

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio
Appellee

v.

Robert Moore
Appellant

Court of Appeals No. L-14-1116
L-14-1117

Trial Court No. CR0201301418
CR0201301479

DECISION AND JUDGMENT

Decided: September 30, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Robert Moore, appeals the judgment of the Lucas County Court of Common Pleas, which convicted him of multiple felony offenses following a jury trial, and sentenced him to a total of 17 years in prison. For the following reasons, we affirm.

{¶ 2} In March 2013, the Lucas County Grand Jury returned two separate indictments against appellant. The first, case No. 2013-CR-1418, charged appellant with nine counts of felonious assault in violation of R.C. 2903.11(A)(2), felonies of the second degree, along with attendant firearm specifications. The second indictment, case No. 2013-CR-1479, contained one count of carrying concealed weapons in violation of R.C. 2923.12(A)(2), a felony of the fourth degree, and one count of improperly handling firearms in a motor vehicle in violation of R.C. 2923.16(B), also a felony of the fourth degree.

{¶ 3} Appellant entered a plea of not guilty to the charges, and the matter proceeded to a jury trial on four of the counts of felonious assault in case No. 2013-CR-1418 with their attendant firearm specifications, and on both the count of carrying concealed weapons and the count of improperly handling firearms in a motor vehicle in case No. 2013-CR-1479.

{¶ 4} Regarding the latter case, testimony from the trial revealed that on December 28, 2012, appellant was a passenger in a car that was pulled over by Toledo police. Appellant was located in the rear of the car, behind the passenger's seat opposite of the driver. During the stop, while one officer was speaking with the driver, a second officer stood at the rear quarter panel on the passenger side of the car. The second officer testified that he observed appellant making furtive movements and reaching into his waistband. The officer ordered appellant to stop moving and to show his hands. Appellant complied and explained that he had a bottle in his pants. The officer then

opened the rear passenger door to remove appellant from the vehicle. As he opened the door, the officer noticed a gun wedged between the seat and the door, adjacent to appellant. The officer shouted “gun,” and pulled appellant to the ground and placed him under arrest. The gun was found to be loaded and operational.

{¶ 5} The conduct giving rise to the four counts of felonious assault occurred on January 9, 2013. On that day, appellant and James Haynes¹ got into a physical altercation with the victim and several of the victim’s friends. The victim testified that he had known appellant for several years from seeing him around in the neighborhood. After ten or twenty minutes, the fight broke up and everyone went their separate ways. Several minutes later, however, the victim testified that he was standing on the corner of the street when he observed appellant and Haynes walking towards him. He then testified that appellant pulled out a gun and fired a shot at him. After ducking the shot, the victim picked up his coat and fled across the street. Appellant and Haynes continued to fire several shots, one of which hit the victim in his foot.

{¶ 6} The victim’s mother also testified. Like the victim, she had known appellant from the neighborhood. She testified that, on the day of the shooting, she was doing household chores when she heard someone yell “Here comes Rob.” The mother walked outside to see what the commotion was about. There, she observed appellant and Haynes come up, pull out guns, and start shooting at her son. The mother, who was in the line of

¹ Haynes was sometimes referred to as “Quentin” or “Q”.

fire, dove behind a building. She was not hit. The mother then called 911, and she is heard in the audio recording identifying appellant as the shooter.

{¶ 7} In addition to the testimony of the victim and his mother, surveillance video of the shooting was entered into evidence. In the video, two men, identified as appellant and Haynes, are seen walking towards the parking lot where the victim is standing. As the camera pans, the victim is seen flinching. The victim testified this is when the first shot went past his head. The victim picked up his coat and is then seen running in the opposite direction from where appellant and Haynes had come. Appellant then comes into view and fires two shots towards the victim, the first of which appears to hit the ground by the victim's foot. The video also shows that the victim's mother and two other unidentified individuals were in appellant's direct line of fire at the time of the shooting.

{¶ 8} Several days later, the victim and his mother were asked to identify the shooter from a photo array. The victim immediately identified appellant. The mother tentatively identified appellant, but could not be 100 percent certain because she did not remember his tattoos. Thus, she did not identify him as the shooter. Both the victim and his mother also identified appellant at trial. However, the victim testified that appellant had the same appearance at trial, having hair on his head and face, as at the time of the shooting. The video, though, showed the shooter as bald and clean shaven.

{¶ 9} Following the state's presentation of evidence, the defense rested without calling any witnesses. The jury then deliberated and returned with a verdict of guilty as

to all charges. At the subsequent sentencing hearing, appellant was ordered to serve a cumulative prison term of 17 years.

Assignments of Error

{¶ 10} Appellant has appealed the trial court's judgments of conviction, and now presents two assignments of error for our review in this consolidated appeal:

1) The State failed to provide legally sufficient evidence to sustain a conviction on Carry Concealed Weapons and Improperly Handling Firearms in a Motor Vehicle.

2) Appellant's convictions for Carry Concealed Weapons, Improperly Handling Firearms in a Motor Vehicle and four counts of Felonious Assault fell against the manifest weight of the evidence.

