

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-07-1310

Appellee

Trial Court No. CR-0200701472

v.

Edward Calvin

DECISION AND JUDGMENT

Appellant

Decided: September 4, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Mark T. Herr, Assistant Prosecuting Attorney, for appellee.

Jack P. Viren, Jr., for appellant.

* * * * *

HANDWORK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, where, after a jury trial, appellant, Edward Calvin, was found guilty of complicity to commit assault, a violation of R.C. 2903.13 and 2923.03(A)(2), a misdemeanor of the first degree. He was sentenced to two years of probation, to serve three days at the

Corrections Center of Northwest Ohio, to pay restitution, to perform 100 hours of community service, to complete an anger management program, and to have no contact with the victim. Appellant was also committed to the Lucas County Work Release Program for 30 days. His sentence was stayed pending appeal. Appellant asserts two assignments of error:

{¶ 2} "DEFENDANT-APPELLANT'S CONVICTION ARE [sic] NOT SUPPORTED BY SUFFICIENT EVIDENCE AND ARE [sic] THEREFORE A DENIAL OF DUE PROCESS"

{¶ 3} "DEFENDANT-APPELLANT'S CONVICTION ARE [sic] AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 4} The facts relevant to a disposition of appellant's assignments of error are as follows.

{¶ 5} On the afternoon of January 31, 2007, Barbara Duerson, who was at that time 64 years old, drove to Glendale Fielbach Elementary School in her white automobile¹ to pick up her granddaughter. This was only the third or fourth time that Duerson had provided transportation home for her grandchild. According to Duerson, she generally parked in the school parking lot and walked to the school to get her granddaughter.

{¶ 6} The driveway to the school branches out in a "Y" shape. The left side leads to the parking lot; the right side leads to the school. There is a grassy area between the

¹While some of the witnesses simply identified the victim as the woman in the white car, it is undisputed that they were referring to Duerson.

two branches. For parents/caretakers picking up children from school, the left branch is known as the "car lane" while the right branch is known as the "bus lane." At the point where the driveway splits, there is a sign stating that the right branch is for "Buses Only."

{¶ 7} Duerson provided the following testimony. On the day of the incident, she was late and there was a long line of motor vehicles in the driveway. She drove past these vehicles and started to drive down the bus lane. Appellant and his wife, Kristina, were in their van, which was sitting at the entryway to the car lane and next to the grassy median that separated the two lanes. Duerson then moved her car backward in the bus lane, turned left, and drove over the curb of the grassy area, heading toward the parking lot. She then stopped on the grassy area. Duerson motioned for the vehicle in front of appellant's van to move forward. When it did, she moved forward.

{¶ 8} Duerson further testified that Kristina got out of the van, "jumped" in front of her car, and yelled to appellant that Duerson had hit Kristina. When Duerson finally parked her vehicle, appellant came over to her car, opened the door, and pulled her out of the driver's seat. At that point, Kristina Calvin started to "beat on her." Kristina, at one point, pushed Duerson to the ground, sat on her, and hit her in the face.

{¶ 9} Geneva Sheffield was just ahead of appellant's van when the altercation started. She testified that Kristina got out of her van, went over to Duerson's vehicle and "had words" with Duerson. Kristina then pulled Duerson from her car, knocked her down, and sat on her "just pounding on her." This witness further testified that appellant would not allow anyone to help Duerson by putting his arm up so that they could not go

past him. Sheffield also stated that when Duerson was finally able to get to her car, appellant and Kristina kept blocking the victim's car in by standing in front of and behind the vehicle, thereby preventing Duerson from leaving.

{¶ 10} A second witness, Irma Avila, parked her car and started walking across the parking lot to meet her children when she noticed a "commotion" going on. Avila kept walking, but after she met her children and was walking back to her car, she saw a white car moving backward and forward while a woman stood in front of that car yelling. Avila said that Duerson eventually pulled in and parked diagonally to Avila's vehicle. Avila told her children to get in her vehicle and lock the doors. At that time, Avila saw a man exit a van, come over to the white car, and pull an older lady out of the driver's seat. At trial, she identified appellant and Kristina Calvin as the two individuals involved in the altercation.

{¶ 11} Melissa McGee also testified that she saw Kristina standing in front of a white car as it tried to enter the parking lot. Kristina was screaming "You're not, I'm not letting you go anywhere." She also saw Kristina reach into the white vehicle and hit Duerson. When the driver backed the car away from Kristina, appellant ran to the car, told the woman that she was not going anywhere, and pulled her out of her car. According to McGee, Duerson ended up on the ground. McGee also identified Kristina and appellant as the persons who attacked the lady in the white car.

{¶ 12} Peggy Masiker, another parent who was at the school to pick up her child, identified Kristina as the woman who, at one point was standing in front of Duerson's car

and "beating on" the hood. She further testified that after Duerson parked her car, both appellant and Kristina attempted to pull the older woman out of her vehicle, but were unable to do so because "two gentlemen came up and broke up the argument."

{¶ 13} Officer Diana Trevino of the Toledo Police Department was the officer dispatched to the school. Officer Trevino testified that due to the injuries suffered by Duerson, she had her sent to the hospital for a medical examination. The officer stated that the victim had a large "goose egg", that is, a bump, on her forehead, scrapes down the side of her face, a black eye, and lumps all over her scalp². According to Trevino, neither appellant nor Kristina had any visible injuries, and neither of the two wanted to seek any medical treatment for injuries.

