[Cite as *In re A.D.*, 2006-Ohio-2300.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86508

IN RE:	:	
	:	
A.D.	:	JOURNAL ENTRY
	:	
	:	and
	:	
	:	OPINION

DATE OF ANNOUNCEMENT OF DECISION:	May 11, 2006
CHARACTER OF PROCEEDING:	Civil Appeal from Common Pleas Court, Juvenile Division, Case No. 04110459
JUDGMENT:	AFFIRMED
DATE OF JOURNALIZATION:	_____

APPEARANCES:

For Appellant, A.D.:	ROBERT L. TOBIK Public Defender PATRICIA K. LONDON Assistant Public Defender 1200 West Third Street, N.W. 100 Lakeside Place Cleveland, Ohio 44113
For Appellee, State of Ohio:	WILLIAM D. MASON Cuyahoga County Prosecutor GARY A. VICK, JR. Assistant 1200 Ontario Street Cleveland, Ohio 44113

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ANTHONY O. CALABRESE, JR., J.:

{¶ 1} A.D. (appellant) appeals from the trial court's adjudicating him delinquent on charges of aggravated robbery and felonious assault. After reviewing the facts of the case and pertinent law, we affirm.

I.

{¶ 2} On November 18, 2004, four teenagers surrounded A.A. (the victim) as he was walking near East 79th Street and Superior Avenue in Cleveland. The boys assaulted the victim, seriously injuring his right eye and stealing $5 from his pants pocket. The victim, who is a sophomore in high school, later identified appellant as one of the boys who punched him and as the boy who took the money from him.

{¶ 3} On December 6, 2004, appellant was charged with aggravated robbery and felonious assault. On March 8, 2005, the trial against appellant began, and on March 29, 2005, he was adjudicated delinquent on both charges.

II.

{¶ 4} In his sole assignment of error, appellant argues that "the evidence was insufficient to support a finding of delinquency as to the charges of aggravated robbery and felonious assault." Specifically, appellant argues that there was insufficient evidence to prove the identity of the assailants.

{¶ 5} When reviewing the sufficiency of the evidence, an appellate court must determine "[w]hether, 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* (1991), 61 Ohio St.3d 259. The only element that is in question in the instant case is appellant's identity. Appellant argues that

the victim's sight was limited because of the injury to his eye and that the two witnesses who testified against him did not have an adequate opportunity to view the assailants' faces. Although appellant did not appeal on grounds that his delinquency was against the manifest weight of the evidence, he essentially argues that this is a case of mistaken identity, testing the weight of the evidence.

{¶ 6} The proper test for an appellate court reviewing a manifest weight of the evidence claim is as follows:

> "The appellate court sits as the 'thirteenth juror' and, reviewing the entire record, weighs all the 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 (1997), 78 Ohio St.3d 380, 387.

{¶ 7} At trial, the victim identified appellant as follows: "When he hit me in the face, I just gave up and laid down on the ground. And when I laid on the ground, I just started looking around, like looking at the faces so I could remember." When finding appellant delinquent in the instant case, the juvenile court stated the following:

> "This is a tough case. One of the state's witnesses, the girlfriend, I didn't find to be particularly compelling. In fact, I even wrote in my notes that some of her testimony was questionable. I found the victim's testimony to be rather consistent. I mean, he was straight up and claims that he picked you out of a photo line-up and identified you the night of the event. Your cousin coming in and testifying certainly casts a different light on everything. When I have to make a decision like this, I try to - all the testimony doesn't alway [sic] coincide, but sometimes it kind of fits together like pieces and parts of a puzzle. And if I do that in this case and I put credit on the testimony that I think warrants it and discount some of the others, I find that there is enough

> evidence to find beyond a reasonable doubt that you committed the offenses as charged."

{¶ 8} We find that the evidence of appellant's identity is sufficient to show that he was among the teenagers who assaulted and robbed the victim. Furthermore, the trier of fact was in the best position to "view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *State v. Truesdale* (July 10, 1992), Jackson App. No. 670.

{¶ 9} Accordingly, we hold that the court did not lose its way when finding appellant delinquent of the charges against him. Appellant's assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas, Juvenile Court Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANTHONY O. CALABRESE, JR.
JUDGE

COLLEEN CONWAY COONEY, P.J., and

PATRICIA ANN BLACKMON, J., CONCUR.