

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

IN RE: A.J.	:	APPEAL NOS. C-150605 C -150606
	:	TRIAL NOS. 15-3499X 15-3497X
	:	<i>JUDGMENT ENTRY.</i>
	:	
	:	

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 A.J. appeals his two adjudications of delinquency for conduct that, if committed by an adult, would have constituted two counts of felonious assault, along with firearm specifications. A.J. had fired two shots into a group of people getting out of a van. The trial court found that two members of that group, Shania Brown and Patrick Ewing, had been in A.J.’s line of fire and could have been physically harmed. The juvenile court committed A.J. to the Department of Youth Services (“DYS”) for concurrent, one-year terms for the two counts of felonious assault. The court also imposed a consecutive three-year term for the firearm specifications. After reviewing the record and applicable law, we affirm the juvenile court’s judgments.

In his first assignment of error, A.J. contests the sufficiency of the evidence underlying his adjudication for felonious assault against Brown. He argues that the

state failed to prove that he had knowingly attempted to cause physical harm to Brown because she had not been in the line of fire. But the evidence shows that Brown was only six feet away from Ewing, who was in the line of fire. Further, Brown testified that she immediately fell to the ground when A.J. began shooting and that someone pushed her back into the van so she would not get hurt. Finally, Brown and Ewing each drew a sketch depicting where they were standing and where A.J. was standing when he fired his weapon. Both of these drawings demonstrate that Brown was in the line of fire. Thus, after viewing the evidence in the light most favorable to the state, we hold that any rational trier of fact could have found that A.J. had knowingly attempted to cause physical harm to Brown. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 491 (1991), paragraph two of the syllabus. The first assignment of error is overruled.

We also overrule the second assignment of error, and hold that A.J.'s adjudications were not against the manifest weight of the evidence. Although A.J. contends that Ewing's testimony identifying A.J. as the shooter was not credible because Brown had testified that the area where A.J. had been standing on the street was not well lit, we are mindful that "[t]he weight to be given to the evidence and the credibility of the witnesses are primarily for the trier of the facts." *See State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 90. Further, in addition to Ewing's testimony, Ewing's sister, who had been with the group when A.J. had fired at them, identified A.J. as the shooter in her 911 call to the police. Accordingly, we cannot say that the trial court lost its way and created a manifest miscarriage of justice by adjudicating A.J. delinquent. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

In his third assignment of error, A.J. maintains that the juvenile court erred by imposing a three-year term of commitment to DYS for the firearm specifications.

Juvenile courts have considerable discretion in imposing dispositions on juvenile offenders. *In re Bracewell*, 126 Ohio App.3d 133, 136, 709 N.E.2d 938 (1st Dist.1998). Its decision will not be overturned on appeal absent an abuse of discretion. *In re Carrie A.O.*, 6th Dist. Huron No. H-05-007, 2006-Ohio-858, ¶ 13.

R.C. 2152.17(A)(2) states that if the juvenile is guilty of a firearm specification as set forth under R.C. 2941.145, “the court shall commit the child” to DYS for a “definite period of not less than one and not more than three years.” Thus, it was mandatory for the juvenile court to commit A.J. to DYS for the firearm specifications, but the court had discretion to impose a one-, two- or three-year period of commitment. And contrary to A.J.’s argument, the record demonstrates that the juvenile court understood that a commitment to DYS was mandatory, but that it did have discretion as to the length of the term. Because the court acted within its discretion in imposing a sanction within the statutory guidelines, we overrule the third assignment of error.

In his fourth assignment, A.J. argues that R.C. 2152.17, which requires juvenile courts to impose a period of commitment to DYS for certain firearm specifications, is unconstitutional. First, A.J. contends that R.C. 2152.17 violates his procedural due process rights because the statute divests the juvenile court of the ability to decide the appropriateness of the penalty. But this court, in a similar challenge to mandatory juvenile-bindover proceedings, held that “there is no procedural-due-process right to an individualized determination in juvenile court.” *State v. McKinney*, 2015-Ohio-4398, 46 N.E.2d 179, ¶ 15 (1st Dist.). Other appellate courts have also rejected the argument that a juvenile statute is unconstitutional if it divests the juvenile court of the ability to make an individualized determination. *See, e.g., State v. Anderson*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 65-76; *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815, ¶ 42-45.

Next, A.J. contends that his three-year term of commitment to DYS for the firearm specifications violates the prohibition against cruel and unusual punishment because the mandatory nature of the punishment prevented the juvenile court from considering his youth as a mitigating factor. But the legislature took A.J.'s diminished culpability (his youth) into account by making the penalty for a firearm specification less for a juvenile than an adult offender. Under R.C. 2941.145, an adult offender is subject to a mandatory three-year prison term for a firearm specification, whereas R.C. 2152.17 reduces that penalty for a juvenile offender to a term of commitment between one and three years. Further, the statute gives the juvenile court discretion in how many years to impose for the firearm specification. Thus, the juvenile court was able to consider A.J.'s unique circumstances before imposing the three-year period of commitment.

With respect to the sanction A.J. received, we note that the Eighth Amendment prohibits punishments that “are so disproportionate to the offense as to shock the moral sense of the community.” *State v. Chaffin*, 30 Ohio St.2d 13, 282 N.E.2d 46 (1972); *State v. Smith*, 1st Dist. Hamilton No. C-060991, 2008-Ohio-2561, ¶ 16. Based on the facts before us, we cannot say that A.J.'s term of commitment, which was within the statutory range, was so disproportionate to the act of shooting into a group of people so as to shock the moral sense of the community. Therefore, the fourth assignment of error is overruled.

In his final assignment of error, A.J. contends that the juvenile court abused its discretion by keeping him in physical restraints for a portion of his adjudicatory hearing.

A defendant's right to be free of physical restraints during his trial “may be overcome in a particular instance by the need for physical security, escape prevention, or courtroom decorum. The decision to impose such restraints is left to

the trial court's discretion." *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, 23 N.E.3d 1023, ¶ 153.

In considering A.J.'s motion to be free from physical restraints, the court noted that A.J. had several reported incidents from DYS, which included not following rules and/or orders, bullying other residents and initiating physical altercations with other residents. But, despite those incidents, the juvenile court did not keep A.J. in physical restraints when there were two sheriff's deputies in the courtroom. When one of the deputies had to leave, the physical restraints were put in place. Given the incident reports from DYS coupled with the fact that only one sheriff's deputy remained in the courtroom, we hold that the court did not abuse its discretion by placing A.J. in physical restraints during that portion of the adjudicatory hearing. The fifth assignment of error is overruled, and the judgments of the juvenile court are affirmed.

Further, 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., DEWINE and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on July 8, 2016

per order of the court _____.
Presiding Judge