

[Cite as *State v. Cattledge*, 2010-Ohio-4953.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-105
 : (M.C. No. 08 CRB 28298)
 Dominique Cattledge, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on October 12, 2010

Richard C. Pfeiffer, Jr., City Attorney, Lara N. Baker, Melanie R. Tobias, and Orly Ahroni, for appellee.

Heather L. Keck, for appellant.

APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶1} Dominique Cattledge, defendant-appellant, appeals from a judgment of the Franklin County Municipal Court, in which the court found him guilty, pursuant to a bench trial, of carrying a concealed weapon, in violation of R.C. 2923.12(A)(1), a first-degree misdemeanor.

{¶2} Appellant was a student at Linden McKinley High School in Columbus, Ohio. On October 29, 2008, several students reported to the school principal, Tiffany Chavers, that they had seen appellant with a gun on the way to school. Chavers summoned appellant to her office and asked that he empty his pockets, which he did.

Appellant removed a knife from his pocket. Appellant was charged with carrying a concealed weapon.

{¶3} A bench trial was held on January 6, 2010. The trial court found appellant guilty of carrying a concealed weapon and sentenced him to a 60-day jail term. On January 8, 2010, appellant filed a motion to set aside the verdict. The trial court denied appellant's motion on January 14, 2010. Appellant appeals the judgment of the trial court, asserting the following three assignments of error:

I. THE VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE WHERE THERE WAS NO EVIDENCE PRESENTED THAT THE KNIFE APPELLANT WAS CARRYING WAS EITHER DESIGNED OR SPECIALLY ADAPTED FOR USE AS A WEAPON, OR POSSESSED, CARRIED, OR USED AS A WEAPON.

II. THE VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHERE THERE WAS NO EVIDENCE PRESENTED THAT THE KNIFE APPELLANT WAS CARRYING WAS EITHER DESIGNED OR SPECIALLY ADAPTED FOR USE AS A WEAPON, OR POSSESSED, CARRIED, OR USED AS A WEAPON.

III. THE DEFENDANT WAS DENIED DUE PROCESS OF LAW WHERE THE COURT IMPROPERLY SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT TO SHOW THAT HE HAD A LEGITIMATE PURPOSE FOR CARRYING A POCKET KNIFE.

{¶4} We will address appellant's first and second assignments of error together. Appellant argues that the verdict was against the manifest weight of the evidence and based upon insufficient evidence. In reviewing a sufficiency of the evidence claim, the relevant inquiry is whether any rational fact finder, viewing the evidence in a light most favorable to the state, could have found all of the essential elements of the crime proven beyond a reasonable doubt. *State v. Jones*, 90 Ohio St.3d 403, 417, 2000-Ohio-187, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, and *State v.*

Jenks (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. Whether the evidence is legally sufficient is a question of law, not fact. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. On review for sufficiency, courts do not assess whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* at 390. In determining the sufficiency of the evidence, an appellate court must give "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, 99 S.Ct. 2789. Consequently, a verdict will not be disturbed based upon insufficient evidence unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh* (2001), 90 Ohio St.3d 460, 484; *Jenks* at 273.

{¶5} This court's function when reviewing the weight of the evidence is to determine whether the greater amount of credible evidence supports the verdict. *Thompkins* at 387. In order to undertake this review, we must sit as a "thirteenth juror" and review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Id.*, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. If we find that the fact finder clearly lost its way, we must reverse the conviction and order a new trial. *Id.* On the other hand, we will not reverse a conviction so long as the State of Ohio, plaintiff-appellee, presented substantial evidence for a reasonable trier of fact to conclude that all of the essential elements of the offense were established beyond a reasonable doubt. *State v. Getsy*, 84 Ohio St.3d 180, 193-94, 1998-Ohio-533; *State v. Eley* (1978), 56 Ohio St.2d 169, syllabus.

