[Cite as *In re I.L.J.F.*, 2015-Ohio-2823.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN THE MATTER OF:	:	
I.L.J.F.	:	CASE NO. CA2014-12-258
	:	O P I N I O N 7/13/2015
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JV2014-1525

D. Joseph Auciello, Jr., 306 South Third Street, Hamilton, Ohio 45011, for appellant

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PIPER, P.J.

{¶ 1} Appellant, I.L.J.F., appeals his adjudication in the Butler County Court of Common Pleas, Juvenile Division, as a delinquent child.

{¶ 2} On the evening of August 19, 2014, F.F., an acquaintance of appellant, was shot in the back while riding in the front passenger seat of a friend's car. Photos taken by Officer Jason Deaton of the Middletown Police Department showed the bullet which struck F.F. likely traveled from the backseat area, through the front seat, into F.F.'s back.

{¶ 3} When F.F. was pulled from the car, Officer Deaton observed a .32 caliber casing fall to the ground. Nevertheless, the caliber of the bullet that struck F.F. could not be verified because it is still lodged in F.F.'s body. Further, although a .45 caliber handgun was located in the vicinity of the car, police never located a .32 caliber handgun.

{¶ 4} At the time of the shooting, the driver of the vehicle, R.O., did not reveal the real names of his passengers, but gave police a fictitious story about a mysterious stranger he picked up by mistake, who then shot F.F. from the backseat and ran away. Notwithstanding R.O.'s initial story, Detective John Hoover of the Middletown Police Department filed a complaint on August 28, 2014, alleging appellant was a delinquent child for committing acts that, if committed by an adult, would constitute negligent assault, improperly handling firearms in a motor vehicle, and tampering with evidence.

{¶ 5} Appellant entered a denial on all charges, and a two-day hearing was held on November 17 and November 25, 2014. At the hearing, two different storylines emerged as to what occurred on the evening F.F. was shot.

{¶ 6} The state's key witness was appellant's cousin, G.L. G.L. testified that on the evening of August 19, 2014, she and her friend, J.H., were riding around together and smoking marijuana with R.O. While the group was riding around, they picked up appellant at "Crawford Street," and continued "riding around through the town just smoking and chilling, kicking it." At some point, the group also picked up F.F.

{¶ 7} G.L. testified that once F.F. was in the car, the occupants of the vehicle were arranged as follows: R.O. was driving, F.F. was in the front passenger seat, J.H. was in the backseat directly behind R.O., appellant was in the middle of the backseat, and G.L. was in the backseat directly behind F.F. G.L. testified that after the group picked up F.F., they began riding around again. She said R.O. was "super high" and was driving crazy and fast, and there was general discussion in the car about going to rob someone.

{¶ 8} G.L. stated that there were two guns in the car, a big one and a little one, and that she didn't know where they came from. She said that at one point appellant was holding both guns, but that he was only holding the little gun when F.F. warned the backseat passengers to put the guns away. Almost immediately after F.F.'s warning, "not even five (5) seconds later [R.O.] turns the corner * * * the back end of the car * * * dragged, like and the car like spun and the gun accidentally went off and when the gun went off [F.F.] was like 'I'm shot.'"

{¶ 9} G.L. testified that after the gunshot, "the car was smokey [sic] and everybody's ears were ringing * * *." She recalled that "I'm leaned over the seat and I'm trying to see * * * what's wrong with [F.F.] and [R.O.]'s * * * slowly pulling over * * * and [J.H.]'s sitting up in his seat and [appellant]'s just staring at me like * * * in shock." After R.O. pulled the car over, "as soon as the door opened [appellant] took off." J.H. also ran before police arrived, as did G.L., who took the big gun out of the car, dropped it in a nearby yard, and hid behind a house.

{¶ 10} When asked if she knew where the gun that shot F.F. went, G.L. stated that appellant "took off with it." She said that appellant was the last person she saw with the gun that evening, and that she never saw the gun again. She testified that appellant confirmed what happened in the car the following day, when she had a "conversation" with him via Facebook. Screenshots of the Facebook "conversation" entered into evidence show that a user of appellant's account wrote the following on August 21, 2014: "Wat the hell happen they say he got hit with a 45 and I had a 22" [sic], and "I'm not turning my self in [but] I'll give the gun back * * * [J.H.] told me to take the gun and leave * * *" [sic].

{¶ 11} Next, the state called F.F. as a witness. Although F.F. testified he did not actually see appellant with the gun, and despite his denial that members of the group had been smoking marijuana on the evening he was shot, F.F.'s recollection of the evening

largely corroborated G.L.'s account. F.F. recalled seeing two guns in the car, and telling the backseat passengers not to play with the guns behind his back. He also remembered telling J.H. to put down the gun, and then, approximately 40 seconds later, hearing appellant say, "let me put a bullet in the chamber," after which F.F. heard a bullet being chambered. Soon thereafter, the gun went off and a bullet entered through the left side of F.F.'s back.

