**[Cite as *State v. Eckert*, 2009-Ohio-3312.]**

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

| | | |
|---|---|---|
| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2008-10-099 |
| | : | O P I N I O N |
| - vs - | | 7/6/2009 |
| | : | |
| DENNIS LEE ECKERT, JR., | : | |
| Defendant-Appellant. | : | |

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2008 CR 00510

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 North Third Street, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 South Third Street, Batavia, Ohio 45103, for defendant-appellant

**BRESSLER, J.**

**{¶1}** Defendant-appellant, Dennis Lee Eckert, Jr., appeals his conviction in the Clermont County Court of Common Pleas for robbery. We affirm in part and reverse in part.

**{¶2}** Prior to trial, the parties entered into an agreed stipulation of facts. The agreed stipulation of facts, which was then filed with the trial court, indicates the following:

**{¶3}** On March 31, 2008, at approximately 10:24 a.m., appellant entered into a Huntington Bank located in Clermont County. After entering the bank, appellant walked to a

writing table and then proceeded to an open teller window. Once there, appellant handed Julia Slone, the bank teller, a traveler's check and asked if the bank "cashed these." After examining the check, Slone discovered appellant had written the phrase "[t]his is a robbery" on the back of the check.

**{¶4}** Startled, Slone showed the check to Jessica Hall, the teller stationed next to her, and asked her what she should do. After reading the note, Hall triggered an alarm by pulling her "bait" clip, and told Slone to "give [appellant] the money." Still waiting at the counter, appellant "pressed" Slone to give him "his money." Appellant never indicated that he had a weapon. After being handed $2,000, appellant left the bank and fled the scene on foot. The tellers, who later claimed they believed appellant "would pull a gun out," were visibly upset and crying when the police arrived.

**{¶5}** On May 9, over a month later, an anonymous tip identified appellant as the bank robber. After turning himself in, appellant provided police with a full confession. Appellant was then charged with theft in violation of R.C. 2913.02(A)(1), a fifth-degree felony, and robbery in violation of R.C. 2911.02(A)(2), a second-degree felony.

**{¶6}** Following a bench trial, appellant was found guilty of both offenses, sentenced to six years in prison, three years of postrelease control, and ordered to pay restitution. Appellant now appeals his robbery conviction, raising three assignments of error.

**{¶7}** Assignment of Error No. 1:

**{¶8}** "THE TRIAL COURT ERRED IN ENTERING A FINDING OF GUILTY TO ROBBERY AS THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUSTAIN SUCH CONVICTION."

**{¶9}** In his first assignment of error, appellant argues that the trial court erred by finding him guilty of robbery because, according to him, the state did not prove the essential elements of the crime. Specifically, appellant claims his robbery conviction should be

reversed because the state failed to prove that he threatened to inflict physical harm on another, and therefore, failed to provide sufficient evidence to support his conviction. We disagree.

**{¶10}** Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52. An appellate court, in reviewing the sufficiency of the evidence supporting a criminal conviction, examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Carroll,* Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117. After examining the evidence in a light most favorable to the prosecution, the appellate court must then determine if any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

**{¶11}** Appellant was charged with robbing a Huntington Bank in violation of R.C. 2911.02(A)(2), a second-degree felony, which prohibits any person, in attempting or committing a theft offense, from, among other things, threatening to inflict physical harm on another. *State v. Whitaker*, Butler App. No. CA2008-01-034, 2009-Ohio-926, ¶9. "[T]he threat of physical harm need not be explicit; rather, an implied threat of physical harm is sufficient * * *." *State v. Harris*, Franklin App. No. 07AP-137, 2008-Ohio-27, ¶14; *State v. Ellis*, Franklin App. No. 05AP-800, 2006-Ohio-4231, ¶7. As the United States Sixth Circuit Court of Appeals found, written or verbal demands for money to a bank teller are common means used to rob a bank and "carry with them an implicit threat: if the money is not produced, harm to the teller or other bank employee may result." *United States v. Gilmore* (C.A.6, 2002), 282 F.3d 398, 402; *United States v. Bell* (C.A.6, 2008), 259 Fed.Appx. 733,

