

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2008-11-284
 :
 - vs - : OPINION
 : 8/17/2009
 :
 WILLIAM S. WOODRUFF, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-06-1029

Robin N. Piper, Butler County Prosecuting Attorney, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45012-0515, for plaintiff-appellee

Brian K. Harrison, P.O. Box 80, Monroe, Ohio 45050, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, William Woodruff, appeals a decision of the Butler County Court of Common Pleas convicting him of felonious assault on a peace officer. We affirm the decision of the trial court.

{¶2} The incident underlying this case occurred on June 4, 2008. At that time, appellant was an inmate at the Butler County jail in cell block F, a high security sector. Nate Blanton and Martin McIntire, corrections officers with the Butler County Sheriff's Department,

were stationed at cell block F that night. Around 11:30 p.m., appellant and cellmate Jacob Wiles were released from their cell for their daily one-hour recreation period. When appellant approached the isolation cell housing James Bedinghaus, the officers informed him Bedinghaus was forbidden from having contact with others. Appellant became argumentative, and, after a brief verbal confrontation with the officers, returned to his cell.

{¶3} A short time later, appellant emerged from his cell restraining Wiles. Appellant wrapped a torn sheet around Wiles' neck and, unbeknownst to the officers at the time, was holding a sharpened toothbrush "shank" to Wiles' neck. Appellant demanded that the officers open Bedinghaus' cell, stating "you have a hostage situation. What are you going to do about it?" The officers initially believed appellant and Wiles were joking and told them to "stop playing." When appellant threatened to kill Wiles if they did not comply, the officers ascended to the upper level of the cell block to address the situation.

{¶4} Officer Blanton then tackled appellant. According to the testimony of Officer Blanton and Officer McIntire, appellant then jabbed the toothbrush shank into Officer Blanton's side approximately four times. Blanton was wearing a stab vest under his uniform at the time. The vest protected the front and back of his body, but left the sides vulnerable. In order to further subdue appellant, Officer Blanton struck appellant, rendering him unconscious and he dropped the shank. Officer Blanton was sore for a few days after the altercation, but did not sustain any lacerations.

{¶5} Appellant offered a different version of events. Appellant testified that the "hostage situation" was staged by him and Wiles. He contended that the purpose of the ruse was to build his reputation in the jail so he did not have to worry about being bothered. He did not intend to hurt Wiles, and did not think the incident would escalate in the manner it did. Contrary to the testimony of the two officers, who insisted that appellant was uncooperative and combative throughout the entire incident, appellant maintained that he did not resist the

officers in any way.

{¶6} Appellant was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(2). This offense is typically a second-degree felony, but in appellant's case the charge was enhanced to a first-degree felony because the victim was a peace officer. R.C. 2903.11(D)(1).¹ The matter proceeded to a jury trial, at which appellant was found guilty. The trial court sentenced appellant to a prison term of ten years, to be served consecutive to his current term of incarceration. Appellant timely appeals, raising two assignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE FAILURE OF THE INDICTMENT FOR FELONIOUS ASSAULT AGAINST A PEACE OFFICER TO INCLUDE A *MENS REA* ELEMENT AS TO THE STATUS OF THE VICTIM AS A PEACE OFFICER IS STRUCTURAL ERROR THAT REQUIRES REVERSAL OF APPELLANT'S CONVICTION."

{¶9} Appellant argues that his conviction must be overturned because the indictment failed to charge an element of the offense, namely, the mens rea element for the peace officer enhancement. The indictment for felonious assault stated as follows:

{¶10} "On or about June 04, 2008, at Butler County, Ohio, [appellant] did knowingly cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, when the victim is a peace officer, which constitutes the offense of FELONIOUS ASSAULT, a First Degree Felony, in violation of R.C. §2903.11(A)(2), and against the peace and dignity of the State Of Ohio."

{¶11} Regarding the perpetrator's awareness that the victim is a peace officer, appellant maintains that the default mens rea of recklessness applies because the statute neither specifies a mens rea for this element nor expressly imposes strict liability when the

1. R.C. 2903.11 has since been amended by 2008 H 280, effective April 7, 2009. The peace officer enhancement at subsection (D)(1) was re-codified at subsection (D)(1)(a) by the amendment.

victim is a peace officer. See R.C. 2901.21(B). In accordance with the Ohio Supreme Court's decision in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, appellant insists that the failure of the indictment to include the mens rea for this element constitutes structural error and warrants reversal of his conviction.

{¶12} In *State v. Scott*, Summit App. No. 24149, 2008-Ohio-6439, the Ninth Appellate District addressed the precise argument posited by appellant here. The *Scott* court acknowledged the *Colon* holding that an indictment which omits a mens rea element of an offense is defective, but noted that a strict liability offense does not implicate a culpable mental state. The court reviewed prior cases in which it held that the state was not required to prove the accused knew the victim was a peace officer to support a conviction under the general assault statute, R.C. 2903.13, or the felonious assault statute, R.C. 2903.11. The court reasoned that the legislature articulated the elements of the assault statutes with sufficient clarity to indicate that the victim's status as a peace officer elevated the offenses to a higher degree, irrespective of whether the accused was cognizant of the victim's status as a peace officer. Disposing of the defendant's *Colon* argument, the court concluded:

{¶13} "Because R.C. 2903.11(D) imposes strict liability for the peace-officer penalty enhancement, an indictment alleging felonious assault on a peace officer need not include a mens rea element as to the status of the victim as a police officer. Accordingly, Count Two of Scott's indictment, as recited above, does not contain any structural error requiring reversal of his conviction." *Scott* at ¶12.

