[Cite as *State v. Allen*, 2022-Ohio-4621.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DANIEL H. ALLEN III,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 CO 0001

Criminal Appeal from the
East Liverpool Municipal Court
Columbiana County, Ohio
Case No. 21 CRB 00324

BEFORE:
Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Vito Abruzzino, Prosecutor*, Atty. Christopher R. W. Weeda,* Assistant Prosecutor, *Atty. Steven V. Yacovone,* Assistant Prosecutor, 135 South Market Street Lisbon, Ohio 44432 for Plaintiff-Appellee and

Atty. Robert L. Root III, 176 Franklin Street, SE, Warren, Ohio 44481 for Defendant-Appellant.

Dated: December 1, 2022

Robb, J.

{¶1} Appellant, Daniel H. Allen III, appeals the trial court's judgment finding him guilty of assault in violation of R.C. 2903.13(A), a first-degree misdemeanor. Appellant Daniel was sentenced to 90 days in jail with 80 days suspended and one year of probation; ordered to pay a $250 fine and court costs; ordered to have no contact with the victim, the victim's family, or the state's witnesses; and ordered to attend an anger management course. We stayed his jail term pending appeal.

{¶2} Appellant Daniel raises four assignments of error and contends his rights to a speedy trial and conflict-free counsel were violated. He also asserts his conviction is against the manifest weight of the evidence and based on insufficient evidence. For the following reasons, we affirm.

Statement of the Case

{¶3} An argument arose about personal property the day after Dale Allen's funeral. According to the trial testimony, the decedent's mother, Linda Allen, told people attending the calling hours that she did not want her grandson, Dillon Allen, to have his father's possessions, which were displayed at the funeral home, because Dillon would pawn them. This argument eventually resulted in a physical altercation between Dillon, and the decedent's three brothers, Daniel, Brian, and David Allen. Daniel, Brian, and David Allen shared the same trial counsel, and their cases were consolidated for trial purposes.

{¶4} The day of the altercation, Dillon called his grandmother yelling and upset about her derogatory statements. Dillon decided to return one of the items, a deer head, to her but wanted to keep the other disputed item, a crossbow. At one point during the call, Dillon was told to come retrieve all of his father's possessions from Linda's home. Dillon's uncle Brian was there at the time. According to Dillon, Brian told him over the phone that he was going to "beat his ass." (Tr. 233.) But according to Brian, Linda, and

Dillon's grandfather Daniel Allen Jr., Dillon told Brian that he was going there to "smack [Brian] in [his] fat fucking head." (Tr. 571.)

{¶5} Linda put Dillon's father's possessions in garbage bags and placed them in the driveway. Dillon asked his mother, Rhonda Allen, to go with him to collect his father's things, and she asked her boyfriend to go too because he had a truck. They drove separately to Linda and Daniel Jr.'s house. Dillon drove his mother's car and had his cousin Ryan with him, and Rhonda arrived with her boyfriend, William Buckins, referred to as Bud. Rhonda and Bud began loading the bags into his truck while Dillon delivered the deer head. (Tr. 203.)

{¶6} Dillon's other uncle, Appellant Daniel, was sitting in his parked truck and was on the telephone. Meanwhile Linda called Dillon's third uncle, David Allen, to the house to help maintain the peace. (Tr. 541.)

{¶7} The testimony thereafter is conflicting. Brian testified that Dillon "sucker-punched" him; whereas Dillon testified that Brian attacked him and pushed him onto the hood of a car. Dillon is five feet, nine inches tall and 140 pounds, and his uncle Brian is six feet, five inches tall and weighs 375 pounds. (Tr. 634.) Dillon recalls being thrown around "like a rag doll." He said the fight was about him disrespecting his grandmother. (Tr. 204.)

{¶8} There is limited video evidence of the physical altercation that was captured via a doorbell camera. It does not depict the entire altercation. It is difficult to see details of the fight because the majority of the footage depicts the front porch, and the altercation occurred on the far side of the street.

{¶9} The video shows Dillon leaning backward on the hood of a car and being grabbed and pulled while he is surrounded by his three uncles, as well as his cousin Ryan, his mother Rhonda, and Bud. At one point, Dillon falls toward the ground and nearly lands on the street before Brian can be seen picking him up and placing him back toward the center of the hood of the car. Appellant Daniel is the farthest away from the camera, and he can be seen leaning toward Dillon and grabbing at him. Dillon then slips away with Ryan's help. Appellant Daniel and Brian then pursue him down the street while Rhonda can be seen trying to hold them back. (State's Exhibit 6; Defendant's Exhibit D.)

