[Cite as *In re E.L.*, 2015-Ohio-2502.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: E.L.	C.A. No. 27527
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DL 13 11 2155

DECISION AND JOURNAL ENTRY

Dated: June 24, 2015

HENSAL, Presiding Judge.

{¶1} Appellant E.L. appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, adjudicating him delinquent for assaulting a teacher. For the following reasons, this Court affirms.

I.

{¶2} E.L. was a football player for Kenmore High School. After the last home game in November 2013, a large fight erupted between the players and fans of the two teams. According to witnesses, E.L. attempted to run toward the fracas, but he was restrained by the team's medical advisor. At the direction of police officers, Kenmore's coaches ordered their players to their locker room to wait until the other team's players boarded their buses.

{¶3} Coach Jerry Van Norstran testified that, after the players were corralled in the locker room, another coach climbed up on a stool and announced that everyone had to remain in the locker room. He said that, as he was standing in front of the exit, E.L. approached him and

asked if he could go outside to see his mother. When Coach Van Norstran told him no, E.L. became angry and tried to push through him. At that moment, the door opened behind Coach Van Norstran, causing him to fall backwards a little, so he grabbed E.L. and moved him to the side. When Coach Van Norstran let go, E.L. lunged at him and punched him with a closed fist. E.L. then grabbed the coach's shirt and refused to let go until he was restrained by a different coach.

{¶4} Following the incident, an officer filed two complaints against E.L., alleging that he appeared to be a delinquent child for committing assault on a teacher and rioting. The case proceeded to trial before a magistrate. After the State presented its evidence, the magistrate dismissed the allegation of rioting. Upon review of all the evidence, she found E.L. delinquent as to the assault allegation and recommended that the court place him on probation for six months. The trial court approved the magistrate's decision that same day. E.L. moved to set aside the magistrate's decision, arguing that the delinquency finding was against the manifest weight of the evidence, but the juvenile court denied his motion.[1] E.L. has appealed, assigning three errors.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO GRANT E.L.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION.

[1] Although E.L. filed a "Motion to Set Aside Decision of Magistrate," it appears that the trial court treated his motion as an objection under Juvenile Rule 40(D)(3)(b). In addition, although the trial court wrote that it "[d]enied" the "motion," we presume that it, in effect, overruled E.L.'s objection.

{¶5} E.L. argues that the juvenile court should have granted his motion to dismiss for lack of subject-matter jurisdiction because the State did not present any evidence that he was under 18 years of age at the time of his alleged delinquency. He notes that, under Revised Code Section 2151.23, the juvenile court has exclusive jurisdiction "[c]oncerning any child who on or about the date specified in the complaint * * * is alleged * * * to be * * * a delinquent * * * child * * *." R.C. 2151.23(A)(1). A child is "a person who is under eighteen years of age." R.C. 2151.011(B)(6). E.L. argues that, since there was no evidence presented at trial regarding his date of birth, the juvenile court did not have subject-matter jurisdiction to decide his case.

{¶6} Whether E.L. was a child in November 2013 did not affect the juvenile court's subject matter jurisdiction over his case. "Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases." *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶ 19. It is "determined without regard to the rights of the individual parties involved in a particular case." *Id*. In this case, the complaint alleged that E.L. was "a minor under the age of eighteen years" who "appears to be a Delinquent child[.]" Such cases are within the subject matter jurisdiction of the juvenile court. R.C. 2151.23(A)(1). The trial court, therefore, did not err when it denied E.L.'s motion to dismiss for lack of subject-matter jurisdiction. *See In re S.R.*, 9th Dist. Summit No. 27209, 2014-Ohio-2749, ¶ 15. E.L.'s first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE MANIFEST WEIGHT OF THE EVIDENCE SUPPORTED ADJUDICATING E.L. A DELINQUENT CHILD.

{¶7} E.L. next argues that the trial court's decision was against the manifest weight of the evidence. If a defendant asserts that his conviction is against the manifest weight of the evidence,

> an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine 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.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases. *State v. Carson*, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at 340.

{¶8} E.L. argues that the evidence did not support his adjudication as a delinquent child. He alleges that Coach Van Norstran was the only witness who saw him do anything inappropriate and that none of the other State's witnesses corroborated his story. Coach Joseph Porco, however, also testified that he was in the Kenmore locker room and saw E.L. hit Coach Van Norstran. According to Coach Porco, after Coach Van Norstran said no one could leave the room, E.L. became angry and charged at Coach Van Norstran. He testified that E.L. lunged at Coach Van Norstran and struck him with a "[c]losed hand to the upper torso."

