

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

In re T.J.

Court of Appeals No. L-12-1347

Trial Court No. 12226528

DECISION AND JUDGMENT

Decided: July 12, 2013

* * * * *

Timothy Young, Ohio Public Defender, and
Brooke M. Burns, Assistant Public Defender, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶1} This is an appeal from the judgment of the Lucas County Court of Common Pleas, Juvenile Division, finding appellant, T.J., delinquent on one count of felonious assault, a felony of the second degree if committed by an adult, along with a firearm specification. We affirm.

A. Facts and Procedural Background

{¶2} The background to the current incident began approximately one year earlier when the victim, Ameen Horn, “jumped” appellant, beating him up. Subsequently, on September 3, 2012, the day before the incident, appellant’s friend, Shron, shot at Horn. Horn reported the shooting to the police, and was instructed to call them if he learned of Shron’s whereabouts. The next day, September 4, 2012, Horn observed appellant and another boy walking down the street. Horn testified that he thought it was “ironic” that the first time appellant had come down that street in the year since he was beaten up was the day after appellant’s friend shot at him. Horn, despite knowing that someone in appellant’s group always carried a gun, left his house and chased after appellant. As the chase turned down an alleyway, appellant, while still running forward, looked back towards Horn and fired a single shot at him. The shot missed, and Horn ducked back to his house.

{¶3} Horn notified the police of the second shooting. An officer then drove Horn down a street where he identified appellant, Shron, and the other little boy, who were already in custody. Thereafter, the police received two separate anonymous tips directing them to a garage where the gun that was used in the shooting had been stashed.

{¶4} Appellant was transported to the Safety Building, where he was interrogated by Toledo Police Detective Jeff Quigley. Neither appellant’s parent nor an attorney was present for the interrogation. Quigley testified that he presented appellant with a Miranda

Rights waiver. Quigley read the waiver paragraph by paragraph to appellant, and asked appellant if he understood. After reading the entire waiver, Quigley told appellant that if he understood everything and wanted to talk, then he should sign the bottom of the form. Appellant's signed waiver was entered into evidence at the trial.

{¶5} During the subsequent interview, appellant first admitted that he stashed the gun in a garage, and later admitted that he shot at Horn. Appellant demonstrated that as he was running away from Horn, he reached back and fired one round in Horn's direction. Quigley testified that appellant's arm was close to parallel with the ground as he demonstrated how the gun was fired. On cross-examination, the portion of the video of the interrogation where appellant demonstrated how he fired the gun was played. Following the video, Quigley reaffirmed that appellant aimed the gun more or less parallel to the ground, although he stated it was closer to pointing to the ground than perpendicular up in the air.

{¶6} Following the state's presentation of evidence, appellant moved to have the charges dismissed on the grounds that there was no intent to cause harm because appellant did not stop to aim and fire, and because appellant fired only one shot. The trial court denied the motion. The defense then rested without presenting any evidence or witnesses. After closing arguments, the trial court found appellant delinquent of felonious assault, with the firearm specification, beyond a reasonable doubt.

B. Assignments of Error

{¶7} Appellant asserts two assignments of error for our review:

I. [T.J.] was denied the effective assistance of counsel when counsel failed to file a motion to suppress [T.J.]’s statement to police, and when counsel failed to object to the admission of [T.J.]’s statement through the testimony of law enforcement and to the admission of his signed rights waiver form, because he was not given the opportunity to consult with an attorney prior to waiving those rights. Fifth and Fourteenth Amendments to the United States Constitution; Section 10, Article I of the Ohio Constitution.

II. The juvenile court erred when it adjudicated [T.J.] delinquent of felonious assault based on the unreliable and inconsistent testimony of one witness who testified that [T.J.] shot at him, when all the other evidence presented supported a finding that [T.J.] did not knowingly attempt to cause physical harm to the victim.

II. Analysis

A. Ineffective Assistance

{¶8} In support of his first assignment of error, appellant argues that his trial counsel was ineffective for failing to object to the officer’s testimony concerning his admission and to the entry of appellant’s signed waiver form into evidence. Further,

appellant argues his trial counsel was ineffective for failing to move to suppress the statements appellant made during his custodial interrogation. Since both of these arguments center on the admissibility of appellant's confession, we will address them together.

{¶9} To demonstrate ineffective assistance of counsel, appellant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That is, appellant must show counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688, 696. Under the first prong, "[j]udicial scrutiny of counsel's performance must be highly deferential. * * * [A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance * * *." *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), quoting *Strickland* at 689.

