

[Cite as *State v. Dawson*, 2015-Ohio-488.]

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

STATE OF OHIO,	:	APPEAL NO. C-130765
	:	TRIAL NO. B-1200188
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
DAMARCO DAWSON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: February 11, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Rachel Lipman Curran*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

The Farrish Law Firm and *Michaela M. Stagnaro*, for Defendant-Appellant.

Please note: this case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Presiding Judge.

{¶1} Defendant-appellant Damarco Dawson has appealed from the trial court's entry convicting him of aggravated murder and aggravated robbery, as well as accompanying weapon specifications to both charges. He raises three assignments of error on appeal: that the juvenile court erred in transferring jurisdiction of his case to the general division of the court of common pleas; that the trial court erred as a matter of law by removing prospective jurors based upon prior felony convictions; and that his convictions for aggravated murder and aggravated robbery were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶2} Finding his arguments to be without merit, we affirm the judgment of the trial court.

Facts and Procedure

{¶3} On September 11, 2011, Jovann Carr had been watching Joseph Allen (also referred to in the record as Jason Allen), Torrence Hall, and Johnella Jackson shoot dice on the back courtyard of the property located at 1729 Vine Street. Allen had invited Carr to the dice game after seeing Carr arguing on Vine Street with two persons, one of whom was Dawson. While the game was going on, Dawson and another unidentified man entered the courtyard and approached Carr. Dawson pointed a gun at Carr and instructed him to "lay it down," street slang for an order to turn over anything on his person. As Carr and Dawson began to wrestle for the gun, the participants in the dice game fled from the courtyard. They each heard successive gunshots as they fled.

{¶4} Carr suffered two gunshot wounds to his back and one gunshot wound to his right thigh. After being shot, he exited from the courtyard and collapsed nearby. He died from related injuries.

{¶5} Because he was 15 years old at the time that these events occurred, the police filed a complaint in juvenile court charging Dawson with the murder of Carr. The juvenile court conducted a discretionary-bindover proceeding. That court found probable cause that Dawson had committed the offense charged and that Dawson was not amenable to rehabilitation in the juvenile system. It ordered that Dawson's case be transferred to the general division of the Hamilton County Court of Common Pleas for prosecution.

{¶6} Dawson was indicted by the grand jury on charges of aggravated murder pursuant to R.C. 2903.01(B), aggravated murder pursuant to R.C. 2903.01(A), and aggravated robbery pursuant to R.C. 2911.01(A)(1). Following a jury trial, Dawson was acquitted of the charge of aggravated murder pursuant to R.C. 2903.01(A). He was found guilty of the second charge of aggravated murder and of aggravated robbery, along with accompanying weapon specifications for both offenses. The trial court sentenced Dawson to an aggregate term of life-imprisonment with parole eligibility after 28 years.

Discretionary Bindover

{¶7} In his first assignment of error, Dawson argues that the juvenile court erred in transferring jurisdiction of his case to the general division of the court of common pleas. He challenges both the trial court's determination that the state had presented sufficient evidence to demonstrate probable cause that he had committed

the offense charged and that he was not amenable to rehabilitation in the juvenile system.

{¶8} Pursuant to R.C. 2152.12(B), once a complaint has been filed alleging that a juvenile has committed an act that would be a felony if committed by an adult, the juvenile court may transfer the case to adult court if it finds that (1) at the time of the offense, the juvenile was 14 years of age or older, (2) probable cause exists that the juvenile committed the act charged, and (3) the juvenile is not amenable to care or rehabilitation in the juvenile system. At the probable-cause hearing, Dawson stipulated that he had been 15 years old at the time the offense was committed.

{¶9} We first consider whether the juvenile court erred in determining that the state had presented sufficient evidence to demonstrate probable cause that Dawson had committed the offense of murder. A juvenile court's probable-cause determination involves both questions of fact and law. In our review, we defer to the juvenile court's credibility determinations, but we review de novo whether the state presented sufficient evidence to demonstrate probable cause that the juvenile had committed the offense charged. *See State v. Washington*, 1st Dist. Hamilton No. C-130213, 2014-Ohio-4178, ¶ 13. To establish probable cause, the state must present "evidence that raises more than a mere suspicion of guilt, but it need not produce evidence proving guilt beyond a reasonable doubt." *Id.*

{¶10} Following our review of the record, we conclude that the state produced sufficient, credible evidence to demonstrate probable cause that Dawson had committed the offense of murder pursuant to R.C. 2903.01(B), as charged in the complaint. At the probable-cause hearing, Joseph Allen testified that, while he was shooting dice, he witnessed Dawson approach Carr and draw a gun. As Dawson and

Carr began to argue and wrestle, Allen fled from the scene. He heard numerous gunshots as he ran. Dawson's attorney effectively cross-examined Allen and pointed out discrepancies in his testimony, as well as highlighted his prior criminal record for the juvenile court. But when finding that the state had established probable cause, the juvenile court clearly indicated that it found Allen's testimony to be credible. The court stated on record that

I was listening to this witness and watching the witness and I let you delve into his motivation for telling the police about this. I'm satisfied with his answers. I don't think he was doing it to avoid prosecution on his own charge that he had. I believe that it was more to clear his name in this particular offense here, as he said it was. I believe him on that. * * * [H]e clearly told the court that he witnessed the defendant with a firearm * * * He witnessed the defendant pointing it at the deceased...he saw them fight...he heard gun shots. He saw the victim expire. That's enough for probable cause and that's what I'm finding.

