[Cite as *State v. Muhammad*, 2013-Ohio-2776.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-906
v.	:	(C.P.C. No. 11CR-07-3616)
Abdul R. Muhammad,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 28, 2013

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Law Office of Blaise Baker, and *Blaise Baker*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendant-appellant, Abdul R. Muhammad, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} On July 8, 2011, a Franklin County Grand Jury indicted appellant with one count of felonious assault in violation of R.C. 2903.11 with a firearm specification and one count of having a weapon while under disability in violation of R.C. 2923.13. The charges arose out of an altercation during which appellant shot Robert Hogan. Appellant entered a not guilty plea and proceeded to a trial.

{¶ 3} At trial, Hogan testified that he had been on a date with Elicia Dunford. The date did not go very well, and they started arguing. The argument moved to the area around his car because he was trying to leave. Hogan explained that as he tried to close his car door, he slammed it on Dunford's fingers, causing "all hell [to] break loose." (Tr. 42.) The two continued to argue, and Dunford called her sister, who lived nearby, for help. Her sister came to the scene with three men, one of them appellant. Hogan testified that after a short verbal altercation with the group, he heard one person tell the others who were in front of his car door to get out of the way. He then was shot through his car window. He was able to drive himself to the hospital. Hogan denied having a gun with him in the car and a subsequent police search of the car also found no gun. Hogan also denied dragging Dunford with his car.

{¶ 4} Appellant admitted to shooting Hogan but claimed to have done so in self-defense or in defense of the people who were in the area. Specifically, he explained that he saw Dunford being dragged by the car and thought she was in danger. He also thought he saw Hogan reaching under the car seat for a gun and was worried that Hogan could shoot anyone there. The jury rejected appellant's defense and found him guilty of felonious assault and the firearm specification. The trial court dismissed the having a weapon while under disability count and sentenced appellant accordingly.

II. The Appeal

{¶ 5} Appellant appealed to this court. His appellate counsel, however, filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that he could find no errors prejudicial to appellant which may be argued to this court on appeal. In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the appeal is wholly frivolous, counsel should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany this request with a brief identifying anything in the record that could arguably support the client's appeal. *Id.* Counsel also must furnish the client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine whether the case is wholly frivolous. *Id.* If the appellate court also determines the appeal

is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.* On the other hand, if this court concludes that there are arguably meritorious issues for appeal, and therefore not wholly frivolous, we must afford appellant the assistance of counsel to address those issues. *Id.*

{¶ 6} Appellate counsel in this matter has followed the procedure in *Anders*. This court also notified appellant of his counsel's representations and afforded him ample time to file a pro se brief. Appellant did not file such a brief. This case is now before us for an independent review to decide whether any arguably meritorious issues exist.

A. The Sufficiency and Manifest Weight of the Evidence

{¶ 7} In counsel's *Anders* brief, he proposes two potential assignments of error, in which he argues that appellant's conviction was not supported by sufficient evidence or was against the manifest weight of the evidence. We disagree.

{¶ 8} 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. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 9} 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). 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.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 10} 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*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the jury'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*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 11} In order to find appellant guilty of felonious assault, the state had to prove that he knowingly caused or attempted to cause physical harm to Hogan by means of a deadly weapon or dangerous ordnance. Appellant admitted to shooting Hogan.[1] The disputed question at trial was not if, but why appellant shot him. Appellant attempted to answer this question by arguing that he did it to defend himself, Dunford, or the others in the area. The jury obviously rejected his version of events and believed Hogan's testimony.

{¶ 12} A conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony. *State v. Morris*, 10th Dist. No. 05AP-1139, 2009-Ohio-2396, ¶ 33. The jury heard all of the evidence and chose to believe the victim's version of events over appellant's version. This was within the province of the jury. *Id.*, citing *State v. Lee*, 10th Dist. No. 06AP-226, 2006-Ohio-5951, ¶ 14. In light of the two versions of events presented to the jury at trial, the jury did not lose its way when it rejected appellant's defenses. *State v. Norman*, 10th Dist. No. 10AP-680, 2011-Ohio-2870, ¶ 12.

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[1] This admission alone provides sufficient evidence of appellant's guilt.

{¶ 13} Because appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence, we find no arguable merit to appellant's potential assignments of error. *State v. McIntyre*, 5th Dist. No. 2008 CA 00196, 2009-Ohio-709; *In re D.M.C.*, 10th Dist. No. 09AP-484, 2009-Ohio-6667.

II. Conclusion

{¶ 14} After our independent review of the record, we are unable to find any non-frivolous issues for appeal, and we agree that the issues raised in appellant's *Anders* brief are not meritorious. *State v. Green*, 10th Dist. No. 10AP-934, 2011-Ohio-6451, ¶ 13. Accordingly, we grant counsel's motion to withdraw and affirm the judgment of the Franklin County Court of Common Pleas.

Motion to withdraw granted; judgment affirmed.

TYACK and DORRIAN, JJ., concur.