

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JERRELL R. JETER,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 20 CO 0017**

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Criminal Appeal from the  
Court of Common Pleas of Columbiana County, Ohio  
Case No. 2017 CR 23

**BEFORE:**

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

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**JUDGMENT:**

Affirmed.

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*Atty. Vito Abruzzino*, Columbiana County Prosecutor and *Atty. Ryan P. Weikart*, Assistant Prosecuting Attorney, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

*Atty. Rhys B. Cartwright-Jones*, 42 N. Phelps Street, Youngstown, Ohio 44503-1130, for Defendant-Appellant.

Dated: December 27, 2021

**WAITE, J.**

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{¶1} Appellant Jerrell R. Jeter appeals a July 30, 2020 Columbiana County Court of Common Pleas judgment entry convicting him of one count of felonious assault. Appellant argues that the trial court improperly admitted a police officer's cell phone video of surveillance footage because it was more prejudicial than probative. Regardless, and even with this evidence, Appellant argues that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} An overview of the procedural history is provided before the facts of the incident for ease of understanding. On January 11, 2017, the state filed a secret indictment against Appellant charging him with one count of possession of drugs, a felony in the third degree in violation of R.C. 2925.11(A). He was also charged with a specification, involving \$2,360 in cash, in violation of R.C. 2941.1417(A), and one count of felonious assault, a felony of the second degree in violation of R.C. 2903.11. This had an attenuated firearm specification in violation of R.C. 2941.145. Two superseding indictments containing the same charges were filed on February 15, 2017 and September 14, 2018.

{¶3} On February 7, 2020, the trial court granted Appellant's unopposed motion to sever the charges. On February 12, 2020, Appellant pleaded guilty to possession of drugs. On the same date, the trial court sentenced Appellant to one year of incarceration to run consecutive to his sentence in unrelated case number 2018 CR 452.

{¶14} Appellant proceeded to a jury trial on the remaining felonious assault charge. This appeal relates solely to the felonious assault charge. The charge stems from a shooting incident at “My Bar” in Wellsville, Columbiana County. The bar is a small building with a door leading out to the main street. Behind the bar is an attached outdoor patio surrounded by a five-foot privacy fence. A glass door separates the bar from the patio. A security camera is positioned at the back of the patio and faces the building. The patio, the glass door, and a limited area outside of the patio can be seen on camera. The camera is part of a surveillance system that allows the videos to be saved and viewed.

{¶15} Part of the incident in question was captured by the surveillance camera. Patrolman Steven Rodgers filmed the surveillance footage of the incident with his cell phone on the date of the incident, November 11, 2016. The cell phone video is dark and grainy but is clear enough to generally observe the events captured on film. Ohio Bureau of Criminal Investigations (“BCI”) Special Agent Justin Soroka testified that he later obtained the actual surveillance system, but the video had “disappeared” and it could not be recovered. Thus, the cell phone video is the only available footage of the incident.

{¶16} The video shows two men walking along the perimeter of the fence before disappearing from the screen. The men were later identified by bar patrons as the victims, Dion McMillon and Curtis Holland. The men next appear on the video at timestamp 10:26 as they enter the patio area from the bar. A man later determined to be Appellant can be seen smoking in the left hand corner of the patio.

{¶17} One of the victims immediately shoved Appellant into the fence and backed him into the corner. The second victim also joined in, and was shoving and pushing. The aggression escalated, but did not appear to result in any punches being thrown. Appellant

did not fight back against the attack. At timestamp 10:26:59, it appears that a bar patron attempted to break up the altercation. At 10:27:53, the victims were separated from Appellant and walked towards the glass door. Before the men left, they turned and said something to Appellant, however, there is no audio associated with the video.

{¶8} At timestamp 10:28:01, Appellant placed both hands on top of the fence and jumped over it. He ran a short distance to the corner of the building and crouched in a position consistent with a person preparing to fire a gun, however, a gun is not visible. While this was occurring, the man who broke up the altercation leaned over the fence to watch.