{¶10} Appellant presents two arguments why his confession was inadmissible. First, he argues that he had a right to have an attorney or a parent present before he could waive his Miranda rights. R.C. 2151.352 provides, "A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code." Recently, in a 4-3 decision, the Ohio Supreme Court clarified that the term "proceedings" used in the statute does not encompass an "interrogation conducted

prior to the filing of a complaint or prior to appearing in a juvenile court.” *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 2. Thus, R.C. 2151.352 does not confer a statutory right to an attorney in appellant’s situation. Nevertheless, appellant advocates the view of the dissent in *In re M.W.* that due process compels a different result in that juveniles are entitled to special protections because of the limitations on their cognitive abilities and legal capacity. However, that view failed to garner majority support, and we are compelled to follow the dictates of the majority. *State v. Silvey*, 6th Dist. No. L-07-1304, 2009-Ohio-1537, ¶ 9. Therefore, in this regard, appellant has failed to demonstrate a reasonable probability that the outcome of the proceedings would have been different had trial counsel objected to the statements or moved to suppress them.

{¶11} Alternatively, appellant argues that counsel was ineffective for failing to move to suppress the confession on the grounds that it was involuntarily given.

In construing whether a juvenile defendant’s confession has been involuntarily induced, courts should consider the standard set forth in *State v. Edwards*, [49 Ohio St.2d 31, 358 N.E.2d 1051 (1976)], which looks to the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement. *In re Watson*, 47 Ohio St.3d 86, 89-90, 548 N.E.2d 210 (1989).

{¶12} Here, appellant, who was 14 years old at the time, was interrogated at the Toledo Police Department’s Safety Building without a parent or attorney present. Quigley reviewed the Miranda waiver form with appellant paragraph by paragraph, and did not recall that appellant had any questions about the form. Appellant then executed the waiver form, and proceeded to respond to questions about the incident, ultimately confessing to firing a shot at Horn. There is no indication in the record that the interrogation was long or threatening, or that appellant suffered any physical deprivation or mistreatment.¹ Therefore, based on the totality of the circumstances contained in the record, we cannot find that appellant’s confession was involuntary. *See State v. Fontenet*, 6th Dist. No. L-10-1366, 2013-Ohio-1355 (confession not involuntary where 15-year-old defendant was apprised of his rights in a clear, step-by-step manner, confessed “extremely quick[ly],” appeared to be behaving logically and coherently, was not subject to threats, and where the entire interview lasted one hour).

{¶13} Accordingly, because appellant has failed to demonstrate that a reasonable probability exists that but for trial counsel’s alleged errors the result of the proceeding would have been different, his first assignment of error is not well-taken.

B. Manifest Weight

{¶14} As his second assignment of error, appellant argues that the trial court’s adjudication was against the manifest weight of the evidence. Specifically, appellant

¹ There was some discussion when the video of the interrogation was played during the trial that the video was only 17-18 minutes long. However, we do not know if the video recorded the entire interrogation.

argues that Horn's testimony that appellant shot *at* him is inconsistent and unreliable. Instead, appellant contends the evidence shows that he shot at the ground to stop Horn from chasing him. Thus, appellant concludes that he did not *knowingly* attempt to cause harm.

{¶15} When reviewing a manifest weight claim,

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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 and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶16} R.C. 2903.11(A)(2) provides, "No person shall knowingly * * * Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordinance." "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶17} Upon our review of the record, we disagree with appellant's interpretation of the facts. On the salient point of whether appellant shot at him, Horn's testimony is consistent with appellant's own confession. In addition, as to the issue of the manner in which appellant shot at Horn, Horn's testimony is consistent with Quigley's in that both described appellant as turning, looking at Horn, and firing. Further, Quigley unequivocally testified that when appellant demonstrated how he fired at Horn, appellant's arm was more or less parallel to the ground. Quigley's statement that the gun was pointed more at the ground than up in the air is merely a description that, on the horizontal plane, appellant had his arm pointed slightly downward as opposed to upward. Turning, leveling a gun at a person, and firing is clearly a knowing attempt to cause physical harm to another with a deadly weapon. R.C. 2903.11(A)(2). Therefore, we hold that the trial court's adjudication is not against the manifest weight of the evidence.

{¶18} Accordingly, appellant's second assignment of error is not well-taken.

III. Conclusion

{¶19} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
