

[Cite as *State v. Hayes*, 2024-Ohio-4679.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 113579
 v. :
 :
 JAMES HAYES, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 26, 2024

Criminal Appeal from the Cuyahoga County Common Pleas Court
Case No. CR-23-680551-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Gregory Paul, Assistant Prosecuting
Attorney, *for appellee*.

Robert A. Dixon, *for appellant*.

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant James Hayes (“Hayes”) appeals his convictions
and asks this court to order the trial court to grant him a new trial. We affirm.

{¶2} Hayes was charged with one count of aggravated murder, two counts of murder, and two counts of felonious assault. The jury found Hayes not guilty of aggravated murder and guilty on the other four counts. All counts contained both one- and three-year firearm specifications. The trial court ruled that all counts merged for purposes of sentencing, and the State elected to have Hayes sentenced on one count of murder. The trial court sentenced him to life imprisonment with the possibility of parole after 21 years.

I. Facts and Procedural History

{¶3} At trial, Hayes testified that he, Brittany Hayes (“Brittany”), and Paulette Yarber (“Yarber”) live together in one home. Hayes and his wife Brittany have one child together, and he has two children with Yarber. On April 15, 2023, Yarber informed Hayes that she hired Darius Williford (“Williford”) to detail and clean her Nissan Pathfinder, but instead Williford stole the car while Yarber was sleeping. Hayes and Yarber called the police to report the car stolen, but Hayes testified that the police never arrived at the residence from which it was stolen to take a report.

{¶4} On April 16, 2023, the next day, Yarber told Hayes that she called the car dealership from which she purchased the Pathfinder and received two possible GPS locations of the car. Yarber asked Hayes to take her to the locations to see if they could find her car. Hayes, Yarber, and Brittany drove to the first location and did not see the car. However, as they were driving away, they spotted the car on

the corner of the street. Hayes testified that he was hoping the car was abandoned, and they could use their second set of keys to retrieve the car and go home.

{¶15} Hayes stated he drove up behind the Pathfinder as close to the bumper as he could and exited the car. He testified that he saw the silhouette of a person in the driver's seat and another person at the passenger window. Hayes then testified that he had his gun with him, and when he got out of his car, he saw a guy inside the car reaching down. Then the man in the driver seat of the Pathfinder drove off quickly, and Hayes was unsure if the driver was going to hit him. Hayes's trial counsel asked for clarification, and Hayes testified that as he approached the vehicle he said, "[H]ey, you stole my car." Tr. 637. Hayes then reached for his gun because he saw the guy in the driver's seat reaching down, grabbing for something. Hayes stated that he did not know what the driver was grabbing, and was hoping it was not a gun. Hayes testified that at that point he got his gun out because he thought he was in danger of being hit. Hayes further testified that he fired his gun when the Pathfinder started coming towards him, attempting to shoot out the tires of the moving vehicle, and he was in fear for his life.

{¶16} Hayes fired four rounds, striking the Pathfinder three times as well as Williford, the driver, killing him. Williford was shot in the thigh and back, which proved to be fatal. Hayes jumped back into his car as the Pathfinder drove away and instructed Brittany and Yarber to get back into the car. He drove after the Pathfinder, attempting to locate it again. Hayes eventually located the Pathfinder,

observing that it had struck a pole. Hayes testified that he did not stop because he panicked nor did Hayes call the police. Instead, he drove home, dropped off Brittany and Yarber, and left the house to park the car in a different location for his wife's uncle to find it. Hayes testified that he then called a guy for a ride to Columbus, Ohio. Hayes stayed in Columbus for a couple of days and then returned to Cleveland. When Hayes returned to Cleveland, he turned himself in to the police.

{¶7} Surveillance cameras recorded the incident between Hayes and Williford. The recordings show the Pathfinder parked on the street and Hayes's vehicle pulling up behind it. As soon as Hayes's vehicle comes to a stop, he jumps out of the driver's side and immediately begins shooting at the Pathfinder, as it drives away. The video does not show Hayes approaching the driver's-side window or that he was close enough to the vehicle to get hit. The video also shows that Hayes is not close enough to the driver's-side window to see Williford grabbing for anything.