{¶11} The trial court correctly determined that the state had met its burden to establish probable cause. We now consider whether the trial court erred in its determination that Dawson was not amenable to rehabilitation in the juvenile system. As a reviewing court, we will not reverse a juvenile court's amenability determination absent an abuse of discretion. *Id.* at ¶ 19. An abuse of discretion connotes more than an error in law or of judgment. It implies that the trial court's judgment was arbitrary, unreasonable, or unconscionable. *See Pembaur v. Leis*, 1 Ohio St.3d 89, 91, 437 N.E.2d 1199 (1982).

{¶12} When determining whether a child is subject to rehabilitation in the juvenile system, the juvenile court is required to consider statutory factors that weigh for and against transfer of the case. *See* R.C. 2152.12(B)(3). Factors weighing in favor of transfer are provided in R.C. 2151.12(D), and factors weighing against a transfer of jurisdiction are listed in R.C. 2151.12(E).

{¶13} When weighing these statutory factors, the juvenile court had before it a report assessing the amenability of Dawson in the juvenile system that had been prepared by Dr. Deardorff. The juvenile court indicated that the following factors weighed in favor of a transfer of jurisdiction: (1) the victim suffered physical or psychological harm; (2) the child had a firearm on or about his person at the time of the offense, and allegedly used, displayed or brandished the firearm during the commission of the offense; (3) at the time the act charged was committed, the child was either awaiting adjudication or disposition as a delinquent child, was under a community-control sanction, or was on parole for a prior delinquency adjudication or conviction; (4) the results of any prior juvenile sanction and program indicate that the child cannot be rehabilitated in the juvenile system; (5) the child is emotionally, physically, or psychologically mature enough for the transfer; and (6) the death of the victim. The juvenile court's entry further indicated that it had considered factors weighing against a transfer of jurisdiction but did not find that any were applicable.

{¶14} Dawson contends that the juvenile court's findings in favor of a transfer of jurisdiction were not supported by sufficient evidence. We disagree. In support of its findings, the juvenile court stated on the record that Dawson had been nearly 16 years old at the time of the offense, and that he would have faced a mandatory bindover had he been 16; that Dawson had been charged with aggravated

murder, the most serious felony that a juvenile may be charged with; that Dawson had 17 prior adjudications; that Dawson had failed to complete previous court-ordered work details; and that he had violated numerous court orders and had failed to comply with court-ordered treatment programs.

{¶15} The juvenile court's amenability determination was supported by competent and credible evidence and was not an abuse of discretion. No error occurred in the transferring of jurisdiction of Dawson's case. Dawson's first assignment of error is overruled.

Excusal of Jurors for Cause

{¶16} In his second assignment of error, Dawson argues that the trial court erred as a matter of law by excusing two prospective jurors for cause based upon their prior felony convictions. We review a trial court's excusal of a potential juror for cause for an abuse of discretion. *See State v. Madrigal*, 87 Ohio St.3d 378, 393, 721 N.E.2d 52 (2000).

{¶17} During voir dire, two jurors revealed that they had prior felony convictions. The first juror stated that he had been convicted in 1994 of carrying a concealed weapon. The second juror stated that he had been convicted of uttering in 1974. Each juror confirmed that he had not received a pardon, had not had his conviction expunged, and had not had the conviction reversed on appeal. Over Dawson's objection, the trial court excused both jurors for cause on the grounds that their prior felony convictions prohibited them from serving as jurors because the convictions had not been reversed, expunged, or pardoned.

{¶18} Both Crim.R. 24(C)(1) and R.C. 2945.25(I) provide that a potential juror may be challenged for cause in a criminal case if the juror has been convicted of

a crime that disqualifies him or her from serving on a jury. Dawson contends that both prospective jurors in this case had had their rights to serve on a jury restored pursuant to R.C. 2967.16(C)(1). The state contends that, pursuant to R.C. 2961.01, a convicted felon may only have his or her right to serve on a jury restored by a full pardon.

{¶19} R.C. 2961.01 concerns the civil rights of convicted felons, specifically including the right to serve as a juror. It provides that a person who either pleads guilty to or is found guilty of a felony “is incompetent to be an elector or juror or to hold an office of honor, trust or profit.” *See* R.C. 2961.01(A)(1). The statute further provides the manner in which a convicted felon may have these three rights restored. It states that

When any person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an *elector* during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an *elector* thereafter following final discharge. The full pardon of a person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under division (A)(1) of this section, but a pardon shall not

release the person from the costs of a conviction in this state, unless so specified.

Id. Pursuant to this statute, only a full pardon will restore the rights of a convicted felon to serve on a jury and hold office.

