IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-060392 TRIAL NO. B-0510014
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
LEONARD EVANS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Following a jury trial, defendant-appellant, Leonard Evans, was convicted of murdering Aubrey McCreary, carrying a concealed weapon, and having a weapon under a disability. Evans was also convicted of a three-year firearm specification. He now appeals his convictions, arguing that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. After reviewing the record, we find no merit to Evans's challenge.

McCreary was fatally shot shortly after midnight on October 6, 2005, in the 1700 block of Vine Street. Cincinnati Police Officer Paul Renadette testified that he had found McCreary's body and blood on the sidewalk in front of 1711 and 1713 Vine Street. McCreary was holding marijuana in one hand and money in the other.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The police found more of McCreary's blood and several spent bullet casings from the murder weapon in a breezeway that separated the buildings located at 1713 and 1715 Vine Street.

Cincinnati Police Officer Ryan Robertston, patrolling in the area undercover, heard the fatal shots fired. Robertston then noticed Evans, who looked panicked, approaching a Dodge Polara on McMicken and Elder Avenues near the shooting. Roberston testified that he had overheard Evans tell the occupants of the Polara, Reginald Hill and his cousin Ricardo, that he needed to get out of the area. The Hills did not allow Evans to enter the vehicle, and Evans began walking away. Robertson then approached Evans and identified himself as a police officer. Evans ran and Robertson gave chase. During the approximately two-minute chase, Robertson observed Evans holding the waistband area of his pants and "clawing" at his clothing. These acts led Robertson to believe, based upon previous handgun arrests that he had participated in, that Evans was attempting to retrieve a concealed firearm. Robertson lost sight of Evans for short periods of time during the chase, including when Evans passed a garbage can. Eventually Evans fell, and Robertson held him at gunpoint while other officers arrested him. Later, the police recovered the murder weapon inside the garbage can that Evans had passed during the chase. Evans's hands contained gunshot residue, and his T-shirt contained blood stains that matched McCreary's blood.

Reginald Hill, the driver of the Polara, testified that Evans had indicated that he possessed a gun when he was attempting to enter the Polara. Although Hill's trial testimony on the issue was equivocal, the veracity of this testimony was bolstered by Hill's unequivocal statement to the police shortly after the shooting that Evans had verbally indicated that he had a gun and that he had touched his waistband as if he were going to

show the gun to him and his cousin. Hill's cousin did not respond to the state's subpoena to testify at trial.

Evans testified at trial that he had not shot McCreary. Rather, he had interrupted two armed men wearing black hoodies as they were robbing McCreary inside the building at 1715 Vine Street. Evans stated that after one of the robbers had pointed a gun at him, he turned and ran out of the building. At the same time, he heard a gunshot and saw McCreary run.

Evans claimed that he had run a few blocks until he saw Reginald Hill and his cousin and asked them for a ride. They turned him down, indicating that they did not want to draw the attention of undercover police officers who were in the area. Evans noticed a white man in a vehicle staring at him. He began running and eventually noticed that he was being chased. He stated that he had stopped running when he saw uniformed officers and realized that the police were chasing him. Evans claimed that on the day of the shooting he had ignited fireworks and he had cleaned and test-fired a weapon.

The test for sufficiency of the evidence is whether any rational trier of fact, viewing the evidence in the light most favorable to the state, could have found the elements of the crime beyond a reasonable doubt.[2] A weight-of-the-evidence review requires an appellate court to sit as a "thirteenth juror."[3] We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.[4]

After reviewing the record, we are convinced that the state presented sufficient evidence to support Evans's convictions for murder with a three-year firearm

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[2] *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.
[3] *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.
[4] Id.

specification,[5] carrying a concealed weapon,[6] and having a weapon under a disability.[7] Further, we are not persuaded that the jury clearly lost its way and created a manifest miscarriage of justice when it found Evans guilty of the offenses. Evans's testimony was not supported by the physical evidence. Additionally, Evans's trial testimony conflicted with taped statements that he had given to the police immediately after the shooting, as well as with the testimony of the state's witnesses. Finally, Evans's credibility at trial was hampered by his prior felony convictions. The weight to be given the evidence and the credibility of the witnesses were primarily for the trier of fact.[8]

Accordingly, we overrule the assignments of error and affirm the trial court's judgment.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

SUNDERMANN, P.J., CUNNINGHAM and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on January 23, 2008

per order of the Court _____.
Presiding Judge

[5] R.C. 2903.02(A).
[6] R.C. 2923.12(A).
[7] R.C. 2923.13(A)(3).
[8] *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.