

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009-CA-00290
ERNEST CARL ISLES	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No.

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: September 29, 2010

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant, Ernest Isles, appeals his conviction of one count of aggravated robbery and one count of felonious assault, with repeat violent offender specifications. The State of Ohio is Plaintiff-Appellee.

{¶2} On March 27, 2009, Jackson Police Officer Christopher McCord was on patrol in the area of Belden Village, in Stark County, Ohio. While he was patrolling, Officer McCord received a dispatch from Belden Village Mall security that a man, subsequently identified as Appellant, had been acting suspiciously and had been in the mall for approximately four hours. Mall security was concerned because Appellant was wearing a heavy winter jacket on a warm day, he had a towel draped over his head, and was carrying a large stick and “practicing karate.”

{¶3} When McCord responded to the scene, he observed Appellant walking in the parking lot of Dillard’s department store, carrying the stick and wearing a heavy winter jacket.

{¶4} Officer McCord attempted to approach Appellant, stating that he was concerned for Appellant’s welfare. As he approached Appellant, Officer McCord attempted to engage Appellant in a conversation in the parking lot of Max and Erma’s restaurant. Appellant refused to answer McCord’s questions and kept his back to McCord.

{¶5} McCord repeatedly asked Appellant to turn around, and Appellant finally did so, but stared right through McCord. As McCord attempted to engage Appellant in conversation, Appellant raised his stick to his forehead. McCord told Appellant to put

the stick down, at which time, Appellant responded that it was a religious stick and he would not put it down.

{¶6} At that time, McCord became concerned and called for backup. Appellant continued to walk away from McCord, so McCord followed him. Appellant turned around and began swinging his stick in McCord's direction. McCord removed his asp baton from his belt, which he stated is a lethal weapon, and held it down by his side. Appellant then lunged towards McCord swinging his stick and threatening to "crush" him.

{¶7} Appellant then began to walk away again, but turned around and swung his stick at McCord again, but missed striking him. At that time, McCord swung his asp and made contact with Appellant in the arm. Appellant was not fazed by the blow, and then swung his stick again at McCord. He struck McCord on the left wrist. McCord swung his asp again, striking Appellant in his left thigh. Appellant was again unaffected by the blow and he swung his stick at McCord's head. McCord raised his arms in self-defense and Appellant struck McCord on his right hand, causing McCord to drop his asp.

{¶8} At that time, McCord drew his service weapon and disengaged the safety mechanism. He stated that he was pulling the trigger when a backup officer, Eric Haynam, arrived and Appellant became compliant.

{¶9} The whole incident was recorded by Kohl's loss prevention video cameras.

{¶10} As a result of being struck, Officer McCord suffered a bruise on his left arm, and multiple cuts on his hand that required stitches.

{¶11} Appellant was indicted on one count of aggravated robbery, in violation of R.C. 2911.01(B), a felony of the first degree, and one count of felonious assault, in violation of R.C. 2903.11(A)(2), a felony of the first degree. Both counts contained a repeat violent offender specification.

{¶12} Appellant pled not guilty by reason of insanity. He also filed a motion to determine his competence to stand trial. He later stipulated to findings by the Psycho-Diagnostic Clinic that he was competent to stand trial and that he was sane at the time of the offense.

{¶13} In October, 2009, Appellant exercised his right to a jury trial. At trial, he requested, and received, a jury instruction on the lesser included offense of assault. The jury, however, convicted Appellant of felonious assault and aggravated robbery. The trial court convicted Appellant of the repeat violent offender specifications.

{¶14} Appellant was sentenced to four years in prison on the felonious assault, nine years on the aggravated robbery, and was not sentenced to any additional time on the repeat violent offender specifications. The sentences were ordered to be served concurrently.

{¶15} Appellant now appeals his convictions, and raises one Assignment of Error:

{¶16} "I. THE TRIAL COURT'S FINDING OF GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE."

I.

{¶17} In his sole assignment of error, Appellant argues that there was insufficient evidence to convict him of aggravated robbery and felonious assault, both with repeat violent offender specifications. He additionally argues that his convictions were against the manifest weight of the evidence. Specifically, Appellant argues that the State failed to meet its burden in proving that a law enforcement officer's asp baton is a deadly weapon and that the State failed to prove that the stick that Appellant wielded is a deadly weapon. We disagree.

