

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1157

Appellee

Trial Court No. CR07-2892

v.

Ruben L. Taylor

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Claudia A. Ford, Assistant Prosecuting Attorney, for appellee.

Andrea Pietraszak, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Ruben Taylor, appeals his conviction, after a bench trial, of the offense of felonious assault, a violation of R.C. 2903.11(A)(1) and a felony of the second degree. Taylor claims that the evidence at trial established the affirmative defense of

self-defense and precluded a conviction for felonious assault. He asserts one assignment of error on appeal:

{¶ 2} "Assignment of Error No. 1: Appellant's conviction should be overturned because Appellant showed by a preponderance of the evidence that he validly exercised his right of self defense when defending himself against the victim."

{¶ 3} On the date of the incident, April 23, 2007, appellant and Artina Taylor were married but lived apart. Appellant agreed to baby sit his wife's two sons, ages six and ten, while she was at work. Nevertheless, appellant dropped off the children at a nearby apartment building where a relative of his wife lived. He left without assuring that anyone was at home. The relative was not there. Unable to enter the apartment, the children walked to St. Vincent's Hospital, where Artina Taylor worked.

{¶ 4} Artina Taylor left work early to care for the children. Appellant had her car. She secured a ride home from her niece, Selena Clark. After locating where her car was parked, Artina Taylor, her niece, and her sons went to the house where appellant lived, ostensibly to get her car keys. An altercation between appellant and Artina Taylor followed.

{¶ 5} Artina Taylor admitted she started the altercation. She pushed and scratched appellant after he answered the door. She testified that she was upset that appellant left her sons at her niece's apartment and thereby caused her to miss work. Artina Taylor testified that appellant punched her twice in the face with a closed fist. Afterwards, Artina Taylor called 9-1-1 for assistance.

{¶ 6} Selena Clark testified that she was standing next to Artina Taylor when she saw appellant strike Artina in the face with a closed fist. Clark pulled the two apart.

{¶ 7} Appellant admitted that he struck Artina Taylor, but claims that he slapped her in the face with an open hand. He denied punching her with a closed fist.

{¶ 8} He also testified that he slapped her while defending himself in the house where he lived.

{¶ 9} Hospital records were admitted in evidence. According to the records, Artina Taylor told medical personnel that she was punched in the right jaw and hit on the left side of her head with pain at both locations. The hospital records indicate that an emergency department doctor made a "preliminary reading" of a facial CT Scan of Artina Taylor and concluded that the CT Scan showed a fracture to the right jaw. A subsequent "Final Report" by a radiologist found no fracture.

{¶ 10} A recording of the call to 9-1-1 was an exhibit at trial. Michael Moore, presently a detective with the city of Toledo police department, responded to the 9-1-1 call. He testified that he observed that Artina Taylor was visibly upset and crying at the scene. She told him that her face hurt on the right side. Artina Taylor also told Moore that appellant punched her in the face and choked her. Moore saw no visible signs of injury.

{¶ 11} "The elements of the crime and the existence of self-defense are separate issues. Self-defense seeks to relieve the defendant from culpability rather than to negate an element of the offense charged." *State v. Martin* (1986), 21 Ohio St.3d 91, 94. In his

assignment of error, appellant argues that the guilty verdict upon which his conviction is based was against the manifest weight of the evidence at trial on the issue of the affirmative defense of self-defense alone.

{¶ 12} "In order to prevail on the issue of self-defense, the accused must show that he was not at fault in starting the affray, and that he had a bona fide belief that he faced imminent danger of death or great bodily harm and that his only means of escape was the use of such force, and that he violated no duty to retreat or avoid the danger. If the defendant fails to prove any one of these elements by a preponderance of the evidence he has failed to demonstrate that he acted in self-defense." *State v. Jackson* (1986), 22 Ohio St.3d 281, 284; see *State v. Robbins* (1979), 58 Ohio St.2d 74, 79-80.

{¶ 13} In an appeal of a criminal case based upon a claim that the verdict is against the manifest weight of the evidence, an appellate court acts as a thirteenth juror. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. An appellate court reviews "the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflict in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 14} Here, the trial court found appellant guilty of felonious assault. The court found that that the testimony of the victim, Artina Taylor, was credible and corroborated

by testimony of Selena Clark and Detective Moore. The trial court specifically found that appellant's testimony was less credible.

{¶ 15} While Artina Taylor admitted that she started the altercation and both pushed and scratched appellant, the evidence conflicted as to the force used by appellant against Artina Taylor in response. Appellant claimed he slapped appellant with an open hand in self-defense. Artina Taylor and Selena Clark testified that he punched Artina Taylor in the face with a closed fist. The record supports a conclusion that the force used by appellant was substantial and the injury caused by appellant was sufficient to require Artina Taylor to secure medical care.

{¶ 16} After a review of the entire record, we find that competent credible evidence supports the trial court's verdict. We find no miscarriage of justice in the trial court's findings that appellant either did not act in self-defense or that he employed unnecessary and excessive force against Artina Taylor.

{¶ 17} Appellant's Assignment of Error No. 1 is not well-taken.

{¶ 18} On consideration whereof, the court finds that substantial justice has been done the party complaining and that appellant has not been denied a fair trial. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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