

[Cite as *State v. Myers*, 2010-Ohio-4602.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-926
v.	:	(C.P.C. No. 07CR-05-3404)
	:	
Leonard R. Myers,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 28, 2010

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*,
for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Leonard R. Myers ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas convicting him of attempted murder, felonious assault, and improperly handling firearms in a motor vehicle, along with their accompanying specifications. For the following reasons, we affirm.

{¶2} Appellant was indicted for the May 2, 2007 shooting of Michael Stiffler. Initially, the trial court found appellant not competent to stand trial, but after his competency was restored one year later, he pleaded not guilty by reason of insanity and waived his right to a jury. At the bench trial, the parties stipulated to the following. Appellant was married to Stiffler's ex-wife, Jamie. Stiffler and Jamie have a child, "so the victim and [appellant] have had ongoing contact and conflicts for several years." (Tr. 7.) In fact, appellant previously threatened Stiffler. Additionally, appellant has shown "increasing signs of mental health issues." (Tr. 7.)

{¶3} Stiffler lived with his mother in Gahanna, Ohio. During the evening of May 2, 2007, Stiffler's mother saw a man twice drive by in a white car with a loud muffler, and the man was hiding his face. Stiffler was near his home delivering newspapers, and he saw appellant driving his car with no rear license plate. Soon afterward, appellant drove by Stiffler again, and appellant shot him several times and drove away. Stiffler survived, but was severely injured. Appellant, who was homeless, went to a friend's apartment in Newark, Ohio, and he was arrested there the next morning. Inside the apartment, police found appellant's wet clothes hanging on a shower rod and the missing temporary tag belonging to his car. Gunshot residue was discovered in appellant's car, and his DNA was on a gun in the glove compartment.

{¶4} Next, the court admitted into evidence appellant's interview with police, where he stated the following after waiving his *Miranda* rights. Appellant confessed to the shooting, although he told police that the man he shot was not "Mike" but "[p]robably maybe one of his own cult." State's Exhibit B2 at 4. He stated that the man that he shot

had previously threatened him with a gun and was part of a group that kidnapped his wife and children and replaced them with "look-a-likes." *Id.* at 8. That group had also tortured him, drugged him, and hooked him up to "a machine called a[n] electromagnetic microwave mind control." *Id.* at 11. He said "they still have this machine hooked to my head where they can use radio waves to talk to me constantly." *Id.* at 16. But he indicated that, as far as he knew, the machine had no powers over him during the shooting.

{¶5} Before the shooting, he asked local and federal authorities to help him find his family, and he warned them that he was going to "leave a trail of bodies" if they did not intervene. *Id.* at 21. The authorities did not respond, however, and he believed the only way for him to protect his family was to "exterminate the threat." *Id.* at 9. He also claimed that "[i]t's my right in the Constitution to protect my children" and that "I don't believe that it's against the law for me to defend my wife and children when the law won't do anything." *Id.* at 15, 25. He added, "the viewpoint of an American citizen and a father says that if the law would do nothing then * * * I must do the law myself." *Id.* at 26. Appellant knew the shooting would lead to a criminal investigation and his arrest. Likewise, he realized that, from the start, police would think he "committed a straight crime and just shot this guy for no apparent reason." *Id.* He was also familiar with the gunshot residue testing that police were going to perform, and he admitted that "in a perfect world" shooting another person "is a grievous thing and like I said, I hate violence." *Id.*

{¶6} Dr. Steven Sparks, a psychologist, evaluated appellant's mental health and testified as follows for the defense. Appellant suffers from paranoid schizophrenia. He first received psychiatric treatment when he was 12 years old, and he has previously been "psychiatrically hospitalized." (Tr. 22.) He attempted suicide by hanging while incarcerated after his arrest for the shooting. He was sent to a mental health facility after he was found not competent to stand trial, and he remained at that facility while he awaited trial after his competency was restored. For the first five months at the mental health facility, he was " 'acutely psychotic' " and had "active paranoid, persecutory and grandiose delusions and was experiencing command auditory hallucinations." (Tr. 23-24.) Sparks said that appellant still suffers from "persisting delusional beliefs and continued experience of auditory and visual hallucinations." (Tr. 31.) Sparks noted that appellant's delusions motivated him to shoot Stiffler and that, due to his mental illness, he did not know the wrongfulness of the shooting.

