

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-1462

State of Ohio,	:	Case No.
Plaintiff-Appellee,	:	On Appeal from the
v.	:	Franklin County Court of
Regis Dickerson,	:	Appeals, Tenth Appellate
Defendant-Appellant.	:	District
		C.A. Case No. 11AP-789

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT REGIS DICKERSON

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EXPLANATION OF WHY THIS CASE INVOLVES  
A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents two critical issues related to constitutional violations of due process in a criminal conviction: (1) Whether the trial court properly refused to permit the defendant to present evidence that an eyewitness had identified someone else as the shooter; and, (2) whether the defendant's conviction was against the manifest weight of the evidence.

In this case, the court of appeals affirmed the trial court's ruling that the State's refusal to produce a correct address for a key exculpatory witness was acceptable and that the State could then use the witnesses unavailability as a reason to exclude evidence that someone else had been identified as the shooter. The court of appeals also ruled that the conviction was not against the manifest weight of the evidence, despite an alarmingly small amount of evidence against the defendant.

The decision of the court of appeals is contrary to fundamental concepts of due process espoused in both the Ohio and United States Constitutions. In this matter, a key eyewitness, Mr. Titus Turner, came forward to the police and identified the killer in this homicide. In the course of his discussions with the police, Mr. Turner also gave the police his home address. However, the killer that Turner identified was not the Appellant and his identification of another party as the shooter did not fit the theory of the State's case. Not surprisingly, when the State was required to produce discovery to the Defendant, they revealed some, but not all, of what they knew about

Turner. When it came to Turner's address, the State did not provide the address that Turner had provided to the police. Instead, the State gave the defendant a fake address -- an address to a vacant lot. Whether the prosecution acted willfully or negligently is of little consequence, the result is the same. The defendant was prohibited, due to the actions of the State, from exercising his right to compulsory process and he could not serve Turner with a subpoena prior to trial.

During the trial, when confronted with its actions, the State admitted that it had provided a false address and then, for the first time, provided the address that Turner had given to the police, but by that time it was too late to locate Turner. The Defendant then tried to call Detective Walachek, the police detective who had set up the line-up for Turner, but the State objected and the trial court refused to permit Det. Walachek take the stand. Thus, as a result of the State's failure to produce a proper address for Turner, it was rewarded for its discovery violation by the complete and total exclusion of the exculpatory evidence from the trial. The defendant, to his prejudice, was unable to present to the jury any evidence that a disinterested eyewitness had identified someone else as the guilty party.

The decision of the court of appeals flies in the face of the most basic and fundamental notions of due process. The primary purpose of the trial is to present the most relevant evidence to the jury. In theory at least, the rules of evidence are designed to ensure that result -- but that clearly did not happen in this instance. Furthermore, the purpose of the discovery process, at least in part, is to permit a defendant a fair and adequate opportunity to examine the

evidence against him so that he can exercise his right to compulsory process. Here, however, the State's discovery violation was used to limit his right to compulsory process, which in turn restricted the evidence that the jury was allowed to hear. Yet, the court of appeals condoned these actions by the State and allowed a mechanical application of the Rules of Evidence to contradict fundamental notions of due process.

As the Supreme Court of the United States has noted, "A state may not arbitrarily limit a defendant's ability to secure the testimony of a favorable witness or arbitrarily limit the evidence that a defendant may present." Holmes v. South Carolina, 547 U.S. 319, 324 (2006). Yet, the court of appeals condones the arbitrary efforts of the State to prevent the defendant from presenting exculpatory evidence. Its decision sets a dangerous precedent that would limit the due process rights of future defendants and invite the State to ignore the rules of discovery in every criminal trial.

The court of appeals decision also gives only a cursory examination to the argument that the conviction was against the manifest weight of the evidence. The sole evidence against the defendant was the testimony of Roshonna Perry, the instigator of the incident that resulted in this homicide, and her girlfriend, Mikaelle Edwards. As the instigator of the incident, Perry had ample motivation to concoct a story deflecting attention from her and she may have been able to get away with murder because she eventually convinced Edwards to back her up.