{¶9} At timestamp 10:28:07, Appellant's arms made a movement that the state claimed is consistent with "recoiling," and is associated with firing a gun. The man who was watching at the fence immediately ran away when he saw Appellant run back towards the fence. At timestamp 10:28:10, Appellant hurdled the fence and landed on the patio. Appellant attempted to enter the glass door but one of the victims ran after Appellant, reached his hand over the fence and shot him in the back. Appellant immediately dropped to the ground and the glass door partially closed on his body.

{¶10} The shooter ran back around the corner of the building and disappeared from the camera's view. A nearby vehicle that had been parked in the camera's view abruptly left, driving off in the same general direction as the fleeing man. The video ends a few seconds after the car leaves. The entire video is two minutes and fifty-four seconds long. The state admitted still shots of the video at trial, some enlarged. However, these photographs are grainy and unclear.

{¶11} C.M., who lives next door to the bar, testified first at trial. According to C.M., the side of her house overlooks the patio area of the bar. She can see the privacy fence from her house but cannot see over it. She testified that police activity is frequent at the bar. On the date of the incident, she heard “boom, boom.” (Trial Tr. Vol. I, p. 137.) Specifically, she clarified that she heard two gunshots, one fired immediately after the other. She testified that she ran and looked out of her side window and saw a man running away from the fence. She ran to another window and saw a vehicle drive towards the man before stopping. She saw the vehicle door open and assumed the fleeing man entered the vehicle. It appears from the timeline that the vehicle is the same one that had been parked in front of the bar that abruptly left after the shooter fled.

{¶12} Patrolman Joseph Saraniti of the Wellsville Police Department was next to testify. He testified that the bar has a poor reputation within the community due to fights, shootings, and narcotics. (Trial Tr. Vol. I, p. 145.) He testified that law enforcement previously attempted to shut the bar down due to drug related complaints. While at the scene, he was informed that the bar owner could not remember the password for the surveillance system. He assisted the owner in resetting the password and was able to view the footage. He used his phone’s camera to record the footage for preservation purposes, as videos often disappear from surveillance systems. Patrolman Saraniti also provided information about the bar’s layout. The front door, which is not depicted in the video, and the back patio door are the only entrances to the bar. The front door leads to the main street and is located about twenty feet from the left side wall.

{¶13} Patrolman Steven Rodgers was the state’s key witness. He testified that he and Patrolman Joe Ryl spoke to several witnesses at the scene who informed them

that Appellant, McMillon, and Holland were involved in the shooting incident. (Trial Tr. Vol. I, p. 185.) Witnesses also informed him that two individuals had taken Appellant to a hospital. Although his testimony is somewhat unclear, he suggested that he learned that Appellant had been taken to East Liverpool City Hospital from a witness but Lt. Marsha Eisenhart later testified that it was her idea to search that particular hospital as it was the closest one available.

**{¶14}** At the hospital, Patrolman Rodgers spoke to Appellant who claimed that he went to his car to get a cigar when he was shot by an unknown person. Patrolman Rodgers testified that he reviewed the hospital's surveillance system and recognized one of the individuals who brought Appellant to the hospital but he did not recognize the female. It is unclear how he later identified her. He also testified that he did not know who owned the vehicle that was parked by the corner where Appellant fired the shots. The vehicle left the scene immediately after the shooter fled.

**{¶15}** Lt. Eisenhart also testified. We note that aspects of her testimony at times contradict that of Patrolman Rodgers and, at one point, she contradicted herself. Lt. Eisenhart testified that officers brought a witness named M.N. to the station. (Trial Tr. Vol. I, p. 201.) M.N. provided information to law enforcement, however it is not clear what information she provided. According to Lt. Eisenhart, the two individuals that were seen bringing Appellant to the hospital informed officers that the woman's car used to transport Appellant to the hospital had been parked in front of the bar. Her vehicle could not be the one pictured in the video, as that vehicle fled while Appellant was still laying on the ground.

{¶16} The final witness to testify was BCI Special Agent Justin Soroka. Soroka processed the woman's vehicle, which was a Grand Jeep Cherokee. He described damage to the bumper area and near the radiator consistent with "potential bullet impact." (Trial Tr. Vol. I, p. 223.) A jacketed bullet was retrieved from the radiator area.

