

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

STATE OF OHIO,	:	APPEAL NO. C-130187
	:	TRIAL NO. B-1206876
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JACK WASHINGTON,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jack Washington appeals the judgment of the Hamilton County Common Pleas Court convicting him, after a jury trial, of aggravated robbery, in violation of R.C. 2911.01(A)(1). The trial court imposed a ten-year prison term. We affirm.

On October 3, 2012, Washington approached Russell Bannister in front of Bannister’s apartment building. Washington said that there was a contract out on Bannister’s life and that someone wanted him to be killed. Washington pulled a gun out of his pocket, demanded money, and directed Bannister to the entry of the apartment building. When Bannister gave him about \$40, Washington demanded “the rest of the money” that he had. Washington told Bannister to empty his pockets, so Bannister gave him his cell phone and a few more dollars. Washington ordered

him to turn around, but Bannister refused and said, “[I]f you going to shoot me, shoot me now.” As Washington continued to threaten him with the gun, Bannister grabbed it from his hand. The gun fell apart. The slide on top of the gun fell to the floor. Bannister pulled the handle of the gun out of Washington’s hand and began to beat him in the head with it. Washington ran, but left part of the gun behind.

In his first assignment of error, Washington argues that the trial court erred by denying his Crim.R. 29 motion for an acquittal. To find Washington guilty of aggravated robbery, in violation of R.C. 2911.01(A)(1), the jury had to find that in purposely committing a theft offense, he had displayed, brandished, indicated possession of, or used a deadly weapon. Based on the evidence introduced at trial, a rational trier of fact, viewing the evidence in a light most favorable to the state, could clearly have found all the elements of aggravated robbery proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. We overrule the assignment of error.

In his second assignment of error, Washington argues that he was denied the effective assistance of defense counsel because counsel failed to introduce a DNA analysis report into evidence. His argument is purely speculative because the record does not reveal the content of the report. Moreover, in closing argument, counsel used the absence of evidence of any DNA analysis on the gun to cast doubt on the victim’s credibility. And given Washington’s admission to the police that his DNA might be found on the gun, the DNA analysis would not have been outcome-determinative.

Washington also argues that defense counsel failed to object to a jury instruction, but the challenged instruction was a correct statement of the law.

OHIO FIRST DISTRICT COURT OF APPEALS

Because Washington has failed to demonstrate that counsel's conduct fell below an objective standard of reasonableness, he cannot prevail on a claim of ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Therefore, we overrule the second assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

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

To the clerk:

Enter upon the journal of the court on December 13, 2013
per order of the court _____.
Presiding Judge