

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

In the Matter of: W.E.

Court of Appeals No. L-11-1076

Trial Court No. 11212295 01

DECISION AND JUDGMENT

Decided: December 2, 2011

* * * * *

James J. Popil, for appellant.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Lori L. Olender, Assistant Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, adjudicating appellant delinquent of felonious assault with a firearm specification and imposing a term of imprisonment. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} On November 3, 2010, appellant was charged with committing felonious assault in violation of R.C. 2903.11(A)(1). It was further alleged that appellant used a firearm in the commission of the offense. Specifically, the state alleged that on the night of October 31, 2010, appellant became involved in a dispute with the victim and several other individuals. While several of the individuals were hitting the victim, appellant used a handgun in his possession to shoot the victim in both of her legs, causing her to require medical treatment.

{¶ 3} For reasons unclear from the record before us, a new complaint charging appellant with the same offense was filed on February 22, 2011. On that same date, arraignment was held and the matter proceeded directly to adjudication. At the beginning of the adjudicatory phase, appellant's counsel informed the court that, after he discussed the matter with appellant and his mother, appellant had indicated he was willing to enter into a stipulated agreement regarding the facts the state intended to place on the record. After an extensive colloquy with appellant regarding his rights, the charges against him, the possible minimum and maximum sentences and other aspects of disposition, the court asked appellant if he needed anything explained or whether he needed to speak to his mother or his attorney; appellant responded that he did not. The prosecutor set forth the evidence that would be offered if the matter proceeded to trial and the trial court then asked appellant if he agreed "that is what the state could prove if they went to trial[.]" Appellant responded that he agreed. At that point, the court found appellant to be a

delinquent child pursuant to R.C. 2903.11(A)(1) and the firearm specification set forth in R.C. 2941.145.

{¶ 4} A disposition hearing was held on February 28, 2011. No objections were raised as to the prior finding of delinquency. Appellant was committed to the Ohio Department of Youth Services for a minimum period of one year to age 21 for the felonious assault finding and for three years on the gun specification charge, with the two terms to be served consecutively.

{¶ 5} Appellant sets forth the following two assignments of error:

{¶ 6} "I. The trial court erred in adjudicating appellant to be delinquent of felonious assault pursuant to R.C. 2903.11(A)(1) with firearm specification pursuant to R.C. 2941.145 absent proof of every element of the charge against him by sufficient, competent and credible evidence.

{¶ 7} "II. The trial court erred in adjudicating appellant to be delinquent of felonious assault pursuant to R.C. 2903.11(A)(1) with firearm specification pursuant to R.C. 2941.145 as that finding was against the manifest weight of the evidence."

{¶ 8} 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. Accordingly, "we review juvenile delinquency adjudications using the same weight and sufficiency standards that we would use for criminal defendants." *Id.*

{¶ 9} In support of his first assignment of error, appellant asserts that the state did not present evidence that he "knowingly" shot the victim.

{¶ 10} Appellant was found delinquent for conduct which, if he were an adult, would constitute felonious assault, in violation of R.C. 2903.11(A)(1). That statute reads, in relevant part: "(A) No person shall knowingly * * * cause serious physical harm to another * * *."

{¶ 11} Sufficiency of the evidence is purely a question of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Under this standard of adequacy a court must consider whether the evidence is sufficient to support the conviction, as a matter of law. *Id.* The proper analysis 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. Williams* (1996), 74 Ohio St.3d 569, 576.

{¶ 12} We note at the outset that at the beginning of the adjudicatory hearing, when asked to explain to the court how the case was proceeding, defense counsel stated the following: "We have had – I have had numerous discussions with [W.] as well as with his mother regarding what is going to happen here this morning. He is willing to enter into the stipulated agreement regarding the facts that the prosecutor will put on the record."

{¶ 13} After a detailed colloquy with appellant in order to establish, pursuant to Juv.R. 29(D), that appellant was making the admission voluntarily and knowingly and that he understood the rights he was waiving thereby, the trial court proceeded to take the

state's statement as to what evidence would have been produced if the matter had gone to trial. The prosecutor stated: "* * *[The victim] would testify [W.E.] was there, that he had a handgun in his hand and that he used that handgun and fired at [her], the bullet striking [her] in both of her – going through both of her legs." With regard to the firearm, the prosecutor stated: "[W]e would show that he had a firearm in his hand, that a shell casing was found and that the medical examination of [the victim] would say that she had a bullet wound to both of her legs." The court then asked: "So that the deadly – the gun satisfies the statutory definition of a firearm, that is, that it is operable and discharged projectiles?" The state responded affirmatively.

{¶ 14} The court then asked appellant, "Do you agree that that is what the State could prove if they went to trial?" Appellant responded, "Yes." After defense counsel stated he was satisfied that the elements of felonious assault and the firearm specification had been met, the court proceeded to find appellant a delinquent child in violation of R.C. 2903.11(A)(1) and 2941.145.

{¶ 15} Ohio courts have consistently held that shooting a gun in a place where there is a risk of injury to one or more persons supports the inference that the offender acted knowingly. See, e.g., *State v. Brooks* (1989), 44 Ohio St.3d 185, 192; *State v. Perez*, 8th Dist. No. 91227, 2009-Ohio-959; *State v. Norris*, 8th Dist. No. 91000, 2009-Ohio-34; *State v. Ivory*, 8th Dist. No. 83170, 2004-Ohio-2968; *State v. Gregory* (1993), 90 Ohio App.3d 124. Based on the facts as presented by the state and agreed to by

appellant, we find that appellant knowingly fired a gun at the victim on the date in question, causing serious physical harm.

{¶ 16} Accordingly, based on the foregoing, including appellant's stipulation to the facts put on the record by the state, we find that the trial court did not err by finding that appellant knowingly caused serious physical harm to another. Appellant's first assignment of error is not well-taken.

{¶ 17} As his second assignment of error, appellant asserts that the trial court's finding was against the manifest weight of the evidence. Appellant essentially supports this claim with the same argument set forth in his first assignment of error, arguing additionally that the trial court "lost its way" and created a manifest miscarriage of justice which therefore requires a reversal of its finding. A challenge to the weight of the evidence attacks the credibility of the evidence. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. In such circumstances, the appellate court determines whether "the [factfinder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 18} Based on appellant's admission in court and the law set forth above, this court cannot reverse the trial court's finding of delinquency as being against the manifest weight of the evidence. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 19} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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