

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO

Appellee

v.

SETH G. GALLION

Appellant

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C.A. No. 2026-CA-12

Trial Court Case No. 2025CR0168

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 16, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

TUCKER, J., and EPLEY, J., concur.

OPINION
GREENE C.A. No. 2026-CA-12

HOLLY M. SIMPSON, Attorney for Appellant
MEGAN A. HAMMOND, Attorney for Appellee

HUFFMAN, J.

{¶ 1} Seth Gallion appeals from a judgment entry of conviction of one count of having weapons while under disability with a forfeiture specification. For the following reasons, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶ 2} On April 11, 2025, Gallion was indicted on one count of having weapons while under disability with an attendant forfeiture specification for a Hi-Point 40 mm S&W firearm, magazine, and ammunition. The charge arose after the Greene County Sheriff's Office, while assisting the Fayette County Sheriff's Office in executing a search warrant, discovered the weapon at property where Gallion occasionally resided and maintained a junkyard, located at 5589 Old U.S. 35 East in Silvercreek Township, Greene County.

{¶ 3} After Gallion was found competent to stand trial and his motions to suppress and to dismiss were overruled, the parties filed a stipulation that he had been previously convicted of three felony drug offenses. Trial by jury occurred on December 8 and 9, 2025, and Gallion was convicted as charged. He was sentenced to community control sanctions for five years. He timely appealed.

Assignments of Error and Analysis

I. Prior Bad Acts

{¶ 4} Gallion asserts four assignments of error. He initially argues that the trial court erred in "admitting evidence of prior bad acts by asking a juror-submitted question to a

witness when the court had previously refused to allow the same testimony” regarding the purpose of the search that led to the discovery of the weapon. Gallion asserts that “after each witness testified, the jury repeatedly requested that the Judge ask the witness the reasons for the search warrant.” After Gallion reviews the testimony of law enforcement witnesses, he directs our attention to the testimony of Detective Christopher Sticka of the Greene County Sheriff’s Office regarding the search warrant. According to Gallion, Sticka’s testimony was “inadmissible and also very prejudicial” and “irrelevant to the specific issue in this criminal case, which was the firearm found on Gallion’s property.” Gallion argues that the “jury had all the information they needed to make a determination regarding [his] guilt without the testimony,” and there “is no purpose for which the jury would need this information, other than their own curiosity.” Gallion claims that the “only possible use [of the evidence] would be to show that [he] has a propensity to break the law” and that it had no probative value. He argues that the “jury clearly felt it needed this information based upon the number of times it asked so it stands to reason that they considered it when finding [him] guilty.”

{¶ 5} “A hallmark of the American criminal justice system is the principle that proof that the accused committed a crime other than the one for which he is on trial is not admissible when its sole purpose is to show the accused’s propensity or inclination to commit crime.” *State v. Hartman*, 2020-Ohio-4440, ¶ 20, quoting *State v. Curry*, 43 Ohio St.2d 66, 68 (1975). This principle “is premised on our understanding of human nature: the typical juror is prone to ‘much more readily believe that a person is guilty of the crime charged if it is proved to his satisfaction that the defendant has committed a similar crime.’” *Id.*, quoting *State v. Hector*, 19 Ohio St.2d 167, 174-175 (1969).

{¶ 6} “The general principle that guides admission of evidence is that ‘[a]ll relevant evidence is admissible’” *State v. Morris*, 2012-Ohio-2407, ¶ 11, quoting Evid.R. 402. To be relevant, evidence must have “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 401.

{¶ 7} Evid.R. 404(B), however, provides exceptions to the general principle that all relevant evidence is admissible and states:

(B) Other Crimes, Wrongs or Acts.

