

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

STATE OF OHIO,	:	APPEAL NO. C-170630
	:	TRIAL NO. B-1605770
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RICHARD THOMAS,	:	
	:	
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.

Following a bench trial, Richard Thomas was found guilty of two counts of felonious assault in violation of R.C. 2901.11(A)(1) and (A)(2). The court merged the counts and sentenced Thomas to four years of incarceration. This appeal followed.

Thomas was convicted of the felonious assault of Rodney Heard after hiring Tywuan Black to attack Heard with a baseball bat. Black admitted guilt, and testified for the state in exchange for a short prison sentence. Black identified Thomas as the man who had hired him to beat Heard. Thomas denied knowing Black, and denied any involvement in the attack. Aside from his testimony, Thomas's defense centered on attacking Black's credibility, and that of other state witnesses.

In his first assignment of error, Thomas contends the trial court erred in admitting, over objection, Black's testimony that Black had gotten a call from his

father saying that “his [father’s] nephew [Thomas] had needed me to do something for him.” Thomas is correct that this constituted impermissible hearsay. *See* Evid.R. 801(C). However, other evidence established that Thomas had asked Black to attack Heard, including Black’s later testimony describing in detail his interactions with Thomas. There was also other properly admitted testimony establishing a connection between Black’s father and Thomas. Shanda White, Heard’s girlfriend, who was present during the attack, testified that she knew Black and Thomas were related because she had grown up in the same neighborhood as Black’s family. We therefore hold that the error was harmless. *See* Crim.R. 52(A) (“any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”); *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643 (applying Crim.R. 52(A)). Thomas’s first assignment of error is overruled.

In his second assignment of error, Thomas argues that his conviction is against the weight of the evidence. While Thomas offered a version of events that would have exonerated him, there is no indication that, in weighing the evidence presented, the trial court so lost its way as to create a manifest miscarriage of justice warranting a reversal. We therefore overrule this assignment of error on the authority of *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

The trial court’s judgment is affirmed.

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.

CUNNINGHAM, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on September 28, 2018

per order of the court _____.