

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE T.R. : JUDGES:
: :
: Hon. Julie A. Edwards, P.J.
: Hon. John W. Wise, J.
: Hon. Patricia A. Delaney, J.
: :
: Case No. 10CA000002
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: OPINION

CHARACTER OF PROCEEDING: Appeal from the Guernsey County Court of
Common Pleas, Juvenile Division, Case
No. 09JA00360

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 14, 2010

APPEARANCES:

For Appellant:

LEWIS M. TINGLE
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For Appellee:

MARGARET BOYD LAPLANTE
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Delaney, J.

{¶1} Appellant, T.R. appeals the decision of the Guernsey County Court of Common Pleas, Juvenile Division, that T.R. was delinquent on one count of felonious assault, a second-degree felony in violation of R.C. 2903.11. Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} T.R. and A.B. are students at Meadowbrook High School. On April 7, 2009, while in the cafeteria, either T.R. or another student placed a ketchup packet behind A.B.'s back while A.B. was seated in a chair. When A.B. leaned back in his chair, ketchup splattered on his shirt. T.R. stood behind A.B. A.B. tossed the ketchup packet backwards and the packet struck T.R. in the face.

{¶3} T.R. then immediately, with a clenched fist, struck A.B. in the right side of his face and head several times. Witnesses state T.R. struck A.B. between three or seven times. A.B. remained seated, covered his face, and did not defend himself. Another student pulled T.R. off A.B.

{¶4} A.B. suffered injuries to his face and right eye. The bones in his face were crushed and required surgery for the insertion of metal plates. A.B.'s right eye blurs when he is trying to read. It is unknown whether the damage to his right eye is permanent.

{¶5} On June 15, 2009, T.R. was charged with felonious assault. A denial of the complaint was entered by the juvenile and a trial was held before the magistrate on October 2, 2009. The magistrate found the complaint to be true. In his decision filed October 5, 2009, the magistrate ordered that T.R. be placed into the Muskingum County

Juvenile Detention for 90 days, with 45 days suspended. The magistrate filed its Findings of Fact and Conclusions of Law on October 5, 2009.

{¶6} T.R. filed objections to the magistrate's decision. The trial court held a hearing on the objections on December 4, 2009. The trial court overruled T.R.'s objections and adopted the magistrate's decision on December 10, 2009.

{¶7} It is from this decision T.R. now appeals.

{¶8} Appellant raises one Assignment of Error:

{¶9} "THE FINDING OF THE MAGISTRATE, THAT T.R. COMMITTED FELONIOUS ASSAULT, ADOPTED BY THE COURT, IS NOT SUPPORTED BY THE EVIDENCE AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶10} T.R. argues in his sole Assignment of Error that the decision to find T.R. delinquent was not support by the sufficiency of the evidence and is against the manifest weight of the evidence. We disagree.

{¶11} We apply the same standard of review for weight and sufficiency of the evidence in juvenile delinquency adjudications as for adult criminal defendants. *In re R.G.*, Stark App. No. 2009CA00281, 2010-Ohio-138, ¶10 citing *In the Matter of: Joshua M.*, Ottawa App. No. OT-04-038, 2005-Ohio-3067 at paragraph 29.

{¶12} When reviewing a claim of sufficiency of the evidence, an appellate court's role is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. Contrary to a manifest weight argument, a sufficiency analysis raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172,

175, 485 N.E.2d 717. 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. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

{¶13} Conversely, when analyzing a manifest weight claim, this court sits as a “thirteenth juror” and in 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.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶14} T.R. was found to be delinquent for violating R.C. 2903.11(A)(1) which states, “No person shall knowingly * * * [c]ause serious physical harm to another * * *.” T.R. admits that he hit A.B. several times in the side of the head. He argues, however, that Appellee failed to present sufficient evidence that he knowingly caused A.B. to suffer serious physical harm. He states that the evidence shows that he merely reacted to being hit in the face with the ketchup packet. It was not his purpose to cause A.B. serious physical harm.

{¶15} R.C. 2901.22(B) states that “[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.”

{¶16} The Ninth District Court of Appeals in *State v. Murphy*, Summit App. No. 24753, 2010-Ohio-1038, recently stated, “the mental state of “knowingly” does not require the offender to have the specific intent to cause a certain *result* - that is the mental state of “purposely” as defined by R.C. 2901.22(A).’ (Emphasis in original.) *State v. Powell*, 11th Dist. No.2007-L-187, 2009-Ohio-2822, at ¶ 49, citing *State v. Huff* (2001), 145 Ohio App.3d 555, 563, 763 N.E.2d 695. ‘[W]hether a person acts knowingly can only be determined, absent a defendant’s admission, from all the surrounding facts and circumstances, including the doing of the act itself.’ *Huff*, 145 Ohio App.3d at 563, 763 N.E.2d 695. ‘[I]f a given result is probable, a person will be held to have acted knowingly to achieve it because one is charged by the law with knowledge of the reasonable and probable consequences of his own acts.’ (Internal quotations and citations omitted.) *State v. Dixon*, 8th Dist. No. 82951, 2004-Ohio-2406, at ¶ 16.” *Id.* at ¶15.

{¶17} Looking at the surrounding facts and circumstances, we find that any rational trier of fact could have found beyond a reasonable doubt that T.R. knowingly caused A.B. serious physical harm. T.R. admitted that he hit A.B. on the side of the head and face multiple times while A.B. sat in his chair and covered his face. (T. 12, 34, 63). T.R. testified that he knew that he would cause A.B. physical harm if he hit him the in the face or the side of the face. (T. 63). As a result of T.R.’s actions, A.B. suffered crushed bones in his face requiring surgery to insert metal plates and he has possible permanent damage to his right eye. (T. 13-15).

{¶18} T.R. also argues in his Assignment of Error that the finding of felonious assault was against the manifest weight of the evidence. Upon review of the record, we

cannot find that the trial court clearly lost its way in finding that T.R. knowingly caused A.B. serious physical harm.

{¶19} The Assignment of Error is overruled.

{¶20} The judgment of the Guernsey County Court of Common Pleas, Juvenile Division, is affirmed.

By: Delaney, J.

Edwards, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. JOHN W. WISE

PAD:kgb

[Cite as *In re T.R.*, 2010-Ohio-4419.]

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE T.R.

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JUDGMENT ENTRY

Case No. 10CA000002

For the reasons stated in our accompanying Opinion on file, the judgment of the Guernsey County Court of Common Pleas, Juvenile Division is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. JOHN W. WISE