'s autopsy.

{¶4} A grand jury indicted Mr. Deel for murder, felony murder, felonious assault, and having a weapon under disability. His first three counts also carried firearm and repeat violent offender specifications. Mr. Deel pleaded guilty to having a weapon under disability, and the trial court agreed to bifurcate his repeat violent offender specifications for trial. A jury found him guilty of his remaining counts and his firearm specifications. The trial court then found him to be a repeat violent offender. The court sentenced him to life in prison with parole eligibility after 21 years.

{¶5} Mr. Deel now appeals his convictions and raises two assignments of error for this Court's review.

II.

ASSIGNMENT OF ERROR ONE

THE VERDICT OF THE TRIAL COURT CONVICTING APPELLANT OF MURDER AND FELONIOUS ASSAULT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE[.]

{¶6} In his first assignment of error, Mr. Deel argues his convictions for murder and felonious assault are against the manifest weight of the evidence. Specifically, he argues the jury lost its way when it chose to believe he was the individual who shot W.C. We disagree.

{¶7} When deciding whether a criminal conviction is against the manifest weight of the evidence, this Court must consider the entire record and “weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Otten*, 33 Ohio App.3d 339, 340 (9th Dist.1986). A reversal on a manifest weight of the evidence challenge is reserved for exceptional cases where the evidence weighs heavily against the conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶8} The male resident testified he was friends with W.C. and gave him permission to live at his house on a temporary basis. He also knew Mr. Deel. On the day of the shooting, Mr. Deel brought his vehicle over so they could repair it. He testified that they worked on the vehicle for several hours and, by 10:00 p.m., Mr. Deel was still there. The male resident saw W.C. at the house that evening too. He testified W.C. was collecting his things because he was preparing to move out.

{¶9} The male resident testified that he and the female resident were in the kitchen preparing a meal when Mr. Deel came inside. The three of them spoke briefly before Mr. Deel

left to run an errand. He told the male resident he would return shortly. During that exchange, the male resident noticed Mr. Deel had a gun in his waistband. The male resident indicated the gun was not a BB gun, as he had grown up around firearms and was familiar with them. When he asked Mr. Deel what he was doing with a gun, Mr. Deel simply responded “nothing” and walked outside. A few minutes later, the male resident heard gunshots.

{¶10} The male resident ran to the front door behind the female resident, who ran outside. He estimated that it took him about two seconds to reach the front door from the kitchen. When he looked outside from the porch area, he saw W.C. lying on the ground. He did not see anyone else around. He testified that the female resident yelled at him to get a towel, so he ran back into the house. He brought one towel, but the female resident yelled for a second one. When he went back inside, he heard Mr. Deel’s vehicle start. By the time he returned to the front door, Mr. Deel had already driven the vehicle out to the street. He watched as Mr. Deel came close to hitting a car parked in the street and drove “very fast” away from the house.

{¶11} The female resident never saw W.C. at the house that evening, but she acknowledged he had been living there for a few weeks. She confirmed that Mr. Deel came to the house to work on his vehicle and joined her and the male resident in the kitchen just after 10:00 p.m. At that time, Mr. Deel had a gun in his waistband. She said the gun looked like one she had seen in his vehicle a week earlier.

{¶12} The female resident estimated she heard gunshots “about a minute or two after [Mr. Deel] walked out the door.” Much like the male resident, she estimated it took her no more than two seconds to reach the front door from the kitchen once the gunshots stopped. She immediately ran outside but did not see anyone other than W.C. She yelled at the male resident to get towels so she could try to stop W.C. from bleeding. While she was tending to W.C., Mr. Deel came

“flying out the driveway” in his vehicle. She confirmed that he almost hit a car parked in the street as he sped away.

{¶13} Both the male resident and the female resident testified that other individuals came to the scene in the wake of the shooting. One of those individuals was K.J. The female resident testified that K.J. ran at her from across the street after the shooting and remained on scene after the police arrived. She acknowledged K.J. was acting “really weird” and “yelling and screaming and trying to roll [W.C.] over.” Nevertheless, neither she, nor the male resident saw K.J. outside when they ran to the front of the house immediately after the shooting.

{¶14} Officer Anthony Bower and another officer received a dispatch about the shooting around 10:20 p.m. and arrived within minutes. Officer Bower testified that three people were standing around W.C. when they arrived: the female resident, K.J., and a man in a green shirt. The female resident gave the police Mr. Deel’s name, and they quickly focused their investigation on him. Nevertheless, Officer Bower confirmed that the police spoke with K.J. Officer Bower observed odd behavior on the part of K.J., including his walking around without a shirt or shoes and repeatedly refusing to stay where he was told. The lead detective in this matter confirmed that K.J. appeared to “have serious psychological issues” and was “possibl[y] [a] drug user as well.”

