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

STATE OF OHIO,	:	APPEAL NO. C-170007 TRIAL NO. B-1305605
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
KEITH ACKLIN-BYRD,	:	
Defendants-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 jury trial, defendant-appellant Keith Acklin-Byrd was convicted of a casino-gaming offense under R.C. 3772.99(E)(7), and theft as a fourth-degree felony under former R.C. 2913.02(A)(1) and (B)(2). We affirm his convictions.

In his first assignment of error, Acklin-Byrd contends that the trial court erred by allowing hearsay to be admitted into evidence. He argues that the court should not have let a casino representative testify that he had been told by another person that a dealer was hit in the face by some chips and was sent home.

We agree that the statement was hearsay, and that the trial court erred in admitting it into evidence. *See State v. Hinkston*, 1st Dist. Hamilton Nos. C-140448 and C-140449, 2015-Ohio-3851, ¶ 21; *State v. Wilkins*, 2d Dist. Montgomery No. 21562, 2007-Ohio-2962, ¶ 32-35; *State v. Gau*, 11th Dist. Lake No. 2000-L-109, 2002-Ohio-4216, ¶ 19-21. But it was only relevant to proving a robbery charge, on which Acklin-Byrd was acquitted. Therefore, any error was harmless beyond a

reasonable doubt, and we overrule Acklin-Byrd's first assignment of error. *See State v. Bayless*, 48 Ohio St.2d 73, 357 N.E.2d 1035 (1976), paragraph seven of the syllabus; *State v. Brundage*, 1st Dist. Hamilton No. C-030632, 2004-Ohio-6436, ¶ 33.

In his second assignment of error, Acklin-Byrd contends that the evidence was insufficient to support his convictions and that his convictions were against the manifest weight of the evidence. This assignment of error is not well taken.

Acklin-Byrd was convicted of violating R.C. 3722.99(E)(7). It provides that "[a]ny person who purposely or knowingly does any of the following commits a felony of the fifth degree on the first offense * * * [c]laims, collects, takes, or attempts to claim, collect or take money or anything of value in or from a casino game with the intent to defraud or without having made a wager contingent on winning a casino game."

Acklin-Byrd argues that the state failed to prove that he acted purposely or knowingly. Our review of the record shows that the state presented evidence that Acklin-Byrd acted purposely as defined in R.C. 2901.22(A). He stated in a videotaped interview with casino security personnel that he had intended to "make it rain," that he was giving money "back to the people" in retaliation for a previous incident at the casino where he believed he had been cheated, and that "everybody got paid right there." Thus, his own statements showed that he intended to provide a benefit to others to the detriment of the casino. *See* former R.C. 2913.01(B); *State v. Buttrom*, 1st Dist. Hamilton No. C-970406, 1998 WL 852558, *7-8 (Dec. 11, 1998).

As to the theft offense, Acklin-Byrd primarily argues that the state failed to prove that the value of the property taken was over $7,500. A casino representative testified that he and his team had conducted an inventory of the chips at the table in question and had determined that the casino had lost approximately $25,000. He

further said that the loss was "absolutely" in excess of $7,500. Thus, there was evidence to support the value as determined by the jury.

Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution could have found that the state had proved beyond a reasonable doubts all of the elements of the casino-gaming offense under R.C. 3772.99(E)(7) and theft as a fourth-degree felony under former R.C. 2913.02(A)(1) and (B)(2). Therefore, the evidence was sufficient to support the convictions. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *State v. Hackney*, 1st Dist. Hamilton No. C-150375, 2016-Ohio-4609, ¶ 29.

Acklin-Byrd also contends that his convictions 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 the convictions and order a new trial. Therefore, the convictions were not against the manifest weight of the evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Wallace*, 1st Dist. Hamilton No. C-160613, 2017-Ohio-9187, ¶ 69. Therefore, we overrule Acklin-Byrd's second assignment of error and affirm the trial court's judgment.

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

MYERS, P.J., MILLER and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on January 26, 2018
per order of the court _____.
Presiding Judge