

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
TAMARCUS HARRIS	:	Case No. 2010CA00030
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2008CR1372(B)

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 27, 2010

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
Stark County Prosecutor

ANTHONY KOUKOUTAS
111 Second Street, NW
Suite 302
Canton, OH 44702

By: RENEE M. WATSON
Assistant Prosecuting Attorney
110 Central Plaza South
Suite 510
Canton, OH 44702

Farmer, J.

{¶1} On October 27, 2009, the Stark County Grand Jury indicted appellant, Tamarcus Harris, on one count of aggravated robbery in violation of R.C. 2911.01(A)(1) and one count of having weapons while under disability in violation of R.C. 2923.13(A)(3). Said charges arose from an incident involving Anthony Salopek. Mr. Salopek had asked a group of individuals for a ride home. Instead, one of the individuals, appellant, pulled out a gun and told Mr. Salopek to empty his pockets.

{¶2} A jury trial commenced on January 20, 2010. The jury found appellant guilty as charged. By judgment entry filed January 26, 2010, the trial court sentenced appellant to an aggregate term of twelve years in prison.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I

{¶5} Appellant claims his convictions were against the manifest weight and sufficiency of the evidence. We disagree.

{¶6} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. "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." *Jenks* at

paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307. On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "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. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. 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.

{¶7} Appellant was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1) which states:

{¶8} "(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:

{¶9} "(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."

{¶10} Appellant was also convicted of having a weapon while under disability in violation of R.C. 2923.13(A)(3) which states:

{¶11} "(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

{¶12} "(3) The person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse."

{¶13} Appellant argues there was insufficient proof that he owned the firearm, and the witnesses lacked credibility. From the evidence presented, we find sufficient facts to substantiate the convictions.

{¶14} The victim, Anthony Salopek, identified appellant as the individual with the firearm, at the scene of appellant's arrest and during the trial. T. at 178, 201, 205-206.

{¶15} The description of the vehicle was broadcast by the Massillon Police Department and it was stopped by Patrolmen Kenneth Smith and Thomas Rogers. Appellant was identified as the front seat passenger. T. at 176-177, 187-188. When the vehicle was searched, a firearm was retrieved from the glove compartment immediately in front of the passenger seat. T. at 189, 193.

{¶16} When appellant was arrested, he made two admissions:

{¶17} "He stated to me that he was the person responsible for the crime and the other two had nothing to do with it.

{¶18} "He had made a statement that they are not involved, it's my gun, I don't know why, this is all on me, they have nothing to do with this. Basically to that extent, that was the extent of our conversation." T. at 179 and 223-224, respectively.

{¶19} Appellant did not deny these admissions, but claimed at trial he made the statements to protect the driver and the other passenger. T. at 300-301. Appellant claimed Mr. Salopek was the aggressor, that he [appellant] did not rob Mr. Salopek, and he had no knowledge of the firearm. T. at 299-301.

{¶20} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881. The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260.

{¶21} Based upon appellant's own admissions and the positive identification by the victim, we cannot say the jury lost its way. There is sufficient evidence in the record, if believed by the trier of facts, to support appellant's convictions.

{¶22} The sole assignment of error is denied.

{¶23} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ Patricia A. Delaney

JUDGES

SGF/sg 907

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TAMARCUS HARRIS	:	
	:	
Defendant-Appellant	:	CASE NO. 2010CA00030

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ Patricia A. Delaney

JUDGES