

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-A-0034
CHRISTOPHER B. SOLLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2013 CR 082.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Gregory A. Price, 137 South Main, Suite 300, Akron, OH 44308 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Christopher B. Soller, appeals his convictions, following a trial to the court, in the Ashtabula County Court of Common Pleas, for two counts of Felonious Assault. The issues to be determined by this court are whether the admission of hearsay statements is prejudicial to a defendant when similar testimony was already part of the record and whether convictions for Felonious Assault are against the weight and sufficiency of the evidence when the defendant purposely hits an

individual and causes vision damage, and strikes a victim with his car when backing quickly into an area where a group of people is located. For the following reasons, we affirm the judgment of the trial court.

{¶2} On March 28, 2013, Soller was indicted by the Ashtabula County Grand Jury for one count of Felonious Assault, a felony of the second degree, in violation of R.C. 2903.11(A)(1); and one count of Felonious Assault, a felony of the second degree, in violation of R.C. 2903.11(A)(2).

{¶3} A trial to the court was held in this matter on March 7, 2014. The following testimony and evidence were presented:

{¶4} On December 8, 2012, Gary Greene was at DeGee's Bar in Ashtabula, where he had arrived at 8 p.m. and had two or three beers, which was in addition to drinks he had earlier that day. At 9:30 p.m., Greene went outside to wait for his ride. Outside, he noticed a male, later identified by others as Soller, screaming at a female, who "looked scared to death." Greene asked the female whether she needed help, to which she replied "no." He then stepped back, looked down at his phone, and was hit in the face by Soller. Greene testified that he did not do anything to provoke this action.

{¶5} Greene explained that after he was hit, he tried to go back into the bar and told Soller he did not want any problems, but Soller came at him again and hit him in the eye and nose. Greene explained: "then I tried to defend myself, and then the next thing I knew I was out on the ground," at which time he lost consciousness. Greene clarified on cross-examination that after the first hit, Soller came at him and Greene tried to defend himself. Greene was unable to identify Soller in court as the man who hit him.

{¶6} Regarding his injuries, Greene testified that his nose and cheekbone were broken and his eyesight is “20/300.”¹ Greene went to the emergency room following the incident. The hospital records from the night of the incident indicate that Greene had a nasal bone fracture, could not see with his left eye, and had a retrobulbar hemorrhage/hematoma of that eye, a condition where blood collects behind the eye, causing an increase in pressure. A lateral canthotomy procedure was performed, which involved cutting a ligament in the eye to release the pressure.

{¶7} Greene explained that his vision has not improved from the time he received treatment and is worse now. Over the defense’s objection, Greene testified that he was told by doctors that his optical nerve is dying as a result of this incident. Greene sought treatment from an ophthalmologist at the VA in January of 2014, who was not able to help him, and Greene believes that his eyesight will not be restored. Greene’s loss of vision makes painting and customizing cars, which is his profession, difficult.

{¶8} Dennis Cox, the owner of DeGee’s, was informed of the fight occurring in the parking lot. Cox exited the bar, saw Soller running to his car, and followed him. Soller pulled his car forward, toward the north side exit and almost hit Cox, to which Cox responded by putting his hand up and striking the car’s back window. Soller drove by, stopped, traveled in reverse at a “rather fast rate of speed,” and hit Cox with the back of the car, prior to driving away through the south side exit. As a result of the incident, he had severe bruising to his rib cage.

1. Although Greene testified that he suffered a fracture to his cheekbone, the medical records do not indicate this.

{¶9} Cox identified Soller in the surveillance video that was played for the court. Cox noted that Soller had been banned from the bar in the past.

{¶10} Soller testified that he went to DeGee's on December 8 to speak to his girlfriend, Dennie Mull, whom he had expected home earlier that evening. The two had a conversation outside of the bar regarding when she would return home. While this took place, Greene, whom Soller did not know, was yelling things at him and threatened to beat him up if he did not leave Mull alone. Soller walked away from Greene, but "felt his presence" and heard him screaming, so he turned and "threw the first punch." After that, Greene set down items he had in his hands, put his fists up and tried to punch Soller. The two "locked up" and went to the ground. Greene then got up, started advancing, and "ran into" Soller's hand.

{¶11} After this, Soller got in his car, saw Cox and several men come out of the bar, screaming at him. He felt as though they may try to "jump on" him. When Soller attempted to exit the parking lot via the north exit, a pedestrian was walking in that area, and he "panicked" due to the men approaching his car. He then began backing up to exit in the other direction, looked to the left, saw the group of men there, and assumed Cox was on the left side of the car. As he pulled out of the parking lot, he believed someone pounded on his car and was not aware he had hit Cox. Soller testified that he did not intend to hit anyone and that it was dark in the parking lot.

