

Westerbeck placed her money in the boy's hand. Westerbeck had closed her eyes, fearful that she was going to be shot, and when she opened them, the boys were running down the street. On cross-examination, Westerbeck conceded that she could not identify Heard as the boy who had been standing behind her. But she did state that this boy had stood so close to her that she could have touched him had she moved her hand.

Cincinnati Police Investigator Julian Steele testified that Heard had admitted his participation in the robbery of Westerbeck. Specifically, Heard confessed that he and Watson had approached a woman washing her car and asked her for change. Watson then pulled out a gun and demanded money. Steele further testified that he had not recovered the firearm used in the commission of the robbery.

Heard testified on his own behalf and denied involvement in the robbery. According to Heard, he had only confessed because Steele had told him that, if he did not provide a confession, Steele would make the state send him to jail for four years.

R.C. 2923.03(A)(2) defines complicity as “[n]o person, acting with the kind of culpability required for the commission of an offense, shall * * * [a]id or abet another in committing the offense.” The criminal intent of a complicitor “can be inferred from the presence, companionship, and conduct of the defendant before and after the offense is committed.”² R.C. 2911.02 defines aggravated robbery as “[n]o person, in attempting or committing a theft 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.”

To prove the firearm specification, the state had to establish that either Heard or his co-defendant had possessed a “weapon capable of expelling or propelling one or

² *In re T.K.*, 109 Ohio St.3d 512, 2006-Ohio-3056, 849 N.E.2d 286, ¶13.

more projectiles by the action of an explosive or combustible propellant.”³ In determining whether a firearm had such a capability, “the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.” This court has consistently held that “a victim’s belief that the weapon is a gun, together with the intent on the part of the accused to create and use that belief for his own criminal purpose, is sufficient to prove a firearm specification.”⁴

Following our review of the record, we conclude that the evidence demonstrated that Heard had been complicit in the aggravated robbery of Westerbeck and that Heard’s adjudication was not against the manifest weight of the evidence.⁵

Westerbeck described in detail how Watson and Heard had approached her together and how Watson had pulled out the gun, placed it against her head, and demanded money. Westerbeck viewed the opening in the gun where the bullet would have been expelled, and she believed that Watson intended to shoot her. Westerbeck could have easily touched the boy standing behind her if she had moved her arm, and after the robbery both boys ran away together. Moreover, Heard had confessed his involvement to Investigator Steele. The magistrate was in the best position to judge the credibility of the witnesses and was entitled to reject Heard’s argument that he had only confessed out of fear of imprisonment. This is not the rare case in which the trier of fact lost its way and created a manifest miscarriage of justice.

Heard’s assignment of error is overruled, and, therefore, the judgment of the trial court is affirmed.

³ R.C. 2923.11(B)(1).

⁴ *State v. Jeffers* (2001), 143 Ohio App.3d 91, 95, 757 N.E.2d 417.

⁵ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

OHIO FIRST DISTRICT COURT OF APPEALS

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 HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 14, 2007
per order of the Court _____.
Presiding Judge