Neither of the State's witnesses were credible and Perry told

differing stories to the police before settling on the one that the State presented to the jury. Perry also received a joint recommendation for probation on drug charges that she was facing at the time of this incident. Edwards waited weeks to perfect her story before talking to the police. Given that their stories conflicted with those of the bartender and the bouncer at the bar where the murder took place -- both of whom testified that the defendant was not at the bar on the night of the murder -- it cannot be said that the State proved the defendant's guilt beyond a reasonable doubt.

In sum, this case involves an important constitutional issue combined with a relatively small amount of evidence against the defendant. The came together to deny the defendant a fair trial and result in the unjust conviction of an innocent man. To defend the principles of due process, this court must grant jurisdiction to hear this case and review the erroneous decision of the court of appeals.

#### STATEMENT OF THE CASE AND FACTS

This action arose from the murder of Corey Hart outside of the Wood's Bar, located on Fifth Avenue in Coulumbus, Ohio on August 17, 2010. The Appellant was indicted for this homicide on September 23, 2010. The indictment alleged two counts of murder, an unclassified felony, and two counts of felonious assault, felonies of the second degree. Each count also contained a firearm specification. On March 14, 2011, the trial court severed the felonious assault counts at the request of the defendant. Appellant proceeded to trial on the murder counts and was convicted on both counts and the specifications. The

counts were merged for purposes of sentencing and the Appellant was sentenced to 18 to Life for the murder and the gun specification. The severed felonious assault counts were disposed of by prior plea agreement. Appellant filed a timely appeal which was decided by the Franklin County Court of Appeals on July 19, 2012.

At trial, the State relied almost exclusively on the testimony of two alleged eyewitnesses to support its indictment. The State's primary witness was Roshonna Perry, who had started a fight inside the Wood's Bar with another patron. Perry, the State's main witness, was kicked out of the bar and the fight continued outside. Perry, a female, was admittedly beating a male bar patron with a pair of brass knuckles. At some point after the fight was taken outside, Corey Hart attempted to intervene and was shot. Perry and another witness, Mikaelle Edwards, claimed that Appellant was the person who shot Hart, but they were alone in their claims. Both the bartender and the bouncer at the Wood's Bar testified that Appellant was not even present at the bar on the night in question and Perry gave conflicting stories to the police. Perry originally gave the Police a description of the assailant that bears no resemblance to the Appellant and only later changed her story to accuse the Appellant. The testimony of Perry and Edwards was the sole testimony linking Appellant to the murder scene.

Appellant appealed his conviction to the Franklin County Court of Appeals. The Court of Appeals affirmed the conviction and found that the Appellant's conviction was not against the manifest weight of the evidence and that the trial court did not err by excluding evidence that an eyewitness had identified another individual as the shooter.

The court of appeals erred in ruling that there was no error in the trial court's exclusion of potentially exculpatory evidence of the identity of another individual accused of this murder whose address was withheld by the State until after the trial had commenced. The court of appeals also erred in finding that the Appellant's conviction was not against the manifest weight of the evidence.

In support of his position on these issues, the Appellant offers the following argument.

#### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Appellant was denied a fair trial and was denied due process of law under both the State and the U.S. Constitutions when he was not allowed to present exculpatory evidence that someone else had been identified as the shooter in a police line-up.

The court of appeals clearly erred when it ruled that Appellant should not have been permitted to introduce testimony that someone the police claimed was an eyewitness to the shooting had identified someone else from a police line-up and failed to identify the defendant. In doing so, the trial court denied Appellant a fair trial and denied him due process of law in violation of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States of America and Article 1, Section 10 of the Ohio Constitution.