(1) Prohibited uses

Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses

This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

{¶ 8} To be admissible under Evid.R. 404(B)(2), the “key is that the evidence must prove something other than the defendant’s disposition to commit certain acts.” *Hartman*, 2020-Ohio-4440, at ¶ 22. In other words, “while evidence showing the defendant’s character or propensity to commit crimes or acts is forbidden, evidence of other acts is admissible when the evidence is probative of a separate, nonpropensity-based issue.” *Id.*

{¶ 9} “The Supreme Court of Ohio has put forth a three-step analysis for a trial court to use in determining the admissibility of other acts evidence.” *State v. Walter*, 2023-Ohio-2700, ¶ 62 (2d Dist.), citing *State v. Williams*, 2012-Ohio-5695, ¶ 20. “The first step is to

consider whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” *Williams* at ¶ 20. The second step requires the trial court to “consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B).” *Id.* at ¶ 20. The third step requires the trial court “to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice.” *Id.*, citing Evid.R. 403. “The defendant’s other act ‘must have such a temporal, modal and situational relationship with the acts constituting the crime charged that evidence of the other acts discloses purposeful action in the commission of the offense in question.’” *Walter* at ¶ 63, quoting *State v. Snowden*, 49 Ohio App.2d 7, 10 (1st Dist. 1976), citing *State v. Burson*, 38 Ohio St.2d 157, 159 (1974).

{¶ 10} “The admissibility of other-acts evidence pursuant to Evid.R. 404(B) is a question of law. The [trial] court is precluded from admitting improper character evidence under Evid.R. 404(B), but it has discretion to allow other-acts evidence that is admissible for a permissible purpose.” (Citation omitted.) *State v. Graham*, 2020-Ohio-6700, ¶ 72. Appeals of such decisions are considered by an appellate court under an abuse-of-discretion standard of review.” *Morris*, 2012-Ohio-2407, at syllabus. “A trial court’s improper admission of other-acts evidence ‘may be deemed harmless error . . . when, after the tainted evidence is removed, the remaining evidence is overwhelming.’” *State v. Beall*, 2021-Ohio-5052, ¶ 50, fn. 3 (2d Dist.), quoting *State v. Morris*, 2014-Ohio-5052, ¶ 32.

{¶ 11} Detective Jason Tavner of the Greene County Sheriff’s Office testified that on October 24, 2025, he became involved in the investigation in this matter by assisting with

“the search at the search warrant scene” where the firearm was found. After his testimony, the jurors submitted questions, and the following exchange occurred at the bench:

THE COURT: . . . I have three questions that are basically the same question, and I’ll read them all into the record.

First, “Can you tell us what the search warrant was for, what led to the search warrant?”

And then, finally, “Why was there a search warrant in the first place?”

. . . “Why is there a search warrant?” Any objections to that question?

[DEFENSE COUNSEL]: I understand that, but that’s going to bring up prior bad acts, because they are out there on the search warrant when they think stolen property may have provided drugs and other things [sic] that was in the search warrant, but they are out there not to find [the gun], they are out there because of prior bad acts or prior misconduct.

So I don’t want to ask the question because it brings in 404(B) evidence.

. . .

[THE PROSECUTOR]: I think, at the end of the day, the fact that they know it’s a search warrant and it’s not for murder, . . . I think it probably zeroes out in terms of prejudice.

But I don’t necessarily object to not asking that question just so we don’t get upheaval if it gets that far.

[DEFENSE COUNSEL]: He has already got a few things already in the record with these other convictions so, specifically, I was going to object if that was even asked on 404(B) grounds because—

THE COURT: All right. The Court won’t ask these questions.

{¶ 12} Deputy Joshua Barrett of the Greene County Sheriff's Office testified that he was the manager of the property room and was involved in the collection and booking of evidence from the scene of the search warrant's execution. After his testimony, the court addressed a juror question as follows: "First, 'Are we allowed to know why a search warrant was issued?' He can't answer that. . . . The Court will not ask that question."

{¶ 13} Detective Sticka testified that on April 4, 2025, he "was the primary investigator assigned by my supervisor to assist Fayette County Detectives who were conducting an investigation." After his testimony, the following exchange occurred regarding juror questions:

THE COURT: "Why were deputies/detectives initially called to the search warrant scene?"

[DEFENSE COUNSEL]: To me, we're still going into that area that I don't want us to.

THE COURT: I don't think so, but I would more than likely, like to hear what the State's thought is.

[PROSECUTOR]: He has testified that they were there to assist Fayette County, so I think that's—

THE COURT: The search came to Greene County. That's—I'm not going to go into the search warrant. There was testimony to the effect they were assisting Fayette County in their search warrant. I will ask that one.

{¶ 14} After the sidebar concluded, the following exchange occurred:

THE COURT: "Why were deputies and detectives initially called to the scene of the search warrant?"

THE WITNESS [Detective Sticka]: We were assisting Fayette County Sheriff's Office regarding a—

[DEFENSE COUNSEL]: Objection.

THE COURT: Approach.

(Bench discussion ensued.)

[DEFENSE COUNSEL]: 404(B), not relevant, and that's the reason they're there for allegedly stolen items he had.

. . .

[PROSECUTOR]: If we want to—if we want to correct it a little bit and advise him without telling us what the substance of Fayette County's investigation was.

THE COURT: What about just leaving the question—the answer where it stands, “We were assisting Fayette County Sheriff's Office,” said “a search warrant.”

[DEFENSE COUNSEL]: It was the last word he said though. He said something.

THE COURT: “We were assisting Fayette County Sheriff's Office regarding a”—then “Objection.”

[DEFENSE COUNSEL]: I don't know if he is going to say regarding an allegation.

THE COURT: I'm going to allow him to answer it, and we'll go from there.

(Bench discussion concluded.)

THE COURT: Detective, you were going to answer, Greene County Sheriff's Office was assisting Fayette County's Sheriff's Office regarding a what?

THE WITNESS: A breaking and entering and—

THE COURT: Hold on. "What was the purpose of being on Greene County property with the Sheriff's Office helping Fayette County? Is that normal when another jurisdiction comes into another county?"

THE WITNESS: Yes, sir. If an outside agency is coming into our county and the property is located in our jurisdiction or any other jurisdiction, if they request help, we will help them.

THE COURT: And that's why you were assisting them in Greene County in their investigation?

THE WITNESS: Yes.

{¶ 15} First, an abuse of discretion is not demonstrated. There is no basis to conclude that Gallion's conviction was attributable to the very brief and limited mention of a possible breaking and entering. Such mention merely provided context for why the officers were at Gallion's property. Gallion was not identified as a suspect in the investigation, and such "evidence" does not qualify as a prior bad act on his part. The investigation commenced in another county, and Gallion was not alleged to have committed breaking and entering; Evid.R. 404(B) restricts only evidence of a defendant's own other crimes, wrongs, or acts. In other words, Gallion was not specifically implicated, no "act" by Gallion was introduced, and the evidence was not subject to the Evid.R. 404(B) prohibition.

{¶ 16} Most significantly, even if we were to conclude that the court erred in admitting the alleged "evidence," any error was harmless. This is so because, as discussed below,

the evidence of Gallion's guilt—namely the stipulation to his prior felony convictions and his admission in an officer body-worn camera recording that he owned the firearm—was overwhelming. Gallion's first assigned error is overruled.

II. Admission of Video Evidence

{¶ 17} In his second assignment of error, Gallion argues that the court erred “in admitting video evidence of [him] speaking to police when it only allowed part of the entire video taken that day.” He directs our attention to Evid.R. 106. According to Gallion, he sought to “introduce the entirety of the recording made from the search of his property because the State played only a portion showing Gallion admitting that he was aware of a firearm located on his property.” He argues that defense counsel “objected to the video because it was incomplete, including a portion that was cut off and never provided.”

{¶ 18} Gallion claims he retracted a prior admission regarding the weapon and was advised that he would not be arrested if he cooperated. He argues that whether he recanted his initial statement to Sticka was relevant to the weight and veracity of any admission regarding the weapon. He also argues that whether he confessed based on law enforcement's alleged statement that he would not be arrested was relevant to whether the confession was voluntary. Gallion asserts that the court “should have ordered that the jury watch the entire video,” and if “there was a part that was cut off or not redacted, the jury should have been permitted to see that and draw their own inferences about the weight of Gallion's statements as a whole.”

{¶ 19} Evid.R. 106 states: “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which is otherwise admissible and which

ought in fairness to be considered contemporaneously with it.”¹ “We have stated that Evid.R. 106 ‘is merely a rule that concerns the timing of evidence that is otherwise admissible.’” *State v. Hatfield*, 2022-Ohio-148, ¶ 80 (2d Dist.), quoting *State v. Matthews*, 2011-Ohio-5066, ¶ 32 (2d Dist.). “When a party has presented a part of a document or recording, an adverse party may present any other document or part thereof to prevent misunderstanding or distortion.” *Id.*

{¶ 20} At trial, Sticka testified that after he learned the firearm was found in a closet in the bedroom of a trailer, he spoke to Gallion. Sticka explained that he was wearing a functional body camera at the time. At a sidebar, defense counsel stated that Gallion “wanted an objection to all the video” and that if Gallion were to testify, “he may say the video is incomplete.” The prosecutor indicated that the video was “redacted down” to Sticka’s entire conversation with Gallion. Defense counsel stated that he and Gallion “watched all the videos, and he has been provided those from me,” but that “there’s a portion he is claiming is not recorded on any videos where he says he denied ownership, and that is not part of this. We’re not saying the redaction is incomplete, it’s something that he wanted to be sure.” The court overruled the objection, and the video was played.

{¶ 21} The recording reflected that Sticka approached Gallion while Gallion was outside leaning on a vehicle. As Sticka drew near, he asked, “Hey Seth, how long have you had that firearm, man?” Gallion replied, “Um, I don’t know, really, I ain’t never even used it.” Sticka then asked if Gallion had purchased it at a store or bought it from another person, and he advised Gallion that the weapon was not stolen. Without answering Sticka’s questions about where he had obtained the gun, Gallion stated that he had the weapon for

1. Under Ohio law, the standard of review for the admission or exclusion of relevant evidence is abuse of discretion. *State v. Poulton*, 2014-Ohio-1198, ¶ 21 (5th Dist.), citing *State v. Sage*, 31 Ohio St.3d 173 (1987).

protection. Sticka then indicated that it was found in Gallion's bedroom and asked if that was where it was normally kept. Gallion repeated that he just had it for protection but he "forgot the combination to the thing." When asked how long he had the weapon, Gallion replied, "It's been a while" and "at least a year or so." Gallion stated that "there was a time people were stealing a lot of stuff," he wanted to be able to defend himself, and he was "not a gangster." Sticka replied, "Thank you Seth, I'll be right back with you." The recording then ended.

{¶ 22} At trial, Gallion testified that he was "just trying an off-grid thing" at the location of the search warrant, where he had two campers "built together," generators, and "stuff from the junkyard" that he "scrapped" or resold. He acknowledged speaking to Sticka about the gun. Gallion denied ownership of the gun. He testified that the weapon belonged to Keith Branham, an acquaintance with whom he did "side jobs." He stated that when officers asked him for the combination of the lockbox containing the gun, he did not know the contents or the combination of the lockbox because the lockbox was not his. According to Gallion, Branham brought the lockbox to his property along with "furniture and just stuff from a storage locker." He denied ever using the gun.

{¶ 23} Gallion further testified that officers were at his property for over an hour. He stated that he admitted to owning the gun because he was "shocked," "on the spot," and did not want to cause trouble for Branham. Gallion claimed that he "just said whatever made them happy," and that he was told that he would not be arrested if he cooperated with the investigation. He testified that he "never stated that he owned the gun" but "just said it was there for like seven months or a year, but I was like meaning the box, I was trying to generalize it." He testified that a Fayette County detective told him, "You already said you're the owner of the gun," and that Gallion responded, "No, you're an effing liar, twisted my

words. I never said I owned that gun.” Gallion acknowledged that while he was transported to jail, he offered to provide information regarding the suspected breaking and entering. He denied attempting to “fix” at trial what he had told Sticka at the scene. Although Gallion asserted that he spoke to “multiple detectives,” he acknowledged that his statements to Sticka regarding the gun as shown in the video reflected their entire exchange.

