

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: Sheila G. Farmer, P.J.
	:	Hon: W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon: Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 09-COA-010
BRIAN A. KLINGLER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Ashland County Court of Common Pleas, Case No. 08-CRI-062

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 10, 2009

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Gwin, J.

{¶1} Defendant-appellant Brian A. Klingler appeals a judgment of the Court of Common Pleas of Ashland County, Ohio, which convicted and sentenced him for having weapons under disability in violation of R.C. 2923.13 (A)(3), after a jury trial. Appellant assigns two errors to the trial court:

{¶2} “I. THE CONVICTION OF APPELLANT FOR HAVING WEAPONS UNDER DISABILITY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶3} “II. THE IMPOSITION OF A PRISON SENTENCE IN THIS CASE IMPOSES AN UNNECESSARY BURDEN ON STATE RESOURCES.”

I

{¶4} In his first assignment of error, appellant argues the trial court should not have entered a conviction because the jury’s verdict was against the manifest weight of the evidence.

{¶5} Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: “The 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 clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶16} Guilt may be proved by circumstantial or direct evidence. *State v. Griffin* (1979), 13 Ohio App. 3d 376, 377, 469 N.E. 2d 1329. The jury may draw inferences reasonably supported by the evidence. *State v. Vondenberg* (1980), 61 Ohio St. 2d 85, 401 N.E. 2d 437. This court must examine the evidence admitted at trial to determine whether the evidence, if believed by the trier of fact, would convince the average mind of the defendant's guilt beyond a reasonable doubt. We must review the evidence in a light most favorable to the prosecution and determine whether 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, 279, 574 N.E. 2d 492.

{¶17} In order to "have" a firearm or dangerous ordinance within the meaning of R.C. 2923.13, an individual must either actually or constructively possess it. Actual possession requires ownership and/or physical control, while constructive possession may be achieved by means of an agent. *State v. Hardy* (1978), 60 Ohio App. 2d 325, 397 N.E. 2d 773. Syllabus by the court, paragraph one.

{¶18} Appellant apparently does not dispute that he had previously been convicted of two counts of trafficking in marijuana, and as a result of these convictions, was prohibited by law from possessing a firearm.

{¶19} The State called Mary Dickeson, who testified she observed appellant carrying a rifle into the home of her neighbor, Matt Spotts. After approximately 15 minutes, appellant and his companion left Spotts' home with the gun covered in a blanket. Dickeson was not sure who was holding the gun then. Appellant argues she was 80 to 100 feet away, and at the time she saw him and his companion, she was assisting a client to load a seven foot tall cupboard into a van. Dickeson testified her

memory of the details of the day had faded, but she had no doubt appellant was carrying the rifle when he entered the neighbor's home.

{¶10} The State called Laura Nichols to testify. Nichols is another neighbor who had known appellant for over ten years. She testified she saw appellant and his companion wrapping a blanket around an item while they were in the doorway of Matt Spotts' home. At first she did not know what was inside the blanket, but as they came outside, she observed the butt of the gun under the blanket.

{¶11} Matt Spotts testified he had known appellant for some fifteen years. Spotts admitted he was under the influence of drugs on the day in question. He testified he observed the appellant near a rifle in his home. Appellant offered to sell it to him.

{¶12} The State presented the testimony of the arresting officer, who spoke with appellant's companion on the day in question. In response to the officer's questioning, the companion showed the officer a rifle in her trunk, wrapped in a baby blanket. The officer took possession of the blanket and rifle.

{¶13} There was no DNA evidence on the gun from appellant.

{¶14} Our review of the record leads us to conclude the State presented sufficient, competent and credible evidence from which the jury could find appellant was guilty of the crime charged.

{¶15} The first assignment of error is overruled.

II

{¶16} In his second assignment of error, appellant argues the imposition of a prison sentence in this case imposing an unnecessary burden on State resources. In *State v. Shull*, Ashland App. No. 2008-COA-036, 2009-Ohio-3105, this court reviewed a

similar claim. We found although burdens on State resources may be a relevant sentencing criteria as set forth in R.C. 2929.13, state law does not require trial courts to elevate resource conservation above seriousness and recidivism factors, *Shull*, at paragraph 22, citing *State v. Ober* (October 10, 1997), Greene App. No. 97CA0019.

{¶17} The State urges appellant failed to reform himself after his previous incarceration. The record indicates appellant regularly visited with a drug addict, and on the date of the offense, he was attempting to sell this drug addict a rifle. Appellant was sentenced to the minimum prison term available, along with post-release control.

{¶18} We find appellant has not demonstrated his sentence is an unnecessary burden on State resources. The second assignment of error is overruled.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas of Ashland County, Ohio, is affirmed.

By Gwin, J.,
Farmer, P.J., and
Edwards, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