{¶10} The footage ends, and thereafter, Dillon picked up a paver from a neighbor's landscaping before dropping it. (Tr. 674.) As a result of the altercation, Dillon had scrapes on his knees, elbows, and nose. Photographs of his injuries were admitted at trial. (Tr. 212; State's Exhibits 1-4.)

{¶11} Appellant Daniel was initially charged with domestic violence in violation of R.C. 2919.25(A), a first-degree misdemeanor. (March 18, 2021 Arraignment Entry.) Appellant Daniel appeared with counsel, pleaded not guilty, and signed a waiver of speedy trial time. (March 18, 2021 Time Waiver.)

{¶12} Following the exchange of discovery, the jury trial was set for August 4, 2021. The parties appeared with counsel, but the trial did not go forward in light of a plea deal. The plea agreement was not finalized, and the jury trial was reset for October 27, 2021. There is no transcript of this hearing in the record. (August 4, 2021 Judgment Entry.)

{¶13} On that same date, August 4, 2021, the state amended the charge from domestic violence to assault, in violation of R.C. 2903.13(A), first-degree misdemeanor. (August 4, 2021 Judgment Entry.) Appellant Daniel did not challenge the amended charge and did not move to dismiss the charge.

{¶14} On October 25, 2021, Appellant Daniel filed a motion to continue the October 27, 2021 jury trial, which the court granted. It reset the trial to January 5, 2022. The jury trial commenced January 5, 2022, and the jury found Appellant Daniel guilty of assault. (Jan. 7, 2022 Verdict.) Appellant's brother Brian was also convicted of assault via the same jury trial. Their other brother, David W. Allen, was found not guilty. (Tr. 819.) Their cases were consolidated for trial purposes only. Appellant's brother, Brian Allen, separately appealed to this court.

{¶15} As stated, Appellant Daniel was sentenced to 90 days in jail with 80 days suspended and one of year probation. He was ordered to pay a $250 fine and court costs; ordered to have no contact with the victim, the victim's family, or the state's witnesses; and ordered to attend an anger management course. (Jan. 7, 2022 Sentence and Conviction.) Appellant Daniel appealed, and we stayed his jail term pending appeal.

First Assignment of Error: Right to a Speedy Trial

{¶16} Appellant Daniel's first assigned error asserts:

"The trial court committed reversible error by failing to bring the case of Assault against the Defendant/Appellant, Daniel H. Allen, III, to trial pursuant to the speedy trial statute of the Ohio Revised Code."

{¶17} An appellate court's review of a speedy trial claim is a mixed question of law and fact. *State v. High*, 143 Ohio App.3d 232, 242, 757 N.E.2d 1176 (2001). We defer to the trial court's findings of fact if they are supported by competent, credible evidence and independently review whether the trial court correctly applied the law. *Id*.

{¶18} Ohio recognizes both a constitutional and a statutory right to a speedy trial. *State v. King*, 70 Ohio St.3d 158, 161, 637 N.E.2d 903 (1994). The prosecution and the trial court are required to try an accused within the time frame provided by statute. *State v. Singer*, 50 Ohio St.2d 103, 105, 362 N.E.2d 1216 (1977).

{¶19} R.C. 2945.73(B) states: "Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code." Thus, a defendant is statutorily required to raise the issue by motion made at or prior to the commencement of trial. *Id.*

{¶20} R.C. 2945.71 provides the timeframe for a defendant's right to a speedy trial based on the level of offense and states in part:

> (B) Subject to division (D) of this section, a person against whom a charge of misdemeanor * * * is pending in a court of record, shall be brought to trial as follows:
>
> * * *
>
> (2) Within ninety days after the person's arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.

R.C. 2945.71(B). And R.C. 2945.72 lists a number of tolling events that extend the period of time in which the state must bring a defendant to trial. R.C. 2945.71(A)-(I).

{¶21} This court has repeatedly held that a defendant's failure to file a motion to dismiss on speedy trial grounds waives the issue on appeal. *State v. Trummer*, 114 Ohio App.3d 456, 470-471 (7th Dist. 1996), citing *Partsch v. Haskins*, 175 Ohio St. 139, 140, 191 N.E.2d 922 (1963) (the right to a speedy trial is "a right which must be claimed or it will be held to have been waived."); *State v. Mock*, 187 Ohio App.3d 599, 2010-Ohio-2747, 933 N.E.2d 270, ¶ 15 (7th Dist.); *State v. Hergenroder*, 7th Dist. Columbiana No. 07 CO 17, 2008-Ohio-2410, ¶ 13.

