[Cite as *State v. Turner*, 2011-Ohio-3705.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1051 (C.P.C. No. 08CR-11-8193)
Denelle Turner,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 28, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Denelle Turner ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of murder and felonious assault. Having concluded that there was sufficient evidence to support the conviction and that it was not against the manifest weight of the evidence, we affirm.

{¶2} A Franklin County Grand Jury indicted appellant on charges of murder (two counts), in violation of R.C. 2903.02, felonious assault, in violation of R.C. 2903.11, and tampering with evidence, in violation of R.C. 2921.12. Count 1 of the indictment alleged that appellant purposely caused the death of Robert Demons. Count 2 alleged that appellant caused the death of Robert Demons as a proximate result of appellant's committing or attempting to commit felonious assault. Count 3 alleged that appellant committed felonious assault by knowingly causing or attempting to cause physical harm to Chiquita Pittman by means of a deadly weapon. Count 4 alleged that appellant tampered with evidence by concealing a firearm. Appellant pleaded not guilty to the charges.

{¶3} The charges against appellant arose out of a shooting that occurred in the early morning hours of August 3, 2008, at the Southpark Apartments on the west side of Columbus, Ohio. Four witnesses testified that they were part of a group of individuals who were at a bar until about 2:45 a.m. that morning. The group included the following, among others: Robert Demons; Robert's girlfriend, Chiquita Pittman; Robert's sister, Antoinette Brown; Robert's brother, Sherman Brown; and Sherman's girlfriend, Kachina Carter. As the group was getting ready to leave the bar, they discussed getting something to eat. Duron and Durrell Gray, also known as Ron-Ron and Ray-Ray, needed a ride to Southpark, and there was some discussion about whether to take them there. Antoinette said they should not go to Southpark because the people there did not like Robert. Ultimately, at least three cars, and possible four cars, containing all of these individuals and a few others, drove to Southpark.

{¶4} Chiquita drove her car, a gray Expedition. Sherman drove Robert's car, a yellow Cutlass. Kachina drove her car, a blue-green Jimmy. There was also some discussion at trial of a fourth car, a red two-door, which may have been the car that Ron-Ron and Ray-Ray rode in. Chiquita, Sherman, and Kachina each denied that the two were in his or her car.

{¶5} There was conflicting testimony about the order in which the three cars arrived at Southpark. In any case, at least the three cars, and maybe a fourth, pulled into the parking lot in front of 790 Canonby Place.

{¶6} At trial, Antoinette testified that appellant, known as G-Baby, approached the cars. She saw that appellant had a pistol in his hand, and she got out of the car to "protect" her brother. (Tr. 152.) She approached appellant, "got in his face," and said that they were only there to drop people off and did not want any problems. (Tr. 154.) She said she talked to appellant for about 20 minutes.

{¶7} Robert got out of his car and started laughing. Antoinette told Robert to get back in the car, and he did. Chiquita started to pull the Expedition away. Robert put his hand out of the car window, pointed a gun into the air, and shot into the air three times. Robert did not point the gun back at appellant or toward the other cars.

{¶8} Appellant had walked around Antoinette and was standing in the middle of the parking lot. As soon as Robert fired the third shot, appellant shot at the Expedition containing Robert and Chiquita. Appellant ran away. Antoinette later identified appellant near his mother's apartment.

{¶9} Antoinette said that appellant and Robert did not exchange any words. After the shots by appellant and Robert, a man named Wendell Richardson came

outside and started shooting. She admitted that she had not told police that Robert started shooting first "because he was on parole and he is not even supposed to have a gun." (Tr. 195.) She also did not tell police that Wendell had also fired shots because she thought it was irrelevant.

{¶10} Sherman testified that, before he pulled into the parking lot at Southpark, he "saw G-Baby and my brother in the parking lot together with their guns out in each other's face." (Tr. 223.) He said they were not waving their guns though, and he did not see Robert ever point his gun at appellant.

{¶11} About the time Sherman was pulling in, he saw Robert get back into his car. As Chiquita began driving the Expedition away from where they had been parked, Robert "stuck his hand out the window and shot up in the air." (Tr. 227.) He fired three or four shots. He did not point the gun at appellant. As soon as Robert shot into the air, appellant "shot the back of the truck." (Tr. 228.) Appellant was about 15 steps away from the Expedition when he fired. He fired about three shots. The window in the back of the Expedition shattered. Robert did not shoot back. Appellant walked away.