{¶6} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. See *Martin* at 175. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, "is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Thus, a reviewing court must defer to the factual findings of the jury or judge in a bench trial regarding the credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Concerning the issue of assessing witness credibility, the general rule of law is that "[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan* (1986), 22 Ohio St.3d 120, 123. Indeed, the fact finder is free to believe all, part, or none of the testimony of each witness appearing before it. *Hill v. Briggs* (1996), 111 Ohio App.3d 405, 412. If evidence is susceptible to more than one construction, reviewing courts must give it the interpretation that is consistent with the verdict and judgment. *White v. Euclid Square Mall* (1995), 107 Ohio App.3d 536, 539. Mere disagreement over the credibility of witnesses is not sufficient reason to reverse a judgment. *State v. Wilson*, 113 Ohio St.3d 382, 387, 2007-Ohio-2202.

{¶7} R.C. 2923.12(A)(1) provides:

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

(1) A deadly weapon other than a handgun[.]

{¶8} Pursuant to R.C. 2923.11(A), " '[d]eadly 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."

{¶9} Appellant concedes that the knife he carried was an instrument capable of inflicting death. Furthermore, the state has not argued that appellant possessed, carried, or used the knife as a weapon. Thus, the only issue on appeal is whether the knife was designed or specially adapted for use as a weapon.

{¶10} To determine whether the knife in question here should be deemed a deadly weapon we will compare its characteristics to knives examined by courts in other Ohio cases. In *State v. Anderson* (1981), 2 Ohio App.3d 71, the court determined that a folding knife with a locking, four-inch blade, but which could not be easily opened with one hand, was not a deadly weapon. The court indicated that the knife had neither a switch or other spring-loaded blade nor a gravity blade capable of instant one-handed operation. *Id.* at 72. The court likened it to the familiar type of folding clasp knife carried as a useful tool by thousands and noted the defendant worked for a moving and storage company requiring the opening of packing cartons and the cutting of twine. *Id.*

{¶11} In *In re Gochneur*, 11th Dist. No. 2007-A-0089, 2008-Ohio-3987, the court determined that a three-inch blade, which locked into place once opened, was a deadly weapon. The court indicated that the evidence showed the blade opened easily with one hand by simply flipping the switch on the handle; once opened, the blade would not close without triggering the lock; and the blade of the knife was serrated. The court found that, "knives opening easily with one hand may be considered (for obvious reasons), as being designed or adapted for use as weapons." *Id.* at ¶19. The court also cited in further support R.C. 2923.20(A)(3), a section that relates to unlawful transactions in weapons,

which prohibits any person other than a law enforcement agency from possessing, among other things, a " 'switchblade knife, springblade knife, gravity knife, or similar weapon.' " *Id.*, quoting R.C. 2923.20(A)(3). The court further found that the fact that a knife has a serrated edge may also be considered in determining whether it was designed or adapted for use as a weapon. *Id.*

{¶12} In *State v. Flowers* (May 1, 1985), 1st Dist. No. C-840564, the court held the trial court's determination that appellant's knife was designed as a weapon was not supported by sufficient evidence. The knife in question was a folding knife with a serrated, four-inch, curved blade. However, the tip of the knife blade was not sharp, the blade could only be opened by using two hands, and the blade did not lock in the open position.

{¶13} The court in *Flowers* cited to *State v. Sears* (Feb. 27, 1980), 1st Dist. No. C-790156. In *Sears*, the court found the knife in question was not a deadly weapon. The knife was a folding knife, required two hands to open, had a four-inch blade, and locked in place. The court discounted the relevancy of the locking feature, stating that anyone who had ever utilized a folding knife knew this feature made the knife more useful for a multitude of lawful purposes and does not make the knife per se designed for use as a weapon. The court indicated the knife was otherwise "just like any other pocket knife." *Id.*

{¶14} In *State v. Manning* (Feb. 16, 2001), 2d Dist. No. 18347, the court found the knife in question to be a deadly weapon. In *Manning*, the blade on the knife was less than two inches in length, was pointed and sharp, was concealed inside a cylinder that could easily and quickly be manipulated to make the knife available to use as a weapon, and could be opened using only one hand.

{¶15} In *State v. Graham* (Oct. 23, 1998), 6th Dist. No. S-97-050, the court found there was sufficient evidence that the knife at issue was a deadly weapon. The knife was

a folding knife with a four and one-half inch blade and had a hole incorporated into the knife's blade designed to permit the knife to be opened with one hand. The court found that, at the least, evidence of one-handed operation was sufficient to submit the matter to the jury as a question of fact, and the jury apparently resolved the question in favor of the state.

