

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

State of Ohio

Court of Appeals No. L-14-1050

Appellee

Trial Court No. CR0201302487

v.

Brandon Lamont Conner

DECISION AND JUDGMENT

Appellant

Decided: May 15, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Dexter L. Phillips, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Brandon Conner, appeals the February 20, 2014 judgment entry of the Lucas County Court of Common Pleas which, following a trial to the court and conviction for assault on a corrections officer, sentenced appellant to six months of imprisonment. The sentence was ordered to be served concurrent to the

sentence for which he was incarcerated at the time of the offense. For the reasons set forth herein, we affirm.

{¶ 2} The relevant facts of this case are as follows. On August 30, 2013, appellant was indicted on one count of assault of a corrections officer, a fifth degree felony, stemming from an incident on June 21, 2013, where during a shakedown of appellant's jail cell at the Toledo Correction Institution "ToCI," appellant allegedly tackled and hit a corrections officer. Appellant entered a not guilty plea to the charge.

{¶ 3} The matter proceeded to a bench trial on February 4, 2014, and the following relevant evidence was presented. The state's first witness was the victim, Corrections Officer Benjamin Hamrick. Officer Hamrick stated that he had worked at ToCI for just over one year. On June 21, 2013, Hamrick stated that he was conducting a security check when he noticed that appellant's cell had a plastic identification card stuck in the door to prevent it from locking; this is a violation of ToCI rules. When he looked into the cell he noticed a pile of tobacco which is considered "major" contraband. Officer Hamrick then initiated a cell "shakedown" or search of the cell.

{¶ 4} While conducting the shakedown, Officer Hamrick stated that appellant approached and asked why Hamrick was in his cell; Hamrick explained that he had observed two violations. Hamrick then discovered several items that were titled to other inmates. Hamrick testified that during the search, appellant kept coming back and asking for items from his cell. Appellant returned again and asked for a sweatshirt that was on his bed. Hamrick stated that appellant started to come into the cell which is not permitted

during a shakedown; he asked if Hamrick could hand him the sweatshirt. After picking up the sweatshirt, Officer Hamrick patted it down and felt a lump in the front pocket “just smaller than a softball size” which also turned out to be tobacco. Hamrick stated that he took the tobacco and secured it in his left cargo pants pocket.

{¶ 5} At that point, Officer Hamrick testified that appellant was “visibly upset.” Officer Hamrick stated that the search took approximately ten minutes and that while he was taking a final look under the bed, appellant tackled him from behind and he hit his head on the bed rail. Hamrick stated that appellant then “rabbit punched” (according to Hamrick, a rapid succession of punches) him in the side and he felt a tugging on his belt where his Spider alarm system, or man down button, was located. Hamrick testified that he was able to activate the signal and that appellant’s hands then went to the cargo pocket with the tobacco. According to Officer Hamrick, appellant was able to get the tobacco and ripped the pocket three quarters of the way off.

{¶ 6} Appellant then stood up and ran from the cell with the tobacco. Officer Hamrick stated that he observed appellant throw the tobacco to another inmate who was standing outside the cell and that individual threw it off the range or over the rail to the ground below. Hamrick testified that as a new corrections officer he was “flabbergasted” and ran down the steps in an attempt to recover the tobacco.

{¶ 7} A video depicting the outside of the cell block was admitted into evidence. From the video, Hamrick described the toss of the tobacco from appellant to inmate Savage who then threw the package to the open first floor. Hamrick also pointed out his

torn pants pocket. Hamrick concedes that you are not able to see inside appellant's cell where the alleged assault occurred.

{¶ 8} During cross-examination, Officer Hamrick was questioned about his new employee probationary status on the date of the incident. He responded negatively when asked whether he fabricated the assault because he lost the contraband and feared discipline. Hamrick did admit that he initially allowed appellant to walk away because his concern was to re-secure the contraband.

{¶ 9} Officer Hamrick stated that he sought medical care immediately following the attack. He admitted that the nurse saw no bruises or markings. He stated that the bruises were evident the next day.

{¶ 10} At the close of the state's case, appellant moved for acquittal pursuant to Crim.R. 29. Appellant argued that the state failed to present any evidence of an assault of Officer Hamrick. The court denied the motion finding that the state had presented a prima facie case.

