

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

In the matter of: B. O.

Court of Appeals No. L-08-1454

Trial Court No. 08186285

DECISION AND JUDGMENT

Decided: July 10, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Melissa M. Wagner, Assistant Prosecuting Attorney, for appellee.

James J. Popil, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, which found appellant delinquent of one count of aggravated assault, in violation of R.C. 2903.12. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, B.O., a juvenile at the time of the underlying events, sets forth the following two assignments of error:

{¶ 3} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT DETERMINED THAT THE EVIDENCE SUPPORTED A FINDING OF DELINQUENCY TO THE OFFENSE OF AGGRAVATED ASSAULT PURSUANT TO R.C. 2903.12 (A) (1).

{¶ 4} "II. THE TRIAL COURT'S FINDING THAT APPELLANT 'KNOWINGLY' ACTED TO CAUSE HARM TO ALLEGED VICTIM JONES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS APPELLANT'S ACTIONS WERE AT MOST 'RECKLESS' OR 'NEGLIGENT.'"

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. This case stems from an incident occurring at a Lagrange Street home in North Toledo. On May 22, 2008, a large group of individuals was gathered at a home occupied by appellant's brother. An altercation transpired between appellant and her brother's girlfriend. The girlfriend left the premises following the dispute, but later returned accompanied by individuals, including the victim.

{¶ 6} Upon returning to the home, the fracas amongst the group resumed and quickly escalated. The victim was in the process of exiting the premises when appellant stabbed him in the back with a steak knife on the front porch. Significantly, appellant does not deny stabbing the victim. Rather, appellant claims that she does not recall it happening.

{¶ 7} The victim felt a pinch sensation in his back, turned around, and observed appellant being restrained by her brother. Another one of the persons present at this melee removed the knife from the victim's back.

{¶ 8} Appellant, 17 years of age at the time of the incident, was ultimately charged with felonious assault and aggravated assault as a result of the stabbing. On October 15, 2008, the matter proceeded to trial. Appellant was found delinquent of aggravated assault, in violation of R.C. 2903.12(A)(2), a fourth degree felony. The remaining count of felonious assault was not proven and was dismissed. Appellant, 18 years of age at the time of sentencing, was sentenced to a 90 day term of incarceration, with work release if eligible. Timely notice of appeal was filed.

{¶ 9} In her assignments of error, appellant maintains that the trial court's finding of delinquency in committing aggravated assault was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶ 10} A criminal conviction may be overturned on appeal if there is insufficient evidence, or if the conviction is against the manifest weight of the evidence. In considering a challenge based upon the sufficiency of the evidence, we must determine whether the evidence submitted to the trial court was legally sufficient to establish the elements of the offense. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. In order to resolve the sufficiency question, we must determine whether the evidence presented, if believed, would satisfy an average person of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 11} In conjunction with the above analysis, we must also ascertain whether the verdict was against the manifest weight of the evidence. When determining whether a conviction was contrary to the manifest weight of the evidence, the appellate court serves as a "thirteenth juror" to conclude whether the trial court so significantly lost its way as to result in a manifest miscarriage of justice, necessitating that the conviction be overturned. *Thompkins*, at 387. In reaching this decision, we grant substantial deference to the trial court's determination given its unique opportunity to closely observe and assess the demeanor and credibility of the witnesses and of the evidence presented. *State v. Mickles*, 6th Dist. No. L-05-1206, 2006-Ohio-3803.

{¶ 12} In applying these controlling principles to this case, we note that the record establishes that appellee presented undisputed testimony from an eyewitness who directly observed appellant stab the victim in the back with the same knife that was recovered from the victim. The victim testified that the knife that was removed from his back was the same knife that he had earlier observed appellant holding. Most notably, the record shows that appellant herself equivocates on her actions. When directly asked whether she stabbed the victim, appellant replied, "I'm not saying I didn't. I just don't recall it because it could have happened, like, in the midst of that anywhere."

{¶ 13} R.C. 2903.12(A)(2) establishes aggravated assault to be, "no person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation by the victim that is reasonably sufficient to incite the person to using deadly force shall knowingly * * * cause or attempt to cause physical

harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance."

{¶ 14} Appellant's own testimony relevant to her state of mind on the night of this incident clearly establishes that appellant was experiencing passion and rage. Prior to the stabbing, appellant was being held down by the victim while others pulled on appellant's hair extensions and kicked her. The record contains ample testimony showing conduct by the victim so as to constitute provocation towards appellant. Lastly, the record contains undisputed eyewitness testimony that appellant, following this provocation, did cause harm to the victim by means of a deadly weapon, a steak knife. Appellant stabbed the victim in the back with a knife as he was crossing the front porch while exiting the premises.

{¶ 15} We find that the record contains sufficient evidence to satisfy an average person that appellant committed the requisite statutory elements of the offense of aggravated assault. We find no evidence in the record demonstrating that the trial court lost its way or that the outcome constituted a manifest miscarriage of justice. Wherefore, we find appellant's two assignments of error not well-taken.

{¶ 16} On consideration whereof, we find substantial justice has been done. The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

In the Matter of: B. O.
C.A. No. L-08-1454

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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