{¶15} Detective Edward Hornacek, the lead detective, testified that the police found two shell casings at the scene and two inside Mr. Deel’s vehicle. The police located the vehicle about one hour after the shooting. It was parked at Mr. Deel’s father’s residence, but Mr. Deel was not there. Detective Hornacek ultimately asked a liaison from the Violent Fugitive Task Force to aid in the search for Mr. Deel. The Task Force found him at a location in southern Ohio four days after the shooting. The detective testified that a standoff ensued, during which Mr. Deel threatened to kill himself. When he finally surrendered, Mr. Deel had a firearm and two magazines on his

person. The magazines were loaded with a total of 19 bullets. The police found additional ammunition inside his vehicle.

{¶16} Detective Hornacek interviewed Mr. Deel at the police station the day of his arrest. The State played the recording of that interview for the jury. Mr. Deel told Detective Hornacek that K.J. shot W.C. before handing him (Mr. Deel) the gun and running off. Mr. Deel claimed that he panicked, so he left with the gun. He also claimed the gun he had in his waistband that evening was a BB gun.

{¶17} A ballistics expert tested the gun taken from Mr. Deel during his arrest. He fired the gun using ammunition submitted alongside it and collected the casings from the rounds he fired. He then compared those casings with casings the police found at the scene and inside Mr. Deel's vehicle. The expert confirmed that all the casings he compared had been fired from the gun taken from Mr. Deel. Further, all the casings came from the same brand of bullet. The bullets were Federal make, jacketed stranded zinc bullets. The expert testified that, during his six years as a firearm examiner, he had never encountered that type of bullet. He examined the bullet fragments retrieved from W.C.'s body and confirmed that those fragments also were consistent with that type of bullet.

{¶18} Detective Hornacek testified that he was very familiar with ammunition but, before this incident, had never encountered Federal make, jacketed stranded zinc bullets. Apart from the casings the police collected, they found live rounds inside a travel Chinese checker game case on the front driver's seat of Mr. Deel's vehicle. Those rounds were also Federal make, jacketed stranded zinc bullets. Detective Hornacek researched the bullets and discovered they were a discontinued brand. He also examined available registration materials for the gun and found it was registered to a man from Akron who was deceased.

{¶19} A forensic scientist tested the gun and the casings the police collected against DNA standards taken from Mr. Deel and K.J. Swabs taken from the casings did not produce any DNA profiles. Yet, a major DNA profile found on the gun's trigger guard and its magazines was consistent with Mr. Deel's DNA profile. The forensic scientist did not uncover a DNA profile consistent with K.J.'s anywhere on the gun or the magazines.

{¶20} A female acquaintance of W.C.'s testified that she went out with him the night before the shooting. They frequented three establishments, and, at the second one, they encountered Mr. Deel. The female acquaintance knew Mr. Deel, and she testified that she, W.C., and another female were in the parking lot when Mr. Deel arrived in his vehicle. Mr. Deel parked and called them over to show them a gun he had recently purchased. According to the female acquaintance, Mr. Deel was proud of the gun. She testified it was a 9mm Taurus, the same make and caliber gun used to shoot W.C. the next day.

{¶21} The female acquaintance testified that W.C. and Mr. Deel had an argument in the parking lot. According to her, W.C. looked down at Mr. Deel's shoes while they were speaking and noticed they were identical to a pair he owned. W.C. had left his shoes at the male resident's house. W.C. accused Mr. Deel of stealing his shoes and called the female resident to see if she had been giving away his possessions. According to the female acquaintance, she ultimately diffused the situation between the two men, and she and W.C. went to a different establishment.

{¶22} The female acquaintance testified that W.C. spent the night at her residence. When she awoke in the morning, he was gone, and she realized he had borrowed her car. She had a friend drive her to the male resident's house in the afternoon to try to find W.C. and her car. She testified that W.C. was not there, but Mr. Deel had come to the house to work on his vehicle. She briefly spoke with him as he was sitting inside his vehicle. According to the female acquaintance,

he had his gun resting on his lap while he played with his cell phone or something else. She left shortly thereafter and did not return until after 10:00 p.m. The police were already there when she arrived. The female acquaintance testified that a crowd had formed, and people in the crowd told her Mr. Deel had shot W.C.

{¶23} When asked about K.J., the female acquaintance testified that she met him for the first time one to two days before the shooting. W.C. was helping a friend work on a car, and the car was raised up on a jack. According to the female acquaintance, K.J. appeared while W.C. was underneath the car. K.J. dragged his knuckles across W.C.'s sternum before jumping into the car and causing it to wobble. W.C. became angry because K.J. was creating a safety hazard, so he told the female acquaintance: "Woman, beat his ass." The female acquaintance then chased K.J. around the car as he ran from her. It was not clear to her whether W.C. and K.J. were friends. She testified that she saw K.J. one other time after W.C.'s murder. Someone told her K.J. had broken into her car, and she found him while he was still removing items from it. According to the female acquaintance, K.J. was stealing items he believed had belonged to W.C. He said, "Well, [W.C.] is dead. This is everybody's stuff now."