{¶12} Dennie Mull explained that on December 8, she was talking to Soller about whether she would leave DeGee's to return home and noticed Greene outside. He was standing "close" to Soller and was slurring his words. She did not hear him threaten Soller. She was not scared of Soller on that night. Mull saw Soller hit Greene

after Soller asked Greene to “step away” about three times. She did not witness anything else, since she went inside the bar to get Cox.

{¶13} A surveillance camera video of both incidents was played at trial. It showed Soller and his girlfriend talking outside of the bar, with Greene close by, and appeared to show some conversation back and forth between Soller and Greene. Soller then punched Greene, who stumbled, placed some items down, and stood with his hands up. Soller approached Greene, and Greene took a swing toward Soller. The two men then tussled on the ground, stood, and Soller appears to hit Greene in the face again, at which time Greene fell to the ground.

{¶14} The video then showed a group of men, including Cox, exit the bar and approach the center of the parking lot, where Soller drove closely by them. Cox was near the car and stumbled to the ground. Soller drove to the north exit, paused briefly, put his car into reverse, and quickly backed up into the area where the crowd was standing. Although the other members of the group were slightly to the left of the car, Cox, who appears to be on the ground, was struck. Soller continued to back up and exited rapidly from the south driveway.

{¶15} At the conclusion of the trial, the court found Soller guilty of both counts of Felonious Assault, as charged in the Indictment. This verdict was memorialized in a March 10, 2014 Judgment Entry.

{¶16} Following a sentencing hearing on May 15, 2014, a Judgment Entry of Sentence was issued by the trial court. Soller was ordered to serve a term of five years in prison for each count of Felonious Assault, to be served concurrently.

{¶17} Soller timely appeals and raises the following assignments of error:

{¶18} “[1.] The trial court committed reversible error by allowing the alleged victim to testify about hearsay statements made regarding the severity and prognosis of his injuries.

{¶19} “[2.] The trial court’s decision to find Mr. Soller guilty of both counts of Felonious Assault is not supported by sufficient evidence and is against the manifest weight of the evidence.”

{¶20} In his first assignment of error, Soller argues that the lower court improperly admitted Greene’s hearsay testimony regarding what doctors had told him about his diagnosis and prognosis. He asserts that since this inadmissible testimony relates to Greene’s impaired vision, which was necessary to establish the “serious physical harm” element required for the Felonious Assault conviction, the conviction for Felonious Assault related to Greene should be reversed.

{¶21} The State concedes that certain testimony given by Greene included hearsay statements, but asserts that any error related to the admission of this testimony was harmless since there was other evidence to prove his injury.

{¶22} This court generally evaluates a trial court’s admission of evidence, including its ruling on the admission of hearsay statements, under an abuse of discretion standard. *State v. Sanders*, 11th Dist. Lake No. 2011-L-024, 2012-Ohio-400, ¶ 50, citing *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271, 569 N.E.2d 1056 (1991) (“a trial court is vested with broad discretion in determining the admissibility of evidence in any particular case, so long as such discretion is exercised in line with the rules of procedure and evidence”); *State v. Tipton*, 11th Dist. Portage No. 2012-P-0072, 2013-Ohio-3207, ¶ 58.

{¶23} Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid.R. 801(C). Hearsay is inadmissible at trial unless it falls under an exception to the Rules of Evidence. Evid.R. 802.

{¶24} Here, Greene was permitted by the court to give testimony relating to certain statements made to him by his doctors. These included that “it was explained to [him]” that his “optical nerve is * * * dying,” that he was told it was a result of this incident, and Greene did not believe his vision would be restored. Soller contends, and the State concedes, that such testimony is hearsay and is not admissible under any exception.

{¶25} Presuming that these statements were inadmissible hearsay, we must determine if their admission was harmless error. Evid.R. 103(A) and the standard established in Crim.R. 52(A) provide that such errors are harmless unless the record demonstrates that the errors affected a party’s substantial right. Where testimony is admitted in error, the error is harmless when “there is no reasonable possibility that exclusion of the evidence would have affected the result of this trial.” *State v. Boyle*, 11th Dist. Portage Nos. 2003-P-0027, 2003-P-0028, and 2003-P-0029, 2004-Ohio-1531, ¶ 27, citing *State v. Webb*, 70 Ohio St.3d 325, 335, 638 N.E.2d 1023 (1994) (“nonconstitutional error is harmless if there is substantial other evidence to support the guilty verdict”) (citations omitted); *State v. DeMarco*, 31 Ohio St.3d 191, 195, 509 N.E.2d 1256 (1987) (applying “reasonable possibility” standard in a hearsay case).

{¶26} Even if the foregoing statements had been excluded, substantial other evidence established the “serious physical harm” element of Felonious Assault and the exclusion of this testimony would not have affected the trial’s result.

{¶27} Pursuant to R.C. 2901.01(5), serious physical harm includes: “[a]ny mental illness or condition of such gravity as would normally require hospitalization; * * * physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; * * * physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; [or] 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.” The medical records show that Greene suffered a retrobulbar hemorrhage and that he had to undergo a procedure to cut a ligament in his eye to relieve pressure. Greene testified that he has suffered from reduced vision since the assault, which led to difficulty in his work painting cars. While Soller objects to Greene’s testimony that the doctors were unable to further restore his vision, this statement made by Greene was merely a description of treatment he did or did not receive, and did not involve any reference to statements made by doctors.² Given the fact that Greene has suffered a decrease in his vision which has not improved over the period following the incident, and the severity of the injury and the treatment required, serious physical harm occurred.³

2. Soller also takes issue with Greene’s testimony that his vision is getting worse. He did not object to this specific statement. Further, the fact that Greene’s vision has become worse is something Greene himself would perceive.

3. Although not addressed by either party, the records reviewed by the court also show that, in a doctor visit on December 10, 2012, Greene was advised that “return of all vision OS [in the left eye] is not anticipated to occur secondary to the nature of the injury.”

{¶28} Such a conclusion is further supported by this court’s holding that “it is well-established that [serious physical harm] may be reasonably inferred ‘[w]here injuries to the victim are serious enough to cause him or her to seek medical treatment.’” (Citations omitted). *State v. Bowden*, 11th Dist. Ashtabula No. 2013-A-0040, 2014-Ohio-158, ¶ 33. There is no question that the injuries here required immediate medical treatment.

{¶29} Soller argues that Greene’s vision problems could have been caused by his high blood pressure and the State failed to prove that this was not the case. However, Soller presented no evidence to prove that the vision problems were related to this cause rather than the assault. It is reasonable to conclude that the blows to Greene’s face, followed by a procedure to release pressure from the eye and immediate and future vision problems, arose from this incident rather than a different medical cause.

{¶30} Finally, it is noteworthy that there is no indication the court relied on the hearsay statements in reaching its ruling in this case, such that prejudice would be apparent. See *State v. Richcreek*, 196 Ohio App.3d 505, 2011-Ohio-4686, 964 N.E.2d 442, ¶ 32 (6th Dist.) (“if the trier of fact * * * expressly relies upon hearsay statements in determining guilt, the admission of the hearsay is prejudicial”) (citation omitted). The court, in issuing its ruling, referenced the injury itself as diagnosed at the time Greene visited the emergency room, and described Greene’s testimony that he had vision problems. It did not discuss any hearsay or testimony related to the doctors’ statements.

{¶31} The first assignment of error is without merit.

{¶32} In his second assignment of error, Soller argues that his Felonious Assault convictions were against the weight and sufficiency of the evidence.

{¶33} With respect to the sufficiency of the evidence, “[t]he 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.” (Citation omitted.) *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶34} Whereas “sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, * * * weight of the evidence addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). “In other words, a reviewing court asks whose evidence is more persuasive -- the state’s or the defendant’s?” *Id.* An appellate court considering whether a verdict is against the manifest weight of the evidence must consider all the evidence in the record, the reasonable inferences, the credibility of the witnesses, and whether, “in resolving conflicts in the evidence, 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.” (Citation omitted.) *Thompkins* at 387.

{¶35} In order to convict Soller of Felonious Assault against Greene, the State was required to prove, beyond a reasonable doubt, that he “knowingly * * * [c]ause[d] serious physical harm” to him. R.C. 2903.11(A)(1).

{¶36} Soller takes issue only with the serious physical harm element of this conviction. As discussed thoroughly above, there was sufficient evidence in the record showing that such harm occurred through the serious injury to Greene’s eye and the ongoing vision problems that resulted. This conviction is also supported by the weight of the evidence, when considering the entirety of the testimony presented, including that the assault on Greene resulted in a long-standing vision problem that required him to visit the emergency room, receive an invasive procedure on his eye, as well as follow up treatment that has not restored his normal vision.