{¶12} Chiquita testified that, when they arrived at Southpark, appellant was sitting outside the apartment building. Robert saw appellant and "just starts talking crazy in the car." (Tr. 277.) Robert got out of the car with his gun and yelled at appellant. "At first [appellant] was just in shock, like who is he talking to? So when he realized Robert was talking to him, they start arguing." (Tr. 279.) The argument between Robert and appellant was "heated," and Chiquita was "scared." (Tr. 280.) She made Robert get back into the car. Once Robert got back into the car, and Chiquita started to pull away, appellant was at the driver's side of her car, so close to her that

she "could actually reach out the window and probably touch him." (Tr. 281.) Appellant and Robert continued to argue. She told appellant that Robert was drunk and to " '[l]eave it alone.' " (Tr. 281.) She told Robert to " 'sit back and shut up.' " (Tr. 281.) She started to drive out of the parking lot and heard a gunshot. When she got about halfway down the block, she saw appellant "shooting, the window is shot out and the mirror is shot out." (Tr. 282.) Then Robert fell in her lap. She had no recollection of Robert shooting his gun. She identified appellant as the shooter.

{¶13} On cross-examination, Chiquita said that she had not had anything to drink that night, but Robert was drunk. When they arrived at Southpark, appellant was talking to Antoinette.

{¶14} Kachina testified that she had seen appellant many times before. When she arrived at Southpark, she saw appellant coming toward her car. She got out of the car and spoke to him. Robert was out of the car, too. Appellant "showed Robert his gun, Robert showed him his gun. And Robert like laughed him off." (Tr. 331.) Robert yelled for everyone to leave. As Chiquita was driving away, Kachina heard gunshots, and "G-Baby was like running towards the car with the gun." (Tr. 332.) Kachina clarified that she heard three sets of gunshots, including shots fired by Wendell Richardson after Chiquita had pulled out of the parking lot. Kachina admitted that she did not tell police that night that Robert had a gun because she wanted to protect him.

{¶15} On cross-examination, Kachina said that she did not see Robert fire any shots. She told police that she heard ten to 15 shots that night.

{¶16} Several police officers testified that they responded to calls regarding the shooting that morning. Columbus Police Officer Barry O'Dell testified that, when he

approached Southpark Apartments, he saw a vehicle with multiple people standing around it and a man lying on the ground outside the passenger front door. The man was bleeding from the area of his head, and he was still breathing. Officer O'Dell spoke to a female bystander, who said, " 'G-Baby did this.' " (Tr. 54.)

{¶17} On cross-examination, Officer O'Dell said that police get frequent calls to the area concerning shots being fired. He said that there are a lot of guns in the area. In his testimony, Columbus Police Officer Randall Mayhew also confirmed that "Southpark is pretty active with criminal activity, vehicle thefts, assaults, gunfire." (Tr. 69.)

{¶18} Columbus Police Officer Joseph Riddle testified that he heard the dispatch concerning the shooting, and he recognized the name of the suspect identified as G-Baby. He knew appellant by that name and knew where he lived. As he approached appellant's apartment building, Officer Riddle saw appellant and other men sitting on the front porch. Officer Riddle then saw appellant run inside the building. He and another officer went inside the building, and Officer Riddle saw appellant run inside the apartment. Appellant ultimately came out of his apartment and surrendered to police.

{¶19} On cross-examination, Officer Riddle confirmed that the area is a tough place to live, and there are a lot of shootings within the precinct. He said that appellant was cooperative while police detained him.

{¶20} Columbus Police Detective Thomas Burton also testified that he arrived at the scene at about 7:00 a.m. on August 3, 2008. He and another detective took photographs and collected evidence from the scene and from the vehicles. They

collected six nine-millimeter spent casings and three .40-caliber casings from the parking lot.

{¶21} Detectives also collected evidence at the apartment where police had apprehended appellant. They found a nine-millimeter semiautomatic pistol inside a floor register.

{¶22} Detective Burton identified photographs depicting possible bullet strikes in the following places on the Expedition: left rear taillight; right rear taillight; right rear wheel well; right rear passenger door; front passenger headrest; and the windshield. There was no glass in the back window, and the hydraulic arm to the rear window was broken. Detectives recovered bullet fragments and a Llama .40-caliber semiautomatic pistol from inside the vehicle.

{¶23} On cross-examination, Detective Burton said that they collected one .45-caliber shell casing from the parking lot in front of 750 Canonby Place. On re-cross, Detective Burton said that, in a neighborhood like Southpark, it is not unusual to find additional shell casings.

{¶24} Mark Hardy, a forensic scientist with the Columbus Division of Police, also testified. Hardy examined two weapons found at the scene—a Star nine-millimeter Luger pistol and the .40-caliber Llama pistol, both semiautomatic. He determined that the three .40-caliber shell casings found at the scene were from bullets fired from the Llama pistol, and the six nine-millimeter shell casings were from the Star pistol. As for some of the bullet fragments found inside the Expedition, he could rule out the .40-caliber pistol as the weapon they were fired from, but he could not determine whether they were fired from the nine-millimeter pistol or not. On cross-examination, he

confirmed that neither pistol could have fired the .45-caliber shell casing found at the scene.

{¶25} The parties entered into several stipulations. First, if called to testify, an assistant coroner would testify that Robert Demons died of a gunshot wound to the head. The wound was from back to front and right to left. Second, if called to testify, a forensic scientist would testify that gunshot residue was found on appellant. Third, if called to testify, a forensic biologist would testify that DNA samples were taken from the nine-millimeter pistol. That DNA consisted of a mixture of DNA from which appellant could not be excluded. Finally, if called to testify, a detective would testify that no fingerprints were found on the nine-millimeter pistol.

{¶26} Appellant testified on his own behalf. He was 17 years old at the time of the shooting. He had attended the ninth grade, but had not completed it.

{¶27} Appellant stated that, in the early morning hours of August 3, 2008, he was sitting in front of an apartment building on Canonby Place. He saw four cars pull very quickly into the parking lot in front of him. The first car was a yellow Cutlass owned by Robert Demons and driven by Sherman Brown. Robert's girlfriend, Chiquita, drove the second car, a gray SUV. Sherman's girlfriend, Kachina, drove the third car. Brian Galloway owned the fourth car, a red two-door.

{¶28} Kachina got out of her car and they spoke. Antoinette got out and they spoke. Antoinette said they did not want any trouble. As he and Antoinette were talking, Robert got out of the Expedition "with a gun coming towards" appellant. (Tr. 510.) Robert waved the gun in front of appellant's face and told Antoinette to get away. Robert took his eyes off appellant long enough for appellant to pull his gun out, and

when he did, Robert put his gun down. Robert turned away from appellant and got back in the Expedition. Chiquita backed up and pulled away slowly. Chiquita stopped in front of the yellow Cutlass, and Robert yelled to Sherman, " 'Come on, let's go.' " (Tr. 513.)

{¶29} Appellant was "scared, just shaking and just trying to get out of there." (Tr. 513-14.) He walked to the middle of the parking lot in order to avoid meeting up with Robert. When he got to the middle of the lot, he heard shots being fired. He "just felt stuff just flying past me, air, something just hitting the pavement or something. As I was just standing there in the parking lot, I was shocked, I couldn't go nowhere, couldn't run nowhere, couldn't hide behind anything. I was just stuck in the middle of the parking lot." (Tr. 514.) He saw "fire coming from the gun." (Tr. 514.) He started "shooting at the back of the car" and "took off running up the pathway." (Tr. 515.) As he ran toward his apartment, after about a minute, he heard more gunshots and saw Wendell aiming at the Expedition. He ran to his apartment and put the gun on the speaker in his bedroom. When he saw police approaching, he went inside and locked the door. When they told him to come out, he did.

{¶30} Appellant denied running after the Expedition. He said he had nowhere to run except into the parking lot because there were dumpsters behind him.

{¶31} Appellant said that he and Sherman Brown had had minor arguments, but nothing serious. He and Sherman each had a baby by the same woman. Appellant had no dispute with Robert. He denied drinking or smoking marijuana that night.

{¶32} On cross-examination, appellant confirmed that he owned the recovered nine-millimeter pistol, which he carried for protection. He was alone when the cars arrived. Appellant was shocked when Robert got out of his car with a gun, and

appellant said nothing in response to Robert. He did not run away because he did not want to turn his back on Robert. He did not think Robert was laughing at him.

{¶33} Appellant said again that he could not run away because he saw the fire from Robert's gun and could not outrun a bullet. When asked why he did not run away when Robert took his eyes off him, appellant said he "could have ran away. But I chose to stand there because I was still shocked, never had a barrel down in my face before, and I started walking towards my house so I can go towards my safety." (Tr. 538.) On re-cross, appellant said that he shot at the Expedition because shots were fired at him "and that is where the bullets was coming from." (Tr. 541.)