{¶22} "[T]he failure to raise the question of such a violation denies the [state] the opportunity to establish that tolling of the statute occurred." *State v. Turner*, 168 Ohio App.3d 176, 2006-Ohio-3786, 858 N.E.2d 1249, ¶ 22 (5th Dist.). Due to the failure to raise speedy trial issues in the trial court, the state had no obligation to make a record of the reasons for any delays in the proceedings below to demonstrate that Appellant Daniel was afforded his right to a speedy trial. *Id*. Accordingly, this assignment of error is overruled.

Second Assignment of Error: Waiver of Attorney's Potential Conflict of Interest

{¶23} Appellant Daniel's second assigned error asserts:

"The trial court committed reversible error as a Waiver of Conflict was not filed in the above captioned matter, where co-defendants utilized a single attorney in a consolidated case."

{¶24} Appellant Daniel claims the trial court did not secure a knowing and voluntary waiver of conflict from the co-defendants regarding their decision to use the same defense counsel. He claims there is no oral or written waiver of conflict on the record or filed with the court. The factual premise for Appellant's argument is partially correct. Although there is no written waiver of potential conflict of interest signed by him and filed with the trial court regarding their decision to use the same defense counsel, the trial court conducted an oral conflict-of-interest inquiry during which the court addressed each defendant individually.

{¶25} A criminal defendant has the right to counsel that is free from conflicts of interest. *State v. Williams*, 166 Ohio St.3d 159, 2021-Ohio-3152, 184 N.E.3d 29, ¶ 6. However, a trial court does *not* have an independent obligation or duty to inquire as to conflicts when faced with co-defendants employing the same counsel unless there is

some indication alerting the trial court to incompatible interests. *Id*. ("A trial court's affirmative duty to inquire into multiple representation of codefendants arises when the trial court knows or has reason to know that a possible conflict of interest exists or when a defendant objects to the multiple representation."). And absent an objection or some other circumstance indicating the court should have known about a possible conflict, the court may assume there is no conflict or the defendant is aware of the risk and accepted it. *Williams*, *supra*, at ¶ 16, citing *State v. Ingol*, 89 Ohio App.3d 45, 49, 623 N.E.2d 598 (9th Dist.1993).

{¶26} Moreover, "the right to be represented by an attorney free of conflicts must be balanced against 'the right of a defendant who does not require appointed counsel to choose who will represent him.'" *State v. Smith*, 3rd Dist. Hancock No. 5-11-10, 2012-Ohio-5020, ¶ 26, citing *U.S. v. Gonzalez–Lopez,* 548 U.S. 140, 144, 126 S.Ct. 2557 (2006). Thus, the conflict must be raised or the court must have some actual reason or notice before it is required to inquire. For example, if co-defendants are assigning blame on one another; making inconsistent statements; or putting forth competing defense strategies, then an inquiry is likely necessary. *Id.* According to the Supreme Court in *Williams*, the mere possibility of a conflict of interest is not enough to require a trial court to inquire. *Id.* at ¶ 19.

{¶27} Further, Appellant Daniel does not identify nor has this court found a rule, statute, or case requiring a trial court to secure a written waiver of a potential conflict of interest to be filed with the clerk of courts in a case.

{¶28} The trial court initiated the following dialogue regarding a possible conflict of interest at the beginning of an April 2021 status conference:

> THE COURT: We are dealing with three cases here * * *.
>
> Now, I note that all three defendants are here with Mr. King as counsel.
>
> And I know, Mr. King, I asked you about this before, but you are satisfied – and I leave it up to you, you know the facts better than I, but this is not a conflict of interest situation for you[?].

MR. KING: Judge, that has already been explored with all my clients, and, no, there is no conflict of interest and [there] doesn't appear to be any on the horizon at all.

* * *

THE COURT: * * * Now, Mr. King, we have set this for one jury trial based on your representation to me that you have discussed the matter of, I guess, would be trifurcation of – which your clients could insist upon, and the Court would make a decision as to whether to try all three of them together or to try them separately.

