

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

IN RE: DELRICO OLIVER.	:	APPEAL NO. C-081228
	:	TRIAL NO. 08-006458(X)
	:	
	:	<i>JUDGMENT ENTRY.</i>
	:	

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

Appellant Delrico Oliver appeals his delinquency adjudication in the Hamilton County Juvenile Court for the offense of complicity to aggravated robbery and accompanying firearm specifications.

On April 28, 2008, Brandon Yanez drove to the PNC Bank in Cincinnati at Martin Luther King Drive and Burnett Avenue to use the ATM machine. Upon his arrival, he saw Oliver and Deangelo Johnson standing at opposite sides of the bank. As Yanez approached the ATM, Oliver and Johnson moved so that they were standing together. When Yanez began his transaction, Oliver and Johnson began walking side by side towards him. Yanez testified that because it was nighttime and he was alone, he “felt that [he] could be in danger.” So he cancelled his transaction and started walking back to his car. Oliver and Johnson yelled at him to stop. Yanez got in his car and locked the door. When he looked up, he saw Johnson pointing a

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

handgun at his chest from approximately three feet away. Oliver was standing directly behind Johnson as he brandished the weapon.

Yanez drove away and contacted the police. A radio description of Oliver was then broadcast. An officer responding to that broadcast approached Oliver, but he fled. The officer then encountered Johnson, but because he was unaware of Johnson's involvement, the officer released him. After a brief pursuit, officers located both Oliver and Johnson at the home of Johnson's grandmother, where they shared a room. Johnson was found on the first floor. Oliver was found in a bedroom on the second floor, where the handgun was also found.

Earlier that evening, Joseph Wright, a resident of the neighborhood, saw Oliver discharging a handgun at a tree near the PNC bank. Johnson was with him at the time.

In his sole assignment of error, Oliver argues that his delinquency adjudication was against the manifest weight of the evidence. While not specifically identified in the assignment itself, he also challenges the sufficiency of the evidence adduced in support of his delinquency adjudication. Accordingly, we address both issues on appeal.

When a defendant claims that an adjudication is supported by insufficient evidence, this court must review the record to determine whether, after viewing the facts in the light most favorable to the state, a rational trier of fact could have found that all the essential elements of the crime had been proved beyond a reasonable doubt.² When reviewing a defendant's claim that an adjudication is against the manifest weight of the evidence, this court must weigh the evidence and the

² See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

credibility of the witnesses to determine if the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the adjudication must be reversed.³

Oliver was adjudicated delinquent for complicity to aggravated robbery as defined in R.C. 2911.01 and for the accompanying firearm specifications. Oliver argues that his adjudication was not supported by sufficient evidence because the state failed to prove that he had a dangerous weapon on his person or under his control during the commission of the crime. He also argues that the state failed to present evidence of the element of attempted theft. We disagree.

Oliver and Johnson approached Yanez as he was using the ATM machine. Oliver then accompanied Johnson, who was armed with a gun, to Yanez's vehicle immediately after Yanez had left the ATM machine. Oliver stood directly behind Johnson as he pointed the gun at Yanez. The gun, moreover, was recovered in the bedroom Oliver shared with Johnson, and Oliver was the only occupant in the room at the time the gun was found. Although Johnson and Oliver did not demand money from Yanez, we can infer their intent to commit an attempted theft from the facts before us. Moreover, the Ohio Supreme Court has held that an unarmed accomplice may be convicted of aggravated robbery with a firearm specification, even though it was only the principal who was armed.⁴ Because Oliver was Johnson's accomplice, and Johnson was armed, the state presented sufficient evidence to support Oliver's adjudication for complicity to aggravated robbery with the accompanying firearm specifications. Furthermore, given our review of the record, we cannot conclude that the testimony from the state's witnesses was so unreliable or unworthy of belief that

³ See *id.* at 387.

⁴ *State v. Chapman* (1986), 21 Ohio St.3d 41, 487 N.E.2d 566; see, also, R.C. 2152.17(B).

OHIO FIRST DISTRICT COURT OF APPEALS

the trial court lost its way and created a manifest miscarriage of justice. We, therefore, overrule Oliver's sole assignment of error and affirm the judgment of the trial court.

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.

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

To the Clerk:

Enter upon the Journal of the Court on August 5, 2009

per order of the Court _____.
Presiding Judge