[Cite as *State v. Freeman*, 2010-Ohio-5818.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- SHANON LAMAR FREEMAN Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P. J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J. Case No. 2010 CA 00019 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 2009 CR 01555
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 29, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO PROSECUTING ATTORNEY KATHLEEN O. TATARSKY ASSISTANT PROSECUTOR 110 Central Plaza South, Suite 510 Canton, Ohio 44702-1413	ANTHONY F. KAPLANIS 701 Courtyard Centre 116 Cleveland Avenue NW Canton, Ohio 44702

Wise, J.

{¶1} Appellant Shanon Freeman appeals his conviction, in the Stark County Court of Common Pleas, on one count of aggravated assault. The relevant facts leading to this appeal are as follows.

{¶2} On September 20, 2009, patrons had gathered at Walther's Café in Canton for a Sunday afternoon of NFL games on television. Anthony Randle, who is the father of appellant's sister's children, was sitting at a corner of the bar, having just ordered some food and beer. Appellant then entered the establishment, and a verbal altercation ensued, which developed into a physical fight. During the encounter, appellant struck Randle several times in the face, hitting him with enough force to remove his right eye from its socket. Doctors were thereafter unable to save Randle's eye. Appellant immediately left the premises after the incident.

{¶3} An investigation by the Canton Police Department followed. A warrant was issued for appellant's arrest. On October 19, 2009, the Stark County Grand Jury indicted appellant on one count of felonious assault, R.C. 2903.11(A)(1).

{¶4} The matter proceeded to a jury trial on December 14, 2009. Appellant moved for acquittal following the State's case, which the trial court overruled. At the close of all evidence, the court instructed the jury on the offense of felonious assault, as well as the inferior degree or lesser included offense of aggravated assault. The court also instructed the jury on self-defense.

{¶5} Appellant was ultimately found guilty of aggravated assault, a felony of the fourth degree.

{¶6} On December 31, 2009, appellant was sentenced to fifteen months in prison.

{¶7} On January 28, 2010, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶8} THE JURY'S FINDING OF GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

I.

{¶9} In his sole Assignment of Error, appellant maintains his conviction was against the sufficiency and manifest weight of the evidence. We disagree.

{¶10} In reviewing a claim of insufficient 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." *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶11} Appellant herein was convicted of one count of aggravated assault. R.C. 2903.12(A)(1) states in pertinent part as follows: "No person, while under the influence of a sudden passion or in a sudden fit of rage, *** shall knowingly *** [c]ause serious physical harm to another or to another's unborn."

{¶12} The focus of appellant's sufficiency argument goes to the "knowing" element of aggravated assault. "Knowingly" is defined in R.C. 2901.22(B) as follows:

{¶13} "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."

{¶14} In *State v. Murphy*, Summit App.No. No. 24753, 2010-Ohio-1038, the court reiterated: "If 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." Id. at ¶ 15, quoting *State v. Dixon,* Cuyahoga App.No. 82951, 2004-Ohio-2406, ¶ 16 (internal quotations and citations omitted).

{¶15} Appellant herein portrays the incident at issue as one where an inebriated Randle told appellant he was "going to hand him his ass" and proceeded to block appellant's exiting the premises. However, the State's witnesses provided a quite different picture. Susan Yutzey, the bar manager, recalled that subsequent to the two men exchanging words, it was actually appellant who blocked Randle, after Randle had cancelled his order and said he was leaving. She then observed appellant stop, turn around, and "blast" Randle in the face, knocking him backwards. Tr. at 173. Yutzey tried to intervene, but appellant pushed Randle back down, jumped on him, and punched him in the face three times, causing Randle's right eye to come out of its socket and leaving blood about Randle's person. Id.

{¶16} As the State responds in its brief, a defendant violently striking the eye area of another person, who had already been knocked to the ground, must be held to know that this action will probably cause serious physical harm to such person. Upon review of the record, we hold reasonable triers of fact could have found, beyond a reasonable doubt, that appellant knowingly caused serious physical harm to Randle for

purposes of R.C. 2903.12(A)(1). We hold appellant's conviction for aggravated assault was supported by sufficient evidence.

{¶17} Turning to the second portion of appellant's assigned error, we note our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: "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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶18} Appellant does not contest that he was the individual who participated in the altercation with Randle at Walther's Café. Thus, the issue before us is whether the jury's implicit rejection of the defense of self-defense was against the manifest weight of the evidence. Appellant took the stand in his defense and testified in pertinent part as follows:

{¶19} "Q. Okay. Now you discussed that and it's going back and forth. At what point does the video show that you're trying to leave? What happens when you're trying to leave?

{¶20} "A. As I'm going out the door, you know, [appellant's friend] Marcus [Moore] was like, well, come on, you ready? I was like, yeah?

{¶21} "Q. Marcus, the gentleman that just testified?

{¶22} "A. Yes. We're on the way out And as I go to walk by [Randle], he steps back and he like puts his shoulder into me. And I was like, you know, I'm thinking, here we go. So I try to go back the other way, he steps in front of me and blocks my way going forward. And I'm sitting there and they're like, you can see on the screen -- excuse me, you can see on the screen, I'm like -- I looked up in the air and I'm like this, like, dang, here we go with this. You know, I didn't think it would go that far, but he was going there with it. And so I decide, you know, I waited -- the bar maid said something to him and it drew him towards the bar and I followed Marcus around and we was saying, you know, we'll see you all over at the spot, you know, where we normally go afterwards, you know, at somebody's house, which was probably going to be my sister Felicia's.

{¶23} "And as we [sic] getting ready to go to turn and walk away, you know, he was like -- he said something, he said, you know, I don't even want this. He said, I'm about to hand this n----- his ass.

{¶24} "And whenever he said that, that drew my attention to him. I turned around and I'm watching him. And as I'm watching him, he -- he's coming from the bar walking up on me. I was like -- the closer he got, I started -- I take like a step back and then I take another step back and I see him like drawing up. And when he drew up, you know, I just protected myself." Tr. at 250-252.

{¶25} To establish self-defense, the following elements must be shown: (1) the defendant was not at fault in creating the situation giving rise to the affray; (2) the defendant has a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force;

and (3) the defendant must not have violated any duty to retreat or avoid the danger. *State v. Jones*, Stark App.Nos. 2007-CA-00041, 2007-CA-00077, 2008-Ohio-1068, ¶ 32, citing *State v. Robbins* (1979), 58 Ohio St.2d 74, 388 N.E.2d 755, paragraph two of the syllabus.

{¶26} In this instance, appellant's assertion that Randle put a "shoulder into him" and blocked his exit contradicted testimony by Yutzey (the bar manager) and other prosecution witnesses.[1] As often occurs in physical fight situations, the events escalated and transpired rapidly, and both participants thereafter claimed innocence. The jurors, as the firsthand triers of fact, were patently in the best position to gauge the truth. Upon review, we find the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that appellant's conviction be reversed and a new trial ordered.

{¶27} Appellant's sole Assignment of Error is therefore overruled.

{¶28} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby affirmed.

By: Wise, J.
Gwin, P. J., and
Farmer, J., concur.

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JUDGES

JWW/d 1110

[1] A security video was played for the jury; however, the chief events occurred outside of the camera's view.

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

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
SHANON LAMAR FREEMAN	:	
Defendant-Appellant	:	Case No. 2010 CA 00019

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

Costs assessed to appellant.

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JUDGES