The witness, Mr. Titus Turner, was presented with a line-up created by Columbus Police Detective Walachek. Turner identified someone other than the defendant as the shooter in this homicide. Turner, in the course of talking to the police, had given the police his correct residential address. However, when the State provided

discovery to the Defendant it did not produce that address. Instead, the State provided the Defendant with a different and false address for Turner. As a result, when the Defendant-Appellant later attempted to exercise his right to compulsory process and subpoena Turner for trial, he was thwarted by the State's refusal to produce the address that Turner had provided to the police. At trial, the State did not dispute that it had given the defendant a false address and that it only given the defendant the correct address of this important exculpatory witness during the trial. At that point, Mr. Turner could not be located in time to present his testimony to the jury. In an effort to cure the State's error, the defendant attempted to call Detective Walachek to testify regarding the line-up which he had created, but the trial court refused to permit the detective to take the stand.

The court of appeals glossed over the State's roll in failing to provide the defendant with a proper address for Mr. Turner and simply concluded that he was unavailable. The court of appeals went on to note that Mr. Turner's statements could not be admitted pursuant to Rules of Evidence 803(8) or 801(D)(1)(c). However, the court of appeals failed to consider the issue of the exclusion of Det. Walachek from the trial. Walachek, present at the time of the line-up, certainly could have testified as to matters of which he had personal knowledge, including his own actions in establishing and preparing the line-up, had he not been prevented from testifying by the trial court.

Appellant also asserted that the trial court's ruling denied him his ability to present a complete defense by applying state rules of evidence in a manner that denied the defendant a trial in accordance

with traditional and fundamental standards of due process, contrary to the ruling of the Supreme Court of the United States in Chambers v. Mississippi, 410 U.S. 284 (1973).

Here, the State failed to produce the address of an important exculpatory witness who identified someone else as the shooter until after the trial had commenced, despite the undisputed fact that the State had the correct address and did not disclose it. Rather than punish the State for this blatant Brady violation, the trial court rewarded the State by using the witnesses' State-created unavailability as grounds to prevent the Defendant from presenting any evidence that an eyewitness had identified another individual as the shooter in this homicide. This is exactly the type of stringent application of the hearsay rules that Chambers warns against. It is important to the fundamental notions of due process that the jury be provided with the evidence necessary to reach a fair and equitable verdict. By preventing the defendant from presenting this conflicting eyewitness account, the court of appeals denied the defendant his fundamental right to due process that both the Ohio and United States constitutions guarantee.

**Proposition of Law No. II: Appellant's due process rights as guaranteed by the Fifth and Fourteenth Amendments of the Federal Constitution and Article 1, Section 10 of the Ohio Constitution were violated when the trial court found him guilty of murder when the verdict was unsupported by sufficient evidence and was against the manifest weight of the evidence.**

The Appellant's conviction was unsupported by sufficient evidence to sustain a conviction and was against the manifest weight of evidence. In evaluating whether a conviction is contrary to manifest

weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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." State v. Thompkins (1997), 78 Ohio St.3d 380, 387, 1997-Ohio-52, quoting, State v. Martin (1983), 20 Ohio App.3d 172, 175; State v. Elmore (2006), 111 Ohio St.3d 515, 2006-Ohio-6207, ¶ 44. Whether or not a conviction is against the manifest weight of the evidence requires an examination of the entire record and a determination of whether the evidence produced attains the high degree of probative force and certainty required of a criminal investigation. State v. Getsy (1998), 84 Ohio St.3d 180, 193.

In reviewing a case for insufficiency of the evidence, the relevant inquiry of the court is, "after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." State v. Jenks (1991), 61 Ohio St.3d 259, ¶ 2 of the syllabus.

The evidence in this case was exceedingly thin. What little evidence did exist was inconsistent and contradictory. There was a complete lack of forensic evidence in this case or any other direct evidence linking the Appellant to the crime scene or the victim. Appellant was convicted solely on the testimonial evidence of Roshonna Perry, the instigator of the fight in which the victim was killed, and Mikaelle Edwards. Perry, who was using brass knuckles to fight a man

just before the victim was shot, initially told the police that the shooter was a light skinned guy with braids who was about 5'9" or 5'10" and who left in a black Lumina. After questioning by detectives, Perry left town. After further questioning by police, she then named the Appellant as the shooter. In doing so, she took the suspicion off of herself and received probation for the multiple felonies of which she had already been convicted and was awaiting sentencing.

The only other evidence connecting the Appellant to the crime scene was the testimony of Mikaelle Edwards who chose not to come forward at all until weeks after the shooting. When contacted by police weeks later, she told a story that was similar to one of Perry's stories and dissimilar to other story that Perry told. Edwards was admittedly extremely intoxicated and under the influence drugs at the time she claims to have witnessed the shooting.

These stories must be contrasted by the testimony of other witnesses that contradict Perry and Edwards. Ms. Mia Richardson, the bartender at the Woods Bar on the night of the shooting, testified that Appellant was not present at the bar on the night of the murder as the State claimed. Her testimony was supported by the testimony of Wayne Kelso, the bouncer at the Woods Bar. Mr. Kelso testified that Appellant was not at the Woods Bar on the night of the shooting as Perry and Edwards claimed. It was also the uncontradicted testimony of numerous witnesses that the Woods Bar was a small establishment and not crowded on the night of the shooting, making it unlikely that Appellant could have been present without being seen by either the bartender or the bouncer. Together, the testimony of Ms. Richardson and Mr. Kelso

make the Perry/Edwards version of events simply unbelievable.

Given Perry's conflicting version of events and self-serving motivation to deflect attention away from herself and onto someone else while, at the same time, avoiding a prison sentence, makes her a less than believable witness. Edward's testimony simply mimicked that of her girlfriend, Perry, and her drug and alcohol induced tale was equally unbelievable -- especially given that no one else who was present at the bar on the night of the shooting can place Appellant at the scene. The conviction, based solely on the testimony of these two witnesses and unsupported by other evidence, was, quite clearly, lacking in sufficient evidence to sustain the conviction and was against the manifest weight of the evidence.

#### CONCLUSION

For the reasons discussed above, this case involves a substantial constitutional question. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

R. J. R. Sr.

Regis Dickerson

APPELLANT, PRO SE

Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by regular U.S. Mail to counsel for Appellee, Sheryl L. Prichard, Assistant Prosecuting Attorney, Franklin County Prosecutor's Office, 373 South High Street, 13th Floor, Columbus, OH 43215 on this 20th day of August, 2012.

Regis D. Dickerson Sr.  
Regis Dickerson

APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case No. _____
Plaintiff-Appellee,	:	On Appeal from the
v.	:	Franklin County Court of
Regis Dickerson,	:	Appeals, Tenth Appellate
Defendant-Appellant.	:	District
		C.A. Case No. 11AP-789

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APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT REGIS DICKERSON

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
2012 JUL 19 PM 12:56  
CLERK OF COURTS

State of Ohio, :  
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 Plaintiff-Appellee, :  
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 v. : No. 11AP-789  
 : (C.P.C. No. 10CR-09-5617)  
 :  
 Regis L. Dickerson, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on July 19, 2012, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

SADLER, FRENCH, and DORRIAN, JJ.

By  \_\_\_\_\_  
Judge Lisa L. Sadler

T. Barstow

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
2012 JUL 19 PM 12:52  
CLERK OF COURTS

State of Ohio, :  
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 Plaintiff-Appellee, :  
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 v. : No. 11AP-789  
 : (C.P.C. No. 10CR-09-5617)  
 Regis L. Dickerson, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on July 19, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*,  
for appellee.

*Todd W. Barstow*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Regis L. Dickerson, appeals his murder conviction following a jury trial in the Franklin County Court of Common Pleas. For the following reasons, we affirm.

**I. Background**

{¶ 2} In September 2010, appellant was indicted for two counts of murder with firearm specifications for the killing of Corey Hart. The indictment also contained two counts of felonious assault with specifications based on incidents occurring on separate dates and involving different victims; however, the trial court granted appellant's motion to sever those counts, and the case proceeded to trial on the murder counts. The following evidence was presented at the murder trial.