{¶16} In *State v. Wheeler* (Mar. 19, 1999), 2d Dist. No. 17197, the court found insufficient evidence that the knife at issue was a weapon. The knife was a "butterfly" knife, which is a knife sheathed by a two-part, hinged handle that is exposed by disengaging a clasp and pulling apart the unhinged portions of the handles to make a united handle. The knife required two hands to open. The defendant, who was a tool and die worker, made the knife, and the court noted he used the knife for carpentry, as a scribe, for shaving boards, opening packages and bags, and deburring steel at work.

{¶17} In *Mayfield Heights v. Greenhoff* (Nov. 14, 1985), 8th Dist. No. 49741, the trial court found there was insufficient evidence to find the two knives at issue were deadly weapons. One knife was a pocket knife with a three and one-half inch blade, and the other was a two-inch folding razor. The appellate court examined the weapons and found that neither object had features that would demonstrate it was per se designed for use as a weapon. The court called the pocket knife an "ordinary" pocket knife that required two hands to open and had no spring attachment. The razor folded into a two-inch sheath. Without further evidence of any other characteristics, the court found neither to be a deadly weapon.

{¶18} In *State v. Ratcliff* (Oct. 26, 1983), 4th Dist. No. 82 CA 13, the court found the knife was not a deadly weapon. At issue in the case was what the court termed an "ordinary" pocket knife, which required two hands to open and could not be locked in an

open position. The blade itself was about two and one-half inches long, with the total length of the open blade and knife being just less than six inches.

{¶19} Based upon the above cases, the following characteristics may, but not always, support a finding that a folding knife is a deadly weapon within the definition of R.C. 2923.11(A): (1) a blade that can easily be opened with one hand, such as a knife with a switch, a spring-loaded blade, or a gravity blade capable of instant one-handed operation; (2) a blade that locks into position and cannot close without triggering the lock; (3) a blade that is serrated; (4) a blade tip that is sharp; (5) an additional design element on the blade, such as a hole, that aids in unfolding the knife with one hand; (6) does not resemble an "ordinary" pocket knife; and (7) is a type of knife considered a weapon for purposes of R.C. 2923.20(A)(3).

{¶20} After reviewing Ohio case law and the evidence presented in this case, we find the knife in question was a weapon pursuant to R.C. 2923.11(A). We first note that any personal observations about and demonstrations with the physical evidence (in this case, the knife) by the state's appellate counsel during oral arguments are not properly part of the record and will not be considered. See *State v. Crenshaw*, 2d Dist. No. 2000-CA-76, 2001-Ohio-1495, citing *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus (indicating that a reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter). However, this court is permitted to independently examine the knife to determine whether the knife is a deadly weapon within the definition afforded by R.C. 2923.11(A). See *Manning*; *Mayfield Heights*; *State v. Campbell* (Apr. 11, 1984), 1st Dist. No. C-830478. The knife in the present case was submitted as evidence before the trial court, and is before this court upon review.

{¶21} Two witnesses testified at trial, both for the state. Chavers, appellant's high school principal, testified the knife had a locking blade. She did not consider it an "ordinary" pocket knife because it was bigger than a typical pocket knife.

{¶22} James Scott, a city of Columbus police officer assigned to appellant's school as a resource unit officer, testified the knife was seven inches long with a locking blade. Scott testified that the blade had a small knob or appendage on it to allow the user to open it with a thumb. He said the blade was easily accessible for someone trying to use it quickly. He said one could call it a pocket knife, but it is used as a weapon. Upon direct examination, Scott testified that one needed two hands to open the blade, but then upon cross-examination, he demonstrated that the knife could actually be opened with one hand using the knob appendage.

{¶23} Based upon this testimony, we find there was sufficient evidence to demonstrate the knife possessed by appellant was a weapon, and such was not against the manifest weight of the evidence. The testimony demonstrated the knife has an additional design element of a knob appendage on the blade, can be opened with one hand using the knob appendage, and has a blade that locks into the open position, all of which are factors that weigh in favor of the knife being deemed a weapon. These characteristics are confirmed by our own review of the knife. Furthermore, this court observes that the knife also has a serrated blade and a sharp blade tip, and the knife can be opened with one hand by flicking the wrist. The ability to open the knife with one hand by either using the knob or flicking the wrist also takes the knife out of the realm of an "ordinary" pocket knife. Therefore, given these characteristics, the knife in question was a deadly weapon, as it was designed to be used as a weapon.

