

[Cite as *Williams*, 2010-Ohio-1752.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92969

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHELDON WILLIAMS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515483

BEFORE: Jones, J., Dyke, P.J., and Boyle, J.

RELEASED: April 22, 2010

**JOURNALIZED:
ATTORNEY FOR APPELLANT**

John T. Castele

1310 Rockefeller Building
614 West Superior Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Brett Kyker
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Sheldon Williams (“Williams”), appeals the judgment of the lower court finding him guilty of felonious assault. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the judgment of the lower court.

STATEMENT OF THE FACTS

{¶ 2} On September 29, 2008, the grand jury returned a one-count indictment against Williams in Case No. CR-515483. The sole count charged Williams with felonious assault in violation of R.C. 2903.11(A)(1). The charge also included a notice of prior conviction and a repeat violent offender specification.

{¶ 3} Williams waived his right to a jury trial and elected to have his case heard by the trial judge. The first witness called by the state was the victim, Michael Robinson (“Robinson”). Robinson testified that he was forty-two years old, employed at the Cleveland Clinic, and living in the bottom unit in the North Moreland Blvd. apartment building, where the assault took place.

{¶ 4} On August 29, 2008, Robinson heard a commotion in the hallway outside of his apartment that sounded like an argument between a man and a woman. After listening for a while, Robinson called a neighbor, Georgia McIntyre (“McIntyre”), who lived on the second floor. Robinson told McIntyre about the noise and his intentions of checking on the situation. McIntyre told Robinson that she would come down.

{¶ 5} After talking to McIntyre on the phone, Robinson opened his door. Upon entering the hallway, Robinson saw Williams sitting on the ground in front of the elevator and Anita France, a neighbor who lived on the third floor of the building, “crying, whimpering, and cowering” in a corner doorway.¹ Robinson heard Williams say, “why me after twenty-two years,” to which France responded, “just go, just leave me alone, I don’t want to do this anymore.”²

¹Tr. 24-25.

²Tr. 25.

{¶ 6} Robinson testified that he approached France with the intention of escorting her back to his apartment. As he walked toward France, Williams stood up and yelled obscenities toward France. Robinson told Williams and France to calm down. Upon reaching France, Robinson extended his left hand and told her to come with him. Robinson and France then walked past Williams, and Williams yelled, “you’re not going anywhere.” Williams then threw Robinson head-first into a brick wall.³ Robinson testified that after his head hit the brick wall, he fell to the floor and lost consciousness. France testified that by the time the paramedics arrived on the scene, Robinson’s eyes were fluttering and he was mumbling. Robinson stated that he remembers Williams spitting on him as he lay on the floor and a paramedic talking to him, but not much else in between.

{¶ 7} In addition to Robinson’s testimony, McIntyre testified that when she reached the glass door leading down to the basement, she observed Robinson fly across the basement hallway, crash into a basement wall, and fall to the concrete floor. McIntyre did not observe anyone else in the basement at the time.

{¶ 8} Robinson was eventually transported to Huron Road Hospital, and after receiving treatment in the emergency room that included x-rays and a Cat-scan, he was admitted to the hospital for a period of two days.

{¶ 9} During his hospital stay, Robinson was treated for severe headaches and dizziness. After Robinson was released from the hospital, he continued to experience severe headaches and dizziness and missed time off from work because of his inability to walk straight. At trial, Robinson indicated that he still experiences occasional headaches.

³Tr. 26-28, 46-47, 49, 53.

Assignments of Error

{¶ 10} Williams assigns two assignments of error on appeal:

{¶ 11} “[1.] The state failed to produce sufficient evidence to support the defendant’s conviction for felonious assault and defense counsel’s motion for acquittal pursuant to Crim.R. 29 should have been granted.

{¶ 12} “[2.] The defendant’s conviction was against the manifest weight of the evidence.”

LEGAL ANALYSIS

Sufficient Evidence and Manifest Weight

{¶ 13} Due to the substantial interrelation between Williams’s two assignments of error, we shall address them together. Specifically, Williams argues that the state failed to present sufficient evidence and his convictions were against the manifest weight of the evidence.

{¶ 14} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 15} In evaluating a challenge to the verdict based on the manifest weight of the evidence, a court sits as the thirteenth juror and intrudes its judgment into proceedings that it finds to be fatally flawed through misrepresentation or misapplication of the evidence by a jury that has “lost its way.” *Thompkins*, supra, at 387, 678 N.E.2d 541. As the Ohio Supreme Court declared:

“Weight of the evidence concerns ‘the inclination of the *greater amount of credible evidence* offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.’ * * *

“The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts 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. 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.*

{¶ 16} In *State v. Bruno*, Cuyahoga App. No. 84883, 2005-Ohio-1862, this court stated that the court must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. A reviewing court will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a reasonable doubt. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132. Moreover, in reviewing a claim that a conviction is against the manifest weight of the evidence, the conviction cannot be reversed unless it is obvious that 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. Garrow* (1995), 103 Ohio App.3d 368, 659 N.E.2d 814.

{¶ 17} Here, Williams was convicted of felonious assault in violation of R.C. 2903.11(A)(1). Pursuant to R.C. 2903.11(A)(1), “no person shall knowingly* * * cause serious physical harm to another or to another’s unborn.” Under R.C. 2901.01(A)(5), the term, “serious physical harm” includes the following:

“(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

“(b) Any physical harm that carries a substantial risk of death;

“(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

“(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

“(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.”

{¶ 18} Both Robinson and France testified that, as Robinson attempted to move France, Williams grabbed Robinson and threw him into a brick wall.⁴ France indicated that the impact between Robinson’s body and the brick wall made a loud, hard noise. After hitting the brick wall, Robinson fell to the floor and laid motionless.

{¶ 19} Here, Robinson suffered from prolonged pain. Robinson testified that he experienced a severe pain in his head for approximately two weeks. He stated that the pain was similar to having “someone inside [his] head with a hammer hitting the sides of it at full

⁴Tr. 70.

force.”⁵ Robinson testified that he also experienced severe dizziness for two weeks and the dizziness affected his ability to walk straight. Robinson further testified that because of the pain in his head and the dizziness, he was forced to miss an additional two days from work after his release from the hospital. Robinson also testified that he still experiences occasional headaches as a result of this incident.

{¶ 20} In addition to Robinson, France, and McIntyre, the police also provided testimony supporting the lower court’s decision. Officer Jason Schramm (“Schramm”) testified that on August 29, 2008, he received a radio dispatch regarding a victim of an assault. Schramm described Robinson’s demeanor as being very mellow. Schramm testified that Robinson was able to speak, but not at what he deemed to be a normal speed or volume. According to Schramm, “[it] sounded like it was a lot of work to talk.”⁶ Schramm testified that he spoke with Robinson for approximately fifteen minutes while at the hospital before leaving him.

{¶ 21} Construing the evidence in a light most favorable to the state, as we are required to do, there was sufficient evidence that demonstrated that Robinson suffered serious physical harm. This falls within the definition contained in R.C. 2901.01(A)(5)(c) and (e) as Robinson suffered some temporary, substantial incapacity and prolonged pain as a result of Williams’s assault.

{¶ 22} Where injuries to the victim were substantial enough for the victim to seek medical treatment, the jury may infer the victim suffered serious physical harm as defined by R.C. 2901.01(A)(5). See *State v. Lee*, Cuyahoga App. No. 82326, 2003-Ohio-5640;

⁵Tr. 32.

⁶Tr. 85.

State v. Jones, Cuyahoga App. No. 80841, 2002-Ohio-6635; *State v. Wilson* (Sept. 21, 2000), Cuyahoga App. No. 77115.

{¶ 23} A rational trier of fact could have found all elements of felonious assault, including the element of “serious physical harm,” to be present beyond a reasonable doubt. As such, the trial court did not err in denying defense counsel’s motion for judgment of acquittal.

{¶ 24} We find the evidence legally sufficient to sustain the trial court’s conviction for felonious assault in violation of R.C. 2903.11. In addition, when the evidence is viewed in a light most favorable to the state, we find that all essential elements of appellant’s convictions were proven beyond a reasonable doubt. Moreover, nothing in the record demonstrates that the trial court lost its way in convicting Williams.

{¶ 25} Accordingly, Williams’s first and second assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

ANN DYKE, P.J., CONCURS;

MARY J. BOYLE, J., CONCURS IN JUDGMENT ONLY