{¶ 11} Appellant presented the testimony of ToCI inmates Abubakarr Savage and A. Bo Guedea. Savage testified that on the date of the incident, at approximately 9:30 a.m., he was two doors down from appellant's cell conversing with a fellow inmate when he heard "feets" moving in appellant's cell. Savage testified that he moved over to the cell and "peeped" in and observed appellant grabbing the officer's pocket. Savage stated that as appellant slid out of the cell he tossed him something. Savage testified that although he did not know what had been thrown, he immediately threw it out of his

possession. Savage stated that he did not see appellant hit Officer Hamrick and that he observed both standing in the cell.

{¶ 12} Savage admitted that he had been written up several times for a Rule 27 violation which prohibits lying to a corrections officer. Savage was also cross-examined about why in the video it looks as though he was ready and waiting to catch the package thrown by appellant.

{¶ 13} Inmate Bo Guedea testified that he was also outside of appellant's cell during the incident. He stated that he could see directly into the cell and that Officer Hamrick was conducting a shakedown. Guedea stated that he observed Hamrick standing, looking at a television stand when appellant grabbed the contraband out of Hamrick's pocket and ran out of the cell. Guedea testified that appellant never hit the officer and that Hamrick was never on the ground. Inmate Guedea also denied hearing a signal 3 or "man down" alarm. Guedea admitted that he received a ticket for lying to a corrections officer.

{¶ 14} Savage and Guedea were both charged internally for their alleged involvement in the incident. They appeared before the rules infractions board. Savage was found guilty of conspiracy and given 30 days in isolation. Following his appeal, Savage's decision was administratively overturned. Guedea was charged with attempt to assault a corrections officer and found guilty. Guedea was sentenced to 70 days in isolation. He did not appeal the decision.

{¶ 15} After Officer Hamrick began the shakedown of appellant's cell, appellant testified that he first entered his cell at approximately 9:30 a.m., and entered two additional times. The first time, appellant stated that he spoke with Hamrick about the tobacco lying on the counter and the scope of the shakedown. Appellant then left to make a cup of coffee. After about ten minutes, appellant returned to the cell and again questioned Officer Hamrick about the scope of the shakedown and potential result of the tobacco infraction. Appellant stated that he then went to Savage's cell and spoke with a few other inmates before heading back to his cell.

{¶ 16} Back the third time, appellant testified that he observed contraband in the middle of the cell floor. The contraband mainly consisted of electronic items belonging to other inmates which is prohibited. Appellant admitted that he decided to take the tobacco from Officer Hamrick because it would be expensive to replace. Appellant agreed that he planned to throw it and did not care who got it so long as it was away from Officer Hamrick.

{¶ 17} At that point, the surveillance video was again played for appellant to narrate. Although it does not show inside the cell, appellant was explaining that when he went in the third time, Officer Hamrick was across the cell near the bed and he was on the other side of the contraband.

{¶ 18} Appellant denied that he touched Officer Hamrick's body. Appellant stated that he reached into the pants pocket and pulled out the tobacco. Appellant stated that the

pants pocket ripped because Officer Hamrick grabbed his arm and pulled him away from Hamrick's body.

{¶ 19} The court questioned appellant regarding the contact between he and Officer Hamrick. Appellant admitted that at the point where Hamrick grabbed his arm the two made physical contact. Appellant also admitted that he was not acting in self-defense and that he was not supposed to touch the officers.

{¶ 20} Following the close of the evidence, the trial court found that the state met its burden and found appellant guilty of assault. Appellant was sentenced to six months of imprisonment to be served concurrently to the sentence for which he was incarcerated. This appeal followed.

{¶ 21} Appellant now raises two assignments of error for our review:

1. The state of Ohio failed to provide legally sufficient evidence that appellant knowingly cause[d] or attempted to cause physical harm.
2. Appellant's conviction fell against the manifest weight of the evidence.

{¶ 22} Appellant's first assignment of error asserts that his assault conviction was not supported by sufficient evidence. In determining whether appellant's conviction for assault of a corrections officer is supported by legally sufficient evidence we must 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. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 23} At the time of the alleged offense, R.C. 2903.13 provided, in relevant part:

(A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

* * *

(C) * * *

(3) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree:

(a) The offense occurs in or on the grounds of a state correctional institution or an institution of the department of youth services, the victim of the offense is an employee of the department of rehabilitation and correