

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MATTHEW BROOKS

Defendant-Appellant

: JUDGES:

:
: Hon. William B. Hoffman, P.J.
: Hon. John W. Wise, J.
: Hon. Patricia A. Delaney, J.

: Case No. 2016CA00059

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2015CR1902

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

January 26, 2017

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO, JR.
STARK CO. PROSECUTOR
RONALD MARK CALDWELL
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For Defendant-Appellant:

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Delaney, J.

{¶1} Appellant Matthew Brooks appeals from the March 11, 2016 Judgment Entry of the Stark County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} Appellant is a juvenile inmate (“youth”) incarcerated at the Indian River Juvenile Correction Facility (I.R.J.C.F.) in Massillon, Ohio. On September 9, 2014, in league with youths Dashawn Strowder and Joshua Hamm, appellant perpetrated assaults upon two other youths in the facility, Victim 1 and Victim 2.

{¶3} Appellee’s evidence at trial consisted of testimony of corrections officers and investigators at Indian River who stated that appellant, Strowder, Hamm, and another unidentified youth sat at a table in the day room of their unit. Victim 1 and Victim 2 were seated nearby. Strowder and Hamm approached and punched Victim 1 in an apparently unprovoked attack while appellant punched Victim 2. The youths were quickly restrained by corrections officers; appellant briefly walked away and then tried to strike Victim 2 again. Victim 1’s jaw was severely broken and required surgery. Victim 2’s face was red and his nose appeared crooked but he did not sustain any broken bones.

{¶4} Appellant, Strowder, and Hamm provided written statements about the incident.¹ Appellant’s said, “They keep writing checks that they ass can’t cash, 36th Gotti Gang” (sic throughout). The letter “As” in appellant’s written statement are inverted. Hamm’s said, “J. Hamm, fuck this shit, FAM up, I am FAM. Fuck nigga” (sic throughout).

¹ Appellee’s Exhibits 2-A through 2-C.

The “A” in “FAM” is inverted. Strowder’s said, “I’m guilty, 2 years, no tears, I’m gettin bonded” (sic throughout).²

{¶5} The day room where this occurred contains video cameras in the corners of the room. Appellee’s Exhibit 1 is a video of the incident and shows the assaults from several angles.

{¶6} The Gang Intervention Specialist/Security Corrections Coordinator testified about gang infiltration at I.R.J.C.F. At the time of this incident, there were approximately 140 youths incarcerated at the facility. Fifty-five to sixty of those youths are affiliated with an institutional gang known as the “Heartless Felons,” and ten to fifteen are affiliated with a rival gang known as the “Head Bussas (Busters).” These institutional gangs control contraband inside the facility by extorting staff and other inmates with violence. The gang intervention specialist stated that in four years at I.R.J.C.F., he investigates approximately five to six gang-related assaults upon youths and staff per month.

{¶7} The “Heartless Felons” emerged in 2000 in the Ohio D.Y.S. system, originating in Cuyahoga County. The gang began with Cleveland-based youths banding together and targeting non-Cleveland youths with the goal of eventually controlling the flow of contraband in correctional facilities throughout northern Ohio, including I.R.J.C.F. The Heartless Felons gang now includes members who are not from Cleveland.

{¶8} When appellant entered I.R.J.C.F., he was identified by Cuyahoga County Probation as a member of the “Young Heartless Felons.” He had been involved in gang-related incidents at Cuyahoga Hills, another youth correctional facility, prior to his transfer

² In tying Strowder’s statement to the Heartless Felons, the gang investigator noted a similar statement written on the inside of appellant’s door at the facility: “Little Matt, 2 years, no tears, get bonded, no fear” with inverted “As” throughout.

to I.R.J.C.F. Appellant has tattoos indicative of membership in the Heartless Felons, including “Y.F” on his forearm (“Young Felon”), memorial tattoos for deceased members, and starred names.³ The names are identified members of appellant’s street gang in Cleveland, the “Gotti Gang from 36th Avenue.” Appellant also has a tattoo stating “OTF,” which the gang specialist testified is another signal of membership in the Heartless Felons, standing for “Only the FAM.” “FAM” with an inverted “A” is an acronym commonly used by gang members which stands for “Forever About Money.” Youths associated with the Heartless Felons in I.R.C.J.F. have “FAM” tattoos. The gang also uses unique hand signs.

{¶9} Members of the Heartless Felons are organized in a hierarchical structure with the highest member being the “godfather” in control of the entire gang in the facility; the “godson” or “general” is the second-in-command, and various subsets of the gang are each led by an “H.N.I.C.” (“head nigga in charge,” *sic*) and composed of lieutenants, captains, sergeants, and “assassins” or “foot soldiers.” The gang specialist described the documented gang status of the involved youths as of September 9, 2014. Appellant was an “H.N.I.C.,” one of the three highest-ranking Heartless Felons at I.R.J.C.F.; Strowder was a lieutenant; and Hamm was known to be a lieutenant although his rank may have been higher.

{¶10} The Heartless Felons have a documented set of rules and procedures familiar to gang investigators, such as never snitching on a fellow member. Each rank in the organization has its own “golden rules” to follow as well. Lieutenants and above can

³ Photos of appellant’s tattoos are appellee’s Exhibits 4-A through 4-D.

approve and order assaults, called “murder moves.” A “brother plan” is a multi-member assault on a target.