{¶24} We also note the state argues that the knife was a gravity knife, which is considered a weapon under R.C. 2923.20(A)(3). That section, entitled "Unlawful transaction in weapons," makes it unlawful to manufacture, possess for sale, sell, or furnish to any person other than a law enforcement agency for authorized use in police work various weapons, including a gravity knife or similar weapon. The Ohio Revised Code does not define "gravity knife," but the state presents several definitions from other states, which generally define a gravity knife as a knife that has a blade that may be opened by the force of gravity or centrifugal force and then locked into place. Our examination of the knife in the present case demonstrates that it may be opened using centrifugal force applied by the flick of the wrist. Nevertheless, our analysis is not dependent upon a finding that the knife is technically or legally considered a gravity knife. It is sufficient for our analysis that the knife blade can be brought to bear with one hand, using whatever method to do so. For the foregoing reasons, we find appellant's conviction for carrying a concealed weapon was neither against the manifest weight of the evidence nor based upon insufficient evidence. Appellant's first and second assignments of error are overruled.

{¶25} With regard to appellant's third assignment of error, that the trial court improperly shifted the burden of proof to him to show that he had a legitimate purpose for carrying the knife, the portion of the trial court's statement upon which appellant bases this argument is the following:

Mr. Cattledge, I am convinced from, again, the evidence that's been presented, the totality of that evidence, that you were carrying this knife as a weapon, for one purpose and one purpose only. I don't see any other purpose in you carrying it to school. It's my belief that you were aware that was inappropriate for you to carry it to school, and that you had it there for some sort of purpose other than what might be

considered a legitimate purpose. Had there been some testimony that you were making a demonstration in class or that you were in a wood shop or that you were for one reason or another using it for some project, but that's not in evidence and I can't consider that which has not been presented in evidence.

{¶26} Appellant claims that it is clear from the trial court's statement that it improperly presumed appellant was carrying the pocket knife as a weapon based upon the absence of any explanation presented by appellant, rather than on any evidence presented by the state. We find appellant's argument without merit. Initially, as the state points out, the above comments were made after the trial court found appellant guilty of carrying a concealed weapon, and were mere surplusage without legal significance. See *State v. Crawford* (Feb. 6, 1986), 10th Dist. No. 85AP-324 (upon presentation of evidence and arguments, the trial judge is required to make a general finding of guilt or innocence pursuant to Crim.R. 23(C), and separate findings of fact and conclusions of law are neither countenanced nor permitted; therefore, a trial court's reasoning after a general finding of guilt is mere surplusage without legal significance sufficient to impeach the general findings of guilt). See also *State v. Ham*, 3d Dist. No. 16-09-01, 2009-Ohio-3822, ¶37, citing *Crawford*.

{¶27} In addition, other courts have commented whether the defendant had a legitimate reason for carrying the knife in discussing whether the knife should be deemed a weapon. In *Anderson*, after finding that the knife in question was not designed or adapted for use as a weapon, the court noted that, although the blade was somewhat longer than the typical clasp knife, the difference was accounted for by the nature of the defendant's work with a moving and storage company requiring the opening of packing cartons and the cutting of twine. In *Wheeler*, after finding the knife at issue was not

designed or adapted for use as a weapon, the trial court noted that the defendant testified he used the knife for carpentry, as a scribe, for shaving boards, opening packages and bags, and deburring steel at work, all of which were legal and authorized. In *Sears*, in finding that the knife was not designed or adapted for use as a weapon, the court similarly noted that there are thousands of varieties of knives in daily use designed for lawful purposes, including knives used by workers, campers, hunters, and fishermen. In the present case, the trial court was making the point that a legitimate reason for possessing a knife with these particular characteristics may have militated against any suggestion that it was a weapon. For these reasons, we find the trial court did not improperly shift the burden of proof to appellant. Therefore, appellant's third assignment of error is overruled.

{¶28} Accordingly, appellant's three assignments of error are overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

TYACK, P.J., and SADLER, J., concur.