2009 WL 77783 (applying federal statute Section 2113(a), Title 18, U.S. Code, which includes robbery by intimidation).

**{¶12}** While it may be true that appellant "neither verbally, nor by action, indicated he had a weapon," it is undisputed that he provided the teller with a note proclaiming that "[t]his is a robbery," and then, when his demand note did not produce his desired result, he verbally demanded the teller give him "his money." After reviewing the record, appellant's conduct, although not explicit, inherently conveyed a threat to the bank teller that he would inflict physical harm upon her, or her fellow employees, if she failed to comply with his monetary demands. In turn, by making a demand for money, even without making fighting gestures or indicating the presence of a weapon, we find appellant created a reasonable inference in the bank teller of a threat of impending physical harm if his demands were not met.[1] To hold otherwise would effectively render appellant's assertion that "[t]his is a robbery," as well as his verbal demand for "his money," meaningless. Therefore, because appellant's demands for money carried with them an implicit threat to inflict physical harm upon the teller or her fellow employees, the trial court did not err in finding the state provided sufficient evidence to support his robbery conviction under R.C. 2911.02(A)(2). Accordingly, appellant's first assignment of error is overruled.

**{¶13}** Assignment of Error No. 2:

**{¶14}** "THE TRIAL COURT ERRED IN ENTERING A FINDING OF GUILTY TO ROBBERY BECAUSE SUCH VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

**{¶15}** In his second assignment of error, appellant argues his robbery conviction was against the manifest weight of the evidence. This argument lacks merit.

1. This is further supported by the fact that the bank tellers believed appellant "would pull a gun out," even though he made no indication that he, in fact, had a gun.

**{¶16}** The appellate court, in determining whether a conviction was against the manifest weight of the evidence, must review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶39. The question is whether the trial court, in resolving conflicts in the evidence, "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins,* 78 Ohio St.3d at 387, 1997-Ohio-52. When considering whether a judgment is against the manifest weight of the evidence in a bench trial, an appellate court will not reverse the conviction where the trial court could reasonably conclude from substantial evidence that the state has proven the offense beyond a reasonable doubt. *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59; *State v. Tranovich*, Butler App. No. CA2008-09-242, 2009-Ohio-2338, ¶7.

**{¶17}** This cause came before the trial court based on an agreed joint stipulation of facts and, as a result, no testimony was heard. In turn, since a stipulation of fact renders proof of that specific fact unnecessary, and because there was no testimony provided, the trial court was not presented with any conflicting evidence. *State v. Parks*, Cuyahoga App. No. 90368, 2008-Ohio-4245, ¶11; *Thompkins* at 388. Therefore, because the entire trial was based solely on a joint stipulation of facts, and because the stipulation provided the trial court with substantial evidence to prove his robbery conviction beyond a reasonable doubt, appellant's conviction was not against the manifest weight of the evidence. Accordingly, appellant's second assignment of error is overruled.

**{¶18}** Assignment of Error No. 3:

**{¶19}** "THE TRIAL COURT ERRED IN SENTENCING APPELLANT ON BOTH THE ROBBERY AND THEFT COUNTS AS THEY ARE ALLIED OFFENSES OF SIMILAR IMPORT."

**{¶20}** In his third assignment of error, appellant argues that the trial court erred in

sentencing him on both his robbery and theft convictions because they are allied offenses of similar import. The state concedes, and we agree, that his two convictions should have been merged for sentencing purposes as these two offenses are "so similar that the commission of one offense will necessarily result in commission of the other." R.C. 2941.25(A); *State v. Cabrales,* 118 Ohio St.3d 54, 2008-Ohio-1625, paragraph one of the syllabus; *State v. Johnson* (1983), 6 Ohio St.3d 420, 423 (finding aggravated robbery and theft allied offenses); *State v. Reyna* (1985), 24 Ohio App.3d 79, 82. Therefore, because robbery and theft constitute allied offenses of similar import, and because appellant's conduct in the bank involved a single animus and a single course of conduct, we affirm the trial court's findings of guilt, but vacate the multiple sentences and remand the case for the limited purpose of resentencing appellant in accordance with this decision.

**{¶21}** Affirmed in part, reversed in part, and remanded for further proceedings.

YOUNG and RINGLAND, JJ., concur.

**[Cite as *State v. Eckert*, 2009-Ohio-3312.]**