

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

STATE OF OHIO,	:	APPEAL NO. C-090352
	:	TRIAL NO. B-0806126(A)
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DEVOROUS HENDRICKS,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Devorous Hendricks was indicted on two counts of murder with specifications,² one count of felonious assault with a specification,³ and one count of witness intimidation.⁴ The case was tried without a jury. At the conclusion of the trial, the trial court convicted Hendricks of both murder charges with the specifications, as well as the felonious assault with the specification. Hendricks was acquitted of the witness-intimidation charge. He was sentenced to a total prison term of 30 years to life. Costs were remitted.

Larry DuBose, Patrick Peterson, Cameron Parsons, Edgar Crawford, Jr., and others burglarized the apartment of Mario Floyd. The group apparently took nothing during the burglary. Hendricks, who was Floyd's cousin, called DuBose soon after and confronted him about the break-in. The two met, and Hendricks demanded

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

² R.C. 2903.02(A).

³ R.C. 2903.11(A)(2).

⁴ R.C. 2921.04(B).

payment—what he called a “hood tax”—in exchange for Hendricks forgoing retaliation for the break-in. DuBose paid Hendricks \$100.

On September 23, 2007, police responded to the scene of a double homicide. Both Peterson and Parsons had been shot and killed. This had occurred in an apartment complex where DuBose, Peterson, and Parsons lived.

Two months later, Hendricks drove to find DuBose with a man named Antwain Lowe. Hendricks got out of the vehicle and accused DuBose of being a snitch. DuBose asked Hendricks why he had shot and killed Peterson and Parsons when the “hood tax” had been paid. Hendricks told DuBose that the \$100 had only covered him. But because Hendricks believed that DuBose was a snitch, he drew a gun and began firing at DuBose. Lowe shoved Hendricks, and Hendricks missed DuBose. Brittany Johnson, DuBose’s girlfriend, witnessed the incident.

Hendricks and Lowe got into the vehicle and left. Lowe asked what “all that” had been about. Hendricks told Lowe that DuBose was just angry because he (Hendricks) had killed Peterson and Parsons.

During the investigation of the murders, which received wide media attention, Hendricks initially agreed to turn himself in, but ultimately failed to do so. He was apprehended after he was featured on a local news program’s “Wheel of Justice.” During his interview, Hendricks admitted that the burglary had occurred, that he knew DuBose, Peterson, and Parsons had been involved, that he had collected a “hood tax” from DuBose (but claimed that it was payment to keep him from going to the police), and that he and DuBose had an argument. He denied shooting a gun or shooting at anyone.

On appeal, Hendricks raises three assignments of error. In his first assignment, he claims that the state on three occasions improperly withheld

exculpatory information in violation of the rule announced in *Brady v. Maryland*.⁵ We disagree.

In the first instance, Hendricks claims that the state improperly failed to inform him that one of its witnesses could not identify him in a photo array. But the witness's inability to identify anyone in the array was not exculpatory. If the witness had identified someone else, and the state had failed to disclose this fact, *Brady* might have been implicated. Further, the witness testified at trial. There is no *Brady* violation when the information "is disclosed to a defendant in time for its effective use at trial."⁶

The second claim is that the state failed to provide recorded cellular-phone messages that Hendricks claims contained another party's admission to the shootings. The state, at trial, did not have the information. The lead detective testified that "I don't remember any regular messages on his phone." The state suggested that Hendricks's counsel speak to the officer who had collected the information. Hendricks called that officer as a witness for the defense. But no questions were asked about phone messages containing admissions by third parties.

On this record, it is unclear if any such message existed. And if it did, Hendricks had the opportunity to explore the issue with the officer who had collected the data from the phones. Therefore, we find no *Brady* violation.

The third claim concerns the failure of the state to inform Hendricks that a pit bull was confined in the bathroom from which a witness had claimed to call 911. But, as Hendricks notes, there was no barking heard on the 911 tape. And, this information came out during the trial early enough for Hendricks to effectively use it. Further, Hendricks makes no reference to a place in the record where he raised this issue with the trial court. Therefore, we find no *Brady* violation.

⁵ (1963), 373 U.S. 83, 83 S.Ct. 1194.

⁶ *State v. Iacona* 93 Ohio St.3d 83, 100, 2001-Ohio-1292, 752 N.E.2d 937.

For the foregoing reasons, we overrule Hendricks's first assignment of error.

In his second assignment of error, Hendricks claims that his convictions were based upon insufficient evidence. In his third assignment of error, he claims that his convictions were against the manifest weight of the evidence.

The standards for determining whether a conviction was based upon insufficient evidence or was against the manifest weight of the evidence are well established. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.⁷ On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁸

Hendricks premises his arguments here on two points: that there was no physical evidence linking him to the crimes, and that the witnesses who testified against him, saying that he had admitted to the shootings, were not credible. In particular, he notes that Antoinette Green, Hendricks's ex-girlfriend, admitted to lying on the stand about other things. Shanee Thompson, another witness who had overheard an admission by Hendricks, was drowsy and under the influence at the time. And Antwain Lowe was also under the influence and had received a favorable plea deal from the state. Hendricks claims that the evidence overwhelmingly pointed to Edgar Crawford as the shooter.

Antoinette Green testified that Hendricks had admitted to shooting the victims and to shooting at DuBose. Shanee Thompson overheard Hendricks admit to the killings and heard him say that the victims deserved to be shot. DuBose testified about the burglary and about paying the "hood tax." He also testified that he had confronted Hendricks after the killings to find out why he had committed the crimes. He testified that Hendricks had told him that the \$100 payment only covered him—

⁷ See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

⁸ See *id.* at 387.

not Peterson or Parsons. DuBose also testified that Hendricks had shot at him at the end of this confrontation, accusing him of snitching. Antwain Lowe testified to the argument between DuBose and Hendricks and to his conversation with Hendricks after he had shot at DuBose. Lowe said that Hendricks had admitted to the shootings during that conversation. Even Hendricks's interview with police corroborated many of the details of the events involved in this case, except for the actual shootings themselves.

Matters as to the credibility of evidence are for the trier of fact to decide.⁹ This is particularly true regarding the evaluation of witness testimony.¹⁰ We will not reverse a conviction on the manifest weight of the evidence when the trial court has chosen one credible version of events over another. We overrule Hendricks's second and third assignments of error.

Having considered and overruled all of Hendricks's assignments of error, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 21, 2010

per order of the Court _____
Presiding Judge

⁹ *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116.

¹⁰ *State v. Williams*, 1st Dist. Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶45, citing *Bryan*, supra, and *State v. Russ*, 1st Dist. No. C-050797, 2006-Ohio-6824, ¶23.