{¶9} A number of E.L.'s friends testified that Coach Van Norstran was the one who initiated contact with E.L., pushing or pulling E.L. and making him fall over a bench when E.L. attempted to leave the locker room. The magistrate, however, was in the best position to observe the demeanor of the witnesses, assess their credibility, and resolve any conflicts in the evidence. *State v. Eutin*, 9th Dist. Wayne No. 14AP0021, 2015-Ohio-924, ¶ 15. "This Court will not

overturn the trial court's verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witnesses' testimony over the testimony of others." *State v. Brown*, 9th Dist. Wayne No. 11CA0054, 2013-Ohio-2945, ¶ 42. Upon review of the record, we conclude that the magistrate's findings were not against the manifest weight of the evidence. The trial court, therefore, did not err when it adopted them. E.L.'s second assignment of error is overruled.

ASSIGNMENT OF ERROR III

E.L. RECEIVED INEFFECTIVE ASSISTANCE FROM HIS TRIAL COUNSEL.

{¶10} E.L. argues that he received ineffective assistance of counsel at trial and when his lawyer moved to set aside the magistrate's decision. To prevail on a claim of ineffective assistance of counsel, E.L. must show (1) that counsel's performance was deficient to the extent that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and (2) that but for counsel's deficient performance there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). A deficient performance is one that falls below an objective standard of reasonable representation. *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. A court, however, "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland* at 689, quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955). Further, to establish prejudice, E.L. must show that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. *Id*. at 694.

{¶11} E.L. argues that his trial counsel failed to have copies of discovery materials to use as exhibits, that she lost her place in the testimony, that she asked irrelevant questions, and that she referred to testimony as stipulations. He also argues that she failed to object to several instances of hearsay, including testimony that implied that he had previously punched a coach, testimony about the reason for his removal from the football game, and testimony regarding whether his mother supported him being involved in the fight. According to E.L., the admission of the hearsay led the trial court to believe that he was "a spoiled brat" following in his mother's footsteps. E.L. further argues that his lawyer elicited testimony that was detrimental to his defense and failed to pursue the possibility that he had suffered a concussion during the game.

{¶12} Regarding the missing discovery materials, it was E.L.'s counsel's contention that the prosecutor failed to produce them before trial. It also appears that counsel was able to obtain a copy of the materials during the trial. Regarding counsel losing her place or asking irrelevant questions, E.L. has not demonstrated that her actions prejudiced him. Regarding whether his counsel referred to testimony as stipulations, E.L. has not directed this court to any place in the record that supports his allegation. *See* App.R. 16(A)(7).

{¶13} Regarding E.L.'s allegation that his counsel failed to object to hearsay, the first instance that he identifies was admissible because it involved a question about Kenmore's head coach's state of mind. Evid.R. 803(3). The statement about a coach being punched during the fight between the teams was actually elicited by E.L.'s counsel on cross-examination, and she made clear with a follow-up question that E.L. had not been accused of that act. The question about the reason E.L. was removed from the football game was not prejudicial as the witness did not know the reason for E.L.'s removal from the game. Regarding statements that E.L.'s mother made, we note that, although the magistrate referred to them when making findings of fact

during the hearing, she did not refer to them in her written decision, and the trial court did not cite them in its judgment entry. Rather, the juvenile court found that, having reviewed the record, the magistrate did not lose her way when she found the testimony of the teachers who witnessed the incident more credible than the testimony of the other students. Accordingly, we cannot say that there is a reasonable probability that the admission of the mother's statements affected the outcome of the trial.

{¶14} Regarding E.L.'s assertion that his counsel elicited unfavorable testimony about him, it appears counsel was raising the possibility that E.L. had suffered a concussion during the game, which could explain his conduct in the locker room. Her questions, therefore, were a matter of trial strategy that this Court declines to second guess. *See In re Spence*, 9th Dist. Lorain No. 99CA007522, 2001 WL 298236, *5 (Mar. 28, 2001). Finally, we cannot determine on the record before us whether the result of the trial would have been different if E.L.'s counsel had sought a medical expert on concussions. *See State v. Helmick*, 9th Dist. Summit No. 27179, 2014-Ohio-4187, ¶ 20.

{¶15} Regarding his motion to set aside the magistrate's decision, E.L. argues that his lawyer failed to submit timely objections to the decision. He also argues that, even when his lawyer did submit an objection, it was devoid of any legal reason or argument. He contends that his lawyer should have raised all of the arguments he has made in this appeal.

{¶16} Although E.L.'s counsel did not object to the magistrate's decision within the standard deadline, she sought and received an extension of the deadline. Although counsel only made a manifest weight argument to the trial court, E.L. has not established that she overlooked a meritorious argument. We, therefore, conclude that E.L. has failed to demonstrate that his trial counsel was ineffective. E.L.'s third assignment of error is overruled.

III.

{¶17} E.L.'s assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR.

APPEARANCES:

GREGORY A. PRICE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.