

[Cite as *State v. Carr*, 2010-Ohio-6470.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23826
vs.	:	T.C. CASE NO. 08CR2956
MICHAEL H. CARR	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 29TH day of December, 2010.

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GRADY, J.:

{¶ 1} Defendant, Michael H. Carr, appeals from two convictions
 for having weapons while under a disability in violation of R.C.
 2923.13(A)(3). That section provides, in pertinent part:

{¶ 2} "Unless relieved from disability as provided in section
 2923.14 of the Revised Code, no person shall knowingly acquire,

carry, or use any firearm . . . if . . . [t]he person . . . has been indicted for or convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse. . . .”

{¶ 3} Defendant was charged by indictment filed on August 20, 2008, with multiple felony offenses arising from a shooting in which four persons were struck by bullets from a firearm fired by Defendant. Count Nine alleged a violation of R.C. 2923.13(A)(3) arising from that conduct and Defendant’s having been convicted of the offense of trafficking in marijuana. Count Ten stated a similar allegation regarding a conviction for possession of marijuana.

{¶ 4} Defendant waived his right to a jury trial on the two weapons under disability charges. The remaining charges were tried to a jury on September 16, 17 and 18, 2009. A mistrial was declared when the jury was unable to render a verdict. The court subsequently ordered that a second trial would commence on November 9, 2009.

{¶ 5} On September 29, 2009, counsel for the parties appeared in court at docket call in connection with the two weapons under disability charges. Counsel for the State reminded the court that it had not entered a verdict on those two charges, and asked that, following a stipulation “you would enter your decision . . . on

the Weapons Under Disability" charges. (T. 2). Some discussion about bond followed, and counsel for Defendant stated: "At this time, we are willing to stipulate as to the two prior, un, drug related convictions that are set forth respectively in each count of the indictment, uh, with regard to the Weapon Under disability counts." (T. 5). The court then stated that "[b]ased upon the, um, evidence adduced at trial and that stipulation the court finds the defendant guilty of each of those charges." (T. 5). The court set the matter for a presentence investigation.

{¶ 6} On October 27, 2009, Defendant entered guilty pleas to five of the felony offenses charged, and the State dismissed another. On December 11, 2009, the trial court imposed prison sentences for the five offenses to which Defendant entered guilty pleas and the two weapons under disability offenses of which Defendant was found guilty by the court. Defendant was sentenced pursuant to law. He filed a timely notice of appeal.

{¶ 7} ASSIGNMENT OF ERROR

{¶ 8} "THE TRIAL COURT ERRED WHEN IT FOUND DEFENDANT GUILTY OF TWO COUNTS OF HAVING A WEAPON UNDER DISABILITY AS THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION."

{¶ 9} The weapons under disability charges were alleged in Counts Nine and Ten of the indictment. In his appellate brief, Defendant's counsel states: "Counts nine and ten were not a part

of the aforementioned plea bargain and it is counsel's understanding that the parties agreed to let the Court decide said counts based upon the record from the jury trial." (Brief, p. 2). Defendant argues on appeal that the record from that trial is insufficient to support his weapons under disability convictions because it contains no evidence showing that he was previously convicted of the two drug offenses alleged in Counts Nine and Ten.

{¶ 10} Defendant is correct that the transcript of his jury trial of September 16-18, 2010, which Defendant filed, contains nothing indicating that evidence of Defendant's two prior convictions for drug offenses alleged in Counts Nine and Ten was ever offered. However, and after Defendant filed those transcripts, the State asked to supplement the record with transcriptions of the September 29, 2009 docket call appearance in which Defendant's counsel stipulated to the prior convictions alleged in Counts Nine and Ten. We ordered the State to supplement the record with that transcription, which was filed on September 22, 2010.

{¶ 11} Defendant had waived his right to a jury trial concerning the two weapons under disability charges, permitting the court to determine his guilt or innocence from the evidence it received.

The evidence introduced at his trial regarding the shooting was sufficient to prove that Defendant acquired, carried, and used

a firearm. The further issue is whether the stipulation the parties made on September 29, 2009, permitted the finding of guilt the court made.

{¶ 12} "A stipulation is a voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate the need for proof or to narrow the range of litigable issues." 89 Ohio Jurisprudence 3d, Trial §60. "A stipulation, once entered into and filed and accepted by the court, is binding upon the parties and is a fact deemed adjudicated for the purposes of determining the remaining issues in the case. A stipulation, which is agreed to by both parties, is evidence; it is a substitute for evidence in that it does away with the need for evidence." *Id.* At ¶61. "Stipulations, Waivers, and agreements by counsel made for and in the presence of persons accused of crime are just as binding and enforceable upon the person accused as are similar agreements upon the parties to civil actions." *Id.*, Criminal Law, §2571.

{¶ 13} The stipulation, in its substance, was sufficient evidence from which, in addition to the evidence introduced at trial, the court could find Defendant guilty of the two weapons under disability charges alleged. The transcript of the proceeding in which the stipulation was made indicates that Defendant Carr was then present (T. 6), having previously been

ordered to appear. (Dkt. 37). The better practice would have been for the court to inquire of Defendant whether he permitted his counsel to make the stipulation. However, failure to do that is not fatal, and Defendant does not contend that the stipulation was made by his attorney without Defendant's consent.

{¶ 14} The assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And FAIN, J., concur.

Copies mailed to:

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