

[Cite as *State v. Williamson*, 2011-Ohio-835.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-387
 : (C.P.C. No. 08CR-12-8903)
 Wyking D. Williamson, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on February 24, 2011

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Wyking D. Williamson, filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas convicting him on a charge of having a weapon while under a disability. For the reasons that follow, we affirm.

{¶2} The facts giving rise to this case occurred on December 16, 2008 at a residence located at 1794 South 20th Street in Columbus. At trial, Emery Curry testified

that on the date in question, he was living at the residence along with his wife and six children. Emery testified that a number of people came to the residence that day, accusing some of Emery's sons of having broken into the home of appellant's girlfriend, Traysha, and stealing Christmas presents that were to be given to Traysha's children.

{¶3} Emery testified that at some point, a group of at least ten people were gathered outside the residence and one of them threw a large rock through the front window. Emery further testified that about 20 minutes after the rock was thrown through the window, he was standing looking out the window when he saw a man wearing a dark colored jacket walk down the street, turn, and fire two shots into the residence, one of which struck the front door. Emery described the gun used as a large black revolver.

{¶4} Emery further testified that he recognized the shooter as someone from the neighborhood who he knew as Darnell. Emery also testified that some time after the incident a Columbus police detective drove him to a police sub-station, where he identified appellant as the shooter. In court, Emery identified appellant as the person he had seen fire the shots.

{¶5} On cross-examination, defense counsel asked Emery a number of questions regarding discrepancies between Emery's in-court testimony and his statement given to police shortly after the shooting. These discrepancies included that, in his statement to police, Emery had been unable to describe the clothing worn by the shooter, but he was able to describe that clothing in court. Other discrepancies involved the precise location of the group of people outside the residence, whether the shooter was wearing a hat, and whether Emery had seen a second person carrying a shotgun going toward the rear of the residence.

{¶6} Emery's son, Sequan Curry, also testified at trial. Sequan testified that he was sleeping at the residence on the day in question when he was awakened by a large group, which he estimated to be approximately 20 people, at the door who were accusing him and his brothers of breaking into Traysha's house. Sequan further testified that after the rock had been thrown through the window, he was standing at the window looking out when the group of people started to move away from the corner, and that he saw two individuals begin to separate themselves from the group, one of whom stayed at the corner and one of whom began to move toward the back of the residence.

{¶7} At that point, two shots were fired a few seconds apart. Sequan testified that he did not see the first shot fired, but that he reacted by dropping to the floor and moving toward the front door so he could close it. At that point, he saw the second shot fired by a person he knew from the neighborhood as Darnell, who he identified in court as appellant. Sequan also testified that, after the shooting, police showed him a photo array and from that array he was able to recognize a picture of appellant as being that of the shooter.

{¶8} On cross-examination, defense counsel questioned Sequan about discrepancies between his statement to the police after the shooting and his testimony in court. Those discrepancies included whether the shooter was wearing a hat and whether the shooter had short hair or wore his hair in twisted braids.

{¶9} The state also offered testimony by Officer Matthew Baughman, the first police officer on the scene after the shooting, and Detective Jeff Brandt, one of the detectives who investigated the case. Baughman testified that he searched for shell

casings in the area from which the shots were reported to have been fired, but did not find any. Baughman also testified that there was a bullet strike on the door of the residence. Baughman further testified that he went to Traysha's residence, found appellant there, and ultimately arrested him.

{¶10} Brandt testified that a fragment of a casing or jacket from a bullet was collected from in front of the Curry residence, but that it was too damaged to determine the type of gun used. Brandt further testified that he interviewed appellant who admitted being at the scene, but denied being the shooter. On cross-examination, Brandt testified that he did not perform any gunshot residue tests to determine whether appellant had fired a gun.

{¶11} The defense offered eyewitness testimony from two witnesses: Chad Thomas and Lolita Taylor. Thomas testified that on the day in question he and appellant went to Thomas' mother's house, which was located near the Curry residence. Thomas further testified that appellant left to check on his girlfriend, Traysha, and subsequently called Thomas to join him because something was happening. Thomas testified that when he joined appellant outside, there was a group of 50 to 60 people gathered outside the Curry residence. Thomas testified that he heard shots fired from somewhere behind the Curry residence, but that appellant was not the person who fired the shots, nor was he in possession of a gun at any time. Thomas returned to his mother's residence, and appellant subsequently called and told Thomas appellant was being arrested.

{¶12} Taylor testified that on the day in question she was living in the neighborhood where the incident occurred. Taylor knew appellant because they had

attended high school together. Taylor testified that she had come out of her residence when she saw a group of 40 to 50 people outside the Curry residence. Taylor further testified that she was located some distance away from the crowd, and that appellant and Thomas were a few feet in front of her when the shots were fired from somewhere in the crowd. She stated that she did not see appellant lift or fire a gun.

{¶13} Appellant was indicted on one count of discharging a firearm at or into a habitation and one count of having a weapon while under a disability. Appellant exercised his right to a jury trial on the charge of discharging a firearm at or into a habitation, but waived that right as to the charge of having a weapon while under a disability, electing instead to try that charge to the court. After trial, the jury acquitted appellant on the charge of discharging a firearm at or into a habitation. The trial court found appellant guilty on the charge of having a weapon while under a disability.

{¶14} Appellant then filed this appeal, asserting a single assignment of error:

THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION AND WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} When reviewing the sufficiency of the evidence supporting a criminal conviction, an appellate court must examine the evidence submitted at trial to determine whether such evidence, if believed, would convince an average person 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. See also *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789.

{¶16} This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172. Rather, the sufficiency of the evidence test "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson* at 319. Accordingly, the reviewing court does not substitute its judgment for that of the factfinder. *Jenks* at 279.

{¶17} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." Under this standard of review, the appellate court weighs the evidence in order to determine whether 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." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. However, in engaging in this weighing, the appellate court must bear in mind the factfinder's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The power to reverse on manifest-weight grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶18} 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. The trier of fact is free to believe or disbelieve any or all of the testimony presented. *State v. Jackson*, 10th Dist. No. 01AP-973, 2002-Ohio-

1257. 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. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503. Consequently, although appellate courts must sit as a "thirteenth juror" when considering a manifest-weight argument, it must also give great deference to the trier of fact's determination on the credibility of the witnesses. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037.

{¶19} With respect to the sufficiency of the evidence, the definition of having a weapon while under a disability is set forth in R.C. 2923.13. That section provides, in relevant part, that "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply: * * * [t]he person * * * has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse." The parties stipulated to the introduction of a record showing that appellant was convicted on a charge of drug abuse in 1993. Thus, the only issue in this case was whether appellant acquired, had, carried or used any firearm or dangerous ordnance.

{¶20} The state offered testimony from two individuals, Emery and Sequan, each of whom testified that they saw appellant holding a gun outside their residence. Although appellant argues that their testimony was not credible, viewed in a light most favorable to the state, this evidence was sufficient to establish the existence of the elements necessary to prove the elements of the offense of having a weapon while under a disability. Consequently, appellant's conviction was supported by sufficient evidence.

{¶21} As for appellant's claim that his conviction was against the manifest weight of the evidence, appellant argues that the discrepancies in the testimony offered by Emery and Sequan show that their testimony was not credible. Appellant further argues that the only credible testimony offered at trial was that of Taylor, who testified that the shots fired at the Curry residence came from the large group of people gathered outside the residence, and that appellant was separated from that group at the time the shots were fired.

{¶22} The trial court as trier of fact was in the best position to consider the discrepancies in the evidence offered, as well as the demeanor and manner of the witnesses and to determine which of those witnesses were more credible. We cannot say that this was one of the rare cases in which the trier of fact clearly lost its way such that a miscarriage of justice requiring reversal of appellant's conviction has occurred. Consequently, appellant's conviction was not against the manifest weight of the evidence.

{¶23} Therefore, appellant's assignment of error is overruled. Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and TYACK, JJ., concur.