{¶17} At trial, defense counsel conceded that Appellant was the man on the porch. However, his theory was that after the two men attacked him, he briefly fled and then returned. He was shot in the back as he attempted to escape into the bar. Appellant argued that the state could not prove that he possessed a gun or fired any shots during the incident. In fact, Appellant took issue with the fact that he was charged with felonious assault without direct proof that he fired a gun, while the men who were caught on video shooting him were not charged.

{¶18} After a two-day trial, a jury convicted Appellant on the sole count of felonious assault. The trial court sentenced Appellant to five years of incarceration. The court did not state whether the sentence was to run concurrently with or consecutive to the drug charge. Hence, his sentence is presumed to be concurrent, as no consecutive sentence findings were made at the hearing or in the judgment entry of sentencing.

{¶19} For ease of understanding, Appellant's two assignments of error will be addressed out of order.

#### ASSIGNMENT OF ERROR NO. 2

In light of the of the [sic] unfairly prejudicial evidence erroneously admitted against Defendant-Appellant, said evidence was insufficient as a matter of law to support the verdict and conviction rendered in the trial court.

{¶20} Appellant’s argument pertains to Patrolman Rodgers’ cellphone video, which captured footage of the incident from the bar’s surveillance system. According to Appellant, this video is grainy, has no audio, and does not hold any probative value. Appellant also argues that the state did not present the testimony of any eye witnesses to corroborate the events depicted in the video. Appellant argues that this video does not aid the trier of fact, as it does not provide any useful or objective information. See *State v. Simmons*, 2d Dist. Montgomery No. 24009, 2011-Ohio-2068; *State v. Ollison*, 2016-Ohio-8269, 78 N.E.3d 254 (10th Dist.). According to Appellant, enlarged still photos purporting to show him holding a gun were admitted into evidence. However, these photos were such a poor quality they were useless in terms of evidence.

{¶21} In response, the state argues that the video was authenticated, so there was no need to provide additional corroboration from eyewitnesses. Regardless, the state asserts that the neighbor, C.M., corroborated the fact that two gunshots were fired in quick succession. She also corroborated that the patrons fled after the shots were fired. In addition, the damaged nature of the vehicle that transported Appellant to the hospital corroborates the location of the gunfire. The state also argues that Appellant’s injuries corroborate the events depicted on the video.

{¶22} Although not addressed by the parties, Appellant did not object to admission of the video at trial. Thus, he is limited to a plain error analysis. A three-part test is employed to determine whether plain error exists. *State v. Billman*, 7th Dist. Monroe Nos. 12 MO 3, 12 MO 5, 2013-Ohio-5774, ¶ 25, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).



First, there must be an error, *i.e.* a deviation from a legal rule. Second, the error must be plain. To be “plain” within the meaning of Crim.R. 52(B), an error must be an “obvious” defect in the trial proceedings. Third, the error must have affected “substantial rights.” We have interpreted this aspect of the rule to mean that the trial court’s error must have affected the outcome of the trial. (Citations omitted.)

*Billman* at ¶ 25.

{¶23} The video at issue is a duplicate. Admission of duplicates is within the sound discretion of the trial court. *State v. Tibbetts*, 92 Ohio St.3d 146, 160, 749 N.E.2d 226 (2001). The party who challenges the admission holds the burden of demonstrating that the duplicate should be excluded. *Id.*

{¶24} Evid.R. 901 addresses the authentication of evidence prior to its admissibility. The rule provides, in pertinent part: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Evid.R. 901(A).

{¶25} Evid.R. 403(A) covers the mandatory exclusion of relevant evidence where “its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.”

{¶26} Appellant’s argument that the state did not provide witnesses to corroborate the events of the video appears to be an attack on authentication. Here, Patrolman Rodgers testified that he used his cell phone to film the surveillance video because videos often disappear from a surveillance system. Patrolman Rodgers testified that the video

shown in court was the same video he viewed and captured the day of the incident. Lt. Eisenhart testified that Patrolman Rodgers showed her the video and it was the same as the one played before the court. Thus, the video appears to be what the state claims it is.

