

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 13CA010493

Appellee

v.

STEVEN R. MOORE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 11CR083946

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 22, 2015

HENSAL, Presiding Judge.

{¶1} Steven Moore appeals his convictions for aggravated robbery, felonious assault, breaking and entering, obstructing official business, possession of criminal tools, and criminal damaging in the Lorain County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} On October 24, 2011, Henry Husk drove to a property where he was storing scrap he had collected. Mr. Husk testified that, when he arrived at the property, he saw Mr. Moore and another man loading some of his scrap onto a trailer that was attached to a truck. Mr. Husk blocked the truck in with his car and called the sheriff’s department. While he was talking to the dispatcher, the men began ramming his car with the truck. According to Mr. Husk, when he refused to move, Mr. Moore got out of the truck and threw a large electric motor at him. The motor crashed through the front driver’s side window and struck him in the left arm. Mr. Moore

then reached through the window and grabbed Mr. Husk's cell phone, which he threw over to the front passenger seat. He also grabbed and jerked Mr. Husk's left arm as if he wanted to pull him from the car. Around this time, the driver of the truck was able to push Mr. Husk's car enough that he could get around him. As the men drove away in the truck, Mr. Husk resumed talking to the dispatcher. He also began following the truck. Law enforcement officers eventually converged on the truck, and they arrested Mr. Moore after finding him hiding in some weeds. Later that day, Mr. Husk went to the hospital to have his shoulder examined. He was eventually diagnosed with a torn rotator cuff.

{¶3} The Grand Jury indicted Mr. Moore for aggravated robbery and felonious assault with a repeat violent offender specification for both offenses. It also indicted him for breaking and entering, obstructing official business, possessing criminal tools, and criminal damaging. A jury found him guilty of the offenses and the trial court found him guilty of the specifications. At sentencing, the court merged all of the offenses with the aggravated robbery count. It sentenced Mr. Moore to eight years imprisonment. Mr. Moore has appealed, assigning as error that his aggravated robbery and felonious assault convictions are against the manifest weight of the evidence.

II.

ASSIGNMENT OF ERROR

THE GUILTY VERDICTS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE 1, SECTION 10 OF THE OHIO STATE CONSTITUTION.

{¶4} Mr. Moore argues that his aggravated robbery and felonious assault convictions are against the manifest weight of the evidence because the evidence did not establish that his

conduct caused serious physical harm to Mr. Husk. R.C. 2901.01(A)(5), 2903.11(A)(1), and 2911.01(A)(3). To determine whether a conviction is against the manifest weight of the evidence, this Court

must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side.

State v. Thompkins, 78 Ohio St.3d 380, 387 (1997). The appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases.

Otten at 340.

{¶5} Mr. Moore argues that Mr. Husk was not credible about the cause of his shoulder injury, claiming that he was inconsistent about the extent of the injuries he suffered during the robbery. According to Mr. Moore, Mr. Husk testified that he was “dragged” from his car, even though he never mentioned being dragged by the arm to the police, in his witness statement, or during the preliminary hearing. Mr. Moore alleges that the first time Mr. Husk mentioned “dragging” was when he went to see the surgeon who diagnosed his rotator cuff injury a couple of weeks after the robbery. Mr. Moore notes that Mr. Husk handled baggage for United Airlines for 36 years and testified that he had injured his other rotator cuff on the job.

{¶6} Mr. Husk did not testify that he was dragged from the car. He did, however, testify that Mr. Moore pulled and jerked his arm, a detail that he did not include in his written statement to the sheriff’s office on the day of the attack. He also, apparently, did not report that his arm had been jerked or pulled to the doctor who evaluated him later that day. In his

statement to the sheriff's office and in the history that he gave to the doctor who initially treated him, he only reported that he had been struck in the arm by the electric motor. Mr. Husk also gave the doctor who eventually diagnosed his rotator cuff injury the mistaken impression that Mr. Moore had dragged him from his vehicle.

{¶7} Although Mr. Husk may have left out the fact that Mr. Moore pulled his arm in his initial descriptions of the attack, his testimony was not inconsistent with his prior statements. In addition, the doctor who diagnosed Mr. Husk's rotator cuff injury testified that his physical exam of Mr. Husk, in particular the range of motion of Mr. Husk's arm, indicated that the injury happened over a short period of time. While the doctor agreed that years of throwing baggage could lead to degenerative tearing, he opined that Mr. Husk's injury was "acute, or acute with a chronic component."

{¶8} The jury was in the best position to view the witnesses and assess their credibility. *State v. Bulls*, 9th Dist. Summit No. 27029, 2015-Ohio-276, ¶ 24. It was also free to believe all, part, or none of their testimony. *Id.* Upon review of the record, we conclude that the jury did not lose its way when it found that Mr. Moore pulled Mr. Husk's arm, causing his rotator cuff to tear and, thus, serious physical harm under Revised Code Sections 2901.01(A)(5), 2903.11(A)(1), and 2911.01(A)(3). Mr. Moore's assignment of error is overruled.

III.

{¶9} Mr. Moore's convictions are not against the manifest weight of the evidence. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

STEPHEN HANUDEL, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY SLANCZKA, Assistant Prosecuting Attorney, for Appellee.