MR. KING: Judge, that has been discussed with all three of my clients, and it's * * * -- our agreement and – for the record – that would be – have – combining all three cases to one jury trial. * * *

THE COURT: All right. And you've had a full discussion with your clients as to the possible issues one way or the other on the question of

–

MR. KING: In regards to having separate trials and then of course each of them testifying as witnesses on what particular defendant would go forward with a jury trial, and I also indicated that I would need to reduce that to a written document, and going to have it circulated so that they can all sign it[,] and I'll file originals in each of their cases then.

(April 13, 2021 Tr. 2-6.)

{¶29} At that point, the court indicated it is available for individual motion hearings if counsel requested them, and Mr. King responded he did not anticipate the need for separate motion hearings. The judge then indicated he was going to consolidate the three cases anticipating a written consent agreement, as indicated by the defendants' counsel. The court then addressed each of the three defendants individually and asked the same questions.

{¶30} The trial court judge spoke directly to Appellant and asked:

THE COURT: * * * And I guess that leaves Daniel Allen. And I'll ask you the same questions. You understand what is going on?

MR. DANIEL ALLEN: Yes, sir.

THE COURT: And you have discussed with your attorney the benefits and detriments of going to trial separately or together?

MR. DANIEL ALLEN: Yes, sir.

THE COURT: And what is your wish?

MR. DANIEL ALLEN: All three.

THE COURT: Okay.

All right, Mr. King, you'll follow that up with a written waiver?

MR. KING: Yes, Your Honor.

(April 13, 2021 Tr. 7-8.)

{¶31} At that juncture, the trial court judge instructed counsel to let him know if the wishes of the defendants changed regarding the consolidation of the trial. The court then asked the state if it consented to the consolidation of the three cases for trial, and the prosecutor indicated it had no objection at this point but it would advise if any issues arose as to the jury consolidation.

{¶32} Thereafter, at the June 9, 2021 status conference, the issue was again referenced. The court asked:

Now gentlemen, * * * we are scheduled to have a jury trial. We are having all three Defendants tried at the same time, and your clients have specifically waived any conflict that might - - they are aware of the potential conflicts; am I correct?

Mr. King: That has been addressed, Your Honor.

(June 9, 2021 Tr. 10-11.)

{¶33} Here, the three co-defendant's theory of the case and their defenses were largely consistent—they were not blaming one another or putting forth competing defense strategies such that the trial court likely had actual notice sufficient to require it to inquire about a conflict. Nevertheless, the court fully vetted the issue, and as such, Appellant Daniel's second assignment of error lacks merit.

Third Assignment of Error: Sufficiency of the Evidence

{¶34} Appellant Daniel's third assigned error asserts:

"The trial court committed reversible error as there was insufficient evidence offered by the Plaintiff/Appellee, State of Ohio, to establish elements of the crime of assault."

{¶35} Whether the evidence is legally sufficient to sustain a verdict is a question of law, which appellate courts review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997); *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203, ¶ 3.

{¶36} On appeal we determine whether the evidence presented allows a rational trier of fact to find the essential elements of the crime established beyond a reasonable doubt. *State v. Dent*, 163 Ohio St.3d 390, 2020-Ohio-6670, 170 N.E.3d 816, *reconsideration denied sub nom. State v. Walker*, 160 Ohio St.3d 1517, 2020-Ohio-6946, 159 N.E.3d 1179.

{¶37} Appellant Daniel argues his convictions are not based on sufficient evidence because the state failed to establish he made physical contact with Dillon or attempted to cause him harm. Appellant Daniel claims that his act of chasing or walking toward Dillon is insufficient evidence of an attempt to cause physical harm. We disagree.

{¶38} Appellant Daniel was convicted of assault in violation of R.C. 2903.13(A), which states: "No person shall knowingly cause or attempt to cause physical harm to another * * *."

{¶39} Dillon testified in part that Brian was the initial aggressor but his other two uncles likewise attacked him. He said Brian "rushed him" or "ran up on him" and pushed Dillon onto the hood of a car. Then Appellant Daniel and David pulled him off of the car before Brian got on top of him. He said when he was on the ground, all three were standing above him. He had cuts on his legs. When he was able to stand, he recalls Appellant Daniel chasing him down the street screaming at him until Dillon picked up the cement paver. (Tr. 207-208.)