{¶27} We note that the parties do not address the chain of custody. The state must establish the chain of custody as it is part of the authentication and identification requirement found within Evid.R. 901. *State v. Taylor*, 8th Dist. Cuyahoga No. 98107, 2012-Ohio-5421, ¶ 36, citing *State v. Brown*, 107 Ohio App.3d 194, 200, 668 N.E.2d 514 (3d Dist.1995). The *Taylor* court determined that the state failed to present any evidence as to how the video of the security footage had been transferred from the detective who created it to the prosecutor. However, the court ultimately held that the detective who filmed the footage, her supervisor, and the store owner who owned the surveillance system had sufficiently testified that the video had not been altered in any way. *Id.*

{¶28} Here, there is no testimony as to how the prosecution obtained the video. However, similar to *Taylor*, Patrolman Rodgers and his supervisor, Lt. Eisenhart, testified that the video presented at trial mirrored the video taken from his cell phone of the surveillance footage and had not been altered in any way. Thus, the state's failure to demonstrate the chain of custody is not fatal, here.

{¶29} Appellant challenges whether the video, if admissible, is more prejudicial than probative. Appellant appears to base his argument in part on the "best evidence" rule, but mostly on the fact that the video does not clearly show he had a gun or that he fired a gun. Appellant argues that the grainy and overall poor quality of the video makes it almost impossible for the video to be of any evidentiary value.

**{¶30}** The “best evidence rule” is found within Evid.R. 1001 through 1008. Pursuant to Evid.R. 1002, “[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules[.]”

**{¶31}** Several Ohio districts have held that cell phone footage of surveillance videos is admissible so long as the requirements of Evid.R. 1003 are satisfied. See *Ollison, Taylor, Simmons, supra*; *State v. Jones*, 8th Dist. Cuyahoga No. 102318, 2015-Ohio-4694; *State v. Garcia*, 3d Dist. Hancock No. 5-01-12, 2001 WL 1031459 (Sept. 10, 2001).

**{¶32}** Pursuant to Evid.R. 1003, “[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” Evid.R. 1001(4) defines a duplicate as “a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.”

**{¶33}** Appellant has not raised a genuine question as to the authenticity of the video in this case. Thus, he cannot satisfy the first prong of Evid.R. 1003. Even so, Special Agent Justin Soroka testified that he obtained the surveillance system but could not retrieve the video because it had disappeared from the system. Patrolman Saraniti testified that he had earlier filmed the security footage for this reason. As the original video was not available for trial purposes, Appellant has also failed to satisfy the second prong.

{¶34} As to whether the video was probative or prejudicial, both parties cite to *Simmons* and *Ollison*. In *Simmons*, the appellant challenged the admission of a videotaped copy of a surveillance video. The appellant argued that the video, even if admissible, was more prejudicial than probative. *Id.* at ¶ 12-13. In rejecting the argument, the court acknowledged that the video constituted evidence of the appellant committing a crime, and was obviously unfavorable to her. However, the court explained that “[l]ogically, all evidence presented by a prosecutor is prejudicial, but not all evidence unfairly prejudices a defendant.” *Id.* at ¶ 14. The court noted that the offender in the video was partially concealed behind a barrier and because of this, the video does not show her actions. The court explained that while the partial concealment created speculation as to whether the appellant committed a criminal act, this goes to the weight of the evidence, not admissibility. Thus, the evidence was not unfairly prejudicial. Further, the video corroborated eyewitness testimony as to the events depicted, thus held substantial probative value. *Id.* at ¶ 15.

