

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee	:	
v.	:	No. 11AP-526
James E. Green,	:	(C.P.C. No. 08CR-09-6930)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 6, 2012

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*,
for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, James E. Green, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because his convictions are supported by sufficient evidence and are not against the manifest weight of the evidence, we affirm that judgment.

Factual and Procedural Background

{¶ 2} On the evening of June 22, 2008, Quentin Green and his girlfriend, Angela McClain, were at a cookout at appellant's house. Appellant is Quentin's uncle. Appellant and Quentin were in the backyard when they began to argue about the condition of the house. The Green family had owned the house for years, and appellant was upset that his sisters were not helping him keep up with the house. At one point, appellant specifically

identified Quentin's mother as one who did not help with the house.¹ Quentin took offense to appellant's insults about his mother. The two continued to argue until appellant went into the house and came out with a rifle. Appellant fired the rifle and shot Quentin in the leg.

{¶ 3} As a result of these events, a Franklin County Grand Jury indicted appellant with one count of felonious assault in violation of R.C. 2903.11 and one count of having a weapon while under disability in violation of R.C. 2923.13. Appellant entered not guilty pleas and proceeded to a jury trial.

{¶ 4} At trial, Quentin and McClain testified to the above version of events. Appellant called two witnesses in an attempt to deny shooting Quentin. Although neither witness saw the shooting, one testified that appellant did not have a gun that night. The other witness testified that Quentin was the instigator of the argument with appellant.

{¶ 5} The jury found appellant guilty and the trial court sentenced him accordingly.

{¶ 6} Appellant appeals and assigns the following errors:

I. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION.

II. THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29.

III. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE CONVICTION AND [*sic*] WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

Appellant's Assignments of Error - Sufficiency and Manifest Weight of the Evidence

{¶ 7} In his three assignments of error, appellant contends that his convictions are not supported by sufficient evidence² and are also against the manifest weight of the

¹ Quentin said that appellant shouted "his bitch ass momma don't pay anything." (Tr. 61.)

² Although couched in different language, appellant's first and second assignments of error both address the sufficiency of the evidence. *State v. Berry*, 10th Dist. No. 10AP-1187, 2011-Ohio-6452, ¶ 8.

evidence. Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶ 11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's convictions are supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 8} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). When presented with a challenge to the manifest weight of the evidence, an appellate court 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. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*; *State v. Baatin*, 10th Dist. No. 11AP-286, 2011-Ohio-6294, ¶ 8.

{¶ 9} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that 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.' " *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the trier of fact's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967),

paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 10} In order to find appellant guilty of felonious assault, the state had to prove beyond a reasonable doubt that he knowingly caused or attempted to cause physical harm to Quentin by means of a deadly weapon or dangerous ordinance. R.C. 2903.11. In order to find appellant guilty of having a weapon while under disability, the state had to prove that appellant knowingly had carried, or used a firearm after having been convicted of any felony offense of violence. R.C. 2923.13(A)(2).

{¶ 11} Both Quentin and McClain testified that appellant came out of his house with a rifle and shot Quentin. Appellant argues that these witnesses were not reliable or credible because Quentin was intoxicated the night of the shooting and because McClain was Quentin's girlfriend and a convicted felon. We disagree. The jury was aware of all this information. The jury was in the best position to weigh and determine these witnesses' credibility and was entitled to believe or disbelieve the testimony. There is nothing in these witnesses' testimony that would make it so incredible as to render appellant's convictions against the manifest weight of the evidence. *State v. Thompson*, 10th Dist. No. 07AP-491, 2008-Ohio-2017, ¶ 35.

{¶ 12} Appellant also notes that both witnesses did not identify appellant as the shooter until several days after the shooting. However, it appears that police did not question these witnesses until several days after the shooting, so this delay is not persuasive. Moreover, Quentin's delay in identifying his shooter appears to be due to the injuries he sustained from the shooting. When he was able to talk to the police, he identified appellant as the shooter. While McClain originally told a 911 operator that she did not know who shot Quentin, she also identified appellant as the shooter when police later questioned her. Although these two statements are inconsistent, a defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was offered at trial. *State v. Campbell*, 10th Dist. No. 07AP-1001, 2008-Ohio-4831, ¶ 23. The trier of fact is in the best position to take into account the inconsistencies in the evidence, as well as the demeanor and manner of the witnesses, and to determine which witnesses are more credible. *State v. DeJoy*, 10th Dist. No. 10AP-919, 2011-Ohio-2745, ¶ 27.

{¶ 13} Given the evidence presented at trial, the jury did not lose its way or create a manifest miscarriage of justice. Accordingly, appellant's convictions are not against the manifest weight of the evidence. This conclusion is also dispositive of appellant's claim that his convictions are not supported by sufficient evidence. *McCrary* at ¶ 17. Accordingly, we overrule appellant's three assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