{¶20} R.C. 2967.16 also concerns the restoration of rights that have been forfeited by a conviction. Subdivision (C)(1) of this statute provides that

Except as provided in division (C)(2) of this section, the following prisoners or person shall be restored to the rights and privileges forfeited by a conviction: (a) A prisoner who has served the entire prison term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions; (b) A prisoner who has been granted a final release by the adult parole authority pursuant to division (A) or (B) of this section; (c) A person who has completed the period of a community control sanction or combination of community control sanctions, as defined in section 2929.01 of the Revised Code, that was imposed by the sentencing court.

R.C. 2967.16 does not refer to any specific rights that have been forfeited. Rather, it generally discusses when forfeited rights may be restored.

{¶21} Dawson would like this court to hold that a convicted felon may have his or her right to serve as a juror restored under the terms of R.C. 2967.16(C). The state would like us to hold that R.C. 2961.01 is controlling. These statutes appear to conflict on their face. But because they concern the same subject matter, the rules of statutory construction dictate that, if possible, they be considered in *pari materia* so

as to give full effect to their provisions. *See Chesapeake Exploration L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 14.

{¶22} We find that, while the two statutes at first appear to be in conflict, it is possible to read them together so as to give effect to both. R.C. 2961.01, first enacted in 1953, provided one manner in which a convicted felon may have the right to serve as a juror restored. That manner was to obtain a pardon. The legislature later drafted R.C. 2967.16, providing additional ways in which convicted felons may have various rights and privileges restored, including the right to serve as a juror. Read together, R.C. 2961.01 and 2967.16 provide that a convicted felon may have the right to serve as a juror restored by obtaining a pardon or by the terms outlined in R.C. 2967.16(C)(1).

{¶23} Consequently, the trial court erred in excluding the two potential jurors in this case solely because their convictions had not been pardoned, expunged, or reversed on appeal. But because the record fails to demonstrate that either juror had the right to serve as a juror restored pursuant to the terms of R.C. 2967.16(C)(1), we find that the trial court did not abuse its discretion in excusing these two jurors for cause. *See State v. Stone*, 1st Dist. Hamilton No. C-140028, 2014-Ohio-4444, ¶ 36. The second assignment of error is overruled.

Sufficiency and Weight of the Evidence

{¶24} In his third assignment of error, Dawson argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶25} Dawson was found guilty of aggravated murder pursuant to R.C. 2903.01(B) and aggravated robbery pursuant to R.C. 2911.01. The state presented

testimony from Joseph Allen that he had witnessed Carr and Dawson arguing on Vine Street prior to the shooting. Shortly thereafter, as Carr sat watching Allen participate in a game of dice, Allen saw Dawson and another man enter the courtyard and approach Carr. Dawson pointed a gun at Carr and ordered him to “lay it down.” Allen fled from the scene as Carr and Dawson began “tussling.” While running, he heard successive gunshots and witnessed Carr collapse on a nearby street. We find that that when this testimony and all reasonable inferences are viewed in the light most favorable to the prosecution, the jury could have found all the elements of aggravated murder and aggravated robbery proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶26} We now consider whether Dawson’s convictions were against the manifest weight of the evidence. In support of his argument, Dawson cites the discrepancy between the testimonies offered by various witnesses.

{¶27} With respect to Joseph Allen’s testimony, defense counsel thoroughly cross-examined this witness and pointed out to the jury various discrepancies between Allen’s trial testimony and the testimony that he had offered both in the juvenile court bindover proceeding and in a prior deposition. The jury was made aware of Allen’s prior criminal record, as well the fact that, in a separate case, he had been allowed to plead guilty to a misdemeanor rather than a felony in return for truthful testimony in this case. Torrence Hall, another participant in the dice game and a lifelong acquaintance of Dawson’s, testified at trial that Dawson was one of the two men who had approached Carr in the courtyard. But Hall denied seeing a weapon on Dawson’s person. Testimony further revealed that, during both his prior grand jury testimony and his prior deposition testimony, Hall had stated, in

contradiction of his current trial testimony, that Dawson had possessed the weapon. And in further opposition to the testimony offered by both Allen and Hall, Dawson presented testimony from Johnella Jackson and Shawntay Griffin, both of whom were present during the dice game. Both Jackson and Griffin denied altogether seeing Dawson in the courtyard when Carr was shot.

{¶28} This case ultimately came down to the credibility of the witnesses and whom the jury believed. In convicting Dawson, the jury clearly found the testimony offered by Allen to be more credible than that offered by Dawson's witnesses. As the trier of fact, the jury was in the best position to judge credibility and it was entitled to reject the testimony offered by Jackson and Griffin. *See State v. Webster*, 1st Dist. Hamilton No. C-130700, 2014-Ohio-5647, ¶ 18. This was not the rare case in which the jury lost its way and created a manifest miscarriage of justice by convicting Dawson. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶29} Dawson's third assignment of error is overruled. The judgment of the trial court is, accordingly, affirmed.

Judgment affirmed.

FISCHER and DEWINE, JJ., concur.

Please note:

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