[Cite as *State v. Webb*, 2010-Ohio-5208.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 10AP-189
v.	:	(C.P.C. No. 08CR12-8785)
Henry D. Webb,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 26, 2010

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Siewert & Gjostein Co., LPA, and *Thomas A. Gjostein*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Henry D. Webb, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence, we affirm that judgment.

{¶2} On December 18, 2008, a Franklin County Grand Jury indicted appellant with one count of attempted murder in violation of R.C. 2923.02 and one count of felonious assault in violation of R.C. 2903.11. The charges arose out of an altercation

between appellant and another man, LeQuentin Chaney. Chaney was stabbed during the altercation. Appellant entered a not guilty plea to the charges and proceeded to a jury trial. The jury heard conflicting evidence.

{¶3} Chaney testified that he and a friend, Brandon Jones, went to a bar in Columbus, Ohio. Towards the end of the night, Chaney was standing outside the bar in the parking lot when two men walked towards him. One of the men tried to grab a necklace from his neck. Chaney resisted and a fight ensued. One of the men ran away and Chaney got into a wrestling match with the other man, later identified as appellant. During the fight, Chaney fell. Jones came to his defense and punched appellant. Chaney then realized that he had been stabbed in the abdomen. He also saw a knife in appellant's hands. Jones picked Chaney off the ground and took him to a hospital.

{¶4} Appellant described a different version of events. Appellant testified that Chaney started the fight. He testified that a number of men, including Chaney, approached him in the bar's parking lot. After Chaney asked appellant a question, appellant noticed that Chaney tried to stab him with a knife. The two men began wrestling, and appellant took the knife from Chaney and "poked" him with it in order to protect himself from Chaney and the other men, who appellant thought were coming to help Chaney.

{¶5} The jury found appellant guilty of felonious assault but not guilty of attempted murder. The trial court sentenced appellant accordingly.

{¶6} Appellant appeals and assigns the following error:

> APPELLANT'S CONVICTION WAS NOT SUPPORTED BY THE SUFFICIENCY OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE

> I, SECTIONS 1 & 16 OF THE OHIO CONSTITUTION AND THE CONVICTION WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶7} Appellant contends in this assignment of error that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶8} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus. Therefore, we will separately discuss appellant's sufficiency of the evidence and weight of the evidence arguments.

{¶9} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind 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. * * *

{¶10} Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins* at 386. Indeed, 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 v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues

primarily determined by the trier of fact. *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be disturbed unless, after viewing the evidence in the 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*, 90 Ohio St.3d 460, 484, 2001-Ohio-4; *Jenks* at 273.

{¶11} In order to convict appellant of felonious assault, the state had to prove beyond reasonable doubt that appellant knowingly caused Chaney serious physical harm or knowingly caused or attempted to cause Chaney physical harm by means of a deadly weapon. R.C. 2903.11(A).

{¶12} Appellant first argues that the evidence failed to prove that he was the person that stabbed Chaney. We disagree. Chaney testified that appellant stabbed him in the lower abdomen as the two men wrestled in the parking lot. Chaney saw a knife in appellant's hands after he was stabbed. He did not see anyone else with a knife. Additionally, appellant admitted that he stabbed Chaney, although allegedly in self-defense. This testimony is sufficient to allow reasonable minds to conclude that appellant stabbed Chaney.

{¶13} Appellant next argues that even if he did stab Chaney, the evidence failed to prove that he acted knowingly. Again, we disagree. Appellant appears to argue that he accidentally stabbed Chaney. However, appellant never claimed at trial that the stabbing was an accident; he testified that he stabbed Chaney in self-defense. (Tr. 537.) Self-defense is necessarily a purposeful act. *State v. Powell,* 176 Ohio App.3d 28, 2008-Ohio-1316, ¶24. Purposeful conduct satisfies a requirement that a defendant acted knowingly. *State v. Terrell*, 2d Dist. No. 22108, 2008-Ohio-1863, ¶22 (citing R.C.

2901.22(E)); *State v. Philpot*, 10th Dist. No. 03AP-758, 2004-Ohio-5063, ¶33. Thus, appellant's claim of self-defense is an admission that he acted purposefully and, therefore, knowingly. Moreover, Chaney's testimony indicates that appellant was the aggressor and that appellant brought the knife into the fight. This evidence is sufficient to allow reasonable minds to conclude that appellant acted knowingly when he stabbed Chaney.

{¶14} Viewing the totality of the evidence in a light most favorable to the state, the evidence is sufficient for reasonable minds to conclude that appellant knowingly caused Chaney physical harm by stabbing him with a knife. Accordingly, appellant's conviction is supported by sufficient evidence.

{¶15} Appellant's manifest weight of the evidence claim requires a different review. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley,* 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, 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 [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.' " *Thompkins* at 387 (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶16} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Gale,* 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams,* 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams,* 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston,* 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶17} Appellant does not present additional arguments in support of his manifest weight claim. As already noted, credible evidence supports the jury's determination that appellant knowingly stabbed Chaney with a knife. Although appellant testified that he stabbed Chaney in self-defense, Chaney testified that appellant was the aggressor. The jury was free to disbelieve appellant's version of events and believe Chaney's version of events. That decision was within the province of the jury. *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶18-19 (jury's decision to reject claim of self-defense and believe prosecution's version of events not against manifest weight of the evidence);

State v. Morris, 10th Dist. No. 05AP-1139, 2009-Ohio-2396, ¶33-34 (same). Given the conflicting evidence presented at trial, this is not the exceptional case in which the evidence weighs heavily against the conviction. Accordingly, appellant's conviction is not against the manifest weight of the evidence.

{¶18} In conclusion, appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Accordingly, we overrule appellant's assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.