{¶ 12} Appellant offered an alternate version of the events of August 19, 2014. Appellant testified that he had arrived home between 6:30 and 7:00 p.m. that evening, and remained at home for the remainder of the evening without leaving, except to visit the corner store with his sister and to take out the trash.

{¶ 13} Appellant stated that for the most part he was on the front porch talking with his family between approximately 7 and 10 p.m., that he was inside doing chores and watching television between approximately 10 p.m. and 11 p.m., and that he stayed inside for the rest of the evening after his mother set their home alarm just before 11 p.m. He denied having been in the car with F.F., G.L., R.O., and J.H. that night.

{¶ 14} When asked about the Facebook conversation with G.L., appellant indicated that he had not been able to log-in to his Facebook account since December 2013, and had been using a different account since that time. Appellant denied participating in a Facebook conversation with G.L. about the evening F.F. was shot, and speculated G.L. and J.H. had conspired to make it appear he shot F.F. He claimed J.H. wanted to get back at him for a separate incident in which he got J.H.'s friend in trouble at school over a gun.

{¶ 15} In support of his version of events, appellant offered the testimony of his mother and sister. Although the timelines in their respective accounts were somewhat different, both mother and sister testified that appellant was on the front porch with family for much of the evening, that he went inside with the others around 10 p.m. to do his chores, that the alarm was set around 11 p.m., and that appellant did not leave the house that night. They also

testified that appellant had been having problems accessing his Facebook account.

{¶ 16} At the end of the two-day hearing, the juvenile court found appellant was a delinquent child by virtue of committing the three offenses charged in the complaint. In so doing, the court stated:

> I had the opportunity to listen to the tapes and also review all my notes, look at all of the evidence and I've had the opportunity to observe firsthand the demeanor of the witnesses and attempt to assess their credibility and clearly someone is not telling the truth in this courtroom * * * it's clear that as witnesses have come in their testimonies are in direct conflict. * * * this court does conclude based upon what I heard and what I saw, what I observed, review of the evidence [sic] that the prosecution has proven its case beyond a reasonable doubt * * * that [appellant] did commit the three (3) offenses * * * the only witnesses that came in to alibi [appellant] * * * were his sister and his mother and I find that their testimony was not credible * * * I believe [G.L.] was credible and she was telling the truth. * * * the testimony that she has given coupled with what I heard [F.F.] testify to, when you add it all up * * * the [s]tate's met its burden.

{¶ 17} At the dispositional hearing on December 8, 2014, the juvenile court committed appellant to the legal custody of the Ohio Department of Youth Services (DYS) for two consecutive terms of a minimum of six (6) months each for tampering with evidence and improper handling of a firearm, respectively, but suspended the commitment and placed appellant on intensive probation at a local juvenile rehabilitation center. The court also put appellant on basic probation for negligent assault.

{¶ 18} Appellant now appeals, raising two assignments of error. For ease of discussion, we address both assignments together.

{¶ 19} Assignment of Error No. 1:

{¶ 20} THE TRIAL COURT ERRED BY FINDING SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION FOR TAMPERING WITH EVIDENCE, IMPROPER HANDLING OF A FIREARM IN A MOTOR VEHICLE, AND NEGLIGENT ASSAULT.

{¶ 21} Assignment of Error No. 2:

{¶ 22} THE TRIAL COURT PREJUDICED [APPELLANT] BY ENTERING GUILTY VERDICTS FOR COUNTS OF TAMPERING WITH EVIDENCE, IMPROPER HANDLING OF A FIREARM IN A MOTOR VEHICLE, AND NEGLIGENT ASSAULT CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 23} Appellant argues that his adjudication was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶ 24} The purpose of a delinquency proceeding is to determine if the juvenile is delinquent, i.e., has violated a law that would be a crime if committed by an adult. R.C. 2152.02(F)(1); *In re J.D.S.*, 12th Dist. Clermont Nos. CA2013-06-046 and CA2013-06-051, 2014-Ohio-77, ¶ 11. The Ohio Supreme Court has recognized that juvenile delinquency laws, though distinct from the criminal code, feature inherently criminal aspects. *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 26. Thus, the standards of review applied in determining whether a juvenile court's finding of delinquency is supported by insufficient evidence or is against the manifest weight of the evidence are the same standards as applied in adult criminal convictions. *In re D.L.B.*, 12th Dist. Fayette No. CA2011-09-019, 2012-Ohio-3045, ¶ 29.

{¶ 25} Sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 25. In reviewing the sufficiency of the evidence supporting an adjudication of delinquency, "'[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.'" *In re K.F.*, 12th Dist. Butler No. CA2009-08-209, 2010-Ohio-734, ¶ 9, quoting *State v. Smith*, 80 Ohio St.3d 89, 113 (1997).

