**[Cite as *State v. Yarbrough*, 2010-Ohio-5882.]**

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 23764 |
| v. | : | T.C. NO. 09 CR 2562 |
| RUNYON YARBROUGH | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |
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**O P I N I O N**

Rendered on the 3rd day of December, 2010.

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McFARLAND, J. (by assignment)

**{¶ 1}** Defendant-Appellant, Runyon Yarbrough, appeals the decision of the Montgomery County Court of Common Pleas finding him guilty of having weapons while under disability. Yarbrough claims there was error below in that the jury's verdict was against the manifest weight of the evidence. He also argues that there was insufficient

evidence for the jury's verdict. For the reasons stated below, we overrule Yarbrough's assignment of error and affirm the decision of the trial court.

## I. Facts

**{¶ 2}** In August 2009, parole officers sought to execute an arrest warrant on the appellant, Runyon Yarbrough. Looking for Yarbrough, the officers went to the residence of Fatasha Eggleston, Yarbrough's girlfriend. Parole Officer Tim Jones began knocking on the front door of the residence. Jones testified that Yarbrough answered and opened the door approximately two inches to talk to him. Jones stated that he told Yarbrough that he was a parole officer, but Yarbrough slammed the door in his face. Jones continued knocking on the door and Yarbrough then appeared at an upstairs window, yelling at Jones. Eventually, Eggleston answered the front door. Jones then entered the residence and, seeing Yarbrough at the top of the stairs, went upstairs, arrested him, handcuffed him, and then brought him back downstairs.

**{¶ 3}** While waiting for other officers to arrive at the residence to transport Yarbrough, Jones noticed that his glasses were missing. Thinking that they might have been at the top of the steps, he asked Eggleston for permission to go upstairs and get them. Jones testified that at that point Yarbrough became very upset and began yelling at Eggleston, telling her not to allow any search of the home. Jones testified that Eggleston went into the kitchen and when Jones began to follow her, Yarbrough again began yelling at Eggleston, telling her not to allow Jones to go into the kitchen. At that point, Jones decided to wait for other officers to arrive.

**{¶ 4}** Once the other officers arrived, Yarbrough was taken outside and placed in a

cruiser. During the subsequent search of the home, officers found an assault rifle, a handgun, and a bulletproof vest. The assault rifle was found in a closet in an upstairs bedroom. The magazine for this gun was found underneath a mattress in another bedroom. The handgun and bulletproof vest were both found in a closet in the kitchen.

**{¶ 5}** Yarbrough was indicted on four counts of having a weapon while under disability: two counts because of a prior drug conviction; two counts because of a prior offense of violence. During trial, the jury heard testimony from several witnesses, including Parole Officer Tim Jones, police officers who had been involved in Yarbrough's arrest and the subsequent search of the residence, and Fatasha Eggleston. Yarbrough took the stand in his own defense. The jury found him guilty on all four counts. The trial court merged counts one and three, and counts two and four, and sentenced him to a total of six years in prison. Following sentencing, Yarbrough timely filed the current appeal.

## II. Assignment of Error

**{¶ 6}** "THE DECISION OF THE TRIAL COURT, FINDING APPELLANT GUILTY OF FOUR COUNTS OF HAVING WEAPONS UNDER DISABILITY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

## III. Legal Analysis

**{¶ 7}** In his listed assignment of error, Yarbrough states only that the jury's verdict was against the manifest weight of the evidence but, in the body of his brief, he also seems to argue that there was insufficient evidence for the decision. However, he makes no real distinction between an appeal based on the manifest weight of the evidence and one based on the sufficiency of the evidence. In fact, these are different concepts and should be

argued separately. See App.R. 12(A) and 16(A). Though not required to do so, we examine the appropriate standard of review for both arguments.

**{¶ 8}** "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson* , Montgomery App. No. 22581, 2009-Ohio-525, at ¶10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. "When reviewing a claim as to sufficiency of evidence, the relevant inquiry is whether any rational factfinder viewing the evidence in a light most favorable to the state could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372. "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." Id.

**{¶ 9}** In contrast to an appeal based on the sufficiency of the evidence, one based on the manifest weight of the evidence "challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *Wilson* at ¶12. "The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *Thompkins* at 386. Sufficiency tests the adequacy of the evidence, while "[w]eight of the evidence concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *State v. Dawson*, Greene App. No. 2009 CA 63, 2010-Ohio-3904, at ¶19, quoting *Thompkins* at 387.

**{¶ 10}** When evaluating whether a conviction is contrary to the manifest weight of

the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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." *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

**{¶ 11}** Here, the factfinder is present during witness testimony, and reviewing courts must give substantial deference to the factfinder's determinations of credibility. "The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. Further, simply because the evidence may be subject to different interpretations does not make a conviction one that is against the manifest weight of the evidence. *Wilson* at ¶14. And a conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances, where the evidence weighs heavily against conviction. *Martin* at 175.

