

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

In the matter of: M.M.

Court of Appeals No. L-10-1267
L-10-1309
L-10-1310

Trial Court No. JC10207089
JC10207322
JC08189513

DECISION AND JUDGMENT

Decided: June 17, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Melissa A. Sharp, Assistant Prosecuting Attorney, for appellee.

Stephen D. Long, for appellant.

* * * * *

OSOWIK, P.J.

{¶1} This is a consolidated appeal from the Lucas County Court of Common Pleas, Juvenile Division, which found appellant, M.M., a delinquent child by committing

acts which, if committed by an adult, would constitute felonious assault, in violation of R.C. 2903.11(A)(1) and robbery, in violation of R.C. 2911.02(A)(2), both second degree felonies. M.M. also admitted to violating the terms and conditions of his probation, in violation of R.C. 2151.21. For the following reasons, the judgment of the trial court is affirmed.

{¶2} From that judgment, counsel for appellant sets forth two assignments of error:

{¶3} "1. THE TRIAL COURT'S ADJUDICATION OF DELINQUENCY FOR THE CRIMES OF ROBBERY AND FELONIOUS ASSAULT ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶4} "2. M.M.'S ADMISSION TO HIS PROBATION VIOLATION WAS NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY [SIC] WHERE THE TRIAL COURT FAILED TO ADVISE HIM OF HIS CONSTITUTIONAL RIGHTS.

{¶5} The following undisputed facts are relevant to this appeal. On August 1, 2010, M.M. ("appellant") took his bicycle onto the property of a woman. When the woman requested that appellant leave her premises, appellant spit in her face twice. In response, she spit back at appellant. An altercation ensued. Appellant got off his bicycle, grabbed her by her hair, and repeatedly punched her in the face. In response, the woman fought back. As a result of the incident, she received medical treatment, including eight

stitches, from St. Vincent's Mercy Medical Center for lacerations inflicted on the outside of her upper lip and the inside of her lip. In addition, several hundred dollars in cash was stolen from the victim.

{¶6} On August 1, 2010, the Toledo Police Department responded to an emergency call at the victim's residence. Upon arrival, the responding officer observed the victim holding a blood-stained rag from her lacerated lip and observed that the victim had a ripped shirt with blood on it. Appellant fled the scene on his bicycle before the police arrived. Appellant has an extensive criminal history.

{¶7} Appellant also had an existing warrant for his arrest for contempt of a court order, in violation of R.C. 2151.21. On August 19, 2010, a pretrial was held. On August 24, 2010, an adjudicatory hearing was held. The trial court found appellant delinquent on all counts.

{¶8} As a result of appellant's probation violation, he was ordered to serve six months up to age 21 in the legal custody of the Department of Youth Services ("DYS"). On the robbery and assault counts, appellant was sentenced to serve from one year up to the age of 21 at DHS. The sentences were ordered to be served concurrently. It is from this judgment that appellant now appeals.

{¶9} In the first assignment of error, appellant argues that the trial court's adjudication of delinquency for the crimes of robbery and felonious assault was not supported by sufficient evidence and was against the manifest weight of the evidence.

Appellant asserts that the evidence was insufficient to support his adjudication for felonious assault because he was acting in self-defense. Appellant also contends there was insufficient evidence for the robbery adjudication. We disagree.

{¶10} Due process affords juveniles the same protections afforded criminal defendants, notwithstanding the civil nature of juvenile proceedings. *In re John A.S.*, 6th Dist. No. E-04-029, 2004-Ohio-6881, ¶ 10; *In the Matter of: Jesse A.C.* (Dec. 7, 2001), 6th Dist. No. L-01-1271. Accordingly, "we review juvenile delinquency adjudications using the same weight and sufficiency standards that we would use for criminal defendants." *Id.* A juvenile, like an adult, is constitutionally entitled to have every element of a charged crime proved beyond a reasonable doubt. See *In re Winship* (1970), 397 U.S. 358, 365, 90 S.Ct. 1068.

{¶11} Crim. R. 29(A) provides that a trial court "shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, * * * if the evidence is insufficient to sustain a conviction of such offense or offenses." To determine whether the evidence before a trial court was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the state. *State v. Dennis* (1997), 79 Ohio St.3d 421, 430.

{¶12} R.C. 2903.11 defines felonious assault as:

{¶13} "(A) No person shall knowingly:

{¶14} "(1) Cause serious physical harm to another;

{¶15} "(2) Cause or attempt to cause physical harm to another by means of a deadly weapon or dangerous ordinance, as defined in section 2923.11 of the Revised Code.