{¶ 14} Kristina Calvin testified in her own defense and provided the following version of events that occurred on January 31, 2007. Her testimony reciting the chain of events leading to her first confrontation with Duerson mirrored those of previous witnesses. Kristina, however, claimed that, Duerson's car almost hit their van. She also maintained that when Duerson saw her get out of her van, Duerson also got out of her vehicle. Duerson shoved Kristina backwards twice before Kristina hit her in the face. Kristina stated that she could not discern Duerson's age because the woman's lower face was covered with a white "scarf,"³ and she had on a white cap. After the first time

²When Duerson was later examined by her own physician, he discovered that she also had a bruised left arm.

³Duerson was wearing a surgical mask because she had all of her teeth removed a few days before the incident.

Kristina "punched" Duerson, the woman kept "hitting" Kristina, trying to take off her glasses. At that point, appellant got out of the van and Kristina handed him her glasses. The women continued hitting each other and Kristina pulled Duerson by the hair.

{¶ 15} Kristina claimed that Duerson must have tripped on the curb of the grassy area separating the bus and car lanes, and both women ended up on the snow covered ground with Kristina on top of Duerson. When appellant told his wife to "stop fighting," Kristina tried to stand up but Duerson kept punching her; therefore, Kristina kept hitting Duerson. After both women stood up, the fight stopped.

{¶ 16} Appellant returned to the couple's van, and Kristina stood off to the side. Duerson, however, got in her automobile, drove toward Kristina, and "bumped" her with the car. As Kristina ran around to the driver's side of the car, Duerson accelerated at a high speed into the parking lot and stopped three quarters away down the lot. Appellant ran after Duerson, who put the car in reverse and accelerated at a high speed backwards. Kristina testified that she had to jump out of the way. Duerson then went into a parking space at a high rate of speed, backed out again and finally parked.

{¶ 17} On cross-examination, Kristina admitted that after Duerson shoved her, Kristina pulled Duerson's hair when she hit Duerson in the face. She also testified that she told appellant to drive their van in front of Duerson so that she could not leave. Detective Tim Quinn, who took a statement from Kristina at the Toledo Police Department, testified that Kristina told him that after Duerson shoved her, she began hitting Duerson, but that Duerson never hit Kristina.

{¶ 18} Appellant also testified at trial. In his direct examination, he essentially substantiated his wife's testimony concerning the "fight." Edward claimed that after Duerson "hit" his wife with her car, he followed Duerson to the area where she parked. He then opened the driver's side door and reached over Duerson to turn the key in the ignition and stop the engine. According to appellant, Duerson hit him "a couple of times" and he was unable to reach the key. After Duerson allegedly hit appellant he grabbed her coat. At that point people rushed up to the car and told appellant to leave the woman alone and that his wife should not have acted the way she did. After some pushing and shoving, everyone calmed down. Appellant claimed that he never hit Duerson, pulled her out of the car, encouraged "anybody" to fight with her, and never stopped anyone from intervening in the fight between his wife and Duerson.

{¶ 19} Finally, Jeffrey Rosinski testified on behalf of appellant. As material to this case, Rosinski stated that even though he observed appellant reach into Duerson's car window "to stop her," he never touched Duerson or pulled her out of her vehicle.

{¶ 20} In his first assignment of error, appellant contends that the evidence offered at trial was insufficient to prove, beyond a reasonable doubt, that he was guilty of complicity to commit assault.

{¶ 21} A sufficiency of the evidence argument disputes whether the state has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law. *State v. Thompkins*, (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52. In *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of

the syllabus, 1997-Ohio-52, the Supreme Court of Ohio set forth the proper test for determining whether a finding of guilty is support by sufficient evidence, holding:

{¶ 22} "An appellate court's function when reviewing the sufficiency of the evidence * * * 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."

{¶ 23} As applied to appellant, the elements of complicity to commit assault, as found in R.C. 2903.13(A) and 2923.03(A)(2), are that he knowingly aided and abetted another to cause physical harm to another person. In order "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*, 93 Ohio St.3d 240, 2001-Ohio-336, syllabus. Physical harm to another person within the meaning of Ohio's criminal code occurs when the actor causes "any injury, illness, or other physiological impairment, regardless of its gravity or duration. * * *." R.C. 2901.01(A)(3).

{¶ 24} There was testimony at trial that, when viewed in a light most favorable to appellee, the state of Ohio, demonstrates beyond a reasonable doubt that appellant aided

and abetted his wife by not allowing anyone to intervene in his wife's attack on Duerson, and/or just simply stood by holding his wife's glasses, and/or actively participated in the attack by pulling Duerson out of her vehicle. It is undisputed that Duerson was physically harmed. She had bumps, bruises, contusions, scrapes, and hair pulled from her head. Therefore, appellant's first assignment of error is found not well-taken.

{¶ 25} In his second assignment of error, appellant asserts that his conviction is against the manifest weight of the evidence because the prosecution failed to prove, beyond a reasonable doubt, that he aided and abetted Kristina in the assault of Barbara Duerson.

{¶ 26} Under a manifest weight standard, an appellate court sits as a "thirteenth juror" and reviews "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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against conviction." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 27} The outcome of this case rested almost entirely upon the credibility of the witnesses who observed or participated in this incident. Upon a review of that evidence, as set forth above, we cannot say that the jury lost its way in determining that appellant aided and abetted his wife in the assault of Barbara Duerson thereby creating a manifest

miscarriage of justice. Therefore appellant's second assignment of error is found not well-taken.

{¶ 28} The judgment of the Lucas County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

Judge John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.