

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 14AP-913
	:	(C.P.C. No. 13CR-5444)
v.	:	
	:	(REGULAR CALENDAR)
Harold J. Bonner,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2015

Ron O'Brien, Prosecuting Attorney, and *Valerie Swanson*,
for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Harold J. Bonner, defendant-appellant, appeals from a judgment of the Franklin County Court of Common Pleas convicting him of felonious assault with firearm and repeat violent offender specifications, and having a weapon while under disability. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In October 2013, Bonner was indicted on one count of felonious assault, a violation of R.C. 2903.11 (Count 1), and one count of having a weapon while under disability, a violation of R.C. 2923.13 (Count 2). The felonious assault count contained firearm and repeat violent offender specifications. Bonner waived his right to a jury trial as to the repeat violent offender specification attached to the felonious assault count and

as to the having a weapon while under disability count. The matter proceeded to trial in September 2014. The following evidence was presented at trial.

{¶ 3} Elexcia Turner, who was in a romantic relationship with Bonner in 2013, testified as follows. As of September 2013, Bonner and Turner had known each other for at least a few months and they had an "on-and-off relationship." (Sept. 9, 2014 Tr. 135.) Toward the end of September 2013, Turner drove to Cleveland to pick up Bonner so he could spend time with her in Columbus. Bonner brought a shotgun with him. Turner told Bonner to leave the shotgun in her car because she did not want it around her children. Turner parked the car in front of her house located at 1451 Oak Street, Columbus. The house is located in the near east side, which "sometimes could be not the safest neighborhood." (Sept. 9, 2014 Tr. 152.) Turner was asked at trial, "Do you lock your car?" and she answered, "Yes." (Sept. 9, 2014 Tr. 153.)

{¶ 4} Around midnight on October 2, 2013, Turner and Bonner were lying on a bed in a first-floor bedroom in Turner's residence. Bonner received a telephone call from his ex-girlfriend. Turner began to talk with the ex-girlfriend, and "that's when everything went downhill." (Sept. 9, 2014 Tr. 132.) Bonner grabbed Turner's telephone, attempted to call Turner's children's father, and then threw the telephone when he received no answer. Bonner was "mad" and "punched" Turner's television. (Sept. 9, 2014 Tr. 132.) Turner asked Bonner to "calm down," and she told him the relationship was "not going to work" and he needed to leave. (Sept. 9, 2014 Tr. 132.) Turner was concerned the commotion would awaken her children who were sleeping on the second floor of the house.

{¶ 5} Bonner exited the house, and Turner grabbed her telephone and a cigarette, "thinking he's out there trying to calm down." (Sept. 9, 2014 Tr. 133.) When Turner exited the house and walked onto the front porch, Bonner said to her, "Is this what you want, E?" (Sept. 9, 2014 Tr. 133.) Then Bonner shot Turner in the stomach with a shotgun, causing serious injury to her. The projectile "exploded inside" Turner and she fell to the floor of the porch. (Sept. 9, 2014 Tr. 142.) Bonner walked over and struck her in the head with the gun and then walked down the stairs of the porch and up the street. As Bonner was walking away carrying the shotgun, he looked back at Turner. After Bonner left and was out of Turner's sight, she called 911. Turner remembered an

ambulance arriving and having her dress removed so the medics could attend to her wound. Turner was taken to the hospital and remained there for approximately one month for care and treatment. Turner continues to have health complications due to the projectile fragments that remain inside her body.

{¶ 6} Officer Nathan Wilson of the Columbus Division of Police was the first officer to arrive at the scene of the shooting and testified as follows. When Officer Wilson arrived at the scene of the shooting, he saw Turner "bleeding significantly" on the porch. (Sept. 9, 2014 Tr. 41.) Turner was highly distressed and thought she was going to die. Officer Wilson asked Turner if she knew who shot her, and she said, "Yes, it was my ex-boyfriend, Harold Bonner." (Sept. 9, 2014 Tr. 42.) At trial, Officer Wilson did not remember the particulars of other descriptors of Bonner that Turner provided to him, other than she told him that Bonner was wearing a "gray zip up or a gray hoodie." (Sept. 9, 2014 Tr. 43.) Officer Wilson relayed the information provided by Turner over his police radio.

{¶ 7} Officer Donald Finch of the Columbus Division of Police testified that he was working in the area of the shooting when he heard the report of the shooting at approximately 12:45 a.m. Based on the information provided over the police radio, Officer Finch was able to obtain a picture of Bonner through an electronic police database. Officer Finch patrolled the streets surrounding the scene of the shooting looking for Bonner, and at approximately 2:15 a.m., found him walking about two miles away from the scene of the shooting. Bonner was not carrying any weapon, and he had no observable wounds on his person.

{¶ 8} Detective Peter Pappas of the Columbus Division of Police testified that he obtained gunshot residue test samples from Bonner's hands at Columbus police headquarters. A gunshot residue test is used to determine if there is any gunpowder residue on an individual's hands. A sample for a gunshot residue test should be collected within two hours of the incident because various circumstances can cause gunpowder residue to dissipate from a surface. After Detective Pappas obtained the samples from Bonner's hands at 3:10 a.m., the samples were sent to the Ohio Bureau of Criminal Investigation ("BCI") for analysis.