{¶16} "(B) Whoever violates this section is guilty of felonious assault, an aggravated felony of the second degree."

{¶17} 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 the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. See, also, *State v. Jenks* (1991), 61 Ohio St.3d 259, ¶ 2.

{¶18} Our review of the record encompasses sufficient evidence in support of a conviction. In support of appellant's first assignment of error, he claims that he acted in self-defense. Specifically, as the record unequivocally reflects, appellant came on the property of the victim and spit in her face twice. The woman asked appellant to leave and he punched her repeatedly, causing lacerations on her lip. The certified medical records admitted at trial reflect the physical harm inflicted on the victim. Weighing the conflicting testimony, which must be viewed in a light favorable to the state, the trial

court reasonably found that appellant committed assault and was not acting in self-defense. The record contains ample credible evidence in support of conviction. The record does not contain objective or compelling evidence demonstrating self-defense. We find that appellant's felonious assault delinquency finding was proper.

{¶19} Appellant was likewise found to be delinquent of robbery, pursuant to R.C. 2911.02. The record shows that appellant committed a theft offense, fled immediately after, and inflicted physical harm to the victim. The victim testified that appellant made statements claiming to have stolen the money. The victim's mother witnessed the altercation when she arrived at the scene. She overheard her daughter yelling at appellant to return the money he had taken. This testimony, the police report, the physical assault on the victim, and the victim's own testimony all support the adjudication. Appellant contends a conflict pertaining to when the victim realized the money was missing. This contention, however, is not dispositive. The record establishes that appellant took money from the victim while committing felonious assault against her. We concur with the trial court that the evidence presented was credible and persuasive.

{¶20} Given our determination that the record contains sufficient evidence to support the conviction as a matter of law, we next consider the claim that the judgment was against the manifest weight of the evidence. Here, the test is broader. A challenge to the weight of the evidence attacks the credibility of the evidence. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. The function of an appellate court in considering an

appeal on the weight of the evidence is to sit as a "thirteenth juror" and may disagree with the factfinder's resolution of the conflicting testimony. *Id.*, quoting *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211. In such circumstances the appellate court determines whether "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, 287; quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶21} The Supreme Court of Ohio declared in *State v. DeHass* (1967), 10 Ohio St.2d 230, that an appellate court does not conduct an exhaustive review of the record, or a comparative weighing of competing evidence, or speculation as to the credibility of any witnesses. Instead, the appellate court presumptively views the evidence in a light most favorable to the prosecution. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *DeHass*, *supra*. A reviewing court gives these determinations great deference because the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections and use these observations in weighing the credibility of the proffered testimony. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶22} In the case before us, credible testimony and evidence confirmed a finding that appellant caused physical harm to the victim and unlawfully took money in the course of assaulting her. This evidence clearly does not weigh against the disputed

conviction. As such, we will not substitute our judgment in place of that of the trial court.

{¶23} A conviction is not against the manifest weight of the evidence merely because there is conflicting evidence before the trier of fact. *State v. Urbin*, 148 Ohio App.3d 293, 2002-Ohio-3410, ¶ 26. After consideration of the entire record, we cannot say that the trier of fact lost his way such that a manifest miscarriage of justice occurred. Accordingly, appellant's first assignment of error is not well-taken.

{¶24} In the second assignment of error, it is asserted that appellant's admission to his probation violation was not knowingly, intelligently, and voluntarily entered and the trial court failed to advise him of his constitutional rights. In support, appellant contends that although the trial court did comply with Juv.R. 29, it did not comply with Crim.R. 11.

{¶25} For juvenile adjudications, however, a trial court must substantially comply with Juv.R. 29. Juv.R. 29 provides in relevant part:

{¶26} "(D) Initial procedure upon entry of an admission

{¶27} "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

{¶28} "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

{¶29} "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶30} If the trial court substantially complies with Juv.R. 29 in accepting an admission by a juvenile, an admission will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver. Substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his admission.

{¶31} The record reflects the trial court's substantial compliance with Juv.R. 29, when it engaged in the following exchange:

{¶32} "The Court: [M.M.], I understand from what the prosecutor and your lawyer have told me is that you are going to be admitting to the motion to show cause that was filed by Ms. Kennedy; is that right?"

{¶33} "[M.M.]: Yes.

{¶34} "The Court: And that you're going to enter a no contest plea to two no operator's licenses and a no headlights traffic offense. Is that what you think is going to happen with those?"

