

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-466 (C.P.C. No. 10CR-07-4264)
William J. Page,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 21, 2012

Ron O'Brien, Prosecuting Attorney, and *Susan M. Suriano*,
for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, William J. Page, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because his conviction is supported by sufficient evidence and is not against the manifest weight of the evidence, we affirm that judgment.

{¶2} On July 22, 2010, a Franklin County Grand Jury indicted appellant with counts of aggravated robbery in violation of R.C. 2911.01, attempted murder in violation of R.C. 2923.02 and 2903.02, felonious assault in violation of R.C. 2903.11, and having a weapon while under disability in violation of R.C. 2923.13. The charges arose out of the shooting of Remberto Ventura. Appellant entered a not guilty plea to the charges and proceeded to trial.

{¶3} At trial, Ventura testified that on the evening of May 20, 2010, he was at his apartment complex when he found himself surrounded by a number of people. One of those people approached Ventura and demanded money. Ventura told the man he did not have any money. The man put something up to Ventura's stomach (the object was in the man's hand but wrapped in a shirt) and told him that he would kill him if he did not give him money. Ventura ran away from the group. As he fled, he was shot in the back. Ventura identified appellant as the man who approached and threatened him. Corey Divers, appellant's cousin, testified that he and a number of people, including appellant, approached a Hispanic man they saw in their apartment complex on May 20, 2010. Divers testified that appellant asked the man for money, the man ran, and that appellant then shot the man. Another person among the group of people in the area that night, Vaughn Smith, described a similar version of events. Another witness, Carrie Herrington, testified that she saw appellant in her apartment shortly before the shooting with a gun. Appellant denied possessing a gun and all involvement in Ventura's shooting.

{¶4} The jury found appellant not guilty of the aggravated robbery, attempted murder, and felonious assault charges. The trial court, however, found appellant guilty of having a weapon while under disability and sentenced him accordingly. Appellant appeals and assigns the following error:

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 HAVING WEAPONS UNDER DISABILITY AS THAT VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶5} In this assignment of error, appellant contends that his conviction is not supported by sufficient evidence and is also against the manifest weight of the evidence. Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶11 (citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶15. "[T]hus, a

determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's conviction is supported by the manifest weight of the evidence. *State v. Gravelly*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶46.

{¶6} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*; *State v. Baatin*, 10th Dist. No. 2011-Ohio-6294, ¶8.

{¶7} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.* (quoting *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Accordingly, we afford great deference to the trier of fact's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶26 (citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶55). See also *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶8} The trial court found appellant guilty of one count of having a weapon while under disability in violation of R.C. 2923.13. In order to find appellant guilty of that offense in this case, the state had to prove beyond a reasonable doubt that he knowingly

had, carried, or used any firearm after having been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the possession, use, sale, administration, distribution or trafficking of any drug of abuse. R.C. 2923.13(A)(3). Appellant stipulated at trial that he had been adjudicated a delinquent child for one count of possession of drugs. Appellant only disputes whether the evidence supports the conclusion that he had, carried, or used a firearm.

{¶9} At least three witnesses testified that appellant possessed a gun on May 20, 2010. Appellant nevertheless argues that his conviction is against the manifest weight of the evidence because those witnesses were not worthy of belief. We disagree.

{¶10} The trier of fact is in the best position to determine the credibility of witnesses. *State v. Scott*, 10th Dist. No. 10AP-174, 2010-Ohio-5869, ¶17; *State v. Eisenman*, 10th Dist. No. 10AP-809, 2011-Ohio-2810, ¶20. Here, the trial court (as the trier of fact) obviously chose to believe the testimony of the state's witnesses that appellant possessed a gun. This is within the province of the trier of fact, and given the great deference we afford to that determination, we cannot say that the trial court lost its way in making that determination so as to create a manifest miscarriage of justice.

{¶11} Additionally, a conviction is not against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Webb*, 10th Dist. No. 10AP-189, 2010-Ohio-5208, ¶16. While appellant denied owning or even possessing a gun, testimony from the state's witnesses refutes appellant's denial. The trial court was free to disbelieve appellant's testimony and believe the state's witnesses. That decision was within the province of the trier of fact. *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶18-19. As for appellant's allegation that some of the state's witnesses may have benefited from providing testimony for the prosecution, the trial court was free to assess their credibility in light of any consideration they received from the state. *Jennings* at ¶56.

{¶12} The trial court did not lose its way or create a manifest miscarriage of justice. Accordingly, appellant's conviction is not against the manifest weight of the evidence. This conclusion is also dispositive of appellant's claim that his conviction is not supported by sufficient evidence. *McCrary* at ¶17. Accordingly, we overrule appellant's assignment of error.

{¶13} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