{¶11} The gang specialist described a documented series of gang-related assaults leading up to and following the incident on September 9, 2014. Relevant here, on September 2, 2014, Victim 1 engaged in “horseplay” with a youth named Dwayne Sims. The incident escalated into a fight. Sims is the “godson” or number two in the Heartless Felons. When Sims was questioned by staff about the incident, appellant was present and stated “Come on, Dwayne, you know what that was about.” Victim 1 is a documented member of the Heartless Felons, but as the gang specialist testified, “he was kind of on bad papers” because he was involved in a serious staff assault at a different facility and was transferred to I.R.J.C.F. Victim 1 was not fully accepted as a Heartless Felon at the latter facility because gang members believed he “provided information” on the staff assault to law enforcement.

{¶12} Victim 2 was also affiliated with the Heartless Felons and was attempting to leave the gang as of September 9, 2014. As a low-ranking member attempting to leave the gang, he had to be “clapped out,” or assaulted, to gain permission to leave the gang.

{¶13} Appellant was bound over from juvenile court and charged by indictment as follows: Count I, felonious assault against Victim 1, a felony of the second degree pursuant to R.C. 2903.11(A)(1), and Count II, assault of Victim 2, a misdemeanor of the first degree pursuant to R.C. 2903.13(A). Count I includes a gang specification pursuant to R.C. 2941.142. Both counts charge appellant as a principal offender and/or with aiding and abetting.

{¶14} Appellant entered pleas of not guilty and the case proceeded to trial by jury. Appellant moved for judgments of acquittal pursuant to Crim.R. 29(A) at the close of appellee's evidence and at the close of all of the evidence; the motions were overruled. Appellant was found guilty as charged and sentenced to an aggregate prison term of 11 years, including 8 years upon Count I, consecutive with 3 years on the gang specification.

{¶15} Appellant now appeals from the judgment entry of conviction and sentence.

{¶16} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶17} "APPELLANT'S CONVICTION WAS BASED UPON INSUFFICIENT EVIDENCE AND HIS CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

ANALYSIS

{¶18} Appellant argues that his conviction upon Count I, felonious assault, and the accompanying gang specification are against the manifest weight and sufficiency of the evidence.⁴ We disagree.

{¶19} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, "An appellate court's function when reviewing the sufficiency of the

⁴ Appellant does not challenge his conviction upon Count II, the misdemeanor assault upon Victim 2.

evidence to support a criminal conviction 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. 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."

{¶20} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the "thirteenth juror," and after "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 overturned and a new trial ordered." *State v. Thompkins*, supra, 78 Ohio St.3d at 387. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

{¶21} Appellant was convicted upon one count of felonious assault against Victim 1 pursuant to R.C. 2903.11(A)(1), which states, "No person shall knowingly * * * [c]ause serious physical harm to another * * * [.]". The gang specification requires imposition of a mandatory prison term of up to three years upon an offender who committed a felony that is an offense of violence while participating in a criminal gang as defined in section 2923.41 of the Revised Code. R.C. 2941.142. We further note R.C. 2923.03(A), complicity, states: "No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following * * * (2) Aid or abet another in committing the offense * * *." R.C. 2923.03(F) states an offender may be charged with

complicity or with the principal offense. Regarding the requirements for a conviction for complicity by aiding and abetting, the Supreme Court of Ohio has stated,

To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. Such intent may be inferred from the circumstances surrounding the crime.

State v. Johnson, 5th Dist. Stark No. 2016CA00069, 2016-Ohio-8261, ¶ 100, citing *State v. Johnson*, 93 Ohio St.3d 240, 2001–Ohio–187, 749 N.E.2d 749, at syllabus.

{¶22} In the instant case, there is no dispute that Victim 1 was assaulted by Strowder and Hamm and sustained serious physical harm. The issue raised by appellant is whether the evidence established beyond a reasonable doubt that he aided and abetted the attack on Victim 1. Appellant does not dispute that the “Heartless Felons” are a criminal gang as defined in R.C. 2923.41(A) or that he is a member thereof.

{¶23} We find the record to be replete with evidence appellant was complicit in the felonious assault. Appellee provided circumstantial evidence of the motive behind the Heartless Felons’ desire to retaliate against Victim 1: he was suspected of snitching in a gang-related matter at another facility and he had tussled with the number-two person in the criminal organization at I.R.J.C.F. Appellant was one of the three top-ranked Heartless Felons in the facility and based upon the gang protocols it is unlikely lower-ranked Strowder and Hamm would initiate an assault their superior did not order or

encourage. The simultaneous attacks on Victims 1 and 2 divided the attention of staff and are characteristic of a Heartless Felons “brother plan.” The written statements of appellant, Strowder, and Hamm about the incident proclaim their allegiance to the gang and appellant’s explicitly refers to multiple targets (“*They* keep writing checks that *they* ass can’t cash * * *”).

{¶24} We finally note that appellee’s Exhibit 1, the DVD of the assaults from different angles, is compelling evidence of a concerted, premeditated attack by the three offenders upon both victims. The images of three people, together, standing up from the table and descending upon the two victims seated on the couch, fists flying, is compelling evidence which supports appellee’s theory of the case and undercuts appellant’s argument that he was not complicit in the felonious assault upon Victim 1.

{¶25} In reviewing the evidence in a light most favorable to appellee, we find any rational trier of fact could find appellant guilty of the essential elements of felonious assault of Victim 1 with a gang specification beyond a reasonable doubt. Thus, there exists sufficient evidence to sustain appellant’s conviction upon Count I and the accompanying gang specification. Further, upon our review of the entire record, in weighing the evidence and all reasonable inferences, in considering the credibility of the witnesses and in resolving conflicts in the evidence, we cannot find the jury clearly lost its way and created a manifest miscarriage of justice in convicting appellant. His sole assignment of error is thus overruled.

CONCLUSION

{¶26} Appellant's sole assignment of error is overruled and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J. and

Hoffman, P.J.

Wise, J., concur.