{¶35} "[M.M.]: Yes.

{¶36} "The Court: Okay. Now, as you know, you don't have to enter an admission to anything. You have the right to have a trial on these matters. You have the

right to have the State of Ohio prove these charges beyond a reasonable doubt. She would present evidence and witnesses, and your lawyer would have an opportunity to present evidence and witnesses as well. You have the right to remain silent so you won't have to testify during a trial, and you don't have to talk to anyone about any of the circumstances behind all of these, the rest of the charges. You have the right to have an attorney represent you, and Mr. Bryant will continue to represent you. So do you have any questions about your rights?

{¶37} "[M.M.]: No.

{¶38} "The Court: Okay. If you enter a no – you know, when you enter an admission, it's like pleading guilty, and you'll give up all those constitutional rights including your right to remain silent because we'll talk about the circumstances surrounding the motion to show cause. Now, on those traffic matters, you're entering a no contest plea, so I'll have the prosecutor tell me what she could show if she went to trial, and then you and your lawyer would have an opportunity to make mitigating statements, that means, like, offer a special explanation to me about what happened on that day, on these days where you got these traffic offenses, and then I would have to make the finding to decide whether you were guilty or not. But I have to tell you when people enter no contest pleas, and I – and it might sound like an exaggeration, but I want you to understand, 999 times out of 1000 times the judge will accept a no contest plea and find the person – or for a juvenile, find you to be a juvenile traffic offender. And all

those rights that we talked about you would be giving up, including your right to remain silent. Do you have any questions about that?

{¶39} "[M.M.]: No.

{¶40} "The Court: Did anybody make any promises to get you to enter into these agreements?

{¶41} "[M.M.]: No.

{¶42} "The Court: Anyone forcing you to do it?

{¶43} "[M.M.]: No."

{¶44} The trial court fully informed appellant of the consequences of his admission and engaged in a detailed Juv.R. 29 inquiry:

{¶45} "The Court: Do you have any questions – well, I have to tell you this, I'm sorry. I need to finish talking to you. On the motion to show cause for violating your terms of – let me look at it for a second. Because I have to tell you what your maximum sentence is. [M.M.], when did you – what did you go to YTC for, what offense – did you go on grand theft auto?

{¶46} "[M.M.]: Yes, and criminal damaging.

{¶47} "The Court: Okay. Do you remember way back when we said we were suspending your time on the condition that you went to YTC and successfully completed the program and if you didn't follow through, then we could lift or take that suspension away and send you to the Department?

{¶48} "[M.M.]: Yes.

{¶49} "The Court: Okay. Do you have any other questions for me?"

{¶50} "[M.M.]: No.

{¶51} "The Court: I find that you're entering into this agreement, knowingly, willingly, and voluntarily. So [M.M.], I'm going to begin with 08189513, that's the grand theft auto charge, and that's the motion to show cause that was filed on that."

{¶52} Before proceeding to disposition, further inquiry amply revealed appellant did not comply with the terms and conditions of the probation agreement resulting in adjudication as a delinquent child for violating his court order:

{¶53} "The Court: So you were placed in aftercare and you were supposed to comply with all the programming requirements; do you remember that?"

{¶54} "[M.M.]: Yes.

{¶55} "The Court: Did you do that?"

{¶56} "[M.M.]: No.

{¶57} "The Court: Okay. But you didn't come to Community Control.

{¶58} "[M.M.]: No.

{¶59} "The Court: Okay. Are you satisfied that [M.M.] is a delinquent child for violating his order to – his court order to comply with the Youth Treatment Center programming, Ms. Sharp?"

{¶60} "Ms. Sharp: Yes, Your Honor.

{¶61} "The Court: Mr. Bryant?

{¶62} "Mr. Bryant: Your Honor, I am satisfied.

{¶63} "The Court: As is the Court. [M.M.], I find you to be a delinquent child in violation of the court order that you comply with the programming at Youth Treatment Center, and I find you to be a delinquent child for that."

{¶64} The record unequivocally reflects appellant's admission was made knowingly, voluntarily, and intelligently. Therefore, appellant's second assignment of error is not well-taken.

{¶65} Upon careful, independent review of the testimony and evidence presented at trial, we hold that the court did not act contrary to the manifest weight of the evidence in finding defendant a delinquent child in the commission of felonious assault and robbery. There is substantial, competent, and credible evidence in support of the decision. The record contains no evidence that the factfinder lost its way or created a miscarriage of justice.

{¶66} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay costs 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.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J
CONCUR.

JUDGE

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