

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1286

Appellee

Trial Court No. CR0201201582

v.

Deondre White

DECISION AND JUDGMENT

Appellant

Decided: February 14, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Ian B. English, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant Deondre White guilty of two counts of felonious assault with firearm specifications and sentenced him to 14 years incarceration. For the reasons set forth below, the judgment of the trial court is affirmed.

{¶ 2} The following undisputed facts are relevant to the issues raised on appeal.

On the afternoon of March 28, 2012, Alysce Allen and Anthony Ballard drove in Allen's Ford Explorer to a park located in Toledo, Ohio. After Allen parked the car, Ballard got out and began to play basketball with some other males. Allen remained in her car, talking to a friend. Approximately three hours later, several other males arrived at the park, exited their car and engaged in an argument with Ballard. When the argument with one of the individuals became physical, Ballard returned to Allen's vehicle. Before Ballard could get in the car, one of the other males approached Allen's car, pointed a gun and fired several shots. Neither Allen nor Ballard was injured, although several bullet holes were found in the vehicle.

{¶ 3} On April 19, 2012, appellant was indicted on six counts of felonious assault in violation of R.C. 2903.11(A)(2) in connection with the shooting. A firearm specification pursuant to R.C. 2941.145 was attached to each count. Prior to the start of trial, the state dismissed four of the six felonious assault counts, along with the firearm specifications attached to each, and proceeded to trial on the two remaining counts, each with a firearm specification.

{¶ 4} The matter came to trial on August 27, 2012. The state presented the testimony of Alysce Allen, Anthony Ballard, Joseph Eccleston, William Wauford, and Raynard Cooper. Allen testified that on March 28, 2012, at approximately 3 p.m., she and Ballard drove to a park in Toledo. Allen sat in her car and talked to a friend while Ballard played basketball. After a while, appellant, whom Allen did not know, and two

friends arrived in their car. The three men began to argue with Ballard and one of them tried to fight with him; Ballard backed away from the first man, and he and appellant then began to fight. After they exchanged three or four punches, Ballard started to get in the car with Allen. In the meantime, appellant returned to his car and opened the trunk. Allen looked up and saw appellant pointing a gun at her car; she immediately ducked down and, two or three seconds later, heard approximately six shots fired in quick succession. During the shooting, Ballard was outside the car, crouched on the passenger side. Allen heard appellant's car pull away but remained in her car until the police arrived a few minutes later. At that same time, a witness who had been standing across the street from the park ran to Allen's car and said he saw what happened. Allen's car had four bullet holes in it, one of which pierced the windshield in front of where she would have been sitting had she not ducked down. Allen further testified that at no time during that afternoon did Ballard have a gun or knife in his possession.

{¶ 5} Anthony Ballard testified that he has known appellant for four or five years although they only spoke a few times. One of those conversations took place around the day of the shooting when Ballard and his girlfriend were visiting overnight at the apartment of a young woman named Shanea Bibbs, who had just given birth to appellant's child, in order to help her with the new baby. As Ballard and his girlfriend were leaving Shanea's apartment the next morning, appellant returned. When appellant learned that Ballard had stayed in the apartment, he told Shanea she was not to have men there and slapped her. Appellant also brandished a gun and told Ballard never to return.

Ballard and his girlfriend left and later, when Shanea called to apologize for the incident, Ballard told her appellant “needed his ass whooped” for hitting a woman.

{¶ 6} Ballard testified that on the day of the shooting, prior to the assault, he had two phone conversations with appellant, both of which focused on the incident in Shanea’s apartment; afterward, Ballard believed he and appellant had reached an understanding and that there was no more animosity between them. Ballard testified that shortly after appellant arrived at the park, Ballard walked to the passenger side of Allen’s truck and opened the door. He then saw appellant walking toward him “like trying to fight.” Ballard and appellant “threw a couple of punches,” but “it wasn’t a real fight.” Appellant then walked to his car, opened the trunk and walked back toward Allen’s car. As Ballard moved to get in the car, he saw appellant aim a gun in his direction. When Ballard heard the first shot, he ducked down and, after several more shots, ran across the street. After appellant got in his car and drove away, Ballard returned to Allen’s car. Ballard further testified that the gun appellant used in the park appeared to be the same one appellant had brandished when he saw Ballard at Shanea’s apartment the previous day. Ballard testified that he did not identify appellant as the shooter when the police arrived on the scene because he blamed himself in part, based on the dispute with appellant the day before, and thought that the situation might have been better handled another way. Ballard stated that he went to the police the following day, after his parents insisted he do so, because “everybody should be held to their actions.” After Ballard talked to a detective, he identified appellant from a photo array.

{¶ 7} The state's next witness was Joseph Eccleston, who witnessed the shooting from across the street, where he was attending classes at a technical trade school. Before he heard the gunfire, Eccleston heard shouting coming from the park. He looked over and saw a tall man chasing another male, who was telling the tall man to stop, that he did not want to fight. Eccleston then saw another male, who was shorter than the first individual, take a gun from the trunk of a car and pull the trigger several times, aiming at a Ford Explorer. When the man stopped shooting, he and his companions got into a gold Malibu and drove away. Eccleston then ran to the Explorer and called 911. Eccleston did not believe he would be able to identify the shooter with certainty, although when he observed appellant in court he thought appellant matched the physical characteristics of the shooter.

{¶ 8} Toledo Police Sergeant Bill Wauford testified that he showed Ballard a photo array following the shooting and that Ballard immediately identified appellant. Detective Raynard Cooper testified that he responded to the call of shots fired and interviewed several of the witnesses. With the information provided by Ballard the following day, Cooper was able to identify appellant as a suspect.

{¶ 9} The defense presented the testimony of Shanea Bibbs, Briana Toyer-Means and appellant. Bibbs, the mother of appellant's children, testified that she returned home on March 23, 2012, after giving birth to appellant's second child and that appellant stayed

with her constantly from that point on. She stated that on March 28, 2012, appellant was with her at home all day. Bibbs denied that Ballard ever went to her apartment to help out with the baby.

{¶ 10} Briana Toyer-Means, Bibbs' sister, testified that she stayed with Bibbs for a week following her sister's return home from the hospital. She stated that appellant was at the apartment every day that week, helping with the children, cleaning and cooking, and did not leave on the day of the shooting. She also denied that Ballard was ever with them. Lastly, appellant testified, denying that he was present at the park at the time of the shooting.

{¶ 11} The jury returned a verdict of guilty as to both counts of felonious assault and both gun specifications. On September 13, 2012, appellant was sentenced to serve a prison term of four years as to one count and seven years as to the other, with the sentences to be served consecutively. The trial court merged the three-year sentences for the gun specifications for an aggregate sentence of 14 years.

{¶ 12} Appellant sets forth the following as his sole assignment of error:

Appellant's conviction fell against the manifest weight of the evidence.

{¶ 13} Appellant asserts that the jury clearly lost its way in finding him guilty because it heard two radically different stories from the witnesses, and because the state presented no physical evidence tying appellant to the shooting.

{¶ 14} “A manifest weight challenge questions whether the state has met its burden of persuasion.” *State v. Davis*, 6th Dist. No. WD-10-077, 2012-Ohio-1394, ¶ 17, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). In making this determination, the court of appeals sits as a “thirteenth juror” and, after “reviewing 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 and a new trial ordered.” *Id.* at 386.

{¶ 15} R.C. 2903.11, felonious assault, states in pertinent part:

(A) No person shall knowingly:

* * *

(2) Cause or attempt to cause physical harm to another by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

{¶ 16} The jury heard the testimony of the two victims as well as Eccleston, who had a clear view of the shooting from across the street. Although Eccleston was not able to identify appellant with certainty, Allen and Ballard were able to do so. Both Allen and Ballard identified appellant from a photo array the day after the shooting and both identified him in court.

{¶ 17} A jury may believe all, part, or none of a witnesses’ testimony. *State v. Eisenman*, 10th Dist., Franklin No. 10AP-809, 2011-Ohio-2810, ¶ 16. The jury in this

case found the testimony of appellee’s witnesses to be credible and sufficient for conviction. When conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the fact finder believed the prosecution testimony. *State v. Conner*, 192 Ohio App.3d 166, 2011-Ohio-146, 948 N.E.2d 497 (6th Dist.). The trier of fact is best able “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80-81, 461 N.E.2d 1273 (1984). We find no evidence that the fact finder lost its way or created a manifest miscarriage of justice in this case. Accordingly, appellant’s sole assignment of error is found not well-taken.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.