

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

STATE OF OHIO,	:	APPEAL NOS. C-060587
		C-060588
Plaintiff-Appellee,	:	TRIAL NOS. B-05010000-A
		B-0510709
vs.	:	
		<i>JUDGMENT ENTRY.</i>
CORNELIUS HARRIS,	:	
Defendant-Appellant.	:	

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

In case number C-060587, Cornelius Harris appeals from the judgment of the trial court convicting him of three counts of aggravated robbery and accompanying firearm specifications, three counts of robbery and specifications, and five counts of felonious assault and specifications. The trial court made Harris's sentences consecutive to each other and to the sentence imposed in case number C-060588, for a total of over 99 years' incarceration. Harris has advanced no assignments of error in case number C-060588 and has therefore abandoned that appeal. It is hereby dismissed.

At trial in case number C-060587, the state produced testimony and other evidence establishing that Harris and his friend Evander Kelley had robbed James Lawrence, Dwight Lawrence, and Demon Meatchem of money, cellular phones, and compact discs from inside James Lawrence's apartment. Kelley had been a friend of the Lawrences, and so he was allowed into the apartment along with Harris. Several minutes

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

of normal conversation in a fully lit apartment passed before Harris drew a handgun on the Lawrences and Meatchem and then proceeded to rob them. During the robbery, Meatchem and Dwight rushed Harris, and he dropped his gun. Kelly recovered the weapon and fired shots, striking Dwight and Meatcham, but missing James Lawrence. Kelley and Harris then fled. Harris was not immediately apprehended by police. The most contested issue at trial was whether the state's witnesses had properly identified Harris as one of the robbers. Harris now raises four assignments of error. We affirm.

In his first assignment of error, Harris urges that trial counsel was ineffective. To demonstrate ineffective assistance of trial counsel, the accused must establish that counsel's performance was deficient and that the deficient performance prejudiced the accused to the extent that he was deprived of a fair trial.<sup>2</sup>

Harris first contends that trial counsel was ineffective for failing to object to the testimony of investigating detective Karaguleff concerning the victims' descriptions of Harris. Harris claims that these statements were impermissible hearsay. They were not. In part, Evid.R. 801(D)(1)(c) provides that a statement is not hearsay (1) if the declarant testifies at trial and is subject to cross-examination, and (2) if the statement offered is one of identification of a person made shortly after perceiving him, provided the circumstances demonstrate the reliability of the identification.

All three victims testified at trial and were cross-examined by defense counsel. And the victims had had an opportunity to view their assailants in un-threatening circumstances for several minutes in a fully lit apartment before the robbery occurred. Finally, Karaguleff began interviewing the victims shortly after they had been robbed. Under these circumstances, the victims' descriptions were not hearsay under Evid.R.

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<sup>2</sup> *Strickland v. Washington* (1984), 466 U.S. 688, 687, 104 S.Ct. 2052.

801(D)(1)(c). Defense counsel was not deficient in failing to object to Karaguleff's testimony.

Next, Harris maintains that counsel should have objected to Karaguleff's testimony that Kelley had said that he knew Harris by the name "Drama,"—which was a word that Harris had had tattooed on his neck. Kelley did not testify at trial. While we agree that this statement should not have been admitted, counsel's decision not to object could have been a trial tactic. And since Harris was identified by his three victims, we can not say that counsel's failure to object in this instance deprived Harris of a fair trial.

Harris's final argument in support of this assignment is that trial counsel's cross-examination of the victims and Karaguleff was ineffective. But the record belies Harris's contention. Counsel strenuously examined each of the witnesses in an effort to cast doubt on the validity of each identification. The first assignment of error is overruled.

In his second assignment of error, Harris contends that the trial court erred by admitting the victims' and Kelly's identification testimony because the testimony denied Harris due process and his right of confrontation. We have already determined that the victims' identification testimony was properly admitted. And all the victims testified at trial. So Harris's constitutional right to confrontation was satisfied in this regard. While Kelly's statement should not have been admitted, in light of the overwhelming identification testimony in the record, we find that this error was harmless beyond a reasonable doubt.<sup>3</sup> Harris's second assignment of error is overruled.

In his third assignment of error, Harris declares that his convictions were against the manifest weight of the evidence and were not supported by sufficient evidence. This argument has no merit.

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<sup>3</sup> See *Chapman v. California*, (1967), 386 U.S. 18, 24, 87 S.Ct. 824; *State v. Madrigal*, 87 Ohio St.3d 378, 388, 2000-Ohio-488, 721 N.E.2d 52.

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Our review of the record convinces us that, for each of the three victims, the state presented sufficient evidence to establish the essential elements of aggravated robbery, robbery, felonious assault, and the accompanying specifications.<sup>4</sup> And while Harris attempted to shed doubt on the validity of the victims' identification of him, we conclude that the jury did not "lose its way" in choosing to believe the version of events presented by the state.<sup>5</sup> Accordingly, the third assignment of error is overruled.

In his fourth assignment of error, Harris submits that the lower court erred by imposing consecutive sentences for aggravated robbery, robbery, and felonious assault because they were allied offenses of similar import.<sup>6</sup> This assignment fails on the authority of *State v. Rance*<sup>7</sup> and *State v. Smith*,<sup>8</sup> and is therefore overruled.

The judgment of the trial court is affirmed in case number C-060587, and the appeal numbered C-060588 is dismissed.

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., HENDON and WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on August 15, 2007  
per order of the Court \_\_\_\_\_  
Acting Presiding Judge

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<sup>4</sup> *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132, syllabus.

<sup>5</sup> See *Tibbs v. Florida* (1982), 457 U.S. 31, 102 S.Ct. 2211; *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

<sup>6</sup> See R.C. 2941.25(A).

<sup>7</sup> (1999), 85 Ohio St.3d 632, 710 N.E.2d 699.

<sup>8</sup> (Mar. 25, 2005), 1<sup>st</sup> Dist. No. C-040348, 2005-Ohio-1325.