IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

IN RE: E.H.	:	APPEAL NOS. C-150295 C-150296
	:	C-150297 TRIAL NOS. 14-10897X
	:	15-0080X 15-0081X
	:	*JUDGMENT ENTRY.*

We consider these appeals 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.

Appellant E.H. was adjudicated delinquent for acts that, if committed by an adult, would have constituted one count of aggravated robbery under R.C. 2911.01(A)(1) and two counts of robbery under R.C. 2911.02(A)(1), with accompanying firearm specifications. The juvenile court ordered him to serve a minimum of one year's commitment to the Department of Youth Services ("DYS") on each of the underlying offenses, to be served concurrently, plus three years on the firearm specifications, making a total of four years or until he reached the age of 21. We find no merit in his two assignments of error and we affirm the adjudications.

In his first assignment of error, E.H. contends that the evidence was insufficient to support the adjudications. He argues that the stated failed to prove that he possessed, used or displayed a firearm during the commission of the offenses. This assignment of error is not well taken.

To prove the elements of aggravated robbery, as well as the firearm specifications, the state had to prove that E.H. possessed a firearm. *See* R.C. 2911.01(A)(1); R.C.

2941.141; R.C. 2941.145. To prove the elements of robbery, the state had to prove that E.H. possessed a deadly weapon. *See* R.C. 2911.12(A)(1).

Former R.C. 2923.11(B)(1) provided that the term "firearm" meant "any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant." That definition included "an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable."

When determining whether a firearm is "capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely on circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm." Former R.C. 2923.11(B)(2). Nevertheless, simply making the victim believe that the defendant had a gun is not sufficient. The state must still convince the trier of fact that the defendant actually possessed a firearm. *State v. Obsaint*, 1st Dist. Hamilton No. C-060629, 2007-Ohio-2661, ¶ 22.

Only one of the three victims actually saw the gun. That victim testified that E.H. told the victim, "you give me everything, or I'll shoot you." He then showed the victim the part of the gun "where you grab the gun." The victim stated that the gun was gray, and that E.H. "was wearing a big sweatshirt and it was in the pocket." The victim further stated that he believed it was a real gun, and that he gave E.H. money because he was afraid E.H. would shoot him. The combination of the victim's view of the handle of the gun and E.H.'s threat to use it was sufficient to prove that E.H. was armed with an operable firearm when he robbed the victims. *See State v. Shears*, 1st Dist. Hamilton No. C-120212, 2013-Ohio-1196, ¶ 30; *Obsaint* at ¶ 12-20.

The state presented sufficient evidence when viewed in a light most favorable to the prosecution, to prove beyond a reasonable doubt all of the elements of aggravated robbery, robbery, and all of the firearm specifications. Therefore, the evidence was

sufficient to support the adjudications. *See In re Washington*, 75 Ohio St.3d 390, 392, 662 N.E.2d 346 (1996); *In re D.L.*, 1st Dist. Hamilton No. C-140711, 2015-Ohio-4747, ¶ 8.

E.H. also contends that the adjudications 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 E.H.'s adjudications and order a new trial. Therefore, the adjudications were not against the manifest weight of the evidence. *See In re Shad*, 1st Dist. Hamilton Nos. C-080965 and C-081174, 2009-Ohio-3611, ¶ 15, quoting *State v. Thompkins*, 78 Ohio St. 380, 387, 678 N.E.2d 541 (1997). Consequently, we overrule E.H.'s first assignment of error.

In his second assignment of error, E.H. contends that the record does not support the sentences imposed by the court. He argues that the trial court should not have sentenced him to a total commitment in DYS for a minimum of four years to a maximum of his attainment of the age of 21. This assignment of error is not well taken.

R.C. 2152.17(A)(2) provides that if a juvenile is adjudicated delinquent for acts that would make a juvenile guilty of a firearm specification of the type set forth in R.C. 2941.145, the court shall commit the child to the DYS for one to three years in addition to the disposition for the underlying delinquent act. The statute's terms are mandatory. The juvenile court must commit the juvenile to DYS following adjudication for the firearm specification in R.C. 2941.145. *In re D.P.*, 1st Dist. Hamilton Nos. C-130293 and C-130298, 2014-Ohio-467, ¶ 7-9. The only element of discretion is the number of years selected. *Id.* at ¶ 9; *In re J.W.*, 2d Dist. Montgomery No. 24507, 2011-Ohio-6706, ¶ 5. Because E.H. was adjudicated delinquent for acts that would have made him guilty of a firearm specification set forth in R.C. 2941.145, the court had no choice but to commit him to DYS for at least one year, and had discretion to commit him for up to three years, in addition to the disposition for the underlying offenses.

Further, R.C. 2152.16(A)(1)(d) permits the juvenile court to commit a juvenile who has committed acts that would be an aggravated felony of the first or second degree if

committed by an adult to DYS for a minimum period of one year to a maximum period not to exceed the juvenile attaining the age of 21. *See In re K.D.*, 1st Dist. Hamilton No. C-130689, 2014-Ohio-2368, ¶ 2. The order of disposition in a juvenile case is a matter within the juvenile court's discretion. *In re T.W.*, 7th Dist. Mahoning No. 11 MA 35, 2012-Ohio-1305, ¶ 19; *In re J.W.* at ¶ 6; *State v. Matha*, 107 Ohio App.3d 756, 760-761, 669 N.E.2d 504 (9th Dist.1995).

Given the severity of the underlying offenses, the use of a firearm, and the repeated targeting of vulnerable victims, we cannot hold that the juvenile court's disposition was so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. *See In re T.W.* at ¶ 19; *J.W.* at ¶ 6. We, therefore, overrule E.H.'s second assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., MOCK and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on January 22, 2016
per order of the court _____.
Presiding Judge