{¶40} Dillon's mother Rhonda testified she did not see who threw the first punch but remembers Brian was the aggressor. She recalled seeing "Brian come at Dillon." Then David and Appellant Daniel showed up, and they all started fighting with Dillon. She said, "[t]hey beat him up. * * * He got away, at one point, and they went after him

again." (Tr. 280.) Bud, Rhonda's boyfriend, also said Brian was the initial aggressor. He recalls Brian grabbing Dillon and then the other two brothers got out of their trucks, and the fight escalated. Bud recalls Brian and Dillon yelling at one another about disrespect.

{¶41} Bud said the other two brothers joined the fight and were grabbing, pushing, and pulling on Dillon while yelling at each other. The brothers had Dillon up against the hood of a car. Bud also said at some point, all three brothers were kicking and punching, and when Dillon broke free, all three brothers chased him down the street. Bud recounted Brian stating that he "owns this fucking street, owned this fucking town, and owned the fucking cops." (Tr. 315-318.)

{¶42} In Defendants' Exhibit D, a jump drive containing doorbell video footage, Appellant Daniel can be seen in a black t-shirt on the far side of the hood of the car leaning over and grabbing and reaching toward Dillon while Dillon is sliding off the other side of the hood of the car. Dillon then loses his footing, and Brian picks Dillon up and puts him back on the hood of the car within Appellant Daniel's reach. Multiple people can be seen reaching and grabbing toward Dillon, including Appellant Daniel, before Dillon is able to slip free and run away backward with Brian and Appellant Daniel following after him in an aggressive manner. Brian and Appellant Daniel can be seen leaning toward Dillon grabbing and pulling at him while he had his back up against the car. (Def. Exh. D.)

{¶43} Rhonda's call to 911 was played at trial, and during the audio recording, she can be heard yelling to the 911 operator. She said: "they are ganging up on one person." She can then be heard yelling at someone in the background, saying "that is exactly what you guys did." (State's Exhibit 5.)

{¶44} In State's Exhibit 7, according to the body camera footage of Chris Green, Dillon is seen and heard telling then-officer Green what occurred. Dillon states that after returning the deer head to his grandmother, his uncle Brian "bum-rushed" him. Dillon said then all three of his uncles were beating him. He said they were "kicking the shit out of me. They keep coming after me."

{¶45} Dillon told Green his uncles were upset because he was "disrespecting his grandmother." Dillon admits he tried to defend himself. He also said they were upset

because he had his father's crossbow, which they did not want him to have. During his conversation with Green, Dillon states he was not using drugs at the time and was on suboxone from his doctor. Also, during this recording, Dillon can be heard suggesting to Green that the police should secure the footage from the neighbor's video doorbell camera. Dillon then said he just wants to get his belongings and leave. (State's Ex. 7.)

{¶46} Thereafter, the recording depicts Green speaking with Rhonda, who is seen crying and is very upset. She says, "they were like three raging bulls. Who does that?" She then asks Green if she can leave. (State's Ex. 7.)

{¶47} Green testified for the defense and said he was forced to file the charges against the Allen brothers, even though he did not think there was probable cause to do so. (Tr. 448-450.) Green was terminated from the local police department, in part, for dishonesty and making false statements in connection with this investigation. (Tr. 405.) There was also testimony Green was a close friend of the Allens; he had been fishing with Brian; and they went to an Ohio State football game together. (Tr. 375.) Green claims he was wrongfully terminated. (Tr. 450.) The local police captain Fred Flati testified:

> Chris [Green] failed to actually address our whole reason for being there—the assault. He failed to [obtain] any–any information pertinent to that incident, which would, you know, make our investigation a little easier.
>
> He lied to me. He lied to Officer Watkins. And, I mean, being a police officer lying you know, to * * * adversely affect an investigation—unacceptable.

(Tr. 405.)

{¶48} Green accused Dillon of having a white substance on the outside of one of his nostrils. The substance was not seen by others at the scene and not visible in the body camera footage. Further, Dillon denied using illegal drugs at the time, and Flati testified Dillon did not show any signs of impairment. (Tr. 400.)

{¶49} During Officer Justin Watkins' body camera footage, Watkins can be seen approaching the Allen brothers before he fist-bumps Appellant Daniel. Watkins then turns off his camera before speaking with them. (State's Ex. 7.) Flati said Watkins was

a close friend of the Allen brothers as well, which Watkins acknowledged during his testimony. (Tr. 375.)