{¶35} In *Ollison*, the appellant also challenged cell phone footage of surveillance video taken by a police officer. In reviewing the appellant’s claim of unfair prejudice, the court noted the video was significant, as it corroborated eyewitness testimony. In particular, the court explained that the video provided objective evidence as to the proximity of the witnesses to the offender, how long the witnesses were able to view the offender, the distinctive clothing worn by the participants, and the order of the events. *Id.* at ¶ 56. Thus, the video held “high probative value” which assisted the jury in evaluating the credibility of the witnesses and their ability to identify the offender, regardless of the dark quality of the video. *Id.*

{¶36} The video at issue is grainy and generally is of poor quality. However, the video shows Appellant smoking what is described as a “Black and Mild” cigar while standing in the left-hand corner of the patio. Shortly after arriving at the patio, one of the men instantly shoved Appellant into the fence. The video shows an object, explained to be the cigar, fall to the ground and sparks appeared. The men repeatedly shoved and pushed Appellant and backed him into a corner. Up to this point in the video, the two men were the sole aggressors. A person who appears to be an uninvolved third party eventually broke up the altercation and the two men left the patio and entered the bar.

{¶37} As the two entered the bar, Appellant can be seen standing with his arms at his side. Patrolman Rodgers testified that a gun is observable in Appellant’s right hand, however, the video is too dark and poor quality to confirm this. At best, it can be established that Appellant’s arms are extended downward at his sides and the area near his right hand is dark. Appellant can be seen placing his hands on top of the fence as he propelled himself over it. No gun is visible as Appellant placed both hands on the fence. After Appellant cleared the fence, he ran to the left-hand corner of the building. While this occurred, the patron who broke up the original altercation ran to the fence to watch.

{¶38} Appellant approached the corner of the building and assumed what Patrolman Rodgers described as a shooter’s stance. A review of the video shows Appellant crouch slightly and position himself in a manner consistent with a person preparing to fire a gun, however, at no point during the video is it clear Appellant holds a gun. Several seconds later, Appellant’s arms moved in a manner which Patrolman Rodgers testified was consistent with “recoiling.” As previously explained, “recoiling” is

the reaction of a shooter after experiencing the force associated with the explosion of gun powder. After this movement, Appellant ran back towards the patio and jumped the fence.

{¶39} As Appellant ran back to the patio, one of the earlier two men can be seen running after him. At the same time, the bystander who was watching from the fence ran towards the glass door to enter the bar. It is unclear if he ran because of Appellant's action in possibly firing a weapon, or because Appellant was returning, as both events occurred almost simultaneously. Appellant hurdled the fence and attempted to enter the glass door to the bar but his pursuer extended his arm over the fence and shot him in the back. Appellant fell to the ground and the door partially closed on his body.

{¶40} While Appellant is correct in that a gun cannot be clearly seen at any point in the video and the video is generally of poor quality, these facts create a credibility issue rather than an admissibility issue. This matter is akin to *Simmons*. Any evidentiary value of the video is relevant to the weight of the evidence, not admissibility.

{¶41} Accordingly, Appellant's second assignment of error is without merit and is overruled.

#### ASSIGNMENT OF ERROR NO. 1

The verdict and conviction entered against Defendant-Appellant was against the manifest weight of the evidence.

{¶42} Appellant argues that the sole evidence against him was the cell phone video which did not show him possess or fire a gun at any point. Appellant urges that the state did not present any eyewitness testimony and the victims also did not testify.

{¶43} The state objects to Appellant’s assertion that the video was the sole evidence. The state reiterates that the neighbor, C.M., testified that she heard two gunshots fired and then saw patrons fleeing the building. Even so, the state contends that the video showed Appellant assume a shooting position and point a gun towards the front door. The video then shows Appellant’s arm extend around the corner of the building and two recoil movements were visible. Patrolman Rodgers later located Appellant at a hospital and interviewed the individuals who brought him there. The car driven by these individuals had been parked in front of the bar in the direction Appellant was aiming and was damaged during the shooting. A bullet fragment was removed from the vehicle’s radiator. In addition, the state argues that Appellant’s alibi was contradicted by the video.