{¶ 24} Gallion’s reliance on Evid. R. 106 is misplaced; the rule presupposes that additional parts of a writing or recording actually exist and that they are otherwise admissible and relevant to the initial portion introduced. It applies only when a party introduces part of a recorded statement, and an adverse party seeks to introduce additional portions to prevent misunderstanding and distortion. At trial, defense counsel speculated that *if* there was a portion of the video that was “cut off or not redacted,” it should have been shown to the jury. Evid. R. 106 was not triggered because no additional recording exists; Gallion acknowledges that the recording played at trial captured his entire exchange with Sticka. Accordingly, Gallion mischaracterizes the record in claiming that the court only admitted “part of the entire video taken that day.”

{¶ 25} While Gallion refers to an alleged conversation with an unidentified Fayette County detective, he does not claim that any such conversation was recorded. He rather asserts the alleged conversation “was not recorded on any videos.” There is no evidence that Gallion was told that he would not be arrested in exchange for his cooperation, and he appeared neither shocked nor “on the spot” in the video. Gallion did more than admit he was aware of the firearm on his property in indicating that he had had it for a year and had forgotten the combination to the lockbox in which it was found. Moreover, actual ownership of the weapon is not required to sustain a conviction of having weapons while under disability. Based on the foregoing, Gallion’s second assignment of error is overruled.

III. Juror Questions

{¶ 26} In his third assignment of error, Gallion asserts that by “failing to follow the required guidelines” in Crim.R. 24(J), the trial court erred in allowing jurors to pose questions to the witnesses. While he acknowledges that the court complied with some of the requirements in the rule, he asserts that there “is no record that the judge either took steps to ensure that the jurors did not discuss the questions or instructed the jurors not to discuss the questions prior to them being asked.” He again notes that defense counsel objected to the alleged other-acts evidence, the court agreed not to ask questions regarding the purpose of the search warrant, but then the court did so. According to Gallion, the “potential for juror discussion on any aspect of the trial prior to deliberations is not harmless error.” He claims that prejudice is demonstrated because the “jury would not have known that the warrant was for breaking and entering without the testimony and there was no testimony to clarify defendant’s possible relationship to the breaking and entering.”

{¶ 27} Crim.R. 24 states:

(J) Juror Questions to Witnesses.

The court may permit jurors to propose questions for the court to ask of the witnesses. If the court permits jurors to propose questions, the court shall use procedures that minimize the risk of prejudice, including all of the following:

- (1) Require jurors to propose any questions to the court in writing;
- (2) Retain a copy of each proposed question for the record;
- (3) Instruct the jurors that they shall not display or discuss a proposed question with other jurors;

- (4) Before reading a question to a witness, provide counsel with an opportunity to object to each question on the record and outside the hearing of the jury;
- (5) Read the question, either as proposed or rephrased, to the witness;
- (6) Permit counsel to reexamine the witness regarding a matter addressed by a juror question;
- (7) If a question proposed by a juror is not asked, instruct the jurors that they should not draw any adverse inference from the court's refusal to ask any question proposed by a juror.

{¶ 28} “The practice of allowing jurors to question witnesses is a matter within the discretion of the trial court.” *State v. Fisher*, 2003-Ohio-2761, syllabus. *Fisher* noted:

The hallmark of the American trial is the pursuit of truth. Such truth—and, in the end, justice—is attainable only if counsel successfully communicates evidence to the jury. History has nonetheless relegated the jury to a passive role that dictates a one-way communication system—a system that, in its traditional form, is not amenable to resolving juror confusion. The practice of allowing jurors to question witnesses provides for two-way communication through which jurors can more effectively fulfill their fundamental role as factfinders.

Id. at ¶ 19.

