IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-220041 TRIAL NO. B-2101403
Plaintiff-Appellee,	:	
	:	*O P I N I O N.*
vs.	:	
ROBERT CARTER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: January 6, 2023

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Keith Sauter*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

The Law Office of John D. Hill and *John D. Hill,* for Defendant-Appellant.

CROUSE, Judge.

{¶1} Defendant-appellant Robert Carter appeals the judgment of the Hamilton County Court of Common Pleas convicting him of two counts of felonious assault and having a weapon while under disability. For the reasons that follow, we affirm the judgment of the trial court.

Factual and Procedural Background

{¶2} In March 2021, Carter and his then-girlfriend Bridgit Davis got into a fight over a lost set of house keys. Both Carter and Davis had been drinking. The two exchanged punches in the front seat of Carter's Jeep while parked in the driveway of Davis's home in Springfield Township. Carter's stepdaughter and two of Davis's children were in the backseat. The state alleged that Carter held Davis at gunpoint, pistol-whipped her, and then fired several shots towards her and her children, some as he drove away in his Jeep.

{¶3} In an eight-count indictment, Carter was charged with attempted murder (for his conduct towards Davis), five counts of felonious assault (for his conduct towards Davis and her children), discharge of a firearm near a prohibited premises (for his conduct towards a neighbor who attempted to intervene), and having a weapon while under disability. Each charge, except for the weapon-under-disability charge, had attendant firearm specifications.

{¶4} At a bench trial, Davis testified that after the altercation inside the vehicle, Carter pistol-whipped her when they were standing outside of the vehicle. She said that she fell, and Carter tried to shoot her, but the gun did not go off. She testified, "So that's when I told my kids to get out of his car and was trying to run towards my house." Davis got to her feet and "tried to hit him with [a beer bottle] to get away from

him, but it cracked his windshield." She ran to her house with her kids, and Carter "tr[ied] to fire again, and the gun did go off." Carter then "jumped in his Jeep, and [as] he was pulling out the driveway, pulling off, he was shooting out the passenger's side." According to Davis, Carter's stepdaughter was sitting in the backseat when this occurred. Davis estimated that Carter fired four to six shots. She could not provide any identifying information about the gun.

{¶5} On cross-examination, the defense asked Davis why she testified that the gun had jammed when, in her written affidavit, she wrote that Carter shot at her face, but missed. Davis testified that she believed this was equivalent to saying the gun jammed. She stated that although she wrote in the affidavit that "I blocked the shot he shot at my neighbor's daughter," she intended to write "blocked his punch."

{¶6} Springfield Township Police Officer Eric Catron testified that when he arrived at the scene Davis was "hysterical, intoxicated[,] [v]ery upset." Her only injury was a superficial cut on her leg. He testified that the police were not able to locate any bullets, shell casings, or bullet holes at the scene, despite an "extensive" search. Catron theorized that one explanation for the lack of shell casings found at the scene could be that Carter had used a revolver, which retains the shell after firing, but he added that a revolver is less likely to jam. Catron testified that while he was at the scene, he spoke to Carter on the phone and that Carter had admitted that he was involved in a "physical altercation" with Davis at her residence. Carter voluntarily came to the police station that night and spoke with police but denied ever firing a weapon. A portion of his recorded interview was played for the court.

{¶7} The state also submitted as evidence recordings of two 911 calls from neighbors who witnessed the incident. One caller said that a black male with dreads

"pointed the gun at me, put it in the air, and shot it" after the caller had confronted Carter for hitting Davis on the driveway. The caller continued, "He unloaded his whole clip at her house. * * * He just shot the gun at two small children and his girlfriend." The next caller reported hearing a single gunshot, saying, "[H]e just shot off a gun[,] and he just beat up somebody." He then reported that the silver Jeep was pulling away, and then said, "Oh, there go another, and there's three," referring to additional gunshots.

{¶8} After the bench trial, Carter was found guilty of two counts of felonious assault in violation of R.C. 2903.11(A)(2), second-degree felonies, along with their attendant specifications, under counts three and five of the indictment. Count three concerned Carter shooting at Davis after pistol-whipping her, in addition to two attendant firearm specifications for possessing and brandishing a firearm. Count five involved Carter shooting at Davis from his vehicle as he drove away, in addition to three attendant firearm specifications for possessing and brandishing a firearm and discharging a firearm from a vehicle. The court also found him guilty of having a weapon while under disability, in violation of R.C. 2923.13(A)(3), a third-degree felony (count eight). In rendering its verdict, the court stated, "So I reviewed those 911 calls. I found them both persuasive and corroborating of Ms. Davis's testimony." Carter was acquitted of the remaining charges.[1] He was sentenced to an aggregate term of 10 years in the Ohio Department of Corrections, with credit for 305 days already served.

{¶9} This timely appeal followed.

[1] The court granted Carter's motion for a directed verdict on the felonious-assault charges in relation to Davis's children and the discharge-of-a-firearm-near-a-prohibited-premises charge. And Carter was found not guilty of attempted murder and the remaining felonious-assault charge.

Law and Analysis

{¶10} In his first assignment of error, Carter argues that his three convictions are against the manifest weight of the evidence. In his second assignment of error, Carter attacks the sufficiency of the evidence underlying his conviction for felonious assault under count five of the indictment.

{¶11} When this court reviews a challenge to the sufficiency of the evidence, we ask " '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. Walker,* 150 Ohio St.3d 409, 2016-Ohio-8295, 82 N.E.3d 1124, ¶ 12, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Sufficiency review "raises a question of law, the resolution of which does not allow the court to weigh the evidence." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983); *see also State v. Guthrie,* 1st Dist. Hamilton No. C-180661, 2020-Ohio-501, ¶ 7. Our role is to ask "whether the evidence against a defendant, *if believed,* supports the conviction." (Emphasis sic.) *State v. Jones*, 166 Ohio St.3d 85, 2021-Ohio-3311, 182 N.E.3d 1161, ¶ 16.

{¶12} A manifest-weight argument on the other hand "challenges the believability of the evidence." *State v. Staley*, 1st Dist. Hamilton Nos. C-200270, C-200271, and C-200272, 2021-Ohio-3086, ¶ 10. When this court reviews a challenge to the manifest weight of the evidence, we must "review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice." *State v. Powell*,

1st Dist. Hamilton No. C-190508, 2020-Ohio-4283, ¶ 16, citing *State v. Thompkins,* 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶13} The court should only reverse a conviction and grant a new trial in "exceptional case[s] in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. This is because "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶14} Carter argues that his convictions for felonious assault and having a weapon under disability were against the manifest weight of the evidence. He contends that "there was little competent, credible evidence that [he] caused or attempted to cause physical harm to Ms. Davis by shooting at her." He states that Davis was not a credible witness and there was no physical evidence to support Davis's testimony that Carter shot a gun. He claims that the 911 calls "should be taken with a grain of salt," arguing, at most, they established that there were shots fired and he was shooting into the air rather than at Davis.

{¶15} Carter contends that his conviction of felonious assault under count five of the indictment was based on insufficient evidence because there is no evidence that he fired the gun at Davis while driving away in his vehicle.

{¶16} The state counters that Davis's testimony provided "ample evidence" that Carter tried to shoot her, and that the two 911 calls "confirmed that Carter was shooting at Davis."

{¶17} The state correctly notes that "a lack of physical evidence, standing alone, does not render appellant's conviction against the manifest weight of the

evidence." *State v. Peeples*, 10th Dist. Franklin No. 13AP-1026, 2014-Ohio-4064, ¶ 21; *see State v. King*, 1st Dist. Hamilton No. C-060335, 2007-Ohio-4879, ¶ 52 (holding convictions for murder and carrying a concealed weapon were not against the manifest weight of the evidence despite a lack of physical evidence where the state presented circumstantial evidence that corroborated eyewitness testimony); *State v. Brown*, 2d Dist. Miami No. 2018-CA-16, 2019-Ohio-1665, ¶ 25 ("Although no .22-caliber bullets or shell casings were recovered following the incident, the lack of that piece of corroborating physical evidence does not necessitate a conclusion that the trial court's finding was against the manifest weight of the evidence."). The same is true of sufficiency. *State v. Nix*, 1st Dist. Hamilton No. C-030696, 2004-Ohio-5502, ¶ 67 (holding that convictions for murder and felonious assault were based on sufficient evidence because "there is no rule of law that a witness's testimony be corroborated by physical evidence such as fingerprints, for example, or the weapon allegedly used by the accused.").

{¶18} While police did not locate a firearm, bullets, or shell casings, Davis testified that Carter struck her with a firearm and eventually fired it at her, some of those shots happening as he was driving away. The 911 callers corroborated Davis's testimony that Carter beat her up and fired a gun at her. And while there were some discrepancies between Davis's testimony and her written affidavit, Carter has not demonstrated that the trial court lost its way in believing Davis's testimony. Minor inconsistencies in witness testimony "merely raise peripheral credibility determinations that the trial court could resolve based on the totality of the evidence." *State v. Stiver*, 1st Dist. Hamilton Nos. C-210228 and C-210229, 2021-Ohio-3713,

¶ 10. The court specifically noted that it found the 911 calls to be "both persuasive and corroborating of Ms. Davis's testimony."

{¶19} Accordingly, we hold that Carter's convictions for two counts of felonious assault and having a weapon under disability (counts three, five, and eight) are not against the manifest weight of the evidence and his conviction of felonious assault under count five of the indictment was supported by sufficient evidence.

Conclusion

{¶20} We overrule both assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

BERGERON, P. J., and **BOCK, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.