{¶ 3} Officer Matthew Hauser testified that, during the early morning hours of August 17, 2010, he was dispatched to the Woods Bar in Columbus in response to a reported shooting. Upon arrival, he observed several females in the parking lot screaming and pointing to a man, later identified as Hart, leaning up against a car going in and out of consciousness. Officer Hauser saw what appeared to be a ring of blood surrounding a bullet hole in Hart's t-shirt. Hart was transported to Grant Hospital, where he was declared dead shortly thereafter. A deputy coroner with the Franklin County Coroner's Office testified that the cause of death was a single gunshot wound to the abdomen; the manner of death was homicide.

{¶ 4} The state presented two eyewitnesses who testified that they observed appellant fire a single gunshot into Hart's abdomen at close range. The first was Roshonna Perry (a.k.a. "Diamond"), appellant's close friend since childhood. Perry testified that she arrived at the Woods Bar earlier that night and met with appellant, his girlfriend, his cousin, and two of his friends. Later in the evening, Perry began arguing with one of appellant's friends, Mike Myers, whom she had fought with in the past. The argument became physical, and appellant attempted to hold Perry back while others pushed Myers out of the bar. As Myers was being moved outside, Perry hit him in the head with brass knuckles. Myers was "bleeding everywhere" after Perry punched him, and he got in the nearby SUV owned by appellant's girlfriend. (Tr. 236.)

{¶ 5} Perry continued yelling at Myers when she was approached by Hart, the father of her best friend's sister. Hart, who was also at the bar that night, asked Perry, "You good?," which apparently offended appellant. (Tr. 247.) Appellant told Hart, "This don't got nothing to do with you, this is family shit." (Tr. 249.) According to Perry, the two men began to argue when, without warning, appellant pulled out a gun and shot Hart once in the middle of the chest. Perry had not seen Hart threaten appellant or display any weapons.

{¶ 6} Perry initially fled the scene, but she quickly changed her mind and returned to care for Hart. She saw the SUV drive away and did not hear from appellant until a telephone conversation 45 minutes later. During the conversation, appellant told Perry, "That nigger ain't family, don't go up to the hospital to see him." (Tr. 257-58.) The next morning, Perry lied to police about the identity of the shooter in order to protect

appellant. After speaking with her mother, however, Perry decided to contact police to tell them the truth. Perry later met with detectives and selected appellant out of a photo array.

{¶ 7} The state's second eyewitness was appellant's cousin, Mikaelle Edwards, who went to the bar with appellant the night of the shooting. Edwards witnessed the fight between Perry and Myers and sat with Myers in the SUV while appellant and Hart argued in the parking lot. According to Edwards, she tried to convince appellant to get in the car when appellant suddenly pulled out a silver revolver and fired a single shot into Hart's upper stomach. Like Perry, Edwards did not see Hart threaten appellant or carry any weapons.

{¶ 8} Edwards testified that, after appellant got into the SUV, they drove away from the shooting. According to Edwards, appellant appeared calm after the shooting. While she was "hysterically crying" about what had happened, appellant assured her, "it is going to be all right." (Tr. 326.) Edwards did not speak with police until several weeks later, when she met with detectives and was presented with a photo array. After looking at the array, Edwards positively identified appellant as the shooter.

{¶ 9} After the state's case-in-chief, appellant presented the testimony of several witnesses, including two employees of the bar who denied seeing appellant that night or hearing any gunshots. Additionally, appellant's girlfriend, Mykesha Loney, testified that she was not at the bar or with appellant that evening.

{¶ 10} The jury returned from deliberations to find appellant guilty of both murder counts with the attendant firearm specifications. At sentencing, the trial court merged the murder counts and imposed a total prison sentence of 18 years to life.

## **II. Assignments of Error**

{¶ 11} In a timely appeal, appellant advances the following assignments of error for our consideration:

I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF MURDER AS THAT VERDICT WAS NOT

SUPPORTED BY SUFFICIENT EVIDENCE AND WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT AND DENIED HIM A FAIR TRIAL AND DUE PROCESS OF LAW PURSUANT TO THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY NOT ALLOWING HIM TO PRESENT EXCULPATORY EVIDENCE AND TO PRESENT A COMPLETE DEFENSE TO THE CHARGES.

