**[Cite as *State v. Conner*, 2013-Ohio-2773.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| State of Ohio, | : | |
| Plaintiff-Appellee, | : | |
| | | No. 12AP-698 |
| v. | : | (C.P.C. No. 11CR04-1522) |
| Keywan T. Conner, | : | (REGULAR CALENDAR) |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on June 28, 2013

*Ron O'Brien*, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

*Brian J. Rigg*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

**{¶ 1}** Defendant-appellant, Keywan T. Conner, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

## I. Factual and Procedural Background

**{¶ 2}** Late in the evening of February 27, 2011, Larry Latham and his wife Tenishia were watching television in their house on the north side of Columbus, Ohio, when someone knocked on their door. Latham went to the door and asked who it was. The man at the door said it was "Keywan." Latham knew Keywan, the appellant, and considered him to be family. Latham opened the door and let appellant inside the house. Appellant wanted to buy some marijuana, so the two men went to another room where

Latham kept his marijuana. When Latham opened up the box which contained the marijuana, he heard appellant say "Damn" and then Latham was shot in the head. Latham heard two more gunshots before passing out. He eventually woke up and made his way to another room and found his wife lying motionless on the ground. Latham asked one of his children to call 911. Police and paramedics soon arrived at the scene. Even though Latham had been shot in the head, he was able to tell first responders that appellant shot him. He also identified appellant as the shooter when he was interviewed by police at the hospital.

**{¶ 3}** Latham survived his wound but his wife died from multiple gunshot wounds. Latham's wife was seven months pregnant at the time of the shooting. The baby, M.L., was successfully born via C-section later on the morning of February 28, 2011.

**{¶ 4}** As a result of these events, a Franklin County Grand Jury indicted appellant with three counts of aggravated murder in violation of R.C. 2903.01 with death penalty, firearm and repeat violent offender specifications, two counts of attempted murder in violation of R.C. 2923.02 and 2903.02 with firearm and repeat violent offender specifications, one count of aggravated burglary in violation of R.C. 2911.11 with firearm and repeat violent offender specifications, one count of aggravated robbery in violation of R.C. 2911.01 with the same specifications, and one count of having a weapon while under disability in violation of R.C. 2923.13. Appellant entered a not guilty plea to the charges and proceeded to a trial.

**{¶ 5}** At trial, Latham testified to the above version of events. The state also presented testimony from Kelley Johnson, who spent time in jail with appellant before his trial. Johnson testified that he talked with appellant one day after appellant had been in court. Appellant told him that he had to be taken out of the courtroom that day because he was upset with some guy named Larry. He told Johnson that "if he knew then what he know now, he'd have made sure he was dead before he left." (Tr. 533.) Another day, after appellant had visitors at the jail, he told Johnson that one of the visitors told him that he "felt obligated to take care of Larry." (Tr. 536.) Johnson understood that to mean that someone would kill Larry. Appellant told Johnson that he would win his case if Larry did not testify. "No witness, no case" appellant said to him. (Tr. 538.) Johnson became so concerned with these comments that he talked to authorities about the threats to Larry's

life. Appellant also told Johnson that he had a woman who would say that he was with her at the time of the shooting. (Tr. 537.)

**{¶ 6}** Appellant presented an alibi defense, claiming that he had been with a girlfriend at the time of the shooting. The jury rejected his alibi defense and found appellant guilty of all counts and specifications except for the attempted murder of M.L. The trial court also found appellant guilty of having a weapon while under disability and the repeat violent offender specifications in the indictment. The trial court sentenced appellant accordingly. For the three aggravated murder counts that contained death penalty specifications, the jury recommended a prison sentence of life without parole. The trial court imposed that sentence for those counts.

## II. The Appeal

**{¶ 7}** Appellant now appeals and assigns the following errors:

> [1.] Appellant was denied his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution when his counsel (1) permitted testimony without objection of a jail inmate, (2) permitted without objection the testimony of a witness to the hearsay descriptions of the perpetrator of the crime and (3) permitted the introduction of evidence of uncharged other alleged bad acts of appellant in violation of appellant's Sixth Amendment right to confrontation.
>
> [2.] The verdict is against the sufficiency and manifest weight of the evidence.