{¶44} “Sufficiency of the evidence is a legal question dealing with adequacy.” *State v. Pepin-McCaffrey*, 186 Ohio App.3d 548, 2010-Ohio-617, 929 N.E.2d 476, ¶ 49 (7th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). “Sufficiency is a term of art meaning that legal standard which is applied to determine whether a case may go to the jury or whether evidence is legally sufficient to support the jury verdict as a matter of law.” *State v. Draper*, 7th Dist. Jefferson No. 07 JE 45, 2009-Ohio-1023, ¶ 14, citing *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955). When reviewing a conviction for sufficiency of the evidence, a reviewing court does not determine “whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” *State v. Rucci*, 7th Dist. Mahoning No. 13 MA 34, 2015-Ohio-1882, ¶ 14, citing *State v. Merritt*, 7th Dist. Jefferson No. 09-JE-26, 2011-Ohio-1468, ¶ 34.

{¶45} In reviewing a sufficiency of the evidence argument, the evidence and all rational inferences are evaluated in the light most favorable to the prosecution. *State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998). A conviction cannot be reversed on the grounds of sufficiency unless the reviewing court determines no rational juror could have found the elements of the offense proven beyond a reasonable doubt. *Id.*

{¶46} Weight of the evidence concerns “the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.” (Emphasis deleted.) *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. It is not a question of mathematics, but depends on the effect of the evidence in inducing belief. *Id.* Weight of the evidence involves the state's burden of persuasion. *Id.* at 390. The appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins*, at 387, 678 N.E.3d 541. This discretionary power of the appellate court to reverse a conviction is to be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id.*

{¶47} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact is in the best position to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice



inflections, and demeanor. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). The jurors are free to believe some, all, or none of each witness' testimony and they may separate the credible parts of the testimony from the incredible parts. *State v. Barnhart*, 7th Dist. Jefferson No. 09 JE 15, 2010-Ohio-3282, ¶ 42, citing *State v. Mastel*, 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971). When there are two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, this Court will not choose which one is more credible. *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶48} As to sufficiency, Appellant bases his argument on the fact that no gun is actually visible in the video at any point during the incident and the state did not present any other evidence to show that he fired a gun. As to manifest weight, Appellant focuses on the lack of quality and quantity of evidence.

{¶49} Again, the video of the encounter demonstrates that Appellant was not the initial aggressor. The video does not at any point clearly show Appellant holding a gun. The state also misrepresents several facts. First, C.M. testified that she heard two gunshots and then looked out of her window and saw a man running down the street and eventually get into a car. The state contends that this is evidence patrons fled the bar. However, it appears equally likely that the man running down the street and entering the vehicle is the shooter. Further, the state claims that the man who broke up the original altercation ran away when he heard the shots. However, it appears equally likely from the video that the man may have run because Appellant was running back to the patio.

{¶50} As to the absence of eyewitness testimony, the state contends that eyewitnesses were uncooperative. While Patrolman Rodgers and Lt. Eisenhart testified

that they did not receive eyewitness cooperation, this is contradicted somewhat by their testimony. For instance, they both testified that they learned that Appellant, McMillon, and Holland were involved in an altercation by speaking to eyewitnesses. They also learned from these witnesses that two individuals drove Appellant from the bar to the hospital. Additionally, witnesses informed investigators that the bartender cleaned up the blood before they arrived at the scene. Thus, the police received significant information from eyewitnesses who were not called to testify.

{¶51} Regardless, the jury knew that witnesses had given the police certain information and knew those witnesses did not testify. The jury saw the video and was able to independently determine whether Patrolman Rodgers' testimony accurately portrayed the events. The jury saw the blurry and enlarged still photo of the alleged gun. Significantly, the jury also saw Appellant assume a position consistent with a person firing a gun and then saw movement that could be deemed "recoiling." This fact, alone, strongly suggests that Appellant fired a gun even if one cannot clearly be seen due to the poor quality of the video.

{¶52} From this evidence, a reasonable trier of fact could infer that Appellant fired a gun even without definitively observing a gun in his hand. While the evidence was certainly limited in this case, Appellant's positioning and arm movement is sufficient evidence for a jury to conclude that he fired a gun at the two victims. Accordingly, Appellant's first assignment of error is without merit and is overruled.

#### Conclusion

{¶53} Appellant argues that the trial court improperly admitted a cell phone video taken of a surveillance video because it was more prejudicial than probative. Regardless,

Appellant argues that his conviction is not supported by sufficient evidence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

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For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**