{¶50} Based on the foregoing, there was more than enough evidence showing Appellant Daniel knowingly caused or attempted to cause physical harm to Dillon. He can be seen lunging and pulling at Dillon while Dillon is falling backward onto the hood of a car. And Bud explained that Appellant Daniel was grabbing, pushing, and pulling on Dillon, and at some point, he remembers all three brothers were kicking and punching Dillon. Moreover, the state introduced images of scrapes and bruising which Dillon suffered as a result of the altercation.

{¶51} Thus, a rational trier of fact could find the essential elements of assault beyond a reasonable doubt, and as such, this assigned error lacks merit.

Fourth Assignment of Error: Weight of the Evidence

{¶52} Appellant Daniel's fourth assigned error asserts:

"The trial court committed reversible error as the conviction for assault was against the manifest weight of the evidence."

{¶53} A manifest weight review requires us to review the evidence and to determine whether this is an exceptional case in which it is patently apparent that the jury lost its way. *State v. Thompkins*, 78 Ohio St.3d 380, 389, 678 N.E.2d 541 (1997). The reversal of a jury's verdict on manifest weight grounds requires a unanimous concurrence of all three judges. *Id*.

> The * * * weight of the evidence addresses the evidence's effect of inducing belief. * * * In other words, a reviewing court asks whose evidence is more persuasive—the state's or the defendant's? * * * [A]lthough there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. * * * 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' * * *.

State v. Wilson, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25.

{¶54} "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass,* 10 Ohio St.2d 230, 227 N.E.2d

212 (1967), paragraph one of the syllabus. "A jury is free to believe all, some, or none of the testimony of each witness appearing before it." *State v. Ellis,* 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18, citing *Iler v. Wright,* 8th Dist. Cuyahoga No. 80555, 2002-Ohio-4279, ¶ 25.

{¶55} As stated, Appellant Daniel was convicted of assault in violation of R.C. 2903.13(A), which states: "No person shall knowingly cause or attempt to cause physical harm to another * * *."

{¶56} Here, there was some conflicting evidence regarding whether Appellant Daniel made or attempted to make physical contact with Dillon to support an assault conviction. Daniel testified that on the day of the altercation, he was in his truck at his parents' house to unload some chicken feed. He saw Dillon approach with the deer head, which Daniel took from him, carried in the house, and hung on the wall. Appellant says when he returned outside, there was a big scuffle. He did not hit Dillon, and he was simply trying to keep everyone separated. Appellant Daniel says he had no physical contact with Dillon but admits following him down the street. (Tr. 699-701.)

{¶57} Appellant Daniel's mother, Linda, testified she was inside during the fight and did not see it. She also said Daniel was in the house with her for the duration of the physical altercation. (Tr. 558-560.)

{¶58} On the other hand, however, Bud testified that at some point all three Allen brothers were grabbing and pushing Dillon, and Bud "believes" he saw Appellant Daniel throw a few punches. (Tr. 315-316.)

{¶59} In addition to the testimony, the video evidence depicts Appellant Daniel aggressively grabbing at Dillon while he was surrounded and was sliding across the hood of a car on his back. Because of the distance between the camera and the melee, it is unclear based on the video whether Appellant Daniel actually made physical contact with Dillon at the time. After Dillon is seen slipping away in the video, Appellant Daniel can be seen marching toward him in an aggressive manner. And a still photograph introduced at trial depicts Appellant Daniel glaring at Dillon with Rhonda holding Dillon back. (State's Exhibit 6; Defendants' Exhibit D.)

{¶60} The testimony and evidence were before the jury for it to consider, and because credibility issues are for the trier of fact, this court defers to the jury's decision.

DeHass, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus; *State v. Johnson*, 7th Dist. Mahoning No. 19 MA 0030, 2020-Ohio-3640, ¶ 7 (the jury is in the best position to view the witnesses, and to observe their demeanor, gestures, and voice inflections). Contrary to Appellant Daniel's arguments, this is not an exceptional case in which the jury clearly lost its way. This assignment of error lacks merit.

Conclusion

{¶61} Appellant Daniel waived his speedy trial argument on appeal by failing to pursue a motion to dismiss on speedy trial grounds to the trial court. Appellant Daniel's claimed denial of conflict-free counsel argument also lacks merit since the matter was addressed by the court. Last, Appellant Daniel's assault conviction is supported by sufficient evidence and not against the manifest weight of the evidence. Because each of Appellant Daniel's arguments on appeal lack merit, we affirm the trial court's decision.

Waite, J., concurs.

D'Apolito, J. concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the East Liverpool Municipal Court of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.