{¶7} Sparks provided more detail about his opinion in his psychological report. In that report, Sparks said that appellant did not know that shooting Stiffler was illegal because he thought he was protecting his family. Sparks stated the following also established that appellant did not know the shooting was wrong: (1) he indicated that he did not apologize to anyone for his actions because he had no reason to; (2) he did not hide his firearm or evade police; (3) he said he would have engaged in the shooting even if police were present; and (4) he did not flee the crime scene, but instead " 'drove away at a slow, unrushed pace.' " Defendant's Exhibit 1 at 15. Sparks added,

"[o]verall, [appellant's] experience of psychosis including delusional beliefs appear to have impaired his ability to understand the wrongfulness of his alleged actions." *Id.*

{¶8} During cross-examination, Sparks noted that appellant claimed a voice inside his head told him how to find Stiffler, but appellant did not say the voice "directly told him to shoot" Stiffler. (Tr. 53.) In any event, Sparks recognized that appellant does not always act on his auditory hallucinations. By way of example, appellant said that voices in his head told him to rape and murder his daughter, but he refused. Next, the prosecution questioned Sparks about his statement in his report that appellant did not flee the crime scene. Sparks conceded that, although one witness told police that appellant did not speed away after the shooting, other witnesses said appellant sped away, and he recognized that fleeing is a factor to consider when determining whether a person knew they did something wrong. Likewise, Sparks said that appellant washing his clothes after the shooting "might be significant in determining whether he knew there might be evidence" on them. (Tr. 63.) Sparks also acknowledged that appellant gave police an "ultimatum" before the shooting, i.e., that if they did not help him he was going to "take care" of Stiffler himself, and that, ostensibly, appellant's conduct sounded like "vigilante" behavior. (Tr. 65-66.) The court asked Sparks whether his opinion had changed, given the "alternative subjects and facts" brought to his attention during cross-examination. (Tr. 73.) Sparks responded that he "was inspired to consider other factors," but he felt "very confident" that his opinion had not changed. (Tr. 74.)

{¶9} The court rejected appellant's insanity defense, concluding that, contrary to Sparks' opinion, appellant knew shooting Stiffler "violates the law and commonly held

notions of morality." (Tr. 91.) Thus, relying on *State v. Jennings*, 10th Dist. No. 05AP-1051, 2006-Ohio-3704, the court held that appellant is culpable for the shooting, despite his mental illness. Consequently, it found appellant guilty of charges stemming from the shooting and sentenced him to prison.

{¶10} Appellant appeals, raising the following assignment of error:

SINCE THE DEFENSE PROVED BY A [PREPONDERANCE] OF THE EVIDENCE THAT APPELLANT WAS LEGALLY INSANE AT THE TIME OF THE OFFENSE, THE TRIAL COURT'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND THEREBY VIOLATED NOT ONLY OHIO LAW BUT APPELLANT'S RIGHT TO A FAIR TRIAL UNDER THE DUE PROCESS CLAUSES OF BOTH THE OHIO AND FEDERAL CONSTITUTIONS.

{¶11} In his single assignment of error, appellant argues that his conviction is against the manifest weight of the evidence because he proved that he is not guilty by reason of insanity. We disagree.

{¶12} In determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.' " *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. 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.

{¶13} Insanity is an affirmative defense that must be proven by a preponderance of the evidence. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶35; R.C. 2901.05(A). The defendant must persuade the trier of fact that, at the time he committed the offense, he did not know the wrongfulness of his acts due to a severe mental disease or defect. R.C. 2901.01(A)(14). By contrast, the insanity defense "does not permit individuals who know what is legally wrong to eschew the law." *Jennings* at ¶24, citing R.C. 2901.01(A)(14). Thus, a defendant suffering from mental illness cannot avoid criminal responsibility if he knows his conduct "violates the law and commonly held notions of morality." *Jennings* at ¶22, citing *People v. MacDowell* (1986), 508 N.Y.S.2d 870.

