

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-492
Jamie L. Cason,	:	(C.P.C. No. 12CR-774)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on February 5, 2013

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

Steven A. Larson, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Jamie L. Cason is appealing from his conviction on a charge of having a weapon while under a disability. He assigns two errors for our consideration:

I. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGEMNT [sic] AGAINST THE APPELLANT AS THE EVIDENCE WES [sic] INSUFFICIENT TO SUSTAIN A CONVICTION OF COUNT TWO, HAVING A WEAPON UNDER DISABILITY.

II. THE TRIAL COURT VIOLATED JAMIE L. CASON'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED JUDGMENT OF CONVICTION FOR HAVING A WEAPON UNDER DISABILITY 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.

{¶ 2} On January 12, 2012, Robert Cole was shot in the leg near his home. Shortly before being shot, he was having an encounter with Jamie L. Cason. Cole claims Cason shot him. Cole identified Cason as the person who shot him while testifying at Cason's trial.

{¶ 3} Cole made it clear at the trial that he really had no desire to pursue charges against Cason and was testifying only because he had been subpoenaed and felt he had to honor the subpoena. The attitude may also be consistent with a feeling Cason did not mean to shoot him. The jury found Cason only guilty of misdemeanor assault. The jury found Cason not guilty of the charge, which the evidence normally would be viewed as supporting in the case of a shooting, namely felonious assault—knowingly causing physical harm with a deadly weapon. The felonious assault charge would also normally carry a firearm specification with a mandatory three years of incarceration.

{¶ 4} The indictment filed against Cason included both a felonious assault charge with a firearm specification and having a weapon while under disability charge. The having a weapon under disability charge was submitted to the judge presiding over the jury trial. This procedure is normally used by defense counsel from knowing the criminal defendant has a serious prior conviction, in this case a burglary conviction.

{¶ 5} The trial judge in Cason's felonious assault case found that Cason had in fact been in possession of the firearm which shot Cole, consistent with Cole's testimony. Thus, the trial judge, as trier of fact, found Cason guilty of having a weapon under disability in violation of R.C. 2923.13, which reads:

(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.

{¶ 6} The judge's verdict is what is being contested on appeal. 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.

{¶ 7} 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.

{¶ 8} 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.").

{¶ 9} *See State v. Harris*, 73 Ohio App.3d 57, 63 (10th Dist.1991), (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).

{¶ 10} Applying the standards set forth above, the trial court's verdict was not against the manifest weight of the evidence. Nor was the verdict unsupported by sufficient evidence.

{¶ 11} Robert Cole was clearly shot in the leg. No evidence indicated that anyone else shot Cole or that anyone else in the vicinity had a firearm. The jury verdict may have been due to the fact that the testimony at trial indicated that Cason seemed stunned and confused after the gun went off, consistent with the idea that the shooting was not

purposeful as opposed to reckless or otherwise unintended. Purposeful or not, Cole's testimony clearly indicated that Cason was in possession of a firearm when he was under a legal disability.

{¶ 12} Again, the trial court's verdict was clearly consistent with the evidence. Both assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).
