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

STATE OF OHIO,	:	APPEAL NO. C-190240 TRIAL NO. B-1802949
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
DAVEED HAWKINS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On May 29, 2018, Cincinnati Police Officer Scott Traufler received a radio dispatch to investigate a domestic dispute. He testified that the 911 dispatcher told him that "the complainant's child's father [had] pulled a gun and was destroying the house." When officers arrived, Hawkins was in a heated argument with Chanese Whitaker in the parking lot of the apartment building. As officers separated the two and tried to defuse the situation, Hawkins continued to yell at Whitaker for calling the police and reporting that he had a firearm. Whitaker led Traufler to her bedroom in the apartment and told officers that Hawkins had placed something in a sock. The sock was found under a mattress and contained an operable revolver. Hawkins's DNA was later found on the weapon. Hawkins was charged with having a weapon while under a disability. During the trial, the lab technician testified that identical twins would share the same genetic test results, and Hawkins's mother testified that Hawkins had a twin brother. He was convicted after a jury trial and sentenced accordingly.

In his first assignment of error, Hawkins claims that the trial court abused its discretion when it allowed the responding police officer to testify that he had received a radio call to investigate a man with a gun in an argument with a woman.

Hawkins argues that the statement was hearsay not subject to an exception, that the statement violated Evid.R. 403, and that the admission of the statement represented a *Crawford* violation.

But we need not decide whether the admission of the statement was error because it was harmless. *See State v. Smith*, 2019-Ohio-3257, 141 N.E.3d 590, ¶ 14 (1st Dist.) (hearsay errors and Confrontation Clause violations subject to harmless-error review). An error in the proceedings will be considered harmless when the record demonstrates, absent the evidence in question, overwhelming evidence of guilt or some other indicia that the error did not contribute to the conviction. *State v. Benson*, 1st Dist. Hamilton No. C-180128, 2019-Ohio-3255, ¶ 23. The recording from Traufler's bodycam showed Hawkins yelling about Whitaker calling the police because Hawkins had a gun. Further, the officer's statement was never referenced again in the trial and was not cited by either side during closing arguments. The focus of the case was the DNA evidence and the video recording. On this record, any error in the admission of Traufler's statement that he was responding to a call about "the complainant's child's father [had] pulled a gun and was destroying the house" was harmless beyond a reasonable doubt. We overrule Hawkins's first assignment of error.

In his second assignment of error, Hawkins argues that his conviction was against the weight of the evidence. He claims that no one saw Hawkins with the gun that day, and the DNA could have been from his twin brother. While it is possible that the DNA found on the gun belonged to his twin, officers testified that the twin was never seen during the incident or the subsequent investigation, and there was no evidence presented that the brother had ever been to Whitaker's apartment. But Whitaker's excited utterances that he had put something in a sock and Hawkins's statements to her during the argument tie him to the gun that day. A jury could properly conclude that Hawkins was guilty of having a weapon while under a disability. This was not the rare case in which the trier of fact lost its way and

committed such a manifest miscarriage of justice in convicting Hawkins that his conviction must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We overrule Hawkins's second assignment of error and affirm the judgment of the trial court.

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.

MOCK, P.J., BERGERON and **WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on September 23, 2020

per order of the court _____.

Presiding Judge