

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-58
	:	(C.P.C. No. 10CR-02-1105)
Michael L. Head,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 30, 2011

Ron O'Brien, Prosecuting Attorney, and *Susan M. Suriano*,
for appellee.

Steven A. Larson, for appellant.

APPEAL from the Franklin County Court of Common Pleas,

TYACK, J.

{¶1} Michael L. Head ("Head") is appealing from his convictions for aggravated robbery, robbery and felonious assault. He assigns two errors for our consideration:

I. THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S RULE 29 MOTION AS THERE WAS NOT SUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT.

II. THE TRIAL COURT VIOLATED MICHAEL L[.] HEAD'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED JUDGMENT OF CONVICTION FOR AGG.

ROBBERY, ROBBERY AND [F]ELONIOUS ASSAULT WHICH WAS AGAINST THE MANIFEST WEIGHT OF [T]HE EVIDENCE AND THE FIFTH AND FORUTEENTH [sic] AMENDMENTS TO THE U.S. CONSTITUTION, AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION. JUDGMENT ENTRY.

{¶2} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. 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.

{¶3} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* 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.

{¶4} 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.")

{¶5} 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).

{¶6} With this legal background, we address the facts as presented at Head's trial.

{¶7} Antonio Tucker was in need of money because construction work was slow. He hoped to get a little quick cash by helping to set up a drug deal between a willing buyer and a willing seller. The willing seller did not show up when planned, but Tucker

went over to a house on Fabron Avenue in Columbus, Ohio, to meet with the buyer anyway. Tucker knew the buyer as "Gutter," a name used by Head.

{¶8} When Tucker went inside the residence on Fabron Avenue, he was soon approached by a man with a mask and a gun who demanded the marijuana Tucker was supposedly bringing. Head was right behind the man in the mask and was armed with a silver handgun.

{¶9} Head and the masked man made Tucker lie on the floor and repeatedly asked him where the "weed" was. Eventually, Head gave Tucker a cell phone to call the marijuana dealer and arrange for the delivery.

{¶10} Finally, Tucker decided to fight and/or flee. He was able to grab the gun from the masked man, who then yelled at Head to "Shoot him. Shoot him." (Tr. 129.)

{¶11} Multiple shots were fired, one of which struck Tucker in the chin. Tucker later sought treatment at a local hospital, which resulted in his talking to a police detective. The detective had been to the Fabron Avenue residence after a neighbor made a 911 call claiming shots had been fired. The detective found evidence of a shooting and a person being wounded.

{¶12} Tucker was initially slow to be truthful because he was on parole. Eventually, Tucker told police what he later stated at Head's trial.

{¶13} The trial testimony of Tucker alone was more than sufficient to support the jury finding that Head was guilty of an aggravated robbery when he attempted to steal marijuana from Tucker while Head was armed with a functional firearm.

{¶14} The evidence was also sufficient to support a finding of felonious assault. Tucker disarmed one of his robbers, who then yelled at Head to "[s]hoot him," meaning Tucker. The shooting started almost immediately. Head still had a firearm when the shooting started. There was no evidence indicating that anyone else was inside the house with a firearm at that time.

{¶15} Both offenses were supported by sufficient evidence. The first assignment of error is overruled.

{¶16} The weight of the evidence also supported the convictions. Tucker was clearly shot in the face requiring medical treatment. His story about where he got shot was supported by shell casings and blood found at the Fabron Avenue address. No other evidence about how the shooting occurred was presented to weigh against Tucker's testimony. Applying the standards for evaluating the weight of the evidence, we must agree with the State's argument.

{¶17} The second assignment of error is overruled.

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

Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.
