

COURT OF APPEALS
MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
WILLIAM LAWRENCE LLOYD	:	Case No. 14AP0010
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Morgan County Court of Common Pleas, Case No. 14-CR-0013
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	May 26, 2015
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APPEARANCES:

For Plaintiff-Appellee

MARK J. HOWDYSHELL
Prosecuting Attorney
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For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant William Lawrence Lloyd appeals a judgment of the Morgan County Common Pleas Court convicting him of aggravated robbery (R.C. 2911.01(A)(1)) with a repeat violent offender specification (R.C. 2941.149), and sentencing him to twenty-one years incarceration. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On May 2, 2014, appellant entered the Citizens National Bank in McConnelsville wearing a ski mask and brandishing a gun. He pointed the gun at the bank tellers and ordered them to the floor. After emptying the tellers' cash drawers, he proceeded into the bank vault, accompanied by a teller and the cashier. Both employees were needed to unlock the vault's cash drawer. Appellant continued to brandish the gun and ordered both employees to the floor of the vault. He removed cash from the drawer in the vault. As appellant exited the bank, he pulled up his ski mask, and the cashier saw a side view of his face.

{¶3} Sheriff Thomas Jenkins was dispatched to the scene. He saw appellant round the corner of the bank and chased him on foot. Appellant was taken to the ground, face down. As he rolled appellant over, the sheriff noticed a gun in appellant's belt and money in his pockets. Appellant carried a pillowcase full of money from the bank. The total amount of money taken from the bank was \$193,950.00.

{¶4} The gun was later determined to be a BB gun. It was a replica of a military sidearm and had "Beretta" written in front of the trigger guard. Further, although the gun would have been purchased with an orange tip, the tip had been painted black to make the gun appear real.

{¶5} Appellant was indicted on one charge of aggravated robbery, with a repeat violent offender specification. Following jury trial, he was convicted as charged and sentenced to twenty-one years incarceration. He assigns one error on appeal:

{¶6} "DEFENDANT-APPELLANT SHOULD NOT HAVE BEEN CONVICTED OF AND SENTENCED FOR AGGRAVATED ROBBERY BECASUE THE UNLOADED BB GUN USED DID NOT CONSTITUTE A DEADLY WEAPON."

{¶7} Appellant argues that his conviction is against the manifest weight and sufficiency of the evidence because the BB gun was not a "deadly weapon" as defined by R.C. 2923.11(A).

{¶8} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and "in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in evidence the jury 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Thompkins*, 78 Ohio St. 3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App. 3d 172, 175, 485 N.E.2d 717 (1983).

{¶9} An appellate court's function when reviewing the sufficiency of the evidence is to determine 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. Jenks*, 61 Ohio St. 3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶10} Appellant was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1):

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]

{¶11} Deadly weapon is defined by R.C. 2923.11(A) as "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."

{¶12} The Ohio Supreme Court has stated in *dicta* that one may be convicted of aggravated robbery when using a BB gun in the commission of a theft offense. *State v. Gaines*, 46 Ohio St.3d 65, 68, 545 N.E.2d 68 (1989). The jury is entitled to infer the deadly nature of an instrument from the facts and circumstances of its use. *State v. Vondenberg*, 61 Ohio St.2d 285, 401 N.E.2d 437, syllabus (1980). A toy gun is capable of inflicting death because of its possible use as a bludgeon. *State v. Hicks*, 14 Ohio App.3d 25, 26, 469 N.E.2d 992 (1984).

{¶13} This Court has previously held that a BB gun may constitute a deadly weapon, and its use may support an aggravated robbery conviction. In *State v. McKnight*, 5th Dist. Stark App. No.1995CA00241, 1996 WL 74083 (February 5, 1996),

the defendant used a BB gun to rob a convenience store. On appeal, the defendant challenged the sufficiency and weight of the evidence with regard to the deadly nature of the BB gun. In considering this claim, this Court held that because the BB gun could be used as a bludgeon, it can be a deadly weapon within the meaning of R.C. 2923.11(A), and the defendant could be convicted of aggravated robbery. *Id.* at 2.

{¶14} Similarly, in *State v. Tessanne*, 5th Dist. Stark App. No. 1997CA00416, 1998 WL 667328 (September 14, 1998), the defendant pointed a BB gun at one victim and threatened to fight him with it, and threatened to shoot another victim if he did not give the defendant his bike. This Court held that the evidence of the defendant's intent to use the BB gun as a weapon, coupled with the potential use of the gun as a bludgeon, constituted sufficient evidence that the gun was a deadly weapon as defined by R.C. 2923.11(A).

{¶15} In the instant case, Shauntel Shook, a teller at the bank, testified that a man in a mask entered the bank, pointed a gun at the employees, and told them to get on the floor. He pointed the gun in her face during the robbery. She feared for her life during the robbery, and began shaking in the courtroom when she was shown the BB gun. Renee Harkins, the bank cashier, testified that the man moved the gun back and forth while pointing it at the tellers. He also pointed the gun in Ms. Harkins' face. When he dropped the gun in the vault, it sounded "funny" and "lightweight" to her, and at that point she first wondered if it was a real gun. Both witnesses testified that appellant talked to them about family, which they perceived as a threat and a mind game.

{¶16} Sheriff Jenkins testified that the weapon appeared to be a real gun.. He testified that if appellant had pulled out the gun during the chase, he would have shot

appellant. The sheriff testified that when sold, the BB gun would have had an orange tip, but it had been painted black to prevent the gun from looking like a toy. He testified that the gun had "Beretta" printed on it, and was a replica of a military sidearm. He testified that the gun could cause serious injury by stabbing if broken, and could also be used as a club.

{¶17} The altered state of the BB gun coupled with appellant pointing it at bank employees while ordering them to the floor indicated his intention to use the gun as a weapon. This evidence, coupled with the potential use of the gun as a club or to stab someone if broken, constitutes sufficient evidence to support the jury's finding that the BB gun was a deadly weapon as defined by R.C. 2923.11(A). The judgment is not against the manifest weight or sufficiency of the evidence.

{¶18} The assignment of error is overruled. The judgment of the Morgan County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Farmer, P.J. and

Wise, J. concur.