

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87700

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALI TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-461194

BEFORE: Celebrezze, A.J., Gallagher, J., Blackmon, J.

RELEASED: January 25, 2007

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Appellant, Ali Taylor, appeals his conviction in the common pleas court. After a thorough review of the record and the arguments presented and for the reasons set forth below, we affirm.

{¶2} On January 25, 2005, appellant was charged in a three-count indictment, including one count of felonious assault, in violation of R.C. 2903.11, with one- and three-year firearm specifications; and two counts of having a weapon while under disability, in violation of R.C. 2923.13.

{¶3} The indictment arose from an assault on Ervin Walker (“Walker”), the victim in this case, which occurred on August 17, 2003. At the time of the incident, Walker lived with his mother in an apartment on the corner of East 87th Street and Hough Avenue in Cleveland. Walker and appellant became acquaintances through Walker’s mother.

{¶4} On August 17, 2003, Walker and several other people, including appellant, were gathered near the corner of East 87th and Hough. Walker observed appellant smoking cigarettes dipped in embalming fluid, a drug known as “woo.” At some point, appellant became upset because he thought someone had taken compact discs that belonged to him, and he accused Walker of taking the discs. Walker assured appellant that he had not taken them. Appellant pulled out a gun and brandished it. After Walker attempted to reason with him to put the gun away, appellant hit Walker in the eye with the butt of the gun. The force of the hit cut Walker and left a permanent scar on his face.

{¶5} Walker retreated into his mother’s apartment. Sometime later, his grandmother took him to the police to make a report on the assault and then to the hospital for medical treatment. At the hospital, Walker informed the medical personnel that he had been hit with the butt of a gun and was treated for his injury. Detective Ronald Berry of the Cleveland Police Department was assigned to investigate the incident. His investigation led to appellant’s arrest and indictment.

{¶6} On December 20, 2005, trial commenced. Appellant chose to try count one to a jury and counts two and three to the court. At the conclusion of trial, the jury was unable to reach a unanimous verdict on the felonious assault charge, but the trial court found appellant guilty of both counts of having a weapon while under disability. On December 28, 2005, appellant was sentenced to eleven months in prison on the weapons under disability convictions, to be run consecutively to an unrelated conviction in CR-411628.¹

{¶7} Appellant appeals his convictions for having a weapon while under disability, asserting one assignment of error.

{¶8} “I. Appellant’s conviction was not supported by sufficient evidence and he was not proven guilty by evidence beyond a reasonable doubt.”

{¶9} A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 2220, 72 L.Ed. 2d 652, 663, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560. However, a judgment will not be reversed upon insufficient or conflicting evidence if it is supported by competent credible evidence which goes to all the essential elements of the case. *State v. Trembly* (2000), 137 Ohio App.3d 134, 139, citing *Cohen v. Lamko* (1984), 10 Ohio St.3d 167, 462 N.E.2d 407.

¹Appellant later pleaded guilty to an amended count of felonious assault on March 22, 2006; however, that conviction is not at issue in this appeal.

{¶10} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of defendant’s guilt beyond a reasonable doubt. The relevant inquiry 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. (*Jackson v. Virginia* [1979], 443, U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)” *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, at paragraph 2 of the syllabus. See, also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

{¶11} Appellant was convicted of having a weapon while under disability, in violation of R.C. 2923.23, which reads in pertinent part:

{¶12} “A) *** no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

{¶13} “***

{¶14} “(2) The person *** has been convicted of any felony offense of violence ***.

{¶15} “(3) The person *** has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse ***.”

{¶16} Pursuant to the charges for having a weapon while under disability, appellant has stipulated to the fact that he had a prior conviction for aggravated assault in CR-344805, and he had three prior convictions for drug possession in CR-382252, CR-339901 and CR-406590. His sole argument is that there was insufficient evidence presented at trial to establish that he knowingly acquired, had, carried, or used a firearm or dangerous ordnance. We disagree.

{¶17} At trial, both Walker and Detective Berry testified to the events in question. According to the record, Walker clearly saw appellant brandish a gun. Walker further testified that appellant hit him in the face with the butt of the gun. Consequently, Walker was forced to seek medical treatment for his wound, where he informed medical personnel that his injury was caused by being hit in the face with a gun. Taking this evidence alone in a light most favorable to the prosecution, a rational trier of fact clearly could have found that appellant acquired, had, carried, or used a firearm or dangerous ordnance.

{¶18} Appellant contends that since the firearm in question was never recovered or admitted into evidence, the state failed to establish that the gun was real or operable. This contention is without merit. According to R.C. 2923.11(B)(2), “[w]hen determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising

control over the firearm.” It is clear that circumstantial evidence is sufficient to establish the legitimacy of a weapon brandished by a defendant. *State v. Rivers* (1989), Cuyahoga App. No. 54953.

{¶19} When asked if he believed the gun appellant brandished was genuine, Walker testified as follows:

{¶20} “Common sense you being over there, you not going to pull out no gun. You not going to pull a fake gun and take a chance somebody else have a real one and then you freeze up and you get popped.” (Tr. 219.)

{¶21} Further evidence indicated that the neighborhood where the incident took place was well known as a violent area, and it was not out of the ordinary for a person to possess a functioning firearm. Taking this evidence in a light most favorable to the prosecution, it is apparent that appellant’s conviction was supported by the sufficiency of the evidence presented. Appellant’s sole assignment of error is without merit, and this appeal fails.

Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., CONCURS;
SEAN C. GALLAGHER, J., CONCURS IN JUDGMENT ONLY.