

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060479
	:	TRIAL NO. B-0404303
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RONALD ELLIS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant, Ronald Ellis, was convicted of aggravated robbery under R.C. 2911.01(A)(1), with an accompanying firearm specification, and robbery under R.C. 2911.02(A)(2). We affirm those convictions.

The record shows that Cameron Coleman went into the Submarine Galley in the Corryville section of Cincinnati to have a beer after work. He arrived at approximately 10:30 p.m. About an hour later, he went to the bathroom. While he was standing at the urinal, someone else entered the room. That person came up behind him and placed something “hard and heavy,” which Coleman assumed was a gun, against his head. The person said, “I’ll blow your fucking head off. Is the money worth it?”

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

OHIO FIRST DISTRICT COURT OF APPEALS

The assailant reached into Coleman's pocket and removed \$20 to \$30. He told Coleman to lie on the floor, but Coleman sat down instead. The assailant tapped Coleman on the forehead with the object Coleman believed to be a gun and then fled.

Coleman immediately ran out and reported the robbery to the bartender. He described the robber to police as a black male, in his forties, with a mustache, and wearing a black leather coat.

Michael Stock was the bartender that evening. He had seen an individual, later identified as Ellis, enter and leave the bar several times that night. Ellis had been looking around, trying to talk to people and irritating them. At one point, he was drinking beer with a woman. Stock saw Ellis run out of the bar immediately before Coleman came out of the bathroom to report the robbery. Stock's description of Ellis was similar to Coleman's.

Officer Tom Weigand was patrolling in Corryville that night when he received a broadcast about the robbery. He saw an individual matching the description of the robber walking on the street about one block north and east of the Submarine Galley. Weigand got out of his car and yelled for that person to stop. As soon as he yelled, the individual started running. Weigand chased him, but could not apprehend him.

Subsequently, Weigand saw a photograph of Ellis taken from the surveillance camera at Submarine Galley the night of the robbery. He said that it depicted the same person who had run from him that night. Two weeks later, Weigand saw Ellis in approximately the same location and arrested him.

Detective Joy Ludgatis investigated the robbery. Although Coleman told her that he could not identify the robber's face, Stock identified Ellis in photographic lineup as the individual who had run out of the bar that night. When Ludgatis interviewed Ellis, he acknowledged being in the bar the night of the robbery and drinking with a woman,

although he could not identify her. He admitted that he was the person in photographs taken from a security camera and that he was also the person running down the street in video-surveillance footage taken outside the bar that night. When confronted with the video of him running, he could only state that he liked to run.

In his sole assignment of error, Ellis contends that the evidence was insufficient to support his convictions. First, he argues that the state failed to prove that he had possessed a deadly weapon for purposes of the aggravated-robbery conviction and that he had possessed a firearm for purposes of the firearm specification. We find no merit in this argument.

Ellis was convicted of aggravated robbery under R.C. 2911.01(A)(1). It provides that “[n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall * * [h]ave a deadly weapon on or about the offender’s person or under the offender’s control and either display the weapon, brandish it, indicate that the offender possesses it, or use it.” A “deadly weapon” is “any instrument, device, or thing capable of inflicting death, and designed or specifically adapted for use as a weapon, or possessed, carried, or used as a weapon.”²

Both the Ohio Supreme Court and this court have held that “for purposes of establishing the crime of aggravated robbery, a jury is entitled to draw all the reasonable inferences from the evidence presented that the robbery was committed with the use of a gun[.]”³ A jury may “infer the deadly nature of an instrument from the facts and

² R.C. 2923.11(A).

³ *State v. Vondenberg* (1980), 61 Ohio St.2d 285, 401 N.E.2d 437; *State v. Haynes*, 1st Dist. No. C-020685, 2004-Ohio-762.

circumstances of its use.”⁴ A jury may also use a totality-of-the-circumstances test to infer that a firearm was operable for purposes of establishing the deadly-weapon element of aggravated robbery.⁵

As to the firearm specification, R.C. 2941.145(D) states that the term “firearm” has the same meaning given in R.C. 2923.11. R.C. 2923.11(B)(1) defines a “firearm” as “any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant.” The term includes “an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.”

The trier of fact may rely on circumstantial evidence to determine whether a firearm can expel or propel projectiles. That evidence can consist of the defendant brandishing the firearm and the implicit threat to shoot it.⁶ This court has also held that a victim’s belief that a weapon is a gun, together with the intent on the part of the accused to create and use that belief for his own criminal purposes, is sufficient to prove a firearm specification.⁷

The state’s evidence showed that Ellis had approached Coleman from behind and had placed a “hard and heavy” object that Coleman thought was a gun against his head. Ellis said, “I’ll blow your fucking brains out,” and then reached into Coleman’s pockets and stole his money. He ordered Coleman to lie on the floor. Coleman sat on the floor. Although, the bathroom light obscured his view, Coleman believed that the object Ellis held was a gun. Under the circumstances, the jury could have reasonably inferred that Ellis had used a firearm in the commission of the offense. The evidence was sufficient to

⁴ *Vondenberg*, supra.

⁵ *Haynes*, supra.

⁶ *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541; *State v. Woods*, 1st Dist. No. C-060340, 2007-Ohio-1487.

⁷ *Woods*, supra.

show that he had a deadly weapon for purposes of the aggravated-robbery conviction and a firearm for purposes of the firearm specification.

Ellis next argues that the state failed to prove that he was the perpetrator of the offenses. Although Coleman could not specifically identify his assailant, his general description matched Ellis. Further, Stock, who saw Ellis act suspiciously and then run out of the bar immediately before Coleman emerged from the restroom saying that he had been robbed, identified Ellis without hesitation. Weigand also identified Ellis, who ran from him on the street near the bar soon after the crime. Both Weigand and Stock testified that Ellis was memorable because of his large, bushy mustache. Ellis acknowledged being in the bar on the night of the crime. When confronted with the videotape showing him running out of the bar, he stated that he liked to run. Thus, the state presented sufficient circumstantial evidence from which the jury could reasonably have inferred that Ellis had committed the offenses.

In sum, our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state had proved beyond a reasonable doubt all the essential elements of aggravated robbery under R.C. 2911.01(A)(1), the accompanying firearm specification, and robbery under R.C. 2911.01(A)(2). Therefore, the evidence was sufficient to support the convictions.⁸

Ellis also argues that his convictions were against the manifest weight of the evidence. After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse Ellis's convictions and

⁸ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492; *Woods*, supra; *Haynes*, supra.

OHIO FIRST DISTRICT COURT OF APPEALS

order a new trial. Therefore, his convictions were not against the manifest weight of the evidence.⁹ We overrule Ellis's assignment of error and affirm the trial court's judgment.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT., P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 27, 2007
per order of the Court _____
Presiding Judge

⁹ *Thompkins, supra; State v. Allen* (1990), 69 Ohio App.3d 366, 590 N.E.2d 1272.