{¶8} Hayes requested and received a jury instruction for self-defense. However, the trial court denied his request for a lesser included offense instruction of voluntary manslaughter, pursuant to R.C. 2903.01 on Counts 2 and 3. The State argued that voluntary manslaughter is incompatible with a theory of self-defense, stating that "self-defense required a proof of fear while voluntary manslaughter requires a showing of a sudden passion or rage." Tr. 694.

[Cite as *State v. Hayes*, 2024-Ohio-4679.]

{¶9} The jury found Hayes not guilty of aggravated murder, but guilty on the remaining counts and specifications pertaining to those counts. Hayes was sentenced to life imprisonment with possibility of parole after 21 years. He filed this appeal, assigning two errors for our review:

1. The lower court erred and denied the appellant due process of law when it refused to charge the jury on the inferior offense of voluntary manslaughter pursuant to R.C. 2903.03 on Count Two and Three charging murder; and
2. The verdicts finding the appellant guilty of murder in Counts Two and Three were against the manifest weight of the evidence and also based upon legally insufficient evidence and must be reversed under either theory.

II. Jury Instruction - Voluntary Manslaughter

A. Standard of Review

{¶10} “A trial court’s decision to grant or deny a requested jury instruction is reviewed under an abuse of discretion standard.” *State v. Ladson*, 2022-Ohio-3670, ¶ 26 (8th Dist.), citing *State v. Williams*, 2009-Ohio-2026, ¶ 50 (8th Dist.). “Specifically, a defendant charged with murder is entitled to an instruction on voluntary manslaughter when the evidence presented at trial would reasonably support both an acquittal on the charged crime of murder and a conviction for voluntary manslaughter.” *Id.*, citing *State v. Shane*, 63 Ohio St.3d 630 (1992), citing *State v. Tyler*, 50 Ohio St.3d 24 (1990).

{¶11} The term abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio

St.3d 217, 219 (1983). “An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority.” *Cuyahoga Supply & Tool, Inc. v. BECDIR Constr. Co.*, 2024-Ohio-1375, ¶ 7 (8th Dist.), citing *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

B. Law and Analysis

{¶12} In Hayes’s first assignment of error, he argues that the trial court erred by denying his request to instruct the jury on the inferior offense of voluntary manslaughter. The trial court reasoned that “the facts in this case do not support an inferior offense instruction.” Tr. 717-718. The trial court stated that its “recollections of the testimony was that both in [Hayes’s] testimony and in the recorded interview of the defendant, that he said he was shooting at the victim’s vehicle to stop it from leaving, and that he was quote ‘afraid.’” Tr. 718. The trial court determined that Hayes’s testimony does not support an inferior offense instruction.

{¶13} As previously stated, “a defendant charged with murder is entitled to an instruction on voluntary manslaughter when the evidence presented at trial would reasonably support both an acquittal on the charged crime of murder and a conviction for voluntary manslaughter.” *Ladson*, 2022-ohio-3670 at ¶ 26, (8th), citing *Shane* at 632. *See, e.g., State v. Harris*, 2024-Ohio-2709, ¶ 72 (8th Dist.).

{¶14} Voluntary manslaughter, in R.C. 2903.03(A) provides:

No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy.

{¶15} “Whether the provocation was reasonably sufficient to prompt sudden passion or a sudden fit of rage involves both an objective and a subjective analysis.” *State v. Phillips*, 2020-Ohio-4748, ¶ 11 (8th Dist.), citing *Shane* at 634. “For the objective standard, the alleged provocation by the victim must be reasonably sufficient to incite deadly force, meaning ‘it must be sufficient to arouse the passions of an ordinary person beyond the power of his or her control.’” *Phillips* at *id.*, citing *Shane* at 635. “For the subjective standard, the defendant in the particular case must have actually acted under the influence of sudden passion or in a sudden fit of rage.” *Phillip* at *id.*, citing *Shane* at 634-635. “The subjective component, the ‘emotional and mental state of the defendant and the conditions and circumstances that surrounded him at the time,’ will only be considered if the defendant has satisfied the objective component.” *Phillips* at *id.*, quoting *Shane* at *id.*

{¶16} “The determination of what is reasonable provocation is a question of fact for the factfinder.” *Phillips* at ¶ 12, citing *State v. Roberts*, 2009-Ohio-1605, ¶ 22 (8th Dist.), citing *Shane* at 632. “The standard of what constitutes adequate provocation is ‘that provocation which would cause a reasonable person to act out of passion rather than reason.’” *Id.*, citing *Shane* at 634.

{¶17} Hayes’s testimony does not demonstrate that he was under the influence of sudden passion or in a sudden fit of rage. According to Hayes’s testimony, he fired his gun because he thought the victim was grabbing for something or that he was going to be hit by the car. The surveillance video demonstrates that Hayes was in no danger of being hit by the victim. Instead, as soon as Hayes leaves his vehicle, he immediately begins shooting at the Pathfinder as it drives off. Hayes testified that he was afraid. However, “fear alone is insufficient support for reasonable provocation.” *Id.* at ¶ 16, citing *State v. Sinclair*, 2018-Ohio-3363, ¶ 45 (8th Dist.). “If, as a matter of law, no reasonable jury could find that the provocation was adequate, the judge may refuse to give a voluntary manslaughter instruction.” *Id.*, citing *State v. Lee*, 2018-Ohio-3957 ¶ 49 (10th Dist.).

{¶18} We find that Hayes has not demonstrated that his actions were caused by sudden passion or a fit of rage. “When reasonably sufficient evidence of provocation has not been presented, no jury instruction on voluntary manslaughter should be given.” *Shane*, 63 Ohio St.3d at 638. Therefore, we find that the trial court did not err or abuse its discretion in refusing to instruct the jury on voluntary manslaughter, and Hayes’s first assignment of error is overruled.

III. Manifest Weight and Sufficiency of the Evidence

A. Standard of Review

{¶19} A manifest-weight challenge to a conviction asserts that the State has not met its burden of persuasion in obtaining the conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997). A manifest-weight challenge raises factual issues and we review the challenge as follows:

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed, and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

Id. at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Townsend*, 2019-Ohio-544, ¶ 20 (8th Dist.).

{¶20} Accordingly,

[w]ith respect to sufficiency of the evidence, “sufficiency’ is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.” *Black’s Law Dictionary* 1433 (6 Ed.1990). *See also* Crim.R. 29(A) (motion for judgment of acquittal can be granted by the trial court if the evidence is insufficient to sustain a conviction). In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson*, 162 Ohio St. 486 (1955). In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida*, 457 U.S. 31, 45 (1982), citing *Jackson v. Virginia*, 443 U.S. 307 (1979).

Thompkins at 386.

B. Law and Analysis

{¶21} In Hayes’s second assignment of error, he contends that his guilty verdicts on the murder counts were against the manifest weight of the evidence and based on insufficient evidence. Hayes was convicted of two counts of murder, in violation of R.C. 2903.02(A) & (B), which state:

(A) No person shall purposely cause the death of another or the unlawful termination of another’s pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender’s committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

{¶22} Hayes argues that he did not act purposely when shooting at the vehicle. Hays contends that he was aiming at the tires in an effort to stop the vehicle. “An act is committed purposely when it is a person’s specific intent to cause a certain result.” *State v. Krueger*, 2010-Ohio-3725, ¶ 21 (8th Dist.).

Intent may be inferred from the circumstances surrounding the crime. Because intent dwells in the mind of the accused, an intent to act can be proven from the surrounding facts and circumstances. An intent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death, and such intent may be deduced from all the surrounding circumstances, including the instrument used to produce death, its tendency to destroy life if designed for that purpose, and the manner of inflicting a fatal wound. A firearm is an inherently dangerous instrumentality, the use of which is likely to produce death.

Id.

{¶23} According to the evidence, there were bullet impacts in the driver’s-side door, above the handle; above the taillight on the driver’s side of the

vehicle; and in the back window of the vehicle. There is no evidence that Hayes attempted to shoot the tires. Also, Hayes used a firearm to shoot four times at a moving vehicle, which is likely to produce death from either a bullet or from a car crash. The surveillance video showed that Hayes began firing his weapon as soon as he exited his vehicle. His actions, these circumstances, and forensic evidence are sufficient to demonstrate that he purposely caused Williford's death.

{¶24} After reviewing the evidence, Hayes's testimony, and the surveillance video, Hayes has not demonstrated that the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed, and a new trial ordered. Therefore, Hayes's second assignment of error is overruled.

{¶25} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

EILEEN T. GALLAGHER, P.J., and
MICHAEL JOHN RYAN, J., CONCUR