{¶ 26} By contrast, the criminal manifest-weight-of-the-evidence standard addresses

the evidence's effect of inducing belief. *Wilson* at ¶ 25. In determining whether an adjudication of delinquency is against the manifest weight of the evidence, the appellate 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 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.'" *In re D.L.B.* at ¶ 31, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶ 27} In reviewing a manifest weight challenge, the appellate court must be mindful that the original trier of fact was in the best position to judge the credibility of the witnesses and the weight to be given the evidence. *In re D.L.B.*, 2012-Ohio-3045 at ¶ 31, citing *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. As such, the appellate court should only exercise its discretionary power to overturn an adjudication of delinquency based on the manifest weight of the evidence in the exceptional case in which the evidence weighs heavily against the adjudication. *In re J.R.W.*, 12th Dist. Warren No. CA2010-02-013, 2010-Ohio-2959, ¶ 13.

{¶ 28} Because a finding that an adjudication of delinquency is supported by the manifest weight of the evidence also necessarily includes a finding that it is supported by sufficient evidence, the determination that the adjudication is supported by the manifest weight of the evidence will also be dispositive of an appellant's sufficiency claim. *In re K.F.*, 2010-Ohio-734 at ¶ 11. We therefore begin with an examination of whether appellant's adjudication as a delinquent child was supported by the manifest weight of the evidence.

{¶ 29} Appellant was adjudicated delinquent for conduct which, if committed by an adult, would have constituted (i) negligent assault in violation of R.C. 2903.14, (ii) improperly handling firearms in a motor vehicle in violation of R.C. 2923.16, and (iii) tampering with evidence in violation of R.C. 2921.12. In the present appeal, appellant argues the

adjudication was against the manifest weight of the evidence because the testimony against him at the adjudicatory hearing lacked consistency and credibility, and because there was no physical evidence placing appellant at the scene of the shooting.

{¶ 30} R.C. 2903.14 identifies the elements of negligent assault. That statute provides that "[n]o person shall negligently, by means of a deadly weapon * * * cause physical harm to another or to another's unborn." R.C. 2903.14(A). Further, R.C. 2901.22(D) provides that "[a] person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature."

{¶ 31} R.C. 2923.16 identifies the elements of improperly handling firearms in a motor vehicle. R.C. 2923.16(B) provides "[n]o 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 if "the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). Further, to "have" a gun under R.C. 2923.16(B), a person must actually or constructively possess it. *State v. Banks,* 10th Dist. Franklin No. 11AP-592, 2012-Ohio-1420, ¶ 5.

{¶ 32} R.C. 2921.12 identifies the elements of tampering with evidence. R.C. 2921.12(A)(1) provides that "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall * * * [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation."

{¶ 33} It is undisputed in the present case that F.F. was physically harmed by a deadly weapon. Further, the court heard testimony from G.L. that appellant was holding a gun in the backseat of the vehicle while R.O. was driving erratically. G.L. also testified that "everyone in

the car was high" from smoking marijuana, and that while holding the gun appellant "was dancing or * * * shrugging his shoulders * * *." She explained that after R.O. took a turn too fast in the vehicle, appellant had the gun and "the gun accidentally went off," shooting F.F. in the back.

{¶ 34} G.L. also stated that when R.O. pulled the car over after F.F. had been shot, appellant took off with the gun and she has not seen it since. The state then introduced screenshots of a Facebook "conversation" between G.L. and a user of appellant's Facebook account regarding the evening F.F. was shot. In that conversation, the user of appellant's account admitted to having a gun, and claimed that J.H. had told him to take the gun and run away.

{¶ 35} In his testimony, F.F. denied that the passengers in the vehicle were smoking marijuana, and he admitted that he did not see appellant with a gun. However, F.F. testified that there were two guns in the backseat of the car that evening, and that appellant was sitting in the backseat. F.F. recalled seeing J.H. put one gun down on the floor, and then hearing appellant put a bullet in the chamber of another gun seconds before F.F. was shot through the left side of his back. The last time F.F. saw appellant was when appellant was exiting the car.

{¶ 36} Appellant's version of events differed sharply from G.L.'s and F.F.'s testimony, as appellant claimed that he was at his home at the time of the shooting. The juvenile court noted that the testimonies of the witnesses were in direct conflict, but concluded "based upon what I heard and what I saw, what I observed [during the adjudicatory hearing]," that G.L.'s account was credible, and that the prosecution had proven its case beyond a reasonable doubt.

{¶ 37} After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of witnesses, we conclude that this is not an

exceptional case in which the evidence weighs heavily against the adjudication. On the contrary, we find there was ample evidence supporting the juvenile court's determination that appellant is a delinquent child. In so finding, we are mindful that the juvenile court was in the best position to judge the credibility of the witnesses and the weight to be given the evidence, and thus to resolve the conflict in the evidence between the state's and appellant's respective versions of the events that occurred on the evening of August 19, 2014.

{¶ 38} Therefore, we find appellant's adjudication was not against the manifest weight of the evidence. This finding is also dispositive of appellant's sufficiency claim. Appellant's first and second assignments of error are overruled.

{¶ 39} Judgment affirmed.

S. POWELL and M. POWELL, JJ., concur.