

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN THE MATTER OF:	:	
	:	
K.F.	:	CASE NO. CA2009-08-209
	:	
	:	<u>OPINION</u>
	:	3/1/2010
	:	
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JV2009-0965

Robin N. Piper III, Butler County Prosecuting Attorney, Lina N. Alkanhawi, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for appellee, State of Ohio

Dawn S. Garrett, 7865 Paragon Road, Suite 107, Centerville, Ohio 45459-2748, for appellant, K.F.

RINGLAND, J.

{¶1} Appellant, K.F., appeals from a judgment of the Butler County Court of Common Pleas, Juvenile Division, adjudicating K.F. delinquent for abusing harmful intoxicants.

{12} K.F. is a high school student in Butler County, Ohio. In early 2009, K.F. and her classmate and best friend, M.M., went into a restroom stall at lunch time, where M.M. took from her purse a can of "3M Dust Remover," which is a can of compressed air that contains the chemical, Freon. M.M. obtained the can of compressed air from a

classmate, and had already used it several times earlier that day "[t]o get a sensation of being high[.]" M.M. sprayed some of the compressed air through the sleeve of her jacket and inhaled or "huffed" the substance, causing her to pass out. M.M. was awakened when a teacher began knocking on the door of the restroom stall. At that moment, M.M. saw K.F. inhaling the substance from the can of compressed air that K.F. had sprayed on K.F.'s sleeve, just as M.M. herself had previously done.

{¶13} K.F. and M.M. were brought to the assistant principal's office. A police officer who had been called to the school to investigate the matter was also there. M.M.'s purse was searched, and the can of compressed air was retrieved from it. M.M. was disoriented when she first arrived at the assistant principal's office, but became less so as the conversation between her and the assistant principal continued. At first, both students denied they had been inhaling the compressed air, but M.M. eventually admitted that M.M. had done so and informed the assistant principal that K.F. had done so, too.

{¶14} In April 2009, a complaint was filed against K.F. in the Butler County Juvenile Court, alleging that K.F. was delinquent for abusing harmful intoxicants in violation of R.C. 2925.31(A), which offense constitutes a misdemeanor of the first degree if committed by an adult. See R.C. 2925.31(B). In July 2009, a hearing was held on the delinquency charge. At the conclusion of the hearing, the juvenile court adjudicated K.F. delinquent for abusing harmful intoxicants, placed K.F. on probation, and suspended K.F.'s driver's license for six months.

{¶15} K.F. now appeals, assigning the following as error:

{¶16} "THE VERDICT WAS BASED UPON INSUFFICIENT EVIDENCE AND/OR CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶17} K.F. argues the juvenile court's decision adjudicating K.F. delinquent for

abusing harmful intoxicants is against the sufficiency and manifest weight of the evidence. We disagree with this argument.

{¶8} "The standards of review applied in determining whether a juvenile court's finding of delinquency is supported by sufficient evidence and/or is against the manifest weight of the evidence are the same standards applied in adult criminal convictions. *In re P.G.*, Brown App. No. CA2006-05-009, 2007-Ohio-3716, ¶13-14.

{¶9} "In reviewing the sufficiency of the evidence supporting a criminal conviction, an appellate court examines the evidence in order to 'determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.' *State v. Smith*, 80 Ohio St.3d 89, 113, 1997-Ohio-355. '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.' *Id.* In such a review, 'a reviewing court must not substitute its evaluation of the witnesses' credibility for that of the trier of facts.' *In re P.G.* at ¶13.

{¶10} "In determining whether a conviction is against the manifest weight of the evidence, the court, 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 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. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. When reviewing the evidence under a manifest weight challenge, an appellate court must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and the weight to be given the evidence. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The discretionary power to overturn a conviction based on the

manifest weight of the evidence is to be invoked only in those extraordinary circumstances to correct a manifest miscarriage of justice where the evidence presented weighs heavily in favor of acquittal. *Thompkins* at 387.

{¶11} "Because a finding that a conviction is supported by the manifest weight of the evidence also necessarily includes a finding that it is supported by sufficient evidence, the determination that a juvenile court's delinquency finding is supported by the manifest weight of the evidence will also be dispositive of an appellant's sufficiency claim. *In re P.G.* at ¶16, citing *State v. Lombardi*, Summit App. No. 22435, 2005-Ohio-4942." *In re J.A.S.*, Warren App. No. CA2007-04-046, 2007-Ohio-6746, ¶11-14.

{¶12} Appellant was found to be delinquent for abusing harmful intoxicants in violation of R.C. 2925.31(A), which provides that "[e]xcept for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant."

{¶13} K.F. acknowledges that the substance involved in this case was a harmful intoxicant, but contends that the state failed to prove beyond a reasonable doubt that K.F. possessed or abused an intoxicant. because the state's chief witness, M.M., was impaired at the time of the offense due to M.M.'s own drug use, and therefore the juvenile court's decision to find K.F. delinquent was not supported by sufficient evidence and was against the manifest weight of the evidence. We find these arguments unpersuasive.

{¶14} M.M. testified that she saw K.F. inhaling the substance from the can of compressed air after M.M. was awakened when a teacher began knocking on the door of the restroom stall. As K.F. points out, the assistant principal testified that M.M. was disoriented when M.M. and K.F. first arrived at his office. However, the assistant principal also testified that M.M. became less disoriented as their conversation

continued, and when the assistant principal was asked at trial if M.M. "seem[ed] pretty clear-headed" by the time M.M. informed him that K.F. inhaled the harmful intoxicant, the assistant principal answered, "Oh absolutely."

{¶15} Furthermore, the police officer who came to the assistant principal's office to investigate the matter testified that the can of compressed air retrieved from M.M.'s purse "was ice cold to the touch, indicating recent usage." Since M.M. passed out after inhaling the substance and awoke only after M.M. heard a teacher knock on the door of the restroom stall, the trier of fact could have reasonably inferred that it was K.F. who last used the can of compressed air.

{¶16} While a reviewing court can consider the credibility of the witnesses when reviewing a manifest weight claim, see *In re J.A.S.*, 2007-Ohio-6746 at ¶13, the question of whether a witness' testimony is credible is primarily a matter for the trier of fact, since the trier of fact is in the best position to view the witness' testimony first-hand and then use those observations to determine whether the witness' testimony is credible. See *id.*

{¶17} In light of the foregoing, it is clear that the juvenile court's finding that K.F. was delinquent for abusing harmful intoxicants was not against the manifest weight of the evidence. *Id.* at ¶14. Therefore, it is also clear that the state presented sufficient evidence on each of the material elements of the offense of abusing harmful intoxicants, including the elements of possession and abuse, to support the trial court's delinquency adjudication regarding K.F. *Id.*

{¶18} Accordingly, K.F.'s assignment of error is overruled.

{¶19} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

