

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 13AP-179
Xavier Brock,	:	(C.P.C. No. 11CR-00-1579)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 12, 2013

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

Edward Y. A. Parks, for appellant.

APPEAL from the Franklin County Court of Common Pleas
TYACK, J.

{¶ 1} Xavier Brock is appealing from his convictions for having a weapon while under a disability and for discharging a firearm on or near a prohibited premises. The weapon under disability charge conviction followed a non-jury trial. A jury found him guilty of the discharging a firearm charge, while acquitting him of two counts of felonious assault.

{¶ 2} A single assignment of error is presented for our consideration:

THE TRIAL COURT ERRED WHEN IT ENTERED
JUDGMENT OF CONVICTION AGAINST THE APPELLANT
WHEN THE EVIDENCE PRESENTED TO THE JURY WAS
INSUFFICIENT TO SUSTAIN A CONVICTION AND THE
JURY VERDICT OF CONVICTION WAS NOT SUPPORTED
BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 3} 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). 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*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979). 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.

{¶ 4} 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*, 20 Ohio App.3d 172, 175 (1st Dist.1983)); *see also Columbus v. Henry*, 105 Ohio App.3d 545, 547-48 (10th Dist.1995). 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.

{¶ 5} 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* [10 Ohio St.2d 230 (1967)], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens*, 10th Dist. No. 95APA09-1236 (May 28, 1996). It was within the province of the jury to make the credibility decisions in this case. *See State v. Lakes* 120 Ohio App. 213, 217 (4th Dist.1964), ("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.")

{¶ 6} With this legal backdrop, we turn to the charges for which Xavier Brock was convicted.

{¶ 7} Having a weapon under disability is defined by R.C. 2923.13 as follows:

(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) The person is a fugitive from justice.

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

(3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has 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 illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

(4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

(5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to hospitalization by court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, “mentally ill person subject to hospitalization by court order” and “patient” have the same meanings as in section 5122.01 of the Revised Code.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.

{¶ 8} Discharging of a firearm on or near prohibited premises is defined in R.C. 2923.162 as follows:

(A) No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within one hundred yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution;

(3) Discharge a firearm upon or over a public road or highway.

(B)(1) Division (A)(1) of this section does not apply to a person who, while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) Whoever violates this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) of this section shall be punished as follows:

(1) Except as otherwise provided in division (C)(2), (3), or (4) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in division (C)(3) or (4) of this section, if the violation created a substantial risk of physical harm to any person or caused serious physical harm to property, a violation of division (A)(3) of this section is a felony of the third degree.

(3) Except as otherwise provided in division (C)(4) of this section, if the violation caused physical harm to any person, a violation of division (A)(3) of this section is a felony of the second degree.

(4) If the violation caused serious physical harm to any person, a violation of division (A)(3) of this section is a felony of the first degree.

{¶ 9} The evidence presented at trial demonstrated that someone fired four or five gun shots from a van. Right before the shooting started, Brandi Starks was on a cell phone with Xavier Brock who was a former boyfriend. Brock said, "Bitch, I'm about to start popping cuz." (Tr. Vol. I. 101.) Brandi recognized the van as belonging to Linnette Parkham, Brock's current girlfriend. Brandi testified that she saw Brock shooting the gun from the passenger side of the van.

{¶ 10} Brock was under a legal disability due to a finding that he had been a juvenile delinquent who had violated the burglary statute. Combining the delinquency adjudication with the testimony that he shot a firearm four or five times was sufficient to meet all the elements of R.C. 2923.13. The evidence was sufficient as to that charge. The weight of the evidence also supported the conviction for having a weapon while under disability.

{¶ 11} Xavier Brock was on a public street and firing from a motor vehicle when he shot four or five times. The elements of R.C. 2923.162 are also met by the same evidence. The conviction for violating R.C. 2923.162 was also supported by sufficient evidence and was consistent with the manifest weight of the evidence.

{¶ 12} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and CONNOR, J., concur.
