[Cite as *In re L.R.*, 2010-Ohio-15.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93356

IN RE: L.R.

A Minor Child

JUDGMENT:
REVERSED; ADJUDICATION VACATED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL-08129675

BEFORE: Celebrezze, J., Rocco, P.J., and Sweeney, J.

RELEASED: January 7, 2010

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, L.R.,[1] appeals from the judgment of the juvenile division adjudicating him delinquent of aggravated trespass, aggravated riot, criminal activity on school property, and assault. After a thorough review of the record, we find that the state did not meet its burden of proof in this case; therefore, the decision of the trial court must be set aside.

{¶ 2} On the afternoon of October 24, 2008, appellant was with a group of 15 to 20 other high-school-aged individuals gathered outside of the Woodland Hills Elementary School in Cleveland, Ohio. The group was gathered at the nearby corner, both on the public sidewalk and several feet onto school property. Sheryl Scherf, a teacher at the school, saw the group. She informed school security of the group's presence and requested that they be asked to leave. School security officer Bilaal Grooce instructed the group to leave, which they did, peaceably moving across the street.

{¶ 3} Moments later, the Woodland Hills students were released at the end of the school day, around 4:00 p.m. Mr. Grooce testified that, upon seeing "what they were looking for," an indeterminate number of the high school group streamed across the street, over the fence surrounding the school, and headed toward a Woodland Hills student, D.K. Mr. Grooce identified J.W. and J.L. as

[1] The parties are referred to herein by their initials or title in accordance with this court's established policy regarding non-disclosure of identities in juvenile cases.

two of the individuals who jumped the fence and attacked D.K. D.K. was only able to identify J.W. out of the numerous people who assaulted him because he was hit in the head by J.W. and remembered little of what happened thereafter.

{¶ 4} Mr. Grooce radioed for assistance, and Cleveland Municipal School District Police Corporal Tony Jones responded to the scene. Corporal Jones testified that he arrived at a chaotic scene with children everywhere, including in the street. After shepherding students from the street onto the sidewalks, Corporal Jones heard a description over the radio and began looking for individuals in his squad car. A few blocks from the school, he saw two individuals that fit the description and picked them up. Appellant was one of the two picked up. Corporal Jones took these two individuals back to the school, where Ms. Scherf identified them as being part of the group she saw on the sidewalk shortly before the fight.

{¶ 5} Appellant was arraigned in juvenile court and charged with aggravated riot,[2] criminal activity on school property,[3] assault,[4] and aggravated trespass.[5]

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[2] Count 1, R.C. 2917.02(A)(2), a fourth degree felony.

[3] Count 2, Cleveland Codified Ordinance 605.08(B), a first degree misdemeanor.

[4] Count 3, R.C. 2903(A), a first degree misdemeanor.

[5] Count 4, R.C. 2911.211, a first degree misdemeanor as charged in Count 4.

{¶ 6} After a trial before a juvenile magistrate, appellant was found delinquent on all counts. He was sentenced to 50 hours of community service and ordered to write letters of apology.[6] Appellant timely appealed this determination citing as errors the juvenile court's denial of his Crim.R. 29 motion for acquittal and that his adjudication of delinquency is against the sufficiency and manifest weight of the evidence.[7]

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[6] At oral arguments, both sides admitted that appellant had served his 50 hours of community service and submitted his letters of apology. This means appellant has served the entire sentence in this matter. There are no cases on point to instruct this court whether this renders appellant's claimed errors moot. Courts of appeals have held that an adjudication of delinquency is not moot even after juveniles have served their imposed sentence because juvenile courts have retained jurisdiction over delinquent juveniles through probation or other mechanisms. See *In re Payne*, Hamilton App. No. C-040705, 2005-Ohio-4849, at ¶2-4; *In re R.W.J.*, 155 Ohio App.3d 52, 2003-Ohio-5407, 798 N.E.2d 1206, at ¶8. That is not the case here. There is no evidence in the record that appellant was subject to probation.

