

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

In re D.C.

Court of Appeals No. L-14-1279

Trial Court No. 14243529

**DECISION AND JUDGMENT**

Decided: July 10, 2015

\* \* \* \* \*

Tim A. Dugan, for appellant, D.C.

Julia R. Bates, Lucas County Prosecuting Attorney, and Drew Wood,  
Assistant Prosecuting Attorney, for appellee.

\* \* \* \* \*

**YARBROUGH, P.J.**

**I. Introduction**

{¶ 1} Appellant, D.C., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, committing him to the custody of the Department of Youth Services (DYS) following an adjudication of delinquency for aggravated robbery with a firearm specification. We affirm.

### **A. Facts and Procedural Background**

{¶ 2} This case involves a robbery that occurred on September 9, 2014, in Toledo, Ohio. The victim of the robbery, T.J., testified that he was on his girlfriend's, B.W., front porch helping her with her homework when he was approached by appellant. Appellant asked T.J. if he could sit down on the porch, and T.J. responded in the affirmative. Five minutes later, appellant exited the porch, walked down the street, and met with another individual who was not identified at trial. Soon thereafter, appellant asked T.J. over to where he was standing. When T.J. arrived, appellant ordered T.J. to give him the set of earrings T.J. was wearing. T.J. initially refused, and attempted to walk away from appellant. However, appellant approached T.J. for a second time, brandished a handgun, and demanded that T.J. hand over the earrings. T.J. then removed his earrings, gave them to appellant, and walked away.

{¶ 3} Upon completion of the robbery, T.J. went to his mother's home and notified the police. When the police arrived, they began asking T.J. questions regarding the identity of the perpetrator. Although he recognized appellant as someone he had seen around the area, T.J. was unable to identify appellant by name. T.J. eventually learned the identity of the perpetrator when he found a picture of appellant that was posted on Facebook. Although T.J. was not "friends" with appellant on Facebook, he testified that "you can look at somebody without being friends with them on Facebook." After locating appellant's Facebook profile, T.J. showed several pictures of appellant to a

Toledo police officer, Jacob Wescott. The state entered one of appellant's Facebook photos into evidence at trial after Wescott testified that it was the same photo shown to him by T.J. on the day of the robbery.

{¶ 4} Upon receiving a copy of the Facebook photo provided by T.J., Wescott entered appellant's social security number into the data terminal located inside his police cruiser, resulting in the discovery of another photograph of appellant.

{¶ 5} One month after the robbery occurred, a complaint was filed with the juvenile court, alleging that appellant appeared to be a delinquent child in that he committed a theft offense as defined in R.C. 2913.01. The complaint also contained a firearm specification pursuant to R.C. 2941.145.

{¶ 6} A bench trial before a magistrate ultimately ensued, at which T.J., Westcott, and another Toledo police officer, Amy Herrick, testified. At the conclusion of the trial, the magistrate made a finding of delinquency concerning the aggravated burglary charge and the firearm specification, and the matter was continued for disposition.

{¶ 7} At his disposition, the juvenile court committed appellant to DYS for one year up to the age of 21 for the aggravated burglary charge, one year for the firearm specification, and one year up to the age of 21 in connection with a prior sentence that had been stayed by the juvenile court. The court ordered the commitments served consecutively, for a total term of three years up to the age of 21.

## **B. Assignments of Error**

{¶ 8} Appellant has now filed this timely appeal, asserting the following assignments of error:

1) The State failed to provide legally sufficient evidence to sustain a delinquency finding on Aggravated Robbery and the attached firearm specification.

2) The Juvenile Court's finding of delinquency for Aggravated Robbery and the attached firearm specification fell against the manifest weight of the evidence.

## **II. Analysis**

{¶ 9} In appellant's first assignment of error, he argues that the state produced insufficient evidence to support the trial court's adjudication.

{¶ 10} In determining whether the adjudication for delinquency is supported by sufficient evidence, we apply the same standard of review applicable to criminal convictions. *See In re Watson*, 47 Ohio St.3d 86, 91, 548 N.E.2d 210 (1989). The relevant inquiry in such cases is "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 (1991), paragraph two of the syllabus.

{¶ 11} A trial court may enter a finding of delinquency when the evidence demonstrates, beyond a reasonable doubt, that the child committed an act that would

constitute a crime if committed by an adult. R.C. 2151.35(A); Juv.R. 29(E)(4). Here, the juvenile court adjudicated appellant delinquent for a theft offense as defined in R.C. 2913.01 and an attendant firearm specification pursuant to R.C. 2941.145.

{¶ 12} Appellant was found responsible for aggravated robbery in violation of R.C. 2911.01(A)(1), which states:

(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.

{¶ 13} Here, appellant concedes that “[t]here is only one element at issue in this case: identity.” More specifically, appellant asserts that the state “never once asked any witness to identify Appellant as the person in any of the photos or the person who robbed the victim, and never asked the Magistrate to have the record reflect such an identification. T.J. also never identified Appellant as the person holding the firearm.” The record belies appellant's claims.

{¶ 14} At trial, T.J. indicated that the individual shown in the Facebook picture was the same individual who robbed him on September 9, 2014. T.J. also identified appellant as the robber at trial as follows:

Q. Okay. And the person who is sitting here in the courtroom at the middle spot of this table is the same person who took your earrings?

A. Yes.

{¶ 15} Upon further questioning, T.J. also testified that appellant brandished a firearm during the robbery:

Q. Okay. Did he do anything when he asked for your earrings?

A. Yes.

Q. What was that?

A. He pulled a gun.

{¶ 16} In addition to T.J.'s identification testimony, Wescott recognized appellant at trial as the individual pictured in the Facebook photograph provided by T.J. and the photograph that he retrieved from the police department's computer database.

{¶ 17} When viewing the foregoing evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of aggravated robbery and the attendant firearm specification proven beyond a reasonable doubt. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 18} In appellant's second assignment of error, he argues that the trial court's adjudication was against the manifest weight of the evidence.

{¶ 19} 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).

{¶ 20} In support of his second assignment of error, appellant essentially reasserts the argument previously addressed in our examination of his first assignment of error, namely that “the fact of a gun came out rather secondary in T.J.’s testimony and he never identified who actually held the weapon.”

{¶ 21} Notably, appellant fails to cite any conflicts in the evidence concerning T.J.’s identification of him as the individual who brandished the firearm. Rather, T.J.’s uncontroverted testimony identifies appellant as the robber, and identifies the robber as the person who brandished the firearm. Therefore, we find that the evidence presented at trial clearly establishes that appellant wielded the firearm that was drawn on T.J. during the robbery. Thus, we do not find this to be the exceptional case in which the evidence weighs heavily against the conviction.

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

### III. Conclusion

{¶ 23} 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, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

JUDGE

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