

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2012-P-0028</b>
RONALD L. HIGGINBOTTOM, II,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2011 CR 0428.

Judgment: Affirmed.

*Victor V. Viglucci*, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*Patricia J. Smith*, 9442 State Route 43, Streetsboro, OH 44241 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Ronald L. Higginbottom, II, appeals his convictions, following a jury trial in the Portage County Court of Common Pleas, for two counts of Attempted Murder, Aggravated Burglary, Tampering With Evidence, and three firearm specifications. The issues to be determined by this court are whether Miranda warnings remain effective for subsequent interviews when they are given several hours prior to the later interviews, the interviews take place in the same police station, and the defendant shows no intellectual difficulties; and whether convictions for Attempted

Murder, Aggravated Burglary, and Tampering With Evidence are supported by the weight of the evidence when the defendant confesses, witnesses identify the defendant as the perpetrator, there is limited forensic evidence, and the gun used in the shooting was not located by police. For the following reasons, we affirm the judgment of the trial court.

{¶2} On June 29, 2011, Tracy Cresong was shot while sleeping in his bedroom at approximately 4:00 a.m. An investigation by police led to the arrest of Higginbottom.

{¶3} On July 1, 2011, the Portage County Grand Jury indicted Higginbottom for one count of Attempted Murder, a felony of the first degree, in violation of R.C. 2923.02, 2903.02(A), and 2929.02; one count of Attempted Murder, a felony of the first degree, in violation of R.C. 2923.02, 2903.02(B), and 2929.02; one count of Aggravated Burglary, a felony of the first degree, in violation of R.C. 2911.11(A)(1) and (B); and one count of Tampering With Evidence, a felony of the third degree, in violation of R.C. 2921.12(A)(1) and (B).

{¶4} On July 15, 2011, an Amended Indictment was filed, which included firearm specifications for both Attempted Murder charges and the Aggravated Burglary charge, in violation of R.C. 2929.14(D) and 2941.145. It also amended the charge of Aggravated Burglary to include that the violation was of R.C. 2911.11(A)(1) and/or (2) and (B).

{¶5} On September 15, 2011, Higginbottom filed a Motion to Suppress Oral Statements, asserting that he was not properly advised of his Miranda rights prior to his second and third interrogations.

{¶6} On November 14, 2011, a suppression hearing was held. At that hearing, the following testimony was presented.

{¶7} Patrolman Justin Leidel, of the Streetsboro Police Department, testified that on June 29, 2011, he responded to a call regarding a shooting on David Drive in Streetsboro, Ohio. After an investigation conducted on the same date led to Higginbottom as the shooter, he was initially taken into custody by police in Akron. Leidel went to Akron to take Higginbottom into custody and placed him in his police cruiser for transport. At this time, approximately 8:30 a.m., Leidel gave Miranda warnings to Higginbottom and drove him to the Streetsboro police station.

{¶8} Sergeant Richard Polivka, of the Streetsboro Police Department, testified that he and Sergeant Troy Beaver conducted the first interview of Higginbottom in the Streetsboro police station interview room, at 11:34 a.m., which lasted about an hour. Prior to beginning the interview, Sergeant Polivka read Miranda warnings to Higginbottom and also gave him a form with the written rights. Higginbottom initialed each of the rights and signed the waiver stating that he understood these rights. During this interview, Higginbottom stated that he had been home on the night of the shooting and was not involved.

{¶9} Sergeant Beaver also testified regarding the 11:34 a.m. interview. He noted that he was present while Sergeant Polivka read Miranda rights to Higginbottom and that Higginbottom wished to speak with the officers at that time. After about an hour, Higginbottom was returned to his holding cell.

{¶10} At approximately 2:30 p.m., Sergeant Beaver and Detective Brian Shaffer conducted the second interview with Higginbottom, which took place in the booking area of the Streetsboro police station. Sergeant Beaver noted that Miranda rights were not given prior to this interview. During the interview, Higginbottom asked the officers to tell his girlfriend, Cheryl Cresong, that he loved her, and “broke down emotionally.” Soon

thereafter, Higginbottom confessed and explained his involvement in the shooting. Higginbottom did not ask for counsel, did not state that he wanted to remain silent, and was “very cooperative.”

{¶11} Detective Shaffer noted that prior to the 2:30 p.m. interview, he asked Higginbottom, “Are you all right to talk with me?,” to which Higginbottom responded affirmatively. A short time after the interview concluded, Shaffer listened to the recording of the interview and realized that it was difficult to hear. At 5:04 p.m., he took Higginbottom back to the interview room for a third interview, did not give Miranda warnings, but explained that he wanted to have Higginbottom’s statement recorded. Higginbottom’s story was “pretty much” the same as it had been in the prior interview. Higginbottom was cooperative and did not request counsel.

{¶12} On November 22, 2011, the trial court denied Higginbottom’s Motion to Suppress. The court found that Higginbottom was advised of his Miranda rights during the first interview conducted at 11:34 a.m., both orally and in writing. The court also found that no Miranda warnings were given during the subsequent interviews, but that Officer Shaffer did “ask the defendant if he was willing to talk to him.” The court found that no coercion occurred and that Higginbottom “had been through the criminal justice system before.” The court held that “upon considering the totality of the circumstances,” Higginbottom’s statements were voluntary and sufficient Miranda warnings were given.

{¶13} A trial was held on December 8, 9, 13, and 14, 2011. The following testimony was presented.

{¶14} Patrolman Leidel responded to a dispatch regarding a shooting at around 4:00 a.m., on June 29, 2011, to an address on David Drive, in Streetsboro. Near the area of David Drive, approximately a quarter mile from the address of the shooting, he

saw a purple Geo Tracker and stopped the vehicle to see if it was involved in the shooting. Upon approaching the vehicle, he asked the individuals inside to “get to their residence \* \* \* and lock the doors.” Inside of the vehicle, he saw a white female driver and a passenger who he “thought to be” a black female, although he later believed he was mistaken and that the passenger may have been wearing a “head wrap,” making him look like a female. At the time of the stop, Patrolman Leidel did not believe the individuals or the vehicle were related to the crime.

{¶15} Patrolman Leidel then proceeded to the home where the shooting occurred and encountered the victim, Tracy Cresong, laying on the couch, bleeding from a gunshot wound. After Tracy was taken to the hospital, Leidel spoke with his two children present at the home. They stated that the individual who shot Tracy was their mother’s boyfriend, Higginbottom. The children, upon being questioned, stated that their mother, Cheryl Cresong, drove a purple Geo Tracker. Patrolman Leidel then was shown a picture of Cheryl and identified her as the driver of the Tracker he had stopped.

{¶16} A warrant was issued for Higginbottom’s arrest on that same morning and Leidel went to Higginbottom’s home in Akron, saw Cheryl there, and recognized her as the driver of the Tracker. While there, he gathered several items from both Higginbottom’s bedroom and the Tracker, which was parked at the home.

{¶17} Tracy Cresong, the victim, testified regarding the relationship between himself and his wife, Cheryl. He explained that they had a difficult relationship and several break-ups. They had six biological children and two adopted children. During the course of their relationship, during a break-up, Cheryl had a child with Higginbottom. While she was pregnant with that child, in 1999, Tracy and Cheryl continued to have an “off and on” relationship. They subsequently were married in 1999 or 2000, but

continued to have marital problems. In 2010, Cheryl started dating Higginbottom again and filed for divorce from Tracy. Tracy and Cheryl began to see each other again while the divorce proceedings were pending. Tracy testified that a few weeks before the shooting, he was granted temporary custody of the eight children.

{¶18} On the night of the shooting, Tracy was sleeping and heard someone open his bedroom door. He saw a man with a gun, swung at the man, and was shot in the shoulder. He described the man as having a mask covering his face, but could see his eyes and recognized the man as Higginbottom. He explained that he told the kids, after the shooting, that “it was Man,” which was Higginbottom’s nickname. He also told them “make sure they know who did it.”

{¶19} C.F., Tracy and Cheryl’s 15 year old daughter, testified that she was sleeping in the living room of her father’s home at the time of the shooting. She explained that her mother had been dating Higginbottom, who lived in a home with her mother and C.F. at one point for approximately one year. She also explained that a few weeks prior to the shooting, she saw a long gun in the trunk of her mother’s vehicle.

{¶20} On the night of the shooting, C.F. woke up after hearing a loud boom, saw a person running from the hallway, yelled “Dad,” and the individual stopped, looked at her, and ran out the front door. She said she saw the man, although there were no lights on in the living room, and described him as “black,” “tall,” and “very heavy.” She also explained that after the shooting, her father told her Higginbottom was the shooter.

{¶21} H.F., Tracy and Cheryl’s sixteen year old son, testified that he was present at the home during the shooting but did not see the shooter. His father told him that Higginbottom was the shooter.

{¶22} Susan Burns, a guardian ad litem in Tracy and Cheryl's divorce and custody proceedings, testified that she filed a report with the trial court on June 22, 2011, about a week prior to the shooting, recommending that Tracy receive custody of his children with Cheryl.

{¶23} Martin Lewis, a forensic scientist at the Ohio Bureau of Criminal Identification and Investigation (BCI), testified that gunshot residue was found on the white shirt and the white shoes Higginbottom was wearing when Patrolman Leidel took him into custody on June 29, 2011. Residue was also found on a black shoe collected from Higginbottom's bedroom. Lewis testified that there was no gunshot residue on samples taken from Higginbottom's hands. He also explained that the analysis of the gunshot residue could not prove that Higginbottom fired the gun on June 29.

{¶24} Mark Kollar, a special agent with BCI, helped process the crime scene. He testified that there appeared to be footwear impressions in the bathtub near an open window in the bathroom. He also explained that none of Higginbottom's fingerprints or DNA were found in Tracy's home.

{¶25} Sergeant Beaver presented testimony consistent with that given at the suppression hearing. A video of the first interview was played for the jury, which Beaver testified did not include any admissions by Higginbottom. He explained that a second interview was conducted, in the booking room, but that portions of it were difficult to hear or inaudible, so a third interview was conducted by Detective Shaffer in the interview room.

{¶26} Detective Shaffer testified regarding the investigation and Higginbottom's interview. He gave similar testimony regarding the circumstances surrounding the interview of Higginbottom and noted that information was presented to Higginbottom

about his daughter possibly being in the car near the crime scene. Shaffer explained that during the second interview, Higginbottom revealed information about throwing the gun over a bridge. A dive team was sent to the river under the bridge but no weapon was located.

{¶27} The recording of the second interview revealed that Higginbottom admitted to going to Tracy's house but stated that he was not supposed to get shot and the gun went off during a struggle. He also explained that he just wanted to tell Tracy to "leave the kids alone." He entered the house through an open bathroom window and the weapon was a shotgun. He also stated that Cheryl was the driver of the Tracker and she was waiting in the car while he was in Tracy's home.

{¶28} In the third interview, Shaffer stated that he wanted to "recap some things," and Higginbottom gave similar statements regarding his actions as he did in the second interview. He stated that he had been present in the Tracker with Cheryl when it was stopped by Patrolman Leidel.

{¶29} A Judgment Entry was filed on December 15, 2011, memorializing the jury's December 14 verdict, in which Higginbottom was found guilty of each of the offenses for which he was indicted, which included two counts of Attempted Murder, one count of Aggravated Burglary, one count of Tampering With Evidence, and the three firearm specifications.

{¶30} On February 23, 2012, an Order and Journal Entry was filed, in which the court found that the Attempted Murder counts merged for sentencing purposes, as well as the three firearm specifications. The court sentenced Higginbottom to serve three years in prison for the firearm specification, ten years for Attempted Murder, ten years for Aggravated Burglary, and two years for Tampering With Evidence. These sentences



were ordered to be served consecutively, for a total term of twenty-five years of imprisonment.

{¶31} Higginbottom timely appeals and raises the following assignments of error:

{¶32} “[1.] The trial court erred and abused its discretion when it overruled the appellant’s motion to suppress his statements taken in violation of his Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the applicable Ohio State Constitutional protections.

{¶33} “[2.] The convictions were against the manifest weight of the evidence where the appellant’s statements were taken in violation of his Fifth, Sixth and Fourteenth Amendment protections under the United States Constitution and where the remaining evidence does not support a verdict of guilty.”

{¶34} In his first assignment of error, Higginbottom argues that the court erred in denying his Motion to Suppress, since the officers failed to read him Miranda rights prior to the second and third interrogations, rendering his confessions involuntary.

{¶35} The State argues that the officers were not required to provide Miranda warnings for the second and third interviews since he had previously been advised of his rights and knowingly and intelligently waived those rights.

{¶36} “The trial court acts as trier of fact at a suppression hearing and must weigh the evidence and judge the credibility of the witnesses.” (Citations omitted.) *State v. Ferry*, 11th Dist. No. 2007-L-217, 2008-Ohio-2616, ¶ 11. “[T]he trial court is best able to decide facts and evaluate the credibility of witnesses.” (Citation omitted.) *State v. Wagner*, 11th Dist. No. 2010-P-0014, 2011-Ohio-772, ¶ 12. “The court of appeals is bound to accept factual determinations of the trial court made during the suppression hearing so long as they are supported by competent and credible

evidence.” *State v. Hines*, 11th Dist. No. 2004-L-066, 2005-Ohio-4208, ¶ 14. “Once the appellate court accepts the trial court’s factual determinations, the appellate court conducts a de novo review of the trial court’s application of the law to these facts.” (Citations omitted.) *Ferry* at ¶ 11.

{¶37} “It is well established that a defendant who is subjected to custodial interrogation must be advised of his or her *Miranda* rights and make a knowing and intelligent waiver of those rights before statements obtained during the interrogation will be admissible. It is also well established, however, that a suspect who receives adequate *Miranda* warnings prior to a custodial interrogation need not be warned again before each subsequent interrogation.” *State v. Treesh*, 90 Ohio St.3d 460, 470, 739 N.E.2d 749 (2001).

{¶38} “Whether the original *Miranda* warning \* \* \* was still effective is determined by reference to the totality of the circumstances.” *State v. Brewer*, 48 Ohio St.3d 50, 60, 549 N.E.2d 491 (1990); *Treesh* at 470, citing *State v. Roberts*, 32 Ohio St.3d 225, 232, 513 N.E.2d 720, 725 (1987) (“[c]ourts look to the totality of the circumstances when deciding whether initial warnings remain effective for subsequent interrogations”). The factors to consider under *Roberts* include: “(1) [T]he length of time between the giving of the first warnings and subsequent interrogation, \* \* \* (2) whether the warnings and the subsequent interrogation were given in the same or different places, \* \* \* (3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers, \* \* \* (4) the extent to which the subsequent statement differed from any previous statements; \* \* \* [and] (5) the apparent intellectual and emotional state of the suspect.” (Citation omitted.) *Roberts* at 232.

{¶39} In the present matter, Higginbottom gave two separate confessions, in the second and third interrogations, and no accompanying Miranda warnings were given prior to either interrogation. Initially, Miranda warnings were given at around 8:30 a.m., when Higginbottom was taken into custody by Patrolman Leidel. The second set of Miranda warnings was given during the first interrogation, at 11:34 a.m., when no confession was given and Higginbottom denied all involvement. These warnings were both read to Higginbottom and provided in writing. He initialed each of the rights and signed the waiver stating that he understood these rights. These warnings were properly given after the first interview and waived by Higginbottom.

{¶40} Regarding the second interrogation, we find that the resulting confession was admissible, since the Miranda warnings given prior to the first interview were effective and applicable to this interrogation. The period of time that elapsed from the Miranda warnings given during the first interview and the beginning of the second interview at 2:30 p.m. was about three hours. Far longer periods of time have been found not to diminish the effectiveness of the warnings. *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 120 (“[m]ore than 30 hours elapsed between the initial *Miranda* warnings and [appellant’s] second interview”). Further, although both of the officers present at the interview were not the same, Sergeant Beaver was present during both the first and second interviews. The interviews both took place at the Streetsboro Police Department, although in different rooms. Further, although the officers testified that Higginbottom was upset during a portion of the second interview, there are no signs that he had any sort of diminished intellectual capacity and he was not emotional throughout most of his confession. Prior to the interview, he was asked if he was “all right to talk” and he was willing to be interviewed. He never requested for

the interview to stop or asked for counsel. Based on the totality of the circumstances, we find that the warnings given during the first interview were effective for the second interview.

{¶41} Regarding the statements made during the third interview, a review of the recording and the testimony of Detective Shaffer establish that the statements given were very similar to those in the second interview. The testimony of Shaffer established that this was intended to be a recap of the confession due to the lack of clarity in the recording of the second interview. It was again conducted in the Streetsboro Police Department and was given without emotional or intellectual difficulties. When an interview is part of a series of discussions with police, a defendant indicates his awareness of his rights, and the “statements he gave were simply more detailed retellings of the story which he had already” given to police, it has been found that no new warnings are required. *Brewer*, 48 Ohio St.3d at 60, 549 N.E.2d 491. Based on the totality of the circumstances, we also hold that the Miranda warnings were effective for the third interview.

{¶42} In his brief, Higginbottom also questions whether he properly waived his Miranda rights and whether his confessions were voluntary. In determining the voluntary nature of a waiver of a criminal suspect’s Miranda rights, a reviewing court will look at the “totality of the circumstances.” *State v. Gumm*, 73 Ohio St.3d 413, 429, 653 N.E.2d 253 (1995). In deciding whether a defendant’s statement is voluntary, the trial court should consider factors including, “the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.” (Citation omitted.) *State v. Worley*, 11th Dist. No. 2001-T-0048, 2002-

Ohio-4516, ¶ 161. “A suspect’s decision to waive his Fifth Amendment privilege against compulsory self-incrimination is made voluntarily absent evidence that his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct.” *State v. Dailey*, 53 Ohio St.3d 88, 559 N.E.2d 459 (1990), paragraph two of the syllabus.

{¶43} We initially note that Higginbottom includes no specific argument as to how his confession was involuntary other than that he was only given Miranda warnings prior to the first interview, which has already been addressed. In addition, a review of the record reveals that, under the totality of the circumstances, Higginbottom’s waiver of Miranda was voluntary. He was 31 years old at the time of the confession, testimony established that he had previously had at least two criminal charges and had served time in prison, and no evidence was introduced that he had an intellectual disability. Each interview was approximately an hour or less and no physical deprivation occurred. Although the police did admit that they lied about Cheryl implicating Higginbottom, this alone is not sufficient to determine that his confession was involuntary, especially given the other factors weighing against him. *State v. Cooley*, 46 Ohio St.3d 20, 27, 544 N.E.2d 895 (1989) (“[t]he use of deceit is merely ‘\* \* \* a factor bearing on voluntariness’”) (citation omitted).

{¶44} The first assignment of error is without merit.

{¶45} In his second assignment of error, Higginbottom argues that his convictions were against the weight of the evidence. He does not make arguments as to the individual charges for which he was convicted. Instead, he presents specific arguments that the eyewitness identification was unreliable, that there was no scientific or forensic evidence to support a conviction, and that the weapon was not recovered.

{¶46} The State argues that the verdict was supported by the weight of the evidence, based on Higginbottom's confession, the gunshot residue, the witness identification, and other circumstantial evidence.

{¶47} A challenge to the manifest weight of the evidence involves factual issues. The "weight of the evidence addresses the evidence's effect of inducing belief." (Citation omitted.) *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25; *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997) ("[w]eight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial'" (emphasis sic) (citation omitted). "In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's?" *Wilson* at ¶ 25.

{¶48} Generally, the weight to be given to the evidence and the credibility of the witnesses is primarily for the trier of fact to determine. *State v. Thomas*, 70 Ohio St.2d 79, 434 N.E.2d 1356 (1982), syllabus. When reviewing a manifest weight challenge, however, the appellate court sits as the "thirteenth juror." (Citation omitted.) *Thompkins* at 387. The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses, to determine whether, "in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." (Citation omitted.) *Id.*

{¶49} In order to be convicted of both Attempted Murder charges, the State had to prove, beyond a reasonable doubt, that Higginbottom attempted to "purposely cause

the death of another” and attempted to “cause the death of another as a proximate result of \* \* \* committing or attempting to commit an offense of violence that is a felony of the first or second degree,” i.e., the Aggravated Burglary. R.C. 2903.02(A) and (B); R.C. 2923.02(A) (an attempt involves engaging in conduct that, “if successful,” would result in the offense).

{¶50} In the present matter, the weight of the evidence supports the convictions for Attempted Murder. Tracy identified Higginbottom as the shooter. C.F. also stated that she believed the shooter had similar characteristics to Higginbottom, including his build and skin color. Patrolman Leidel stopped a purple Tracker near the scene of the crime, driven by Higginbottom’s girlfriend, and which contained a black passenger that Patrolman Leidel believed to resemble Higginbottom. Gunshot residue was found on the shirt and shoes Higginbottom was wearing when he was taken into custody on the date of the shooting. The State also presented evidence that Tracy and Cheryl were involved in a custody battle and that Tracy had recently been awarded temporary custody of the children. This was consistent with Higginbottom’s statement that he committed the offenses because he wanted Tracy to “leave the kids alone.” The evidence also showed that Tracy and Cheryl had been seeing each other while Cheryl was also seeing Higginbottom, and that Higginbottom was aware of this, supporting the State’s contention that Higginbottom had a motive to commit the shooting.

{¶51} Further, Higginbottom, through his confessions, stated facts consistent with the State’s evidence and testimony of multiple witnesses, including that he entered Tracy’s home through an open window, that the television was on in Tracy’s room at the time of the shooting, that Tracy tried to get the gun away from Higginbottom, that the weapon used was a shotgun, and that Higginbottom exited the home through the front

door. Further, he stated that he was transported to and from the crime by Cheryl in her Tracker, which was consistent with the testimony of Patrolman Leidel and his dashcam video. Although Higginbottom argues in this assignment of error that his confession was admitted in violation of his constitutional rights, as outlined above, we disagree with this argument.

{¶52} Regarding the Aggravated Burglary charge, the State was required to prove, beyond a reasonable doubt, that Higginbottom, “by force, stealth, or deception, \* \* \* trespass[ed] in an occupied structure \* \* \* when another person other than an accomplice of the offender is present, with purpose to commit in the structure \* \* \* any criminal offense” and that Higginbottom either “inflict[ed] physical harm on another” or “ha[d] a deadly weapon or dangerous ordnance on or about [his] person.” R.C. 2911.11(A)(1) and (2). The testimony of both forensic scientist Lewis and Higginbottom himself established that he entered Tracy’s home through a bathroom window. As outlined above, the evidence supported a finding that he entered with the purpose of committing a crime within and did inflict physical harm on Tracy while inside the residence.

{¶53} Regarding the charge of Tampering With Evidence, the State was required to prove, beyond a reasonable doubt, that Higginbottom, “knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted,” did “[a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation.” R.C. 2921.12(A)(1). Higginbottom’s confession and testimony of the officers conducting the interviews established that Higginbottom admitted to disposing of the shotgun over a bridge, although it was never found. Higginbottom fails to present



any argument as to how this conviction, based on the foregoing, was against the weight of the evidence.

{¶54} As to the specific issues raised by Higginbottom, he first argues that the eyewitness identification in this matter was unreliable. He asserts that C.F. only saw the perpetrator for a few seconds and that Tracy was in a “pitch black” room and identified Higginbottom based on revenge for causing his marital troubles.

{¶55} Although Higginbottom argues that Tracy could not have seen him because it was “pitch black,” Detective Shaffer testified that the television was on, which would have provided light to see the shooter. Further, Higginbottom and Tracy had met on prior occasions, so Tracy was aware of his appearance. Although Tracy may have had motive to lie about the shooter’s identity due to his problems with Higginbottom, this is an issue of credibility for the trier of fact to determine. The determination of a witness’ credibility lies with the finder of fact and an appellate court may not substitute its own judgment. *State v. Awan*, 22 Ohio St.3d 120, 123, 489 N.E.2d 277 (1986). “[T]he factfinder is free to believe all, part, or none of the testimony of each witness appearing before it.” *Warren v. Simpson*, 11th Dist. No. 98-T-0183, 2000 Ohio App. LEXIS 1073, \*8 (Mar. 17, 2000). This identification is also supported by Patrolman Leidel’s statement that the passenger in Cheryl’s car had similar facial features to Higginbottom. Finally, C.F. stated that she told the police that the shooter fit the general description of Higginbottom, based on his build and skin color. Again, it was for the jury to determine how much weight to give these identifications, based on the testimony regarding the circumstances in this case. Based on the facts present in this case, we cannot find that the convictions were against the weight of the evidence based on the witness identifications.

{¶56} Higginbottom also argues that there was no reliable scientific evidence to place him at the scene, except gunshot residue, which could have been placed on his clothes by transfer from Cheryl, since the two were living together.

{¶57} The gunshot residue on Higginbottom's clothes that he was wearing just a few hours after the shooting constitutes physical evidence to support his convictions. Higginbottom presents no theory as to how the residue would have transferred to both his shirt and shoes merely by living with Cheryl. Further, there is no requirement that the State present physical evidence when there is substantial testimonial and circumstantial evidence to justify a verdict, as exists in this case. *State v. Withrow*, 11th Dist. No. 2011-A-0067, 2012-Ohio-4887, ¶ 60. There was also specific testimony in this case as to why there may not have been DNA or fingerprint evidence. Tracy testified that Higginbottom was wearing gloves and forensic scientist Lewis noted that no ridge details were found on a handprint near the bathroom window and that this shows "potentially that the person would have been wearing gloves."

{¶58} Finally, Higginbottom argues that the weapon was never found. However, there is no requirement that a weapon be found to prove any of the charges for which Higginbottom was convicted. The State's evidence was consistent with Higginbottom's confession that he had fired a shotgun, in that shotgun pellets were found both at the scene and in Tracy's wound. Further, it has been held that in cases involving firearm specifications, the State is not required to admit the firearm into evidence if circumstantial evidence exists to show that one was used, as is true in the present case. *State v. Sanders*, 11th Dist. No. 2011-L-024, 2012-Ohio-400, ¶ 41.

{¶59} The second assignment of error is without merit.

{¶60} For the foregoing reasons, the judgment of the Portage County Court of Common Pleas, convicting Higginbottom of two counts of Attempted Murder, Aggravated Burglary, Tampering With Evidence, and three firearm specifications, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.