

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-555
	:	(C.P.C. No. 09CR-04-2293)
Homer Hendrix, III,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 27, 2011

Ron O'Brien, Prosecuting Attorney, and *Sheryl Prichard*, for appellee.

Stephen Dehnart, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Homer Hendrix, III, is appealing from the judgment and sentence entered as a result of his conviction of aggravated robbery in violation of R.C. 2911.01. He assigns three errors for review:

First Assignment of Error: The evidence was legally insufficient to support appellant's convictions for Aggravated Robbery and Robbery.

Second Assignment of Error: The Court erroneously overruled appellant's motions for acquittal pursuant to Criminal Rule 29.

Third Assignment of Error: Appellant's convictions were against the manifest weight of the evidence.

{¶2} The assignments of error refer to multiple convictions, but as a result of the application of Ohio's Multiple Counts Statute, R.C. 2941.25, Hendrix was convicted only of one offense, aggravated robbery, despite jury verdicts of guilty as to aggravated robbery and also two theories of robbery.

{¶3} The basic facts are not in dispute. Hendrix got caught stealing merchandise from a local Kohl's department store. He got into a car to flee and got pinned in by a Columbus Police Officer in an unmarked police vehicle. He attempted to flee anyway, apparently unaware that the vehicle attempting to block his flight was being driven by a police officer. Hendrix ran into both the police vehicle and a vehicle being driven by a non-police witness. Hendrix's vehicle was then hit by a marked police cruiser and the attempts to flee were ended.

{¶4} R.C. 2911.01 reads in pertinent part:

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

(2) Have a dangerous ordnance on or about the offender's person or under the offender's control;

(3) Inflict, or attempt to inflict, serious physical harm on another.

* * *

(C) Whoever violates this section is guilty of aggravated robbery, a felony of the first degree.

(D) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised code.

(2) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and also includes employees of the department of rehabilitation and correction who are authorized to carry weapons within the course and scope of their duties.

{¶5} On appeal, Hendrix argues that he should not have been convicted of aggravated robbery because the car he was driving was not a deadly weapon for purposes of R.C. 2911.01. The statutory definition of "deadly weapon" is set forth in R.C. 2923.11 as follows:

(A) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

{¶6} A jury could reasonably find that a person who is using his motor vehicle to move other motor vehicles which are occupied by drivers and/or passengers out of his way in order to flee a crime scene is using his vehicle as a weapon. Since no doubt exists that a motor vehicle, when used as a weapon, can kill someone, the motor vehicle is a deadly weapon under the circumstances described in Hendrix's case.

{¶7} The evidence against Hendrix was sufficient to support a conviction for aggravated robbery.

{¶8} The first and second assignments of error are overruled.

{¶9} The jury was, as noted above, within its rights to find that Hendrix was using his motor vehicle as a weapon as he attempted to flee from the scene of his thefts. That factual finding was not against the manifest weight of the evidence.

{¶10} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. *Id.* "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, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781. The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a matter of law, a judgment of acquittal must be entered for the defendant. See *Thompkins* at 387.

{¶11} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Id.* at 387. In so doing, 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." *Id.* (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175);

see, also, *Columbus v. Henry* (1995), 105 Ohio App.3d 545, 547-48. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387.

{¶12} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [(1967), 10 Ohio St.2d 230], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. It was within the province of the jury to make the credibility decisions in this case. See *State v. Lakes* (1964), 120 Ohio App. 213, 217 ("It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.")

{¶13} See *State v. Harris* (1991), 73 Ohio App.3d 57, 63 (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶14} Since the verdict was consistent with the weight of the evidence, the third assignment of error is overruled.

{¶15} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

CONNOR and DORRIAN, JJ., concur.