#### A. First Assignment of Error

{¶ 12} Appellant's first assignment of error claims his conviction is against the manifest weight of the evidence and is not supported by sufficient evidence because no reasonable juror could have found Perry and Edwards credible. As explained below, appellant's credibility challenges fail under a sufficiency and manifest weight review.

{¶ 13} In determining whether a verdict is against the manifest weight of the evidence, an appellate court sits as the "thirteenth juror" and must weigh the evidence to determine whether 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.' " *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). The appellate court must bear in mind the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances when "the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶ 14} An appellate court does not act as a "thirteenth juror" in determining the sufficiency of the evidence. *State v. New*, 197 Ohio App.3d 718, 2012-Ohio-468, ¶ 8 (10th Dist.). "The issue of sufficiency presents a purely legal question for the court regarding the adequacy of the evidence." *Id.*, citing *Thompkins* at 386. The relevant inquiry is whether, "after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 15} Appellant's credibility challenges necessarily fail under a review for sufficiency of the evidence. In a sufficiency review, courts "do not assess whether the state's evidence is to be believed, but whether, if believed, the evidence admitted at trial supports the conviction." *State v. Jordan*, 10th Dist. No. 11AP-691, 2012-Ohio-1760, ¶ 15, citing *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80; see also *State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, ¶ 135 (reiterating that credibility challenges are "not proper on review of evidentiary sufficiency"). Therefore, we reject appellant's argument regarding the sufficiency of the evidence and will review his credibility challenges under a manifest weight review.

{¶ 16} Appellant claims Perry lacked credibility because she initially lied to police in order to protect appellant. A reasonable juror, however, could have found that Perry's decision to testify against her close friend actually *heightened* her credibility. Perry began her testimony in tears, saying it was difficult for her to testify against appellant because she "love[d] him like [her] brother." (Tr. 219.) Regardless, Perry became cooperative with police shortly after the shooting when she admitted being untruthful and identified appellant as the shooter. A jury is not prevented from believing a witness " 'simply because the witness may have been, to some degree, uncooperative with the police.' " *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 56, quoting *State v. Darthard*, 10th Dist. No. 07AP-897, 2008-Ohio-2425, ¶ 14. "It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness." *State v. Haynes*, 10th Dist. No. 03AP-1134, 2005-Ohio-256, ¶ 24 (quotations omitted).

{¶ 17} Appellant also points to the fact that Perry benefitted from her testimony. In exchange for Perry's truthful testimony, the state agreed to request probation in her unrelated prosecution for possession of cocaine and tampering with evidence. We find nothing about this agreement fatal to Perry's credibility. Perry had already identified appellant as the shooter to detectives by the time she entered into the agreement with the state. Moreover, she pleaded guilty to those offenses before the shooting even occurred and received no reduction in charges from the state. "[T]he jury was free to assess [her] credibility in light of any consideration [she] received from the state." *Jennings* at ¶ 56, citing *State v. Bliss*, 10th Dist. No. 04AP-216, 2005-Ohio-3987, ¶ 26.

{¶ 18} Next, appellant claims Edwards lacked credibility because she admitted to drinking and smoking marijuana the night of the shooting. However, there was no evidence that either substance impaired her memory of the shooting. Edwards' testimony was largely consistent with that of Perry; both denied seeing Hart threaten appellant or display any weapons, and both testified seeing appellant fire a single shot to Hart's abdomen. Their testimony was further corroborated by the deputy coroner, who concluded that Hart was killed by a single gunshot wound to the abdomen. Under these circumstances, the jury could reasonably find the testimony of Perry and Edwards to be credible.

{¶ 19} For the reasons stated above, appellant has failed to establish that his conviction was unsupported by sufficient evidence or against the manifest weight of the evidence. Accordingly, appellant's first assignment of error is overruled.