{¶ 29} *State v. Fite*, 2011-Ohio-2500 (9th Dist.), is instructive. Therein, the trial court failed to advise the jurors not to display or discuss proposed questions with each other, and defense counsel did not object to the instructions provided at trial. *Id.* at ¶ 36. The Ninth

District found that the court erred in failing to instruct the jurors as required by Crim.R. 24(J)(3), but that Fite “forfeited all but plain error” by failing to object. *Id.*, citing Crim.R. 52(B). The court noted, “Although Rule 52(B) of the Ohio Rules of Criminal Procedure permits appellate courts to take notice of plain errors, such notice is to be taken ‘with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.’” *Id.*, quoting *State v. Long*, 53 Ohio St.2d 91, 97 (1978). The court found that to “prevail on a claim of plain error, Mr. Fite would have to show that, ‘but for the error, the outcome of the trial clearly would have been otherwise.’” *Id.*, quoting *State v. Murphy*, 91 Ohio St.3d 516, 532 (2001).

{¶ 30} Similarly, here the record reflects that the court did not instruct the jurors that “they shall not display or discuss a proposed question with other jurors.” The record also reflects that Gallion did not object to the instructions the court did provide. Gallion does not argue that any jurors actually showed or discussed their questions with each other. He merely speculates as to such “potential.” Our determination that any error in allowing Sticka’s testimony regarding the purpose of the search warrant was harmless, along with the overwhelming evidence of Gallion’s guilt (as further discussed in our analysis of his fourth assignment of error), belies any suggestion of plain error. The record does not support a conclusion that the outcome of the trial would have been different had the jurors been properly instructed. Accordingly, Gallion’s third assignment of error is overruled.

IV. Manifest Weight and Sufficiency of the Evidence

{¶ 31} In his final assignment of error, Gallion argues that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. He asserts first that while he admitted to knowledge of the gun to Sticka, Sticka never showed him the retrieved gun, such that it “was not established that the gun Gallion allegedly knew

about was the same gun entered into evidence.” Gallion further asserts that “the next issue regarding the sufficiency of the evidence is that [Branham] testified to the ownership of the gun and confirmed that Gallion did not know the contents of the lockbox where the gun was found.” Finally, Gallion asserts that a third “issue is the weight the jury gave to Gallion’s statement when they were not presented with the full picture of everything Gallion said to officers that day,” and “[u]sing only a small portion of an incomplete recording does not give a full picture of everything Gallion said.”

{¶ 32} A sufficiency of the evidence argument relates to whether the State “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*, 2009-Ohio-525, ¶ 10 (2d Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380 (1997). “In essence, sufficiency is a test of adequacy. Whether the evidence is sufficient to sustain a verdict is a question of law.” *Thompkins* at 386.

{¶ 33} The test for sufficiency of the evidence was set forth in *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus:

An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. 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.

In other words, on review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Thompkins* at 390.

{¶ 34} A weight of the evidence argument, on the other hand, 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, citing *State v. Hufnagel*, 1996 WL 501470, *3 (2d Dist. Sept. 6, 1996). The proper test to apply to a manifest weight of the evidence inquiry is set forth in *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983): “[T]he 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 jury lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” “In order to find that a manifest miscarriage of justice occurred, an appellate court must conclude that a guilty verdict is ‘against,’ that is, contrary to, the manifest weight of the evidence presented.” *Wilson* at ¶ 14.

{¶ 35} However, “[a]lthough 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. Flores-Lopez*, 2017-Ohio-690, ¶ 49 (2d Dist.), citing *State v. McCrary*, 2011-Ohio-3161, ¶ 11 (10th Dist.); accord *State v. Robinson*, 2015-Ohio-1167, ¶ 17 (2d Dist.). As a result, “a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.” *Flores-Lopez* at ¶ 49, citing *State v. Braxton*, 2005-Ohio-2198, ¶ 15 (10th Dist.).

{¶ 36} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of fact primarily to resolve. *Wilson*, 2009-Ohio-525, at ¶ 15 (2d Dist.),

citing *State v. DeHass*, 10 Ohio St.2d 230 (1967). In *State v. Lawson*, 1997 WL 476684, *4 (2d Dist. Aug. 22, 1997), we explained:

Because the factfinder . . . has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended 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.