**{¶ 12}** For a defendant to be convicted under the weapons under disability statute, R.C. 2923.13, the defendant must "knowingly acquire, have, carry, or use" a firearm. On appeal, Yarbrough's sole argument is that this element was not met because there was no evidence linking him to the two weapons found at Fatasha Eggleston's residence. Here, the jury heard testimony from multiple witnesses from which it could reasonably determine that Yarbrough did, in fact, possess the two weapons in question.

**{¶ 13}** First, though the weapons were found at Eggleston's residence, it is undisputed that Yarbrough spent significant amounts of time there. According to

Eggleston, Yarbrough slept there one or two nights a week. Additionally, Yarbrough and Eggleston had two children together who live with Eggleston. And there was testimony that Yarbrough sometimes took care of the children there while Eggleston was at work.

**{¶ 14}** The jury heard the testimony of Parole Officer Tim Jones. Jones testified that Yarbrough denied him entrance into the home, slamming the door in his face, even after he had identified himself as a parole officer. When Eggleston eventually allowed him to enter the residence, Jones went upstairs, placed Yarbrough in restraints, then brought Yarbrough back downstairs. Thinking he may have misplaced his glasses at the top of the stairs, he asked Eggleston for permission to go upstairs and retrieve them. At that point, Yarbrough immediately became extremely agitated and started yelling to Eggleston not to allow Jones to go anywhere in the house. "[H]e made it real clear he did not want me going upstairs." Jones elaborated on this point:

**{¶ 15}** Q: "How many times did the Defendant yell out that he didn't want you going anywhere else in the house?"

**{¶ 16}** A: "Well, when he did that he kind of -- for me, it was like a red alert. And I actually tested it out. Ms. Eggleston went into the kitchen, and I followed her to talk to her. And he started again, 'Do not let him in that kitchen, do not let him anywhere in the house,' screaming again. Which for me was kind of a sign that maybe we should check those areas."

**{¶ 17}** Q: "How often did he repeat those wishes that he didn't want you to search anywhere in the house or to be anywhere in the house?"

**{¶ 18}** A: "He did them over and over again. Any time -- but he didn't do them

while we were in the living room. He did them when I started to an area he didn't want me in. He would scream and scream and scream until we stopped going into that area or stopped heading in that direction. So probably three or four screams each time."

**{¶ 19}** Jones' testimony was corroborated by Deputy Herbert Thornton, who escorted Yarbrough to the police cruiser. Thornton testified that Yarbrough yelled "Don't let 'em search the house," loudly and repeatedly. He continued to do so even when he was placed in the backseat of the cruiser. Thornton also testified that there was a gun cleaning kit, in plain view, on a table in the kitchen. Further, Thornton testified that when Officer Ronald Smith found the handgun in the kitchen closet, Eggleston said "I can't believe he brought those guns into my house."

**{¶ 20}** Officer Smith confirmed that Eggleston made the statement during his own testimony: "[S]he was shown the handgun. She made a comment, 'I can't believe that he brought that in the house with the kids.' And she told us she didn't want any of those -- any of the guns in the house." Smith said that he understood the "he" that Eggleston referred to as being Yarbrough.

**{¶ 21}** Finally, there was testimony from multiple witnesses that because Eggleston was afraid of Yarbrough, she did not want to give consent to search her home in front of him. And she signed the consent to search form only after officers removed Yarbrough from the premises.

**{¶ 22}** The testimony related above was contested on a number of points, both by Eggleston and by Yarbrough, who took the stand in his own defense. Yarbrough denied that the guns were his. He denied any knowledge of them whatsoever. He further denied

saying, at any point, anything about not searching the home. Further, though admitting that he was in the kitchen during the night in question, Yarbrough denied seeing or having any knowledge of the gun cleaning kit, which was sitting on a table in the kitchen in plain view. On cross-examination, he affirmed that he believed the police were out to get him and that they had made the whole thing up.

**{¶ 23}** Eggleston also testified that she did not remember Yarbrough saying anything about not searching the house. She also denied saying anything about the guns belonging to Yarbrough. Eggleston contradicted the testimony of law enforcement officers on other points as well, such as the circumstances surrounding her consent to search the home, and whether that consent was given voluntarily.

**{¶ 24}** Ultimately, Yarbrough's conviction is a matter of witness credibility . Here, the jury obviously believed and gave great weight to the testimony of the law enforcement officers, and discounted or gave little credence to that of Eggleston and Yarbrough. We find that the testimony of the law enforcement officers, if believed, provides abundant circumstantial evidence from which a jury could reasonably infer that Yarbrough possessed the guns in question. And as a reviewing court, we must give great deference to the factfinder's determinations of credibility. This is especially true in the case sub judice, where witnesses contradict each other on a number of essential points.

**{¶ 25}** Accordingly, we find that, after viewing the evidence in a light most favorable to the State, the jury could have found all the essential elements of having weapons under disability beyond a reasonable doubt. Similarly, after reviewing the entire record and weighing the evidence and all reasonable inferences, we cannot say that the jury

clearly lost its way and created a manifest miscarriage of justice. As such, there was sufficient evidence for the jury's decision and that decision was also not against the manifest weight of the evidence. Thus, we affirm the judgment of the court below.

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BROGAN, J. and GRADY, J., concur.

(Hon. Matthew W. McFarland, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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