#### **B. Second Assignment of Error**

{¶ 20} In his second assignment of error, appellant argues that the trial court prohibited him from presenting exculpatory evidence and violated his right to present a complete defense. Appellant sought to prove that a man named Titus Turner identified someone else as the shooter in a photo array prepared by detectives. Because Turner's whereabouts were unknown, appellant attempted to introduce Turner's out-of-court identification through Detective Robert Wachalek, who showed Turner the array. Sustaining the state's objection, the trial court excluded the evidence as inadmissible hearsay.

{¶ 21} Generally, a trial court has broad discretion in deciding the admissibility of evidence, and a reviewing court should not disturb such decisions in the absence of an abuse of discretion that created material prejudice. *State v. Sage*, 31 Ohio St.3d 173, 182 (1987). "Abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Under this deferential standard, "[i]t is not sufficient for an appellate court to determine that a trial court abused its discretion simply because the appellate court might not have reached the same conclusion or is, itself, less persuaded by the trial court's reasoning process than by the countervailing arguments." *State v. Morris*, \_\_\_ Ohio St.3d \_\_\_, 2012-Ohio-2407, ¶ 14.

{¶ 22} Appellant conceded that Turner's out-of-court statement constituted hearsay under the definition in Evid.R. 803(C), but argued that the statement fell within the hearsay exception for public records and reports contained in Evid.R. 803(8). However, even if Turner's identification was contained in a report subject to the exception in Evid.R. 803(8), the statement would nonetheless remain inadmissible hearsay. "[H]earsay statements contained within a public record are not admissible unless the statements themselves are subject to a hearsay exception." *State v. Silverman*, 10th Dist. No. 05AP-837, 2006-Ohio-3826, ¶ 83, citing *State v. Walker*, 9th Dist. No. 14012 (Nov. 8, 1989).

{¶ 23} Nor was the statement admissible under Evid.R. 801(D)(1)(c), governing prior statements of identification. That rule provides that a statement is not hearsay if "[t]he declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is \* \* \* (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification." Evid.R. 801(D)(1)(c). Here, Turner did not testify at trial, and he was not subject to cross-examination. Thus, his testimony could not be considered admissible under Evid.R. 801(D)(1)(c). See *State v. Nevins*, 171 Ohio App.3d 97, 2007-Ohio-1511, ¶ 30 (2d Dist.) (quotations omitted) ("[i]dentification testimony is not admissible per Evid.R. 801(D)(1)(c) unless the person who made the out-of-court identification testifies at trial and is subject to cross-examination").

{¶ 24} Appellant maintains that the exclusion of Detective Wachalek's testimony violated his right to present a complete defense under *Chambers v. Miss.*, 410 U.S. 284 (1973). We disagree. In *Chambers*, the United States Supreme Court found a due process violation based on the combined application of Mississippi's "voucher rule," which prohibited the defendant from impeaching his own witness (who had confessed to the crime but repudiated his confession on the stand) and Mississippi's hearsay rule, which prohibited the defendant from introducing evidence that the witness made incriminating statements to three people. *Id.* at 302. The court emphasized its holding was narrowly confined to the "facts and circumstances" of the case and did not "signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures." *Id.*

{¶ 25} Nothing in *Chambers* abolishes the hearsay rule or renders the out-of-court statements in this case admissible. To the contrary, *Chambers* actually recognizes the unreliability of out-of-court statements where, as here, the declarant does not testify and is not subject to cross-examination. The court found the availability of the declarant in that case to be an assurance of reliability that "significantly distinguishes" the case from those where the declarant was unavailable. *Id.* at 301. Therefore, we find *Chambers* to be materially distinguishable from the facts herein.

{¶ 26} Contrary to appellant's view, *Chambers* "does not stand for the proposition that the accused is denied a fair opportunity to defend himself whenever a state or federal rule excludes favorable evidence." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). Because Turner's out-of-court identification was inadmissible hearsay, the exclusion of Detective Wachalek's testimony was neither an abuse of discretion nor a violation of appellant's right to present a complete defense.

{¶ 27} Accordingly, appellant's second assignment of error is overruled.

### III. Conclusion

{¶ 28} Having overruled appellant's first and second assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

FRENCH and DORRIAN, JJ., concur.

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