

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

In the Matter of: S.S.

Court of Appeals No. E-09-059

Trial Court No. 2009 F 22

DECISION AND JUDGMENT

Decided: September 30, 2010

* * * * *

Dan M. Weiss, for appellant.

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, Juvenile Division, which found appellant guilty on one count of complicity to commit felonious assault, in violation of R.C. 2923.03 and 2903.11, a felony of the second degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, S.S., a minor, by and through counsel, sets forth the following sole assignment of error:

{¶ 3} "I. The Trial Court erred in affirming the Magistrate's decision finding Appellant a delinquent child as the decision was against the manifest weight of the evidence and not supported by the evidence."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On January 2, 2009, at approximately 7:30 p.m., a juvenile male was walking from his home to a nearby neighborhood store. As he traveled down W. Market St. on foot, he was surreptitiously approached and assaulted by individuals who came upon him from behind. Following the attack, the victim was transported by paramedics to the hospital for emergency medical treatment.

{¶ 5} On January 2, 2009, a juvenile female was visiting her sister's home in the immediate vicinity of the victim's assault. During this visit, there were numerous other juveniles present at the premises. The girl overheard the group discuss and propose committing an assault. Subsequent to this conversation, the girl observed appellant and another male swiftly leave the house and approach the assault victim from behind. She witnessed the other male swing at the victim while appellant stood with him.

{¶ 6} On March 9, 2009, a complaint was filed against appellant for one count of complicity to commit felonious assault, in violation of R.C. 2923.03(A)(2) and 2903.11(A)(1), a felony of the second degree. On April 9, 2009, the matter proceeded to trial. On May 1, 2009, appellant was found delinquent of complicity to commit felonious

assault. On May 8, 2009, counsel for appellant filed objections to the magistrate's decision. On August 27, 2009, the trial court affirmed the magistrate's decision. Timely notice of appeal was filed.

{¶ 7} In the sole assignment of error, appellant asserts that appellant's conviction was against the manifest weight of the evidence. In determining whether a judgment was against the manifest weight of the evidence, an appellate court "weighs the evidence and all reasonable inferences, and considers the credibility of witnesses." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. The court then sits as a "thirteenth juror" and determines whether the factfinder lost its way, resulting in a manifest miscarriage of justice, such that the conviction must be reversed. *Id.*

{¶ 8} In support of the assignment of error, appellant argues that appellee's primary witness gave inconsistent testimony and that appellee failed to establish the elements of the offense such that the conviction constitutes a manifest miscarriage of justice.

{¶ 9} We have carefully reviewed and considered the record of evidence, paying particular attention to the trial transcript, in order to determine the propriety of appellant's argument. The record reflects that appellee's chief witness was acquainted with appellant. The record reflects that this witness directly witnessed and heard a group of individuals, including appellant, discuss and collaborate in the planning of an assault. The record reflects that the witness observed appellant leave the home with a co-defendant, approach the victim from the rear, and observed the co-defendant swing at the

victim with appellant present. The record reflects that the victim subsequently overheard the juveniles involved boasting of the assault upon their return to the home of the witness's sister.

{¶ 10} Countering the above-delineated testimony, appellant self-servingly claims that he did not participate in or directly witness the assault, but simultaneously concedes that he overheard several of the co-defendants exclaiming, "We hit him. We hit him." More significantly, appellant admits to engaging in falsehoods and misrepresentations to the investigating officers regarding his conduct and activities during this incident. For example, appellant initially denied to the officers that he ever left the home when the assault was occurring outside. He later conceded that he had been outside but continued to unpersuasively deny any culpability or involvement. When appellee inquired as to why appellant felt the necessity to engage in a series of lies despite his professed innocence, he interestingly stated, "because I thought that maybe if I lied to 'em that I would get out of trouble."

{¶ 11} Based upon our review and assessment of the record of evidence in this matter, we find that the more objective and compelling testimony and evidence and inferences are ample to establish the offense beyond a reasonable doubt. The record is devoid of evidence establishing that the trial court lost its way or that the disputed judgment constitutes a manifest miscarriage of justice. We find appellant's sole assignment of error not well-taken.

{¶ 12} On consideration thereof, the judgment of the Erie County Court of Common Pleas, Juvenile Division, is hereby affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
