[Cite as *State v. Vugrinovich*, 2020-Ohio-3541.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO Appellee v. GREGORY VUGRINOVICH Appellant	C.A. No. 19CA0067-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 18CR1203

DECISION AND JOURNAL ENTRY

Dated: June 30, 2020

CALLAHAN, Presiding Judge.

{¶1} Appellant, Gregory Vugrinovich, appeals his conviction by the Medina County Court of Common Pleas. This Court affirms.

I.

{¶2} On October 1, 2018, seventeen-year-old G.L. left his residence to drive a friend to work. As his vehicle merged onto Interstate 76 and he maneuvered into the leftmost lane, he drove into the path of another vehicle. The driver of that vehicle, Mr. Vugrinovich, swerved into the median to avoid a collision. Mr. Vugrinovich then rejoined the lane of traffic and established a position behind G.L. in the leftmost lane. He maintained that position until G.L. neared his exit and moved to the right. At that point, Mr. Vugrinovich pulled alongside G.L.'s vehicle, and words were exchanged between the two. Mr. Vugrinovich fell back, then cut into the exit lane behind G.L. with the purpose of following and confronting him. At a nearby intersection, he did just that.

{¶3} Mr. Vugrinovich stopped behind G.L. at a red light, exited his vehicle, and opened the door of G.L.'s truck. Within a matter of seconds, Mr. Vugrinovich struck G.L. multiple times, resulting in lacerations to G.L.'s mouth and causing him to lose a tooth. An individual who witnessed the confrontation from his vehicle in the next lane called 911, and a passenger in the witness's vehicle captured Mr. Vugrinovich's license plate on video as he fled the scene. G.L. was treated for his injuries in the emergency room at Akron Children's Hospital.

{¶4} Mr. Vugrinovich was charged with felonious assault, a violation of R.C. 2903.11(A)(1) and tried by a jury. During the trial, Mr. Vugrinovich attempted to question G.L. about pending criminal charges against him. The State objected, and the trial court sustained the objection. The jury found Mr. Vugrinovich guilty of the lesser included offense of assault, a violation of R.C. 2903.13(A). The trial court sentenced him to 180 days in jail, but suspended 90 days of the sentence; ordered him to pay restitution in the amount of $2,520.00; and fined him $1,000. Mr. Vugrinovich filed this appeal.

II.

ASSIGNMENT OF ERROR NO. 1

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE JURY VERDICT OF GUILTY.

{¶5} In his first assignment of error, Mr. Vugrinovich argues that his conviction for assault is not supported by sufficient evidence. This Court does not agree.

{¶6} "Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo." *State v. Williams*, 9th Dist. Summit No. 24731, 2009–Ohio–6955, ¶ 18, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). The relevant inquiry is whether the prosecution has met its burden of production by presenting sufficient evidence to sustain a conviction. *Thompkins* at 390 (Cook, J., concurring). For purposes of a sufficiency analysis, this

Court must view the evidence in the light most favorable to the State. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We do not evaluate credibility, and we make all reasonable inferences in favor of the State. *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). The evidence is sufficient if it allows the trier of fact to reasonably conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id*.

{¶7} R.C. 2903.13(A), which prohibits assault, provides that "[n]o person shall knowingly cause or attempt to cause physical harm to another or to another's unborn." "Physical harm" is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). R.C. 2901.22(B) describes the culpable mental state required to prove a violation of R.C. 2903.13(A):

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

"'When the defendant's culpable mental state is in issue, the proof of a mental state must be derived from circumstantial evidence, as direct evidence will not be available.'" *State v. Syed*, 9th Dist. Medina Nos. 17CA0013-M, 17CA0014-M, 2018-Ohio-1438, ¶ 23, quoting *State v. Flowers*, 9th Dist. Lorain No. 03CA008376, 2004-Ohio-4455, ¶ 15. *See also State v. Celli*, 9th Dist. Summit No. 28226, 2017-Ohio-2746, ¶ 18, quoting *State v. Huff*, 145 Ohio St.3d 555, 563 (1st Dist.2001) ("'[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.'") (Alterations in original.)

