

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 12AP-530  
 : (C.P.C. No. 12CR01-162)  
 Brian O. Williams, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on March 29, 2013

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

*Steven A. Larson*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendant-appellant, Brian O. Williams, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we reverse that judgment in part and remand the matter with instructions.

**I. Factual and Procedural Background**

{¶ 2} Around 11:00 p.m. on the night of December 14, 2011, appellant and Curtis Canty went to a house at 595 South 22nd Street in Columbus, Ohio. Mitchell Anderson and his son, Baron, lived in that house. Also present in the house that night were David Thomas, a handyman doing work at the house, and Demetrious Baxter, a man whom Mitchell and Baron treated as a family member. Appellant and Canty went to the house to

pick up some drugs from Baron, who had acquired a large amount of crack cocaine for the transaction. He kept the drugs in a Ziploc storage bag. While Canty and Baron talked inside the kitchen, appellant and Baxter talked in the living room.

{¶ 3} After some time in the house, appellant asked Canty for the car keys so he could get his cell phone from Canty's car. After a few minutes, appellant returned to the house with a gun. He fired the gun as he walked into the house, hitting Mitchell and Baxter. As shots rang out, Baron heard Canty yell "B, what the fuck are you doing?" Baron ran to the back of the house to get away from the shooting. Appellant and Canty ran out the front door. Thomas, who had gone outside to smoke a cigarette before the shooting started, heard shots inside the house and then saw the two men running out of the house. He saw appellant holding a gun in one hand and a bag in the other hand. Appellant fired a couple of shots at Thomas as appellant and Canty ran down the street.

{¶ 4} After the shooting, Baron discovered that his bag of cocaine was missing. Canty was the last person he saw with the cocaine. Mitchell survived his gunshot wound, but Baxter died as a result of his gunshot wound.

{¶ 5} As a result of these events, a Franklin County Grand Jury indicted appellant with one count of aggravated murder in violation of R.C. 2903.01 with a firearm specification; one count of aggravated robbery in violation of R.C. 2911.01 with a firearm specification; one count of attempted murder in violation of R.C. 2923.02 and R.C. 2903.02 with a firearm specification; 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. Appellant entered a not guilty plea and proceeded to trial.

{¶ 6} At trial, the state's witnesses testified to the version of events set forth above. The jury found appellant guilty of all charges and specifications, and the trial court found him guilty of having a weapon while under disability. The trial court sentenced him accordingly.

## **II. Appellant's Appeal**

{¶ 7} Appellant appeals and assigns the following errors:

- I. The trial court erred when it entered judgment against the appellant as the evidence was insufficient to sustain a conviction of Count Two, having a weapon under disability.

II. The trial court violated Brian O. Williams' rights to due process and a fair trial when it entered judgment of conviction for aggravated robbery with specification which was against the manifest weight of the evidence in violation of the Fourteenth Amendment of the U.S. Constitution, and Section 16, Article I of the Ohio Constitution.

III. The trial court erred when it issued a judgment entry that did not comport with the sentence.

**A. First Assignment of Error—The Weapon Under Disability Conviction**

{¶ 8} Appellant contends in this assignment of error that the state did not present sufficient evidence to prove that he possessed a gun while under a disability. The state concedes this error, and, upon review, we agree. Accordingly, we sustain appellant's first assignment of error.

**B. Second Assignment of Error—The Aggravated Robbery Conviction**

{¶ 9} Appellant contends in this assignment of error that his conviction for aggravated robbery was against the manifest weight of the evidence. We disagree.

{¶ 10} 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.* 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.

{¶ 11} 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).

{¶ 12} Although there are a number of elements the state must prove in order to convict appellant of aggravated robbery, appellant's assignment of error only challenges whether the state proved that he attempted or committed a theft offense. R.C. 2911.01(A). Specifically, appellant claims that there was no evidence that he took Baron's cocaine or was complicit with Curtis in taking the drugs. We disagree.

{¶ 13} Appellant and Canty went to the Anderson house together to pick up drugs from Baron. After appellant stepped out of the house, he returned with a gun and shot two people. Thomas testified that he saw Canty and appellant run out of the house together, and that appellant had a gun and a bag. Baron testified that he kept the drugs in a Ziploc bag and that after the shooting, the bag and the drugs were no longer in the house. In light of this testimony, the jury did not clearly lose its way and create a miscarriage of justice when it concluded that appellant committed a theft offense by taking Baron's drugs or, at the least, aided and abetted Canty in doing the same. Appellant's conviction for aggravated robbery is not against the manifest weight of the evidence. Accordingly, we overrule appellant's second assignment of error.

### **C. Third Assignment of Error—What Prison Sentence did the Trial Court Order?**

{¶ 14} Lastly, appellant argues that the sentence set forth in his sentencing entry differed from the sentence the trial court ordered at his sentencing hearing and that this change in sentence violated his right to be present for the imposition of sentence found in Crim.R. 43(A). We disagree.

{¶ 15} At his sentencing, the trial court made the following pronouncement of sentence:

Taking all of that into consideration, Mr. Williams, on Count One, I sentence you to 30 years' ODRC. On Counts Two and Three, I sentence you to ten years' ODRC. Those two counts will be served concurrently; and then there is mandatory time on the gun specification. I believe the mandatory time would be an additional nine years on four counts -- or I'm sorry, additional 12 years of mandatory time for the gun specifications, for a total of 52 years' ODRC.

(Tr. 453.)

{¶ 16} In the judgment entry of conviction and sentence, the trial court imposed:

As to Count One of the Indictment, Thirty (30) years plus an additional consecutive Three (3) years of mandatory incarceration for the use of a firearm; as to Count Two of the Indictment, Ten (10) years plus an additional consecutive Three (3) years of mandatory incarceration for the use of a firearm; as to Count Three (3) of the Indictment, Ten (10) years plus an additional consecutive Three (3) years of mandatory incarceration for the use of a firearm; and as to Count Five of the Indictment, Three (3) years \* \* \*. Counts Two, Three and Five are to be served concurrently with each other. Count One is to be served consecutively to Counts Two, Three and Five for a total of Forty (40) years. With the consecutive gun specifications, the total sentence is Forty-Nine (49) years.<sup>1</sup>

(Judgment Entry, 1-2.)

{¶ 17} Appellant's argument is premised on his assertion that the trial court's oral pronouncement of sentence at the sentencing hearing did not indicate whether the sentence on Count One was to be served consecutively. We disagree. Although the trial court did not use the word consecutive to describe its sentence for Count One, when the trial court's oral pronouncement of sentence is read in whole, it is clear that the trial court intended to impose a consecutive sentence for Count One. The total sentence indicates that the trial court intended the sentence on Count One to run consecutively. Because the

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<sup>1</sup> We note that the trial court's oral pronouncement of 52 years in prison included 12 years of prison time for four gun specifications. Appellant, however, was only sentenced for three of those specifications. As a result, the 49 years of prison imposed in appellant's sentencing entry is the correct prison term.

trial court's oral pronouncement of the sentence for Count One is consistent with the judgment entry, we overrule appellant's third assignment of error.

### **III. Conclusion**

{¶ 18} In conclusion, we overrule appellant's second and third assignments of error, but sustain his first assignment of error. Accordingly, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas and remand the matter to the trial court to vacate appellant's having a weapon while under disability conviction and sentence.

*Judgment affirmed in part, reversed in part;  
cause remanded with instructions.*

SADLER and DORRIAN, JJ., concur.

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