{¶ 9} Matthew Congleton, a forensic scientist with BCI, testified that he analyzed the samples taken from Bonner's hands. Congleton's report states in part, "Particles highly indicative of gunshot primer residue were not identified on the samples from Harold Bonner." (BCI Laboratory Report, state's exhibit E.) The report provides the following explanation: "A Finding of 'particles highly indicative of gunshot primer residue' on a person's hands means that individual either discharged a firearm, was in the vicinity of a firearm when it was discharged, or handled an item with gunshot primer residue on it. However, this does not eliminate the possibility of other non-firearms sources of exposure." (BCI Laboratory Report, state's exhibit E.) The report further explains: "A finding of 'particles highly indicative of gunshot primer residue were not identified' does not preclude the possibility of any of the above stated events." (BCI Laboratory Report, state's exhibit E.) Congleton explained why a test may be negative even if a person fires a gun. Not all ammunition on the market has the three elements in the primer that are necessary for a positive test result. Time is also a factor as to samples taken from a moving object, such as a living person, because particles are likely to be shed over time. Particles can be removed from hands by running water over the hands, rubbing the hands against another object, or any type of motion.

{¶ 10} Outside the presence of the jury, Turner testified that Bonner had told her about his prior criminal record. Bonner told Turner that he went to prison for 12 years for an assault or aggravated robbery conviction in Cuyahoga County. Additionally, an entry from the Cuyahoga County Court of Common Pleas involving Bonner's criminal past was admitted into evidence. Pursuant to the entry, the Cuyahoga County Court of Common Pleas sentenced Bonner to 12 years in prison for two counts of aggravated robbery, each with a firearm specification. Although admitted into evidence, the entry was only for the trial court's consideration and, thus, was not shown to the jury.

{¶ 11} After the presentation of evidence, the jury found Bonner guilty of felonious assault with a firearm specification (Count 1). The trial court found Bonner guilty of having a weapon while under disability (Count 2), and it found Bonner to be a repeat violent offender. The trial court sentenced Bonner to 7 years in prison on Count 1, with 3 additional years for the firearm specification. The trial court also sentenced Bonner to 3 years in prison on Count 2, to be served consecutively with Count 1, for a total aggregate

sentence of 13 years in prison. The trial court elected not to impose a sentence as to the repeat violent offender specification attached to Count 1. Bonner timely appeals.

II. Assignment of Error

{¶ 12} Bonner assigns the following error for our review:

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 felonious assault and having weapons under disability as those verdicts were not supported by sufficient evidence and were also against the manifest weight of the evidence.

III. Discussion

{¶ 13} In his sole assignment of error, Bonner argues his convictions for felonious assault and having a weapon while under disability were not supported by sufficient evidence and were against the manifest weight of the evidence. We disagree.

A. Sufficiency of the Evidence

{¶ 14} Whether there is legally sufficient evidence to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Sufficiency is a test of adequacy. *Id.* The relevant inquiry for an appellate court is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt. *State v. Mahone*, 10th Dist. No. 12AP-545, 2014-Ohio-1251, ¶ 38, citing *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37. "[I]n a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified truthfully and determines if that testimony satisfies each element of the crime." *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4.

{¶ 15} To prove Bonner committed felonious assault, in violation of R.C. 2903.11, the state was required to show that Bonner knowingly caused serious physical harm to another or caused or attempted to cause physical harm to another by means of a deadly weapon. See R.C. 2903.11(A)(1) through (2). To prove Bonner committed the offense of having a weapon while under disability, the state was required to prove that Bonner

knowingly acquired, had, carried, or used a firearm, and had been convicted of a felony offense of violence. R.C. 2923.13(A)(2).

{¶ 16} Viewed in a light most favorable to the state, the evidence at trial demonstrated Bonner committed felonious assault and the offense of having a weapon while under disability. Turner testified that Bonner shot her in the stomach with a shotgun after the two had a verbal dispute. As a result of the gunshot, Turner sustained significant bleeding, spent approximately one month in the hospital, and also has ongoing health complications. Turner also testified that Bonner indicated to her that he previously had been sentenced to 12 years in prison for an assault or aggravated robbery. A 2001 entry from the Cuyahoga County Court of Common Pleas, which was admitted into evidence, indicates Bonner was convicted of aggravated robbery, an offense of violence. R.C. 2901.01(A)(9)(a). In view of the foregoing evidence, the state established the essential elements of the crimes of felonious assault and having a weapon while under disability.

B. Manifest Weight of the Evidence

{¶ 17} When presented with a manifest weight argument, an appellate court engages in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdict. *State v. Salinas*, 10th Dist. No. 09AP-1201, 2010-Ohio-4738, ¶ 32, citing *Thompkins* at 387. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ' "thirteenth juror" ' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). Determinations of credibility and weight of the testimony are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. 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.' " *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Thus, the finder of fact may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part, or none of a witness's testimony." *State v.*

Raver, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67 (1964).

{¶ 18} An appellate court considering a manifest weight challenge "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." *State v. Harris*, 10th Dist. No. 13AP-770, 2014-Ohio-2501, ¶ 22, citing *Thompkins* at 387. Appellate courts should reverse a conviction as being against the manifest weight of the evidence in only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 19} It is undisputed that Turner was shot in the stomach just after midnight on October 2, 2013. Bonner challenges the jury and trial court's findings that he was the shooter, which were based on Turner's identification of him as the shooter. In support of Bonner's challenge, he alleges certain facts undermine Turner's credibility. First, Bonner asserts that Turner did not mention him getting dressed before he exited the house, even though she testified the two were lying in bed around midnight. Second, Bonner asserts that Turner's testimony that Bonner retrieved the shotgun from her car was inconsistent with her testimony that she locked her car and the evidence indicating her car keys were in the house after the shooting. Third, Bonner asserts that Turner's testimony that he "punched" her television was inconsistent with the absence of visible injuries on Bonner after the shooting. Lastly, Bonner asserts the gunshot residue test administered on him was negative.

{¶ 20} To determine Bonner's guilt, the jury and trial court were tasked with determining the credibility of Turner's identification of Bonner as the shooter. To reverse on manifest weight grounds on the issue of Turner's identification of Bonner, we would need to find that a reasonable trier of fact could not find as credible Turner's testimony identifying Bonner as the shooter. *See State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶ 10 ("it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact which accepted the testimony of such witness unless the

reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible."). In this review, we must remain mindful that it was within the province of the jury and the trial court to resolve or discount any inconsistencies in the testimony at trial. See *DeHass*. "[S]uch inconsistencies do not render [a] defendant's conviction against the manifest weight * * * of the evidence." *State v. Nivens*, 10th Dist. No. 95APA09-1236 (May 28, 1996).

{¶ 21} Bonner fails to demonstrate that Turner's testimony could not be believed. That is, the evidence cited by Bonner does not lead to the conclusion that no trier of fact could have accepted Turner's testimony that Bonner was the shooter. Turner and Bonner had known each other for months prior to the shooting and had an "on-and-off" relationship. Turner identified Bonner as the shooter as she was bleeding on the front porch waiting for emergency medical attention, in addition to identifying him at trial. Based on Turner's testimony, it is unclear how much time elapsed between Bonner leaving the house and Turner getting shot. While Bonner asserts that Turner's testimony does not explain when he put on his sweatshirt and shoes before leaving the house, there is no evidence indicating that he was not fully clothed when he received the call from his ex-girlfriend. Also, no testimony indicated that Bonner would not have had time to leave the house, retrieve the shotgun from the car parked in front of the house, and then return to shoot Turner. Furthermore, although Turner testified that she generally locks her car, she did not specifically testify that the car was locked that night. The jury and the trial court could have reasonably concluded that the car was unlocked because Bonner obtained the shotgun from the car without using the car keys.

{¶ 22} That the results of the gunshot residue test were negative did not preclude a finding that Bonner shot Turner. A negative gunshot residue test does not necessarily mean the person, from whom the samples were taken, did not fire a gun. Evidence at trial indicated the particles of the three elements necessary for a positive gunshot residue test are not always present on a person's hand even after the person fires a gun. The forensic scientist testified at trial that not all ammunition on the market contains all three of the elements necessary for a positive test. The forensic scientist also testified that the passage of time leads to the shedding of particles from a moving object, such as a living person. Here, the samples from Bonner's hands were collected more than two hours after the

shooting. According to Detective Pappas' testimony, samples can be collected beyond the two-hour time frame, but that is not ideal. And Bonner was found nearly two miles from the location of the shooting, demonstrating significant movement after the shooting. Moreover, despite the results of the test, Turner testified that Bonner shot her. Thus, based on this evidence, the jury and the trial court reasonably concluded that Bonner was the shooter, even though the results from the gunshot residue test were negative.

{¶ 23} Similarly, that Bonner had no visible injuries on him after the shooting did not necessarily indicate he had not damaged the television. There was no evidence as to whether the screen of the television was glass or another material less likely to cause an abrasion. The photographs of the television in the record show web-like damage to the screen, and possibly more than one strike point. Turner testified that Bonner "punched" the television "kind of at the top," but she could not recall the particulars of him damaging the television. (Sept. 9, 2014 Tr. 40.) Regardless, Bonner was not charged with damaging the television. The jury and the trial court could have reasoned that the particulars as to how the television was damaged was insignificant in relation to the ultimate issue of fact, namely whether Bonner was the shooter.

{¶ 24} In sum, Bonner fails to show that the jury or the trial court clearly lost their way and created such a manifest miscarriage of justice that his convictions must be reversed and a new trial ordered. Because Bonner's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence, his sole assignment of error is overruled.

IV. Conclusion

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

Judgment affirmed.

TYACK and KLATT, JJ., concur.