{¶24} Mr. Deel argues the jury lost its way by convicting him because the evidence tended to show the police immediately assumed he was the shooter and failed to conduct a thorough investigation. He notes that other individuals were present at the scene of the shooting, but the police failed to identify and interview everyone. Further, he argues the police failed to investigate his claim that K.J. shot W.C. Mr. Deel points to the encounter that occurred between W.C. and K.J. one to two days before the shooting, during which W.C. became agitated and told the female acquaintance to beat up K.J. Based on all the foregoing, Mr. Deel argues, reasonable doubt existed

as to the identity of the individual who shot W.C. Thus, he claims his convictions are against the manifest weight of the evidence.

{¶25} Having reviewed the record, this Court cannot conclude the jury clearly lost its way and created a manifest miscarriage of justice when it found Mr. Deel guilty of murder and felonious assault. *See Otten*, 33 Ohio App.3d at 340. The jury heard testimony that W.C. was shot within minutes of Mr. Deel walking out of the male resident's house. While other individuals appeared at the scene after the shooting, neither the male resident, nor the female resident saw anyone around W.C. within seconds of the shooting. Instead, they saw Mr. Deel flee the scene at a high rate of speed. The jury heard testimony that Mr. Deel was seen with a gun several times leading up to the shooting and had a gun in his waistband when he walked outside. They heard testimony that he and W.C. had argued the night before. They also heard testimony that Mr. Deel left the area, only surrendered to police after a standoff, and was still in possession of the gun used to shoot W.C. when he was arrested. While Mr. Deel claimed it was K.J. who shot W.C., the evidence showed that casings found inside his vehicle matched the gun. The evidence also showed that the gun was loaded with a unique type of ammunition, live rounds of which were found in a bag inside Mr. Deel's car. As this Court has repeatedly held, "[a] verdict is not against the manifest weight of the evidence because the finder of fact chose to believe the State's witnesses rather than the defendant's version of the events." *State v. Martinez*, 9th Dist. Wayne No. 12CA0054, 2013-Ohio-3189, ¶ 16. Upon review, Mr. Deel has not shown this is an exceptional case where the evidence weighs heavily against his convictions. *See Otten* at 340. Thus, his first assignment of error is overruled.

ASSIGNMENT OF ERROR TWO

THE TRIAL COURT ERRED IN GIVING THE FLIGHT INSTRUCTION TO
THE JURY[.]

{¶26} In his second assignment of error, Mr. Deel argues the trial court abused its discretion by issuing the jury a flight instruction. We disagree.

{¶27} “[A] trial court must fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder.” *State v. Comen*, 50 Ohio St.3d 206 (1990), paragraph two of the syllabus, citing Crim.R. 30(A). “[E]vidence of flight is admissible as it tends to show consciousness of guilt. * * * [A] jury instruction on flight is appropriate if there is sufficient evidence in the record to support the charge.” *State v. Villa*, 9th Dist. Lorain No. 05CA008773, 2006-Ohio-4529, ¶ 29. *See also State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, ¶ 240 (“Requested jury instructions should ordinarily be given if they are correct statements of law, if they are applicable to the facts in the case, and if reasonable minds might reach the conclusion sought by the requested instruction.”).

{¶28} “This Court reviews a trial court’s decision to give or not give jury instructions for an abuse of discretion under the particular facts and circumstances of the case.” *State v. Calise*, 9th Dist. Summit No. 26027, 2012-Ohio-4797, ¶ 68. An abuse of discretion implies the trial court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying an abuse of discretion standard, a reviewing court may not simply substitute its own judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

{¶29} Mr. Deel argues the trial court abused its discretion when it issued a flight instruction because the evidence showed that he simply left the scene following the shooting. He notes that he was apprehended within four days, at which point he willingly spoke with officers at the police station. Mr. Deel argues that the evidence does not tend to show that he took any steps to actively evade police detection.

{¶30} Having reviewed the record, we cannot conclude the trial court abused its discretion when it issued the jury a flight instruction. *See Calise* at ¶ 68. There was evidence that Mr. Deel sped away from the scene in his vehicle directly after the shooting. Although he told both the male resident and the female resident that he would return to the house after running an errand, he never did so. The police located his vehicle within an hour of the shooting, but Mr. Deel was nowhere to be found. Four days elapsed before members of the Violent Fugitive Task Force tracked him to a location in southern Ohio. There was evidence that a standoff ensued before Mr. Deel finally surrendered. Based on the foregoing, the trial court reasonably could have concluded that the State produced sufficient evidence to warrant a flight instruction. *See Villa*, 2006-Ohio-4529, at ¶ 29. Mr. Deel's argument to the contrary lacks merit. Accordingly, his second assignment of error is overruled.

III.

{¶31} Mr. Deel's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period

for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

SCOT STEVENSON
FOR THE COURT

SUTTON, P. J.
CARR, J.
CONCUR.

APPEARANCES:

ANGELA M. KILLE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.