{¶ 37} Additionally, the trier of fact is in the best position to consider inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Petty*, 2012-Ohio-2989, ¶ 38 (10th Dist.), citing *State v. Williams*, 2002-Ohio-4503, ¶ 58 (10th Dist.). "To that end, the fact finder is free to believe all, part or none of the testimony of each witness appearing before it." *Id.*, citing *State v. Raver*, 2003-Ohio-958, ¶ 21 (10th Dist.). "Mere disagreement over the credibility of witnesses is not sufficient reason to reverse a judgment." *Id.*, citing *State v. Wilson*, 2007-Ohio-2202, ¶ 24.

{¶ 38} Moreover, "[i]t is well-established that 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." *In re M.J.C.*, 2015-Ohio-820, ¶ 35 (12th Dist.). Thus, we will not substitute our judgment for that of the trier of fact on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. See *Wilson* at ¶ 17, citing *State v. Bradley*, 1997 WL 691510, *4 (2d Dist. Oct. 24, 1997).

{¶ 39} R.C. 2923.13(A)(3) proscribes having weapons while under disability and states:

(A) Unless relieved from disability under operation of law or legal process, 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

{¶ 40} Having reviewed the entire record and weighed the evidence and all reasonable inferences, we cannot conclude that the jury lost its way and created such a manifest injustice that Gallion's conviction must be reversed and a new trial ordered. Regarding whether the weapon retrieved from Gallion's property was shown to be the gun entered into evidence, Tavner testified: "I located a black lockbox in the closet close to the bedroom. I went out and asked Seth what the combination was. He advised we needed a search warrant to get into it. So we had a search warrant. That's why we were there. I used one of the tools on the property to pop the lock off, and inside I located the handgun." Tavner's testimony identified "the Hi-Point 40 caliber handgun that [he] located," as well as the lockbox in which it was contained. Further, the record is clear that Gallion and Sticka discussed the only lockbox and gun retrieved from Gallion's premises; Gallion admitted that he had possessed the gun for at least a year, in a lockbox that he admittedly no longer remembered the combination to. That the lockbox was found in Gallion's living space—apparently not with any other items allegedly stored by Branham—further supports a conclusion that Gallion knowingly acquired, had, or carried the weapon.

{¶ 41} Regarding Branham, he testified that he had a construction business, had known Gallion for two or three years, had previously worked with Gallion, and had “got parts” from Gallion’s junkyard. Branham stated that he also “did clean-outs and rehabs and things, and at times, [he] didn’t have a place for it, [so he] stored stuff” at Gallion’s property. According to Branham, he dropped off multiple items there, most recently storing articles from his father’s home after it was sold. Branham identified a photo of the gun, stating it appeared “to be the one that my father said . . . could be in his stuff, and I have not personally seen it for years, the same one. It was my grandpa’s or father’s, one of the two.” He then stated, “[I]t’s either my grandpa’s or my uncle’s, one of the two. My dad wasn’t sure.” Branham testified that he never opened the lockbox containing the gun. When Branham was asked if he took the lockbox to Gallion’s junkyard, he stated that there “was a bunch of different stuff,” and he “was in such a hurry to get it unloaded, because I had another job to do, so I didn’t see it personally.” Branham was unaware that he had transported the gun, according to his testimony, but he learned about it when Gallion “mentioned there was a box with a lock on it” and asked for the combination. Branham stated that he told Gallion “to hold onto it until I could get back there to pick it up.” He acknowledged that he did not contact law enforcement or the prosecutor’s office to report that the weapon belonged to his family after he learned of Gallion’s arrest.

{¶ 42} The jury clearly discredited Branham’s (and Gallion’s) testimony regarding the ownership of the weapon in favor of the testimony of Tavner and Sticka, and we extend substantial deference to their credibility assessment. We will not substitute our judgment for that of the jury since it is not patently apparent that the jury lost its way in arriving at the verdict.

{¶ 43} Finally, having resolved any issue relating to “the full picture of everything Gallion said to officers that day” and the allegedly “incomplete recording” shown at trial, further analysis is not required. Gallion’s conviction is not against the manifest weight of the evidence and is accordingly supported by sufficient evidence. His fourth assignment of error is overruled.

Conclusion

{¶ 44} The judgment of the Greene County Common Pleas Court is affirmed.

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TUCKER, J., and EPLEY, J., concur.