### A. Second Assignment of Error—The Sufficiency and Manifest Weight of the Evidence

**{¶ 8}** In this assignment of error, appellant contends that his convictions are not supported by sufficient evidence and are also against the manifest weight of the evidence. Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶ 11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's conviction is

supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

**{¶ 9}** The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

**{¶ 10}** In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " '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.' " *Id.*, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the jury's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing State v. Jennings, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

**{¶ 11}** Appellant contends that his convictions are against the manifest weight of the evidence because no physical evidence linked him to the crime scene and because Latham was not able to identify the shooter during his 911 call. We disagree.

**{¶ 12}** First, a lack of physical evidence alone does not render a conviction against the manifest weight of the evidence. *State v. Shedwick*, 10th Dist. No. 11AP-709, 2012-

Ohio-2270, ¶ 32, citing *State v. Berry*, 10th Dist. No. 10AP-1187, 2011-Ohio-6452, ¶ 20. Here, even without physical evidence, there was overwhelming evidence of appellant's guilt, including Latham's testimony identifying appellant as the only person he let inside his house and as the person who shot him. Second, Latham's son called 911 after the shooting. Appellant's trial counsel asked Latham if he remembered his son asking him during that phone call who shot him and whether Latham responded "I don't know." (Tr. 315.) Latham replied that he did not remember that. We cannot say the jury lost its way when it concluded that appellant was the person who shot Latham and his wife, notwithstanding Latham's one possible inconsistent identification, given the obvious stress of that moment and Latham's consistent and continued subsequent identifications of appellant as the shooter.

**{¶ 13}** In light of the considerable evidence supporting the convictions, we conclude that the jury did not lose its way or create a manifest miscarriage of justice. Accordingly, appellant's convictions are not against the manifest weight of the evidence. This conclusion is also dispositive of appellant's claim that his convictions are not supported by sufficient evidence. *McCrary* at ¶ 17. Accordingly, we overrule appellant's second assignment of error.

**B. First Assignment of Error—Ineffective Assistance of Counsel**

**{¶ 14}** Appellant contends in this assignment of error that he received ineffective assistance of trial counsel. We disagree.

**{¶ 15}** To establish a claim of ineffective assistance of counsel, appellant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced him. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to make either showing defeats a claim of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989), quoting *Strickland* at 697. ("[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.").

**{¶ 16}** In order to show counsel's performance was deficient, the appellant must prove that counsel's performance fell below an objective standard of reasonable representation. *Jackson* at ¶ 133. The appellant must overcome the strong presumption

that defense counsel's conduct falls within a wide range of reasonable professional assistance. *Strickland* at 689. To show prejudice, the appellant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶ 204.

**{¶ 17}** Appellant contends that his trial counsel was ineffective for three reasons. First, he contends that trial counsel should have objected to the testimony from Kelley Johnson who testified that appellant told him that he should have made sure Latham was dead and that he wanted him killed before trial. Appellant does not provide the legal basis for this objection or why it would have been sustained. We do not find ineffective assistance of counsel in this regard. *See State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶ 213 (no ineffective assistance of counsel for failure to object to properly admitted testimony from prison inmates repeating defendant's jailhouse confession).

**{¶ 18}** Second, appellant contends that trial counsel should have objected to hearsay testimony identifying him as a suspect in these offenses. Even assuming that trial counsel was deficient for failing to object to this testimony, appellant makes no attempt to demonstrate that the outcome of the trial would have been different had the testimony not been admitted, and given the overwhelming evidence of his guilt presented at trial, we do not see how the result of this trial would have been any different. *See State v. Chandler*, 10th Dist. No. 10AP-972, 2011-Ohio-3485, ¶ 16 (no prejudice from admission of officer's alleged hearsay testimony, where eyewitness testimony overwhelmingly linked defendant to crimes). Therefore, appellant cannot demonstrate ineffective assistance of counsel in this regard.

**{¶ 19}** Lastly, appellant contends that trial counsel should have objected to the introduction of testimony alleging his involvement in similar, uncharged crimes. Appellant does not point to any such testimony and we find none. Therefore, appellant cannot demonstrate ineffective assistance of counsel in this regard.

**{¶ 20}** Appellant has failed to demonstrate the ineffective assistance of counsel. Accordingly, we overrule his first assignment of error.

## III. Conclusion

**{¶ 21}** Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and SADLER, JJ., concur.