[Cite as *State v. Mosley*, 2011-Ohio-5365.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-209 (C.P.C. No. 09CR-5913)
Frankie D. Mosley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 18, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Frankie D. Mosley is appealing from his convictions for attempted murder, felonious assault on a police officer, aggravated robbery and other related charges and firearm specifications. He was sentenced to a term of incarceration of 102 years.

{¶2} Counsel for Mosley has assigned two errors for our consideration:

> I. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE

JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR SEVERANCE.

{¶3} The charges against Mosley stemmed from two separate incidents, one of which occurred on September 4, 2009 and the second of which occurred on September 22, 2009.

{¶4} On September 4, 2009, Mosley robbed and shot Larry Frazier. Frazier had done work on Mosley's truck on prior dates and knew Mosley from the neighborhood. The fact Frazier was robbed and shot was not in serious question. The fact that Mosley was the robber also was not open to serious debate.

{¶5} In the second set of incidents, those which occurred on September 22, 2009, Mosley stole the blue Dodge Neon being driven by an acquaintance. Mosley had a firearm which he fired to warn the driver. Later, when police attempted to apprehend him, he shot at police. The revolver used to shoot Frazier was found in the Dodge Neon when Mosley was finally caught and subdued.

{¶6} The two incidents were sufficiently similar and sufficiently linked so as to make their joinder for trial appropriate. We are bound by the rulings of the Supreme Court of Ohio on this issue and that court has consistently favored joinder of similar cases for trial. See for instance, *State v. Torres* (1981), 66 Ohio St.2d 340.

{¶7} The second assignment of error is overruled.

{¶8} The weight of the evidence clearly favored the verdicts reached. Sufficiency of the evidence is the legal standard applied to determine whether the case

should have gone to the jury. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. Id. "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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781. The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a matter of law, a judgment of acquittal must be entered for the defendant. See *Thompkins* at 387.

{¶9} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* at 387. In so doing, the court of appeals, sits as a " 'thirteenth juror' " and, after " '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.' " Id. (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175); see, also, *Columbus v. Henry* (1995), 105 Ohio App.3d 545, 547-48. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387.

{¶10} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [(1967), 10 Ohio St.2d 230], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. It was within the province of the jury to make the credibility decisions in this case. See *State v. Lakes* (1964), 120 Ohio App. 213, 217 ("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.")

{¶11} See *State v. Harris* (1991), 73 Ohio App.3d 57, 63 (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶12} As to the September 4 incident, Frazier clearly described being robbed and shot.

{¶13} Tyra Cox, who was with Mosley when the robbery occurred, gave testimony which supports that of Frazier. No defense evidence was presented to weigh against the substantial proof offered by the State of Ohio as to the happenings on September 4, 2009.

{¶14} The evidence as to the September 22, 2009 set of incidents was equally compelling. Shawntai Lewis picked up Mosley at his request and drove to a Meijer store. Mosley pushed her out of the blue Dodge Neon she had been driving after threatening her with a gun and firing a warning shot.

{¶15} Shortly thereafter, police responding to a report of the theft of the Dodge Neon tried to pull it over.

{¶16} Mosley fled and fired shots at the police in his attempt to get away. Police eventually were able to arrest Mosley after he crashed the Dodge Neon into a civilian vehicle and attempted to steal another vehicle to continue his flight.

{¶17} The first assignment of error is also overruled.

{¶18} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.

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