The Ohio Supreme Court has held that, absent a showing by the appellant of some loss of civil rights or some collateral disability, juveniles who have served their entire *misdemeanor* sentences cannot challenge their conviction because such an appeal is moot. *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, 867 N.E.2d 408, at ¶9. This court is unaware of any similar holding when the delinquency involves a felony charge. When an analogous case arises with adults, the Ohio Supreme Court has held that "the numerous adverse consequences" of a felony conviction are enough for a reviewing court to rule on an appellant's claimed errors attacking the conviction. *State v. Golston* (1994), 71 Ohio St.3d 224, 227, 643 N.E.2d 109, 111. We see no reason why this should not also apply to juvenile adjudications of delinquency for charges that would be felonies if they were committed by an adult. Therefore, appellant's challenge is not moot.

[7] Appellant's sole assignment of error states that "[t]he trial court erred in denying defense motions for acquittal under O.Crim. R. 29 and finding L.R. delinquent on all counts without sufficient evidence and against the manifest weight of the evidence."

Law and Analysis

{¶ 7} Under Crim.R. 29, a trial court "shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt." *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus. "A motion for judgment of acquittal under Crim.R. 29(A) should be granted only where reasonable minds could not fail to find reasonable doubt." *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394.

{¶ 8} Thus, the test an appellate court must apply in reviewing a challenge based on a denial of a motion for acquittal is the same as a challenge based on the sufficiency of the evidence to support a conviction. See *State v. Bell* (May 26, 1994), Cuyahoga App. No. 65356. In *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492, the Ohio Supreme Court set forth the test an appellate court should apply when reviewing the sufficiency of the evidence in support of a conviction:

{¶ 9} "[T]he relevant inquiry on appeal is whether any reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. In other words, 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 and determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Eley*

[(1978), 56 Ohio St.2d 169]." See, also, *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 10} Four people testified at appellant's trial. Only Ms. Scherf identified appellant as being at the school that day. She testified that he was in the group of 15 to 20 other people gathered a short distance onto school property. When asked to leave the school property, appellant left. No one else who testified was able to place appellant on school property at the time of the fight. Ms. Scherf did not see anyone jump the fence and engage in the skirmish, and Mr. Grooce could not identify appellant as one of those individuals either. J.L. accepted a plea agreement and testified at appellant's trial. J.L. did not identify appellant as one who participated in the fight or jumped the fence onto school property.

{¶ 11} In a trial before the juvenile court, some of the constitutional safeguards afforded adult defendants are not available, but proof beyond a reasonable doubt is one requirement to which a juvenile defendant is entitled. See *In re Winship* (1970), 397 U.S. 358, 368, 90 S.Ct. 1068, 25 L.E.2d 368. The state bears the burden of establishing each and every element of a charged crime and must do so with proof beyond a reasonable doubt. *State v. Eley*, supra, at syllabus.

{¶ 12} In this case, no witness is able to place appellant inside the fence of the school, much less engaging in the assault of D.K. Although evidence was adduced at trial that appellant was trespassing on school property before the

incident, when the group was asked to leave, appellant left. Aggravated trespass requires one to "enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him." R.C. 2911.211(A).

{¶ 13} No evidence of appellant's intent to injure was shown at trial. No one testified as to why the fight started, and no one was able to testify that appellant engaged in any criminal behavior on school property. Although appellant was probably involved in this incident, "probably" is not the standard of evidence used to adjudicate juveniles as delinquent.

{¶ 14} The evidence produced by the state against appellant is not sufficient to sustain the juvenile court's determination; therefore, the decision of the trial court must be reversed. Appellant's Crim.R. 29 motion should have been granted after the close of the state's case. Appellant's assignment of error is sustained as to the denial of his motion for acquittal; appellant's manifest weight argument is moot.

Judgment reversed; delinquency adjudication vacated.

It is ordered that appellant recover of said appellee 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.

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

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR