

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-06-109
 :
 - vs - : OPINION
 : 2/21/2012
 :
 DERRICK BRYANT, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2010-12-1974

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Christopher P. Frederick, 304 North Second Street, Hamilton, Ohio 45011, for defendant-appellant

RINGLAND, J.

{¶ 1} Defendant-appellant, Derrick Bryant, appeals from his conviction in the Butler County Court of Common Pleas for kidnapping and felonious assault. For the reasons outlined below, we affirm.

{¶ 2} On December 1, 2010, appellant, an operator at Superior Environmental Solutions, Inc., called Chester Yeager, the owner of the company, asking for a raise. Yeager refused. Appellant then became upset and their conversation ended shortly thereafter.

{¶ 3} Approximately two hours later, appellant, who was not scheduled to work, entered Yeager's office while he was servicing a pressure washer with Ronald Crenshaw, appellant's direct supervisor. Appellant, who smelled of alcohol and exhibited bloodshot eyes, told Yeager he wanted to talk to him privately and ordered Crenshaw to leave. In response, Yeager told appellant that Crenshaw was not going to leave and that any issues he had could be discussed openly. According to Yeager's testimony, appellant became very angry and said "[y]ou will talk to me, you will listen to me" before he exited from the office and left the building.

{¶ 4} Two to three minutes later, appellant returned to the office with a .30 caliber rifle. According to the evidence presented, appellant, blocking the only exit, then pointed the rifle at Yeager's head and said, "you are going to listen to me or I'm going to blow your f***ing brains out." Appellant then pointed the rifle at Crenshaw and said, "I don't really want to kill you, but if I have to, I will," before he "levered" the rifle causing a bullet to "kick" out of the chamber and fall to the floor.¹ The standoff, which lasted approximately 20 minutes, ended after Crenshaw "bear hugged" appellant moving him out of the office, which ultimately resulted in appellant lowering his rifle and exiting the building.

{¶ 5} Appellant was later arrested and charged with, among other things, kidnapping in violation of R.C. 2905.01(A)(3) and felonious assault in violation of R.C. 2903.11(A)(2), both second-degree felonies that included firearm specifications. Following a jury trial, appellant was found guilty of all charges. The trial court then merged the charges for sentencing and ordered him to serve a total of ten years in prison. As part of its judgment of conviction entry, the trial court also objected to appellant's admission into a transitional control prison program.

1. Police later discovered a live bullet on the floor of the office.

{¶ 6} Appellant now appeals, raising three assignments of error for review. For ease of discussion, appellant's first and second assignments of error will be addressed together.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT APPELLANT OF KIDNAPPING IN VIOLATION OF R.C. 2905.01(A)(3) AND FELONIOUS ASSAULT IN VIOLATION OF R.C. 2903.11(A)(2).

{¶ 9} Assignment of Error No. 2:

{¶ 10} APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 11} In his first and second assignments of error, appellant argues that the state provided insufficient evidence to support his kidnapping and felonious assault convictions and that his convictions were against the manifest weight of the evidence.

{¶ 12} As this court has stated previously, "a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Wilson*, 12th Dist. No. CA2006-01-007, 2007-Ohio-2298, ¶ 35; *State v. Urbin*, 148 Ohio App.3d 293, 2002-Ohio-3410, ¶ 31 (9th Dist.). In turn, while a review of the sufficiency of the evidence and a review of the manifest weight of the evidence are separate and legally distinct concepts, this court's determination that appellant's conviction was supported by the manifest weight of the evidence will be dispositive of the issue of sufficiency. *State v. Rigdon*, 12th Dist. No. CA2006-05-064, 2007-Ohio-2843, ¶ 30, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52; see, e .g., *State v. Rodriguez*, 12th Dist. No. CA2008-07-162, 2009-Ohio-4460, ¶ 62.

{¶ 13} A manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Clements*, 12th Dist. No. CA2009-11-277, 2010-Ohio-4801, ¶ 19. A court

considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 39; *State v. Lester*, 12th Dist. No. CA2003-09-244, 2004-Ohio-2909, ¶ 33; *State v. James*, 12th Dist. No. CA2003-05-009, 2004-Ohio-1861, ¶ 9. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide since it is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence. *State v. Gesell*, 12th Dist. No. CA2005-08-367, 2006-Ohio-3621, ¶ 34; *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Therefore, the question upon review is 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. *State v. Good*, 12th Dist. No. CA2007-03-082, 2008-Ohio-4502, ¶ 25; *State v. Blanton*, 12th Dist. No. CA2005-04-016, 2006-Ohio-1785, ¶ 7.

Kidnapping in Violation of R.C. 2905.01(A)(3)

{¶ 14} Initially, appellant argues that the state failed to prove he "restrained the liberty of Chester Yeager and Ronald Crenshaw with the purpose to terrorize," and therefore, the jury lost its way by finding him guilty of kidnapping. In support of this claim, appellant argues that his conviction must be reversed because his purpose in holding Yeager and Crenshaw at gunpoint was not to terrorize, but instead, was to "address work related issues." We disagree.

{¶ 15} Kidnapping in violation of R.C. 2905.01(A)(3), a second-degree felony, prohibits any person, by force, threat, or deception, from restraining the liberty of another for the purpose "[t]o terrorize, or to inflict serious physical harm on the victim or another." Pursuant

to R.C. 2901.22(A), a person acts purposely when "it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." Moreover, "terrorize," while not defined by the Ohio Revised Code, has been defined "according to its common usage, i.e., 'to fill with terror or anxiety.'" *State v. Chasteen*, 12th Dist. No. CA2007-12-308, 2009-Ohio-1163, ¶ 21, quoting *State v. Leasure*, 6th Dist. No. L-02-1207, 2003-Ohio-3987, ¶ 47.

{¶ 16} At trial, Yeager testified that he immediately froze and became fearful when appellant entered his office with a rifle pointed at his head threatening to "blow [his] f***ing brains out." In addition, Crenshaw, who appellant also threatened to kill while pointing the rifle at him, testified that he feared for his life and that he was "the most terrified" when appellant showed signs that he was "fighting within himself" as to whether he should pull the trigger. The state also presented evidence that both men were shaken up when police arrived and that Crenshaw appeared to be having a heart attack.

{¶ 17} After a thorough review of the record, we find the jury did not clearly lose its way by finding appellant restrained both men in the office at gunpoint for the purpose to terrorize. As noted above, the state presented overwhelming evidence indicating appellant entered the office and threatened to kill both Yeager and Crenshaw as he pointed a rifle at them. While appellant may claim that he merely wanted to "address work related issues," appellant had countless other options available to him that did not involve the use of a rifle and repeated threats to kill both men. Therefore, because the evidence clearly indicates appellant acted with the purpose to fill both men with terror or anxiety by restraining them at gunpoint while making repeated threats to kill them, we simply cannot say the jury clearly lost its way so as to create a manifest miscarriage of justice requiring his kidnapping conviction be reversed. Accordingly, appellant's first argument is overruled.

Felonious Assault in Violation of R.C. 2903.11(A)(2)

{¶ 18} Next, appellant argues that the state failed to prove he "knowingly caused or attempted to cause physical harm to Yeager or Crenshaw," and therefore, the jury also lost its way by finding him guilty of felonious assault. In support of this claim, appellant argues that although he "brought a rifle into his former workplace," he did not use it "in a manner to inflict physical harm," "never pulled the trigger" or "fired a warning shot," and therefore, the jury lost its way in finding him guilty of felonious assault. Again, we disagree.

{¶ 19} Felonious assault in violation of R.C. 2903.11(A)(2), a second-degree felony, prohibits any person from knowingly "caus[ing] or attempt[ing] to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance." "Deadly weapon," as defined by R.C. 2923.11(A), 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." The act of pointing a deadly weapon at another "coupled with a threat, which indicates an intention to use such weapon," is sufficient evidence to support a conviction for felonious assault. *State v. Kehoe*, 133 Ohio App.3d 591, 599-600 (12th Dist.1999), quoting *State v. Green*, 58 Ohio St.3d 239 (1991), syllabus.

{¶ 20} In this case, it is undisputed that the rifle appellant brought into the office constitutes a deadly weapon. See, e.g., *State v. Dunbar*, 5th Dist. No. 1998CA00275, 1999 WL 1071960, * 6 (Nov. 1, 1999) (finding .22 caliber rifle constituted a deadly weapon). In addition, as provided above, the state presented extensive and overwhelming evidence indicating appellant pointed the rifle at both Yeager and Crenshaw and threatened to kill them. Based upon this evidence, we simply cannot say the jury clearly lost its way so as to create a manifest miscarriage of justice requiring his felonious assault conviction be reversed. See, e.g., *Kehoe* at 601; *State v. Goode*, 8th Dist. No. 93475, 2010-Ohio-5347, ¶ 15; *State v. Ellington*, 2nd Dist. No. 23828, 2010-Ohio-5280, ¶ 20-24. Accordingly,

appellant's second argument is overruled.

{¶ 21} In light of the foregoing, having found appellant's kidnapping and felonious assault convictions were not against the manifest weight of the evidence, we necessarily conclude that the state also presented sufficient evidence to support the jury's findings of guilt. Accordingly, having found no reason to disturb the jury's findings, appellant's first and second assignments of error are overruled.

{¶ 22} Assignment of Error No. 3:

{¶ 23} THE TRIAL COURT ERRED BY INCLUDING IN THE SENTENCING ENTRY A PROVISION THAT IT OBJECTED TO APPELLANT'S ADMISSION INTO TRANSITIONAL CONTROL PRISON.

{¶ 24} In his third assignment of error, appellant argues that the trial court erred by "prematurely" objecting to his admission into a transitional control prison program during his sentencing hearing contrary to R.C. 2967.26(A). This court recently rejected this same argument in *State v. Toennison*, 12th Dist. Nos. CA2010-11-307, -308, -309, 2011-Ohio-5869; and again in *State v. Tucker*, 12th Dist. No. CA2011-04-067, 2012-Ohio-50. In fact, as this court specifically stated in *Toennison*, "we fail to see how R.C. 2967.26 prohibits the trial court from predetermining that transitional control is inapplicable during sentencing." *Id.* at ¶ 34. Therefore, based upon this court's holdings in *Toennison* and *Tucker*, appellant's third assignment of error is overruled.

{¶ 25} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.