

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1212

Appellee

Trial Court No. CR0201102428

v.

Capers Warren, Jr.

DECISION AND JUDGMENT

Appellant

Decided: October 11, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brad A. Smith, Assistant Prosecuting Attorney, for appellee.

Nicole I. Khoury, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant guilty of one count of having a weapon while under disability. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On May 24, 2011, Toledo Police officers executed a search warrant at the property located at 1770 Buckingham, Toledo, Ohio, based on information that cocaine was being sold at that location. Prior to execution of the search warrant, officers verified through the TPD database that appellant was using the Buckingham address as his residence. When the officers entered the house, they found several individuals inside, including appellant. A search of the house revealed a shotgun in an upstairs bedroom, a rifle on the first floor and a quantity of illegal drugs.

{¶ 3} On September 13, 2011, appellant was indicted on a charge of having weapons while under disability, a third-degree felony, in violation of R.C. 2923.13(A)(3). The case proceeded to trial before a jury on May 9, 2012, and on May 11, 2012, appellant was found guilty. Appellant was sentenced to 18 months in prison.

{¶ 4} Appellant sets forth the following as his sole assignment of error:

“The conviction was not sufficiently supported by credible evidence and was against the Manifest Weight of the Evidence.”

{¶ 5} The term “sufficiency of the evidence” presents a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The relevant inquiry in such cases 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, 574 N.E. 2d 492 (1991), paragraph two of the syllabus.

{¶ 6} “In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion.” *State v. Davis*, 6th Dist. No. WD-10-077, 2012-Ohio-1394, ¶ 17, citing *Thompkins, supra*, at 387. In making this determination, 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.” *Thompkins, supra*, at 386.

{¶ 7} R.C. 2923.13(A)(3), having weapons under disability, states in pertinent part:

(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:

* * *

(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 * * *.

{¶ 8} The record reflects that appellant stipulated to a 2005 felony conviction for trafficking in cocaine that disqualified him from having weapons. Therefore, the issue before the jury was whether appellant knowingly possessed the two guns found at 1770 Buckingham in Toledo, Ohio. Appellant essentially argues that he was not living at that

address and did not know the guns were there; therefore, he asserts, he did not knowingly possess the firearms. Appellant claims that the house at 1770 Buckingham was not habitable and that he lived at another address in Toledo while he worked on the Buckingham house. He further asserts that his presence in the house when the search warrant was executed and weapons were found does not prove that he possessed the firearms.

{¶ 9} The state presented the testimony of two Toledo Police officers, a pretrial booking officer with the Lucas County Court of Common Pleas, and a criminalist with the Toledo Police crime lab. Sergeant Thomas Morelli testified he was present when the warrant was executed and that he found a shotgun in an upstairs bedroom. He also found a working refrigerator in one of the bedrooms along with shelving with canned goods and neatly folded bath towels. He further testified that Sgt. Cheryl Przybylski, who did not testify at trial, recovered a rifle on the first floor.

{¶ 10} Detective Kenneth DeWitt testified that he conducted surveillance on the 1770 Buckingham address during April and May 2011 after receiving information regarding alleged drug activity taking place there. After DeWitt observed appellant coming and going several times, he verified through TPD records of appellant's arrest history that appellant was using 1770 Buckingham as his address. DeWitt further testified that after he read appellant his Miranda rights appellant waived his rights and stated that the shotgun found in the bedroom was in the house when he moved in. Appellant told DeWitt that he had moved into the house a few weeks earlier and that he

was the only person who lived there. DeWitt stated that appellant stopped talking after the detective asked him whether he was aware that based on his prior felony record he was not permitted to possess a firearm.

{¶ 11} Christy Green, a pretrial booking officer for the Lucas County Court of Common Pleas, testified that as part of her duties gathering information for a suspect's bond report she asks for general information such as current and past addresses. On the night of appellant's arrest, she interviewed appellant at the jail and appellant stated that his current address was 1770 Buckingham, Toledo, Ohio, and that he had lived there for the past 11 years. Green also testified that she contacted the individual who appellant stated could verify the information he had just provided and said that the individual provided confirmation. Lastly, Chadwick Douglas, a criminalist with the Toledo Police, testified that the weapons found in the home at 1770 Buckingham were operable.

{¶ 12} Appellant presented the testimony of Victoria Braman, appellant's wife, who testified that she married appellant in November 2011. Braman stated that she lived with appellant for eight years at 625 Elmore, Toledo, and that appellant had not lived at any other address during that time. Onida Warren, appellant's mother, testified that she owns the residence at 1770 Buckingham Street and that appellant was working on the house at her request. Warren stated that the house does not have gas or electric service hooked up but does have water and sewer service.

{¶ 13} Despite defense counsel's advice to the contrary, appellant testified on his own behalf, insisting that he never lived at the Buckingham Street residence and claiming

that all of the state's witnesses were lying when they testified that he reported Buckingham Street as his address. Appellant denied any knowledge that there were guns in the house and denied having been informed of his Miranda rights after the guns were found. Appellant further testified that whether he would answer truthfully when asked by police for his address "depends on what I'm going to jail for * * * depends on the situation." In response to additional questioning as to information he provided police, appellant testified that "[t]his is a situation I need to give [the officer] a phony address * * *."

{¶ 14} A jury may believe all, part, or none of a witness's testimony. *State v. Eisenman*, 10th Dist. No. 10AP-809, 2011-Ohio-2810, ¶ 16. The jury in this case found the testimony of appellee's witnesses to be credible and sufficient for conviction. When conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the fact finder believed the prosecution testimony. *State v. Conner*, 192 Ohio App.3d 166, 2011-Ohio-146, 948 N.E.2d 497 (6th Dist.). The trier of fact 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. Wilson*, 113 Ohio St.3d 382, 2007-Ohio- 2202, ¶ 24, 865 N.E.2d 1264, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80-81, 461 N.E. 2d 1273 (1984). We find no evidence that the fact finder lost its way or created a manifest miscarriage of justice in this case.

{¶ 15} As to the sufficiency of the evidence, based on the foregoing, we find that the state presented sufficient credible evidence that appellant knowingly possessed a weapon while under disability.

{¶ 16} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