Analysis

{¶ 11} Appellant, in his assignments of error, challenges his convictions as being based on insufficient evidence and being against the manifest weight of the evidence. For ease of discussion, we will address appellant's arguments as they pertain to his different sets of crimes.

Concealed Weapons and Improperly Handling Firearms in a Motor Vehicle

{¶ 12} In his first assignment of error, appellant challenges the sufficiency of the evidence as it relates to the convictions for carrying concealed weapons and improperly handling firearms in a motor vehicle. In his second assignment of error, appellant argues that those convictions are against the manifest weight of the evidence.

{¶ 13} “In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing a sufficiency claim, “[t]he 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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 14} In contrast, when reviewing a manifest weight claim,

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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, quoting *Thompkins* at 387.

{¶ 15} R.C. 2923.12 and 2923.16 provide the elements for carrying concealed weapons and improperly handling firearms in a motor vehicle, respectively. R.C. 2923.12 states, “(A) No person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand, any of the following: * * * (2) A handgun other than

a dangerous ordnance.” R.C. 2923.16 offers, “(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.” “A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶ 16} Appellant argues that the state failed to provide evidence showing that he knowingly had a handgun concealed ready at hand, or that he knowingly transported the firearm. Appellant points to the fact that he was not the driver of the car, nor was the car registered to him. Further, there was no evidence found on the gun linking it to appellant, and the gun itself was not registered to appellant. Finally, the officer did not testify that he saw appellant hide the gun, and appellant surmises that it would have been impossible for him to hide the gun without the officer noticing, given the officer’s view into the vehicle. Appellant contends that the state’s case assumes that appellant placed the gun where it was found, despite no evidence linking it to him, and with testimony that the gun could have been placed there prior to appellant getting into the car.

{¶ 17} We disagree. The evidence revealed that the gun was hidden immediately adjacent to appellant, and away from the other passengers. In addition, the gun, although hidden from those outside of the car, was plainly visible to the officer once he opened the door, leading to the conclusion that appellant would have known of its existence as he sat

next to it. Moreover, appellant's furtive movements in his waistband lead to the inference that the gun had been located on his person prior to appellant's efforts to hide the weapon. Therefore, when viewing the evidence in the light most favorable to the prosecution, we hold that a rational trier of fact could have found the elements of knowingly concealing and knowingly transporting the gun proven beyond a reasonable doubt.

{¶ 18} Likewise, given the evidence presented, and the lack of any evidence showing that appellant was unaware of the existence of the gun, we find that this is not the exceptional case in which the evidence weighs heavily against the conviction, and that the jury did not lose its way creating a manifest miscarriage of justice. Therefore, we hold that appellant's convictions for carry concealed weapons and improperly handling firearms in a motor vehicle are not against the manifest weight of the evidence.

Felonious Assault

{¶ 19} Relative to his convictions for felonious assault, appellant argues only that those convictions were against the manifest weight of the evidence. Specifically, appellant contends that the eyewitness testimony provided by the victim and the victim's mother was faulty as both gave descriptions of appellant that were not consistent with appellant's actual appearance on the day of the shooting. Appellant also notes that the victim had a bias against him, having been in an altercation earlier that day.

{¶ 20} While it is true that the victim testified that appellant appeared the same at trial as he did on the day of the shooting, despite appellant having hair on the top of his

head and on his face at the trial in comparison to the shooter who was bald and clean shaven, and while it is also true that the victim's mother described the shooter as being shorter and lighter than appellant, we do not find that those discrepancies render appellant's convictions against the manifest weight of the evidence. The victim and the victim's mother both had known appellant for years from the neighborhood. Both identified appellant as the shooter at the time of the shooting. The victim also unequivocally identified appellant as the shooter a few days later in a photo array. Finally, both the victim and the victim's mother identified appellant as the shooter in court. Thus, we do not find that the jury clearly lost its way when it concluded that appellant was the shooter.

{¶ 21} Appellant additionally argues that his convictions for felonious assault against the two unnamed victims are against the manifest weight of the evidence. We find appellant's argument to be without merit. The surveillance video shows the person identified as appellant firing two shots in the direction of the victim. At the time those shots are fired, two additional people, and appellant's mother, were near the victim and were running in the same direction as the victim, in the path of appellant's shots. Thus, we find that the jury's conclusion that appellant attempted to harm those two additional individuals was not against the manifest weight of the evidence. *See* R.C. 2903.11(A)(2) ("No person shall knowingly * * * Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance."); *State v. Phillips*, 75 Ohio App.3d 785, 790, 600 N.E.2d 825 (2d Dist.1991) (defendant had to

have known that multiple victims who were within his view and firing range would be harmed as a result of his shooting in their direction).

Conclusion

{¶ 22} Accordingly, having determined that appellant’s convictions were not based on insufficient evidence and were not against the manifest weight of the evidence we find appellant’s first and second assignments of error not well-taken.

{¶ 23} For the foregoing reasons, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.