{¶14} In *Jennings*, a defendant claimed that he was not guilty of murder due to insanity. *Id.* at ¶23. The defendant suffered delusions from a mental illness that led him to believe that the victim was a multiple murderer who would attempt to kill the defendant and others if the defendant did not act. *Id.* at ¶12. A psychologist for the defense testified that the defendant did not know the wrongfulness of his conduct, but, instead, due to his delusions, thought the killing was necessary. *Id.* at ¶15. On the other hand, a psychiatrist for the prosecution testified that the defendant knew his

actions were wrong, given that he tried to cover up the murder and realized that he would face criminal prosecution if caught. *Id.* at ¶¶16-19. This court concluded that, although the defendant's delusions led him to believe he had to kill his acquaintance, the insanity defense did not apply because, as the prosecution's expert recognized, the defendant knew his conduct violated society's legal and moral standards. *Id.* at ¶¶23-24.

{¶15} The trial court relied on *Jennings* to reject appellant's insanity defense. Appellant argues that the court's decision was against the manifest weight of the evidence because, unlike in *Jennings*, the prosecution did not present its own expert to refute Sparks' opinion in support of the insanity defense. But "[a] trier of fact is permitted to reject an expert's opinion, even if uncontradicted by another expert, so long as there exists an objectively discernible reason for doing so." *State v. Gardner* (Nov. 16, 2000), 10th Dist. No. 00AP-93, citing *State v. Brown* (1983), 5 Ohio St.3d 133, 135. Thus, the trial court was not bound by Sparks' opinion merely because the prosecution did not rebut it with its own expert.

{¶16} Next, appellant contends that the insanity defense applies because he believes that he is hooked up to a mind-control machine that leaves voices in his head that tell him what to do. But "[p]roof that a person's reason, at the time of the commission of an offense, was so impaired that the person did not have the ability to refrain from doing the person's act or acts, does not constitute a defense." R.C. 2945.391. See also *State v. Muhammad*, 10th Dist. No. 07AP-609, 2008-Ohio-2839, ¶15 (recognizing that the insanity defense does not apply to a person who knew that his activity was wrong, but could not control his behavior). In any event, appellant did not

say that a voice in his head told him to shoot Stiffler. And appellant can control his behavior despite his auditory hallucinations; he claimed that voices in his head previously told him to rape and murder his daughter, but he refused.

{¶17} Lastly, appellant asserts that Sparks' opinion was credible and that, therefore, the trial court had no basis to reject it. There is evidence, however, showing that appellant understood the wrongfulness of his actions. Appellant engaged in furtive conduct reflective of a consciousness of guilt. See *State v. Saleh*, 10th Dist. No. 07AP-431, 2009-Ohio-1542, ¶86. He tried to conceal his identity during the shooting, he hid his face while he drove by the victim's house, and he removed the temporary license tag from his car. He washed his clothes after the shooting, having knowledge that police would test evidence for gunshot residue. Although there was conflicting evidence on whether appellant sped away after the shooting, it is undisputed that he fled to another city afterward, and this flight is evidence of a consciousness of guilt. See *State v. Henry*, 10th Dist. No. 04AP-1061, 2005-Ohio-3931, ¶39. Appellant knew that, from the start, police would consider the shooting a crime and that it would prompt an investigation that would lead to his arrest. And he knew the shooting was wrong, given his threat to law enforcement that he would leave a "trail of bodies" if they did not help him find his family. State's Exhibit B2 at 21. Because the evidence refutes Sparks' opinion, it was within the province of the trial court to accord no weight to that opinion. See *Gardner*.

{¶18} Appellant demonstrated that he was actually acting on his own personal justification for his conduct, irrespective of its legality. Specifically, he attempted to

rationalize his behavior by claiming that he had to shoot Stiffler, and he even said that the shooting was his attempt to "do the law myself" after the authorities failed to help him. State's Exhibit B2 at 26. As this court held in *Jennings*, however, a criminal defendant cannot "escape criminal responsibility for what he knows to be legally wrong by assuming a cloak of personal belief that his actions were morally justified, even if the belief arises from mental illness." *Id.* at ¶24.

{¶19} To conclude, in spite of appellant's mental illness, the insanity defense does not relieve him of culpability for shooting Stiffler because he understood the wrongfulness of his conduct. *Id.* at ¶23-24. Accordingly, it was not against the manifest weight of the evidence for the trial court to reject appellant's insanity defense and, instead, convict him for shooting Stiffler. Therefore, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and CONNOR, J., concur.