{¶14} This court also recognized the strict liability standard for the peace officer enhancement contained in R.C. 2903.13, the general assault statute, in *State v. Watson*, Madison App. No. CA2005-12-038, 2007-Ohio-129. We agree that the General Assembly expressed a parallel intent to impose strict liability for the peace officer enhancement contained in R.C. 2903.11, the felonious assault statute. Accordingly, we adopt the sound

reasoning of the *Scott* court and hold that an indictment for felonious assault on a peace officer under R.C. 2903.11 need not include a mens rea element as to the victim's status as a peace officer.

{¶15} Appellant's first assignment of error is overruled.

{¶16} Assignment of Error No. 2:

{¶17} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶18} Appellant contends that his conviction was against the manifest weight of the evidence because the sharpened toothbrush did not qualify as a "deadly weapon."

{¶19} To determine whether a conviction is against the manifest weight of the evidence, an appellate court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether 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. Thompkins*, 78 Ohio St..3d 380, 387, 1997-Ohio-52. "The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Id.*

{¶20} According to R.C. 2903.11(E)(1), the phrase "deadly weapon," as used in the felonious assault statute, shares the same meaning attributed to that phrase in R.C. 2923.11. Subsection (A) of R.C. 2923.11 defines a "deadly weapon" to mean "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon." This court has construed this definition as imposing two requirements before an instrument may qualify as a deadly weapon:

{¶21} "First, the article must be capable of inflicting death. Second, the article must either (1) have been designed or specially adapted for use as a weapon or (2) possessed, carried, or used as a weapon. Either alternative branch of the second requirement can be

employed to prove the proposition. When use is a factor, the manner of its use and the nature of the instrument itself determines its capacity to inflict death." *State v. Cramer*, Butler App. No. CA2003-03-078, 2004-Ohio-1712, ¶26.

{¶22} The toothbrush shank in the case at bar satisfies both requirements. First, the shank was capable of inflicting death. Officer Blanton, specially trained in inmate control at the corrections academy, testified about the dangers involved with homemade weapons or "shanks." A sharpened object may break off and become lodged in the victim's body. The victim could then bleed out or suffer serious infection, resulting in death. Alternatively, the sharpened object could pierce a vital organ and cause death. Although corrections officers may wear a stab vest, the vest does not cover the sides of the body. Officer Blanton testified that, compared to the front of the body, the sides are much easier to penetrate because there is very little skin and muscle mass to hinder a sharpened object.

{¶23} Although an unaltered toothbrush is fairly innocuous, appellant testified that he sharpened the end of the toothbrush on his cell floor. The toothbrush shank itself was admitted into evidence for the jury's viewing. The record also included photographs of the substantial laceration across Wiles' neck caused by the toothbrush shank. From this evidence, the jury could have properly concluded that this instrument was capable of causing death. The toothbrush shank could be grasped in such a manner and with sufficient force to penetrate a vulnerable area of the human body, thereby inflicting serious injury and causing death. *State v. Joof*, Franklin App. No. 04AP-579, 2005-Ohio-3275, ¶11-12.

{¶24} Second, the toothbrush shank was both adapted for and used as a weapon. As stated, appellant admitted that he sharpened the end of the toothbrush and the jury was able to view the toothbrush in its altered state. Officer Blanton testified that appellant stabbed him in the side, where his vest left him vulnerable, with sufficient force to attempt to pierce his body. This was echoed by Officer McIntire, who testified that appellant was aggressively

striking Officer Blanton with an object he could not discern. The blows were unsuccessful, however, hitting Officer Blanton's rib and averting substantial injury to the officer.

{¶25} Appellant denies stabbing Officer Blanton. He downplays the toothbrush shank, contending in his appellate brief that the toothbrush was "sharpened slightly at one end" and conceding only that he "poked" Officer Blanton "approximately four times in the side with the end of a toothbrush." Appellant also testified that Wiles sustained the laceration to his neck by accident, when Officer Blanton tackled appellant. He claims that he no longer held the toothbrush shank when Officer Blanton was on top of him because it was dislodged from his hand during the tackle. However, when reviewing a manifest weight challenge, we are mindful that the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The jury was free to believe the version of events that it so chose. Considering the evidence, the jury could have properly concluded that the toothbrush shank was not only adapted for use as a weapon, but also used as a weapon against Officer Blanton.

{¶26} In view of the evidence, we hold that a toothbrush shank – that is, a toothbrush sharpened to a point at one or both ends – may qualify as a "deadly weapon" within the meaning of R.C. 2903.11(A)(2) when possessed, carried, or used as a weapon. After thoroughly reviewing the record, we conclude that the jury did not lose its way when it found appellant guilty of felonious assault on a peace officer.

{¶27} Appellant's second assignment of error is overruled.

{¶28} Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.

[Cite as *State v. Woodruff*, 2009-Ohio-4133.]