{¶37} While Soller contends that the medical records show that Greene’s vision had returned, Greene reported still having vision problems at the trial. We find no basis to second guess the conclusion of the court, as fact-finder, that Greene suffered with continual vision problems that constituted serious physical harm.

{¶38} Although Soller emphasizes in the fact section of his brief that Greene was intoxicated and an unreliable witness for the purposes of describing the events that occurred on the night of the assault, he does not raise any specific arguments related to the elements of the assault other than the severity of the injury experienced. While he notes that the convictions were against the weight of the evidence because of comments made by the trial court during the course of the trial about whether or not Greene’s intoxication was relevant, Soller does not argue that the court was incorrect in finding that Soller initiated the fight and knowingly caused an injury to Greene. The mere fact that the court made a comment that Soller could not hit someone just because they were drunk or were “using words,” does not equate with a finding that the conviction was unfair or against the weight of the evidence. There is no indication that

the court did not evaluate the entirety of both sides' evidence in reaching its ultimate decision.

{¶39} In order to convict Soller of Felonious Assault against Cox, the State was required to prove, beyond a reasonable doubt, that he “knowingly * * * “[c]ause[d] or attempt[ed] to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance.” R.C. 2903.11(A)(2).

{¶40} Soller argues that he did not knowingly cause the injury to Cox, emphasizing that his conduct was, at worst, merely reckless; the parking lot was dark; and he was “panicked” in trying to escape the group of men outside.

{¶41} Soller backed into Cox while driving in reverse into/near a group of individuals he knew was present in the parking lot at rate of speed that appears to be faster than appropriate in these circumstances. Although Soller contends that he was merely trying to escape from a situation in which he felt endangered, the credibility of his testimony is questionable. There is no indication that the men who came outside were acting as a “lynch mob,” as Soller’s brief characterizes them, or that they had either attempted to harm him or were able to harm him while he was inside of his vehicle. Further, Soller could have escaped the situation by exiting through the north exit, where he initially drove, rather than reversing through a crowded area, full of the individuals he allegedly felt threatened by, quickly, to exit in a different area. Although Soller noted a pedestrian in the area of the north exit, there was no testimony or video evidence to corroborate this and it likely took longer to back up and turn toward the second exit than to wait for the pedestrian to pass.

{¶42} While the parking lot was not well-lit, a fact supported by the testimony of Lieutenant Alan Altonen of the Ashtabula City Police Department, there is no question that Soller was aware of the group of men standing in the parking lot, who exited the bar in response to the assault that Soller perpetrated against Greene.

{¶43} While Soller's main contention is that the "knowingly" element was not met, we emphasize that "[i]t is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." *State v. Johnson*, 56 Ohio St.2d 35, 39, 381 N.E.2d 637 (1978); *Bowden*, 2014-Ohio-158, at ¶ 33. It is a probable consequence of backing up rapidly into a crowd that a person will be hit.

{¶44} This intent is further corroborated by the facts outlined above, including the rate of speed at which Soller was traveling while reversing through the parking lot, a fact emphasized by the trial court as the finder of fact, and the decision to reverse through the parking lot rather than leave through the exit where Soller was already stopped. Under circumstances where a defendant is found to have driven a vehicle quickly toward the direction of a victim, intent for Felonious Assault has been found. See *State v. Hudson*, 7th Dist. Mahoning No. 11 MA 130, 2012-Ohio-5614, ¶ 28 ("[a] reasonable trier of fact could find that [the defendant] was aware that by gunning his vehicle forward in the direction of a person standing close by, he would probably hit that person with his vehicle, resulting in some injury").

{¶45} Finally, while Soller emphasizes that the trial court made a comment that his behavior was merely "reckless," the court clearly found that the behavior satisfied the elements necessary for the crime. The judge specifically noted that Soller was

aware people were in the area, reversed at a high rate of speed toward those people, and also questioned his failure to exit through the north exit. As described above, this supported a finding of the necessary intent. We see no basis for second guessing this finding. *State v. Wallace*, 10th Dist. Franklin No. 99AP-802, 2000 Ohio App. LEXIS 1304, 11 (Mar. 30, 2000) (“defendant’s intent is a question of fact to be determined by a trier of fact from the surrounding circumstances”); *State v. Huffman*, 131 Ohio St. 27, 1 N.E.2d 313 (1936), paragraph four of the syllabus.

{¶46} The second assignment of error is without merit.

{¶47} For the foregoing reasons, Soller’s convictions for Felonious Assault in the Ashtabula County Court of Common Pleas are affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.