{¶18} When reviewing a claim of sufficiency of the evidence, an appellate court's role 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. Contrary to a manifest weight argument, a sufficiency analysis raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, 175. 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." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

{¶19} Conversely, when analyzing a manifest weight claim, this court sits as a "thirteenth juror" and in reviewing the entire record, "weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed." *State v.*

Thompkins (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶20} In order to convict Appellant of aggravated robbery under R.C. 2911.01(B), the State had to prove that Appellant, without privilege to do so, knowingly removed or attempted to remove a deadly weapon from the person of a law enforcement officer, or knowingly deprived or attempted to deprive a law enforcement officer of a deadly weapon, when the law enforcement officer, at the time of the removal, attempted removal, deprivation, or attempted deprivation, was acting within the course and scope of the officer's duties; and the offender knew or had reasonable cause to know that the law enforcement officer is a law enforcement officer.

{¶21} In order to convict Appellant of felonious assault under R.C. 2903.11(A)(2), the State had to prove that Appellant knowingly caused or attempted to cause physical harm to another by means of a deadly weapon or dangerous ordnance. A deadly weapon is defined as an instrument capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon. See R.C. 2923.11(A).

{¶22} The evidence is sufficient to support Appellant's convictions.

{¶23} Officer McCord testified at trial that he had been trained on how to use the asp baton, that it is a deadly weapon, but that he had also been trained how to use the baton as a non-deadly weapon and is capable of using it to exert non-lethal force when necessary. We find that Officer McCord's testimony satisfied the "deadly weapon" element of aggravated robbery. See *State v. Chandler*, 5th Dist. No. 2007-CA-00134, 2008-Ohio-3122.

{¶24} Moreover, the stick wielded by Appellant can be considered a deadly weapon in the context of this case.

{¶25} There is no question that the stick was used as a weapon and in a manner intended to inflict harm. Appellant repeatedly swung the stick at Officer McCord and made contact with him on two separate occasions. Appellant first swung the stick and struck Officer McCord's left wrist. Officer McCord testified that he believed that Appellant had broken his wrist when he struck him. Appellant next swung the stick at Officer McCord's head. But for Officer McCord's reflexes in raising his hands to protect his head, Appellant would have struck McCord's head. Instead, he struck McCord's hand, causing McCord to drop his asp and also causing multiple abrasions on McCord's hand, some of which required stitches at the hospital.

{¶26} The sole question, then, is whether the weapon is a "deadly" weapon. We find that it is. The Second District, in *State v. Thaler*, 2nd Dist. No. 21129, 2006-Ohio-4017, similarly found that a pool cue, when swung at a victim, was considered a deadly weapon.

{¶27} In *Thaler*, the defendant, who engaged in a fight with another person, swung a pool cue at the other person, causing him to lose consciousness for approximately thirty seconds. At Thaler's trial, no testimony was presented that the pool cue was capable of inflicting death. On appeal, Thaler argued that based on this lack of testimony, that his conviction was not supported by sufficient evidence. The Second District rejected Thaler's argument, finding that a reasonable finder of fact could determine that the pool cue was capable of inflicting death, given the manner in which Thaler wielded the cue. Specifically, the court stated, "a reasonable jury could find that

a blow delivered with such force . . . aimed at the side of the victim's neck, which would necessarily include the victim's head within the area imperiled by the blow (since the forcefulness of the swinging blow would diminish the precision with which the target area could be defined), would be capable of inflicting death." *Id.*, at ¶53. Similarly, in the present case, Appellant swung his stick, which was introduced into evidence, at Officer McCord's head. Officer McCord sustained several injuries from being struck with the stick, some of which required stitches. Moreover, he stated that Appellant struck him so hard that he thought his wrist was broken, and which caused him to drop his baton.

{¶28} We conclude, therefore, that Appellant's convictions were not against the manifest weight of the evidence and that his convictions were supported by sufficient evidence.

{¶29} Appellant's assignment of error is overruled.

{¶30} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ERNEST CARL ISLES	:	
	:	
Defendant-Appellant	:	Case No. 2009-CA-00290
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE