

[Cite as *State v. Bridges*, 2009-Ohio-4569.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91852

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JERMAINE D. BRIDGES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-485683

BEFORE: McMonagle, P.J., Boyle, J., and Celebrezze, J.

RELEASED: September 3, 2009

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} In the early morning hours of February 18, 2006, gunshots were fired at the Horseshoe Bar in Cleveland, Ohio. One woman was killed and four other individuals were injured.

{¶ 2} A Cuyahoga County Grand Jury subsequently indicted defendant-appellant Jermaine D. Bridges in an eight-count indictment, charging him with murder in violation of R.C. 2903.02(A), murder in violation of R.C. 2903.02(B), four counts of felonious assault in violation of R.C. 2903.11(A)(2), one count of attempted murder in violation of R.C. 2923.02 and 2903.02(A), and one count of having a weapon while under a disability in violation of R.C. 2923.13(A)(3). All counts, except for having a weapon while under a disability, carried a three-year firearm specification. The having-a-weapon-while-under-a-disability count was tried to the bench; all other counts were decided by the jury.

{¶ 3} The State presented 30 witnesses at trial and 119 exhibits were admitted into evidence. The evidence relevant to this appeal follows.

{¶ 4} Rashun Coleman testified that Bridges shot him as he was fighting with him in the vestibule of the Horseshoe Bar the morning of February 18, 2006. Coleman stated that he felt Bridges's right arm get loose and reach for something, and then, although Coleman did not see a gun, "the shot came from where his right arm was." Coleman identified Bridges in court as the man who shot him. William Haddon, a security guard at the

Horseshoe Bar that morning, testified that he was outside and heard three shots coming from right inside the door of the bar. He then saw a group of people fleeing from the bar, followed by a male who walked calmly out of the front door of the bar and around the corner, but then returned to the scene a short time later from a different direction. Haddon testified that the male was dark-skinned, about six feet tall, with short hair—a description matching that of Bridges—and was wearing a tan and brown shirt with a “swirl pattern” on it, the same shirt Bridges had on when he was later arrested at the scene. Bridges did not have a gun on his person when he was arrested and no firearm was ever recovered.

{¶ 5} Curtiss Jones, deputy supervisor of the trace evidence department of the Cuyahoga County Coroner’s Office, testified that he tested samples from Bridges’s hands and both hands contained gunshot primer residue. Jones testified that three conclusions could be drawn from this result: Bridges fired a gun, was in close proximity to a gun when it was fired, or his hands came in contact with a surface that had gunshot primer residue on it. Jones likewise found gunshot primer residue on the sleeve of Bridges’s shirt. Jones testified further that the blast defects on Coleman’s clothing indicated that the gun that wounded him was in direct contact with his clothing when it was fired.

{¶ 6} Marshay Davis, the girlfriend of Bridges's brother, testified that Bridges was in the vestibule of the Horseshoe Bar fighting with a man when the gunshots were fired.

{¶ 7} The jury subsequently acquitted Bridges of the murder, attempted murder, and felonious assault charges; the court found him guilty of having a weapon while under a disability and sentenced him to four years incarceration.

{¶ 8} Bridges now appeals from the trial court's judgment. He contends that his conviction was 1) not supported by sufficient evidence, 2) against the manifest weight of the evidence, and 3) inconsistent with the jury verdict finding him not guilty of other charges that included a firearm specification. We affirm.

Law and Argument

A. Sufficiency of the Evidence

{¶ 9} Bridges first argues that the evidence was insufficient to support his conviction for having a weapon while under a disability.

{¶ 10} Under R.C. 2923.13(A)(3), no person shall knowingly acquire, have, carry, or use any firearm if the person is under indictment for or has been convicted of the illegal possession, use, sale, administration, distribution, or trafficking of drugs. At trial, Bridges stipulated to the journal entry (State's Exhibit A) proving his prior conviction for a felony drug

offense. As Bridges stipulated to his prior felony conviction, the State had to present sufficient evidence that he had, carried, or used a firearm on February 18, 2006 to establish the elements of R.C. 2923.13(A)(3).

{¶ 11} Bridges contends that the evidence was insufficient to support his conviction because Coleman’s testimony that he was the shooter was “weak,” “unreliable,” and “conflicting.” Bridges argues further that the State offered no physical evidence that he possessed a firearm.