{¶34} The instructions to the jury included an instruction that would have allowed a finding that appellant acted in self-defense. Ultimately, the jury found appellant not guilty of count one of the indictment (murder, by purposely killing Robert Demons), but found appellant guilty of count two (murder, by killing Robert Demons as a proximate result of committing or attempting to commit felonious assault) and of count three (felonious assault, by purposely harming or attempting to harm Chiquita Pittman), each with a firearm specification. The jury found appellant not guilty on the charge of tampering with evidence.

{¶35} Appellant filed a timely appeal, and he raises the following assignment of error:

> THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF MURDER AND FELONIOUS ASSAULT AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT

EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶36} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks* at paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim); *State v. Lockhart* (Aug. 7, 2001), 10th Dist. No. 00AP-1138.

{¶37} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. Id. Additionally, we 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.' " Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest

weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶38} The jury convicted appellant of murder, with a firearm specification, in violation of R.C. 2903.02. R.C. 2903.02(A) precludes a person from purposely causing the death of another. R.C. 2903.02(B) precludes a person from causing the death of another as a result of committing or attempting to commit an offense of violence that is a felony of the first or second degree.

{¶39} The jury also convicted appellant of felonious assault in violation of R.C. 2903.11, a felony of the second degree. R.C. 2903.11 precludes a person from knowingly (A) causing serious physical harm to another or (B) causing or attempting to cause harm to another by means of a deadly weapon.

{¶40} We begin with the felonious assault charge, which related to appellant's actions against Chiquita Pittman, the driver of the Expedition. There was evidence that, if believed, was sufficient to support the conviction. Antoinette, Sherman, Chiquita, and Kachina all testified that appellant aimed his gun, a deadly weapon, directly at the Expedition and fired. There was evidence of multiple bullet strikes on the back and passenger side of the vehicle. Although appellant testified that he fired the shots in self-defense, the jury could have rejected that testimony and concluded that appellant

intended to cause harm to Chiquita. Therefore, there was sufficient evidence to convict appellant of felonious assault.

{¶41} Because there was sufficient evidence to convict appellant of felonious assault in the second degree, there was sufficient evidence to convict him of murder in violation of R.C. 2903.02, which precludes a person from causing the death of another as a result of committing a crime of violence that is a first- or second-degree felony. The state presented evidence that appellant fired his nine-millimeter weapon toward the Expedition, and the weapon could have fired the bullet that killed Robert. And multiple witnesses testified that appellant, known as G-Baby, was the only shooter at the time the Expedition was in the parking lot. Therefore, there was sufficient evidence to support the murder conviction.

{¶42} In support of his argument that the convictions are against the manifest weight of the evidence, appellant questions the credibility of Robert's family members. As appellant notes, they did not tell police that Robert had fired shots first or that Wendell Richardson also fired shots. They wanted to protect Robert because he was on parole and should not have been carrying a gun.

{¶43} Appellant also notes the inconsistency among some of the witnesses. Antoinette and Sherman testified that they saw Robert put his hand out the window, point his gun into the air, and fire three or four shots. Chiquita, who was in the car right next to Robert, testified that she did not hear or see Robert fire any shots. Kachina did not see Robert fire any shots, but she heard them. We note, however, that even appellant testified that Robert fired shots. The critical difference in the testimony was whether Robert fired into the air, as Antoinette and Sherman contended, or at appellant,

as appellant contended. Whatever their conclusions about Robert's actions, the jury reasonably concluded that appellant knowingly shot at the Expedition as it was pulling away. Chiquita said that she could see appellant in her mirror and that he was standing behind the vehicle and firing his weapon directly at them. The evidence established that the back window was shattered and there were multiple bullet strikes on the back and passenger side of the vehicle—evidence that supports the state's theory that appellant intended to hurt anyone inside the vehicle.

{¶44} Appellant also challenges the state's evidence concerning whether appellant's gun fired the bullet that killed Robert. Multiple witnesses testified that appellant was the only person who shot at the Expedition. Appellant testified that he shot at the vehicle because that is where the bullets were coming from. The state's witnesses testified as to the shell casings recovered from the scene, and Mark Hardy matched the nine-millimeter shell casings to the nine-millimeter pistol belonging to appellant.

{¶45} For all these reasons, we conclude that the jury verdict was not against the manifest weight of the evidence. Having already concluded that the verdict was supported by sufficient evidence, we overrule appellant's assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and TYACK, JJ., concur.