{¶8} G.L., the victim in this case, testified that after he inadvertently merged into Mr. Vugrinovich's lane of travel on Interstate 76, Mr. Vugrinovich stayed behind his vehicle for three or four miles, pulled briefly alongside him, then maneuvered into the exit lane behind his vehicle. He recalled that when he pulled into a left turn lane at a red light, Mr. Vugrinovich stopped behind him, exited his vehicle, opened the door to his truck, and punched him multiple times in the head with a closed fist. G.L. testified that one of the punches caused him to lose a tooth and bleed profusely. G.L. recalled that after the first strike, he turned away from the door toward the center console in an attempt to shield his head. The emergency room physician who treated G.L. testified that the tooth had to be immediately reinserted into the socket to reestablish blood flow and prevent loss of the tooth, and she noted that G.L. received sutures for lacerations near his mouth.

{¶9} Viewing this testimony in the light most favorable to the State, the jury could reasonably have concluded beyond a reasonable doubt that Mr. Vugrinovich knowingly caused physical harm to G.L. by striking him in a manner that resulted in injury. His conviction for assault is, therefore, based on sufficient evidence, and his first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

> APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶10} Mr. Vugrinovich's second assignment of error argues that his conviction for assault is against the manifest weight of the evidence. This Court does not agree.

{¶11} When considering whether a conviction is against the manifest weight of the evidence, this Court must:

> review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine 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.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). A reversal on this basis is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶12} In addition to G.L., the passenger, A.P., testified at trial. A.P. testified that after G.L. inadvertently merged into Mr. Vugrinovich's lane, Mr. Vugrinovich drove behind G.L. on Interstate 76. A.P. recalled Mr. Vugrinovich was driving "very aggressively," and he explained that in the rearview mirror, he saw Mr. Vugrinovich "riding our bumper, riding our tail, switching lanes to try to yell at us through the window and flicking us off." A.P. testified that near the exit to Route 261, Mr. Vugrinovich pulled alongside G.L.'s truck in the passing lane, and the two exchanged words. At that point, according to A.P.'s testimony, Mr. Vugrinovich cut across the lanes and exited behind G.L.

{¶13} A.P. testified that he heard a door slam while G.L. was stopped at an intersection, then saw Mr. Vugrinovich walking towards the truck. He recalled that Mr. Vugrinovich opened the driver's side door, said something to G.L., then "full blown swings back, pulls back and then punch[ed] [G.L.] in the face closed fist." After the first punch, A.P. saw G.L. spit blood. After the second, he noticed that G.L.'s tooth had come out. A.P. did not know how many times Mr. Vugrinovich struck G.L., but he was certain that it happened at least three times, explaining "because they were closed fist and I thought it was outrageous. I mean, he was hitting [G.L.] hard."

{¶14} T.L., a Wadsworth EMT who was off duty at the time, witnessed the confrontation between Mr. Vugrinovich and G.L. from his vehicle, which was stopped alongside G.L.'s truck in the next lane to the right. T.L. testified that Mr. Vugrinovich caught his eye immediately because it was unusual to see someone walking in the intersection itself. T.L. recalled that as he watched,

Mr. Vugrinovich opened the driver's side door of G.L.'s truck, grabbed G.L. from the front, and "proceed[ed] to strike [G.L.] numerous times." Like G.L. and A.P., T.L. testified that Mr. Vugrinovich pulled his arm back and struck G.L. with a closed fist. T.L. witnessed at least four strikes before he looked at his cellphone in order to call 911.

{¶15} E.D., a nurse practitioner, was a passenger in the car driven by T.L. She testified that after Mr. Vugrinovich opened the door of G.L.'s truck, he immediately started "beating the living tar out of this poor kid[.]" E.D. testified that all of the strikes were with a closed fist to the area of G.L.'s face. She took out her phone with the intention of recording the incident because, in her words, she believed G.L. was being "almost brutalized." E.D. testified that she did not know how many times Mr. Vugrinovich struck G.L., but she noted that it was unrelenting: "there was no pause, like he wasn't tired." She characterized Mr. Vugrinovich's actions as "just pure, unadulterated rage[.]" E.D. captured Mr. Vugrinovich's license plate number as he drove away, then rendered medical assistance to G.L. until the paramedics arrived.

{¶16} Mr. Vugrinovich testified in his own defense. He admitted that he exited Interstate 76 with the intention of confronting G.L. about merging into his lane. By the same token, he admitted that he followed G.L. to the intersection, got out of his vehicle, opened the driver's side door of G.L.'s truck, and struck G.L. multiple times. He admitted that when he confronted G.L., his voice was raised and that he was angry. Mr. Vugrinovich denied that he struck G.L. with his fist, and he maintained that he only struck him three times. He explained that he did so because "[G.L.] mainly started to twist towards me."[1]

[1] Although Mr. Vugrinovich's appellate brief suggests that he may have believed that G.L. had a weapon, he did not raise self-defense at trial or request a self-defense instruction.

{¶17} Mr. Vugrinovich did not deny that he struck G.L. or that G.L. sustained injuries as a result. He did dispute that he drew back and struck G.L. with a closed fist, and he attempted to call the testimony of G.L., A.P., T.L., and E.D. into question by surmising that given his strength and size, an attack of the magnitude that they described would had to have resulted in more extensive injuries to G.L. Mr. Vugrinovich testified that he suffered from attacks of panic and anxiety, but he also testified that he did not experience any such symptoms until after the incident.

{¶18} The sum and substance of his argument is not that the weight of the evidence failed to establish the elements of assault, but that the jury lost its way by not concluding that his conduct was "reasonable under the circumstances." This Court's role, however, is to consider whether this is the exceptional case in which the *evidence* weighs heavily against the conviction. *See Otten*, 33 Ohio App.3d at 340, citing *Martin*, 20 Ohio App.3d at 175. We cannot conclude that it is.

{¶19} Mr. Vugrinovich's second assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 3

> THE TRIAL COURT ERRED WHEN IT WOULD NOT PERMIT DEFENSE COUNSEL TO CROSS-EXAMINE THE ALLEGED VICTIM REGARDING HIS PENDING CRIMINAL CHARGES WHEN SUCH INQUIRY WOULD BE PROBATIVE AS TO THE TRUTHFUL[]NESS OR UNTRUTHFULNESS OF THE ALLEGED VICTIM'S TESTIMONY.

{¶20} In his third assignment of error, Mr. Vugrinovich has argued that the trial court erred by sustaining the State's objection to questions related to pending criminal charges during G.L.'s cross-examination. This Court does not agree.

{¶21} Evid.R. 609(A)(3) provides that subject to Evid.R. 403(B), evidence of a prior conviction is admissible to impeach the credibility of a witness "if the crime involved dishonesty or false statement." Evid.R. 609(C), however, permits only evidence of prior convictions—not pending charges. *State v. Brooks*, 75 Ohio St.3d 148, 151 (1996). Specific instances of a witness's

conduct, other than the conviction of a crime, may be inquired into during cross-examination in the trial court's discretion if they are "clearly probative of truthfulness or untruthfulness." Evid.R. 608(B). Such an inquiry is limited to the witness's character for truthfulness or untruthfulness or that of another witness. *Id.*

{¶22} Evidence that falls within the scope of Evid.R. 608(B) is subject to Evid.R. 403(A), which provides that "[a]lthough relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." *See generally* Evid.R. 403(A). The exclusion of relevant evidence under Evid.R. 403(A) rests within the discretion of the trial court. *State v Skatzes*, 104 Ohio St.3d 195, 2004-Ohio-6391, ¶ 107, citing *State v. Sage*, 31 Ohio St.3d 173 (1987), paragraph two of the syllabus. When considering a trial court's decision to exclude evidence under Evid.R. 403(A), this Court is "mindful that 'the exclusion of evidence under Evid.R. 403(A) is even more of a judgment call than determining whether the evidence has logical relevance in the first place.'" *State v. Thompson*, 9th Dist. Wayne No. 15AP0016, 2016-Ohio-4689, ¶ 25, quoting *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 40.

{¶23} With respect to whether a pending criminal charge may be admitted under Evid.R. 608(B) and Evid.R. 403(A), "the probative value of evidence pertaining to something as tenuous as a pending charge [is] uncertain * * * [while] [t]he danger of unfair prejudice, on the other hand, [is] great." *State v. Buchanan*, 12th Dist. Brown No. CA2008-04-001, 2009-Ohio-6042, ¶ 57. Mr. Vugrinovich proffered evidence of a pending charge so recent that, according to his attorney, G.L. had not yet been arraigned. The probative value of this evidence is questionable relative to the high potential for confusion of the issues that would have been introduced into the proceedings by

its admission. *See* Evid.R. 403(A). The trial court did not abuse its discretion by excluding this evidence.

{¶24} Mr. Vugrinovich's third assignment of error is overruled.

III.

{¶25} Mr. Vugrinovich's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

LYNNE S. CALLAHAN
FOR THE COURT

CARR, J.
SCHAFER, J.
CONCUR.

APPEARANCES:

ERIC D. HALL, Attorney at Law, for Appellant.

S. FORREST THOMPSON, Prosecuting Attorney, and VINCENT V. VIGLUICCI, Assistant Prosecuting Attorney, for Appellee.