{¶ 12} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Smith*, 80 Ohio St.3d 89, 113, 1997-Ohio-355. In essence, sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. 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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 13} Thus, in determining whether a conviction is based on sufficient evidence, an appellate court does not assess whether the State’s evidence is to be believed. Rather, it determines whether the evidence admitted at trial, *if believed*, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. *Jenks*, *supra*; *Thompkins* at 390; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79. Bridges’s arguments about the

unreliability or other weaknesses of Coleman's testimony are therefore not relevant to a sufficiency analysis. Coleman identified Bridges in court as the man who shot him as the two men fought in the vestibule of the Horseshoe Bar the morning of February 18, 2006. This testimony, coupled with State's Exhibit A, a certified journal entry proving Bridges's prior felony drug conviction, was sufficient evidence to establish the elements of R.C. 2923.13(A)(3).

{¶ 14} Although not necessary to our analysis regarding the sufficiency of the evidence, we further find that Bridges's argument that there was no physical evidence that he had a firearm is incorrect. Curtiss Jones testified regarding various State's exhibits that demonstrated that Bridges's hands and clothing had gunshot primer residue on them just after the shooting took place.

{¶ 15} The State presented evidence that, if believed, would support a conviction for having a weapon while under a disability. Bridges's first assignment of error is therefore overruled.

B. Manifest Weight of the Evidence

{¶ 16} While the test for sufficiency requires a determination of whether the State has met its burden of production at trial, a manifest weight challenge questions whether the State has met its burden of persuasion. *Thompkins* at 390. When considering a manifest weight challenge, a

reviewing court examines the entire record, weighs the evidence, and considers the credibility of the witnesses. *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. The court may reverse the judgment of conviction if it appears that the finder of fact, in resolving conflicts in the evidence, “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. A court should reverse a conviction as against the manifest weight of the evidence only in the most “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 17} Bridges argues that his conviction was against the manifest weight of the evidence because, of the State’s 30 witnesses, no one other than Coleman identified him as the shooter and two witnesses testified that they saw another individual with a gun in the Horseshoe Bar that morning. He further contends that Coleman’s trial testimony was inconsistent with his testimony at the grand jury and, therefore, was not credible. Specifically, Bridges contends that although Coleman identified him at trial as the shooter, Coleman testified before the grand jury that he did not know who fired the shot and provided a physical description of the shooter that did not fit Bridges. Bridges also argues that the State produced no physical evidence that he was in possession of a gun on February 18, 2006, as he did not have a

gun on his person when he was arrested outside the bar that morning and no firearm was ever recovered.

{¶ 18} Bridges's arguments do not persuade us that this is the exceptional case in which the evidence weighs heavily against the conviction. Coleman, who was extensively cross-examined about the inconsistencies in his testimony, identified Bridges as the person who shot him. The testimony of Haddon and Davis tended to corroborate Coleman's version of the events. Jones's testimony—that Bridges's hands and clothing contained gunshot primer residue and that the blast defects on Coleman's clothing indicated that the gun was pressed against Coleman when it was fired—further corroborated Coleman's testimony and related to the physical evidence that Bridges possessed a firearm on February 18, 2006.

{¶ 19} The weight to be given the evidence and the credibility of the witnesses are primarily matters for the trier of fact. *State v. DeHass* (1976), 10 Ohio St.2d 230, paragraph one of the syllabus. "When conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the [trier of fact] believed the prosecution testimony." *State v. Gilliam* (Aug. 12, 1998), 9th Dist. No. 97CA006757. Our review of the record does not demonstrate that the trial court lost its way in finding Bridges guilty of having a weapon while under a disability and, therefore, his second assignment of error is overruled.

C. Inconsistent Verdicts

{¶ 20} Bridges also argues that his conviction should be vacated because the trial court's determination that he possessed a firearm was inconsistent with the jury's acquittal on the other charges, including the firearm specifications. Bridges's argument fails.

{¶ 21} The law is well settled; an inconsistency in a verdict does not arise out of inconsistent responses to different counts but only out of inconsistent responses to the same count. *State v. Brown* (1984), 12 Ohio St.3d 147, syllabus. The verdicts here relate to different counts, not the same count, and thus there is no inconsistency.

{¶ 22} Furthermore, the offenses of murder, attempted murder, and felonious assault have distinct elements unrelated to the offense of having a weapon while under a disability and, therefore, acquittal on those charges does not preclude a conviction for having a weapon while under a disability. For example, murder, attempted murder, and felonious assault all include a mens rea element not found in the offense of having a weapon while under a disability. Thus, while the jury may have determined that Bridges lacked the mens rea necessary to commit murder, attempted murder, and felonious assault, it was not inconsistent, based on the evidence, for the court to find that on February 16, 2006, Bridges had, carried, or used a firearm, despite his previous drug conviction. See, e.g., *State v. Lett*, 160 Ohio App.3d 46,

2005-Ohio-1308, ¶41-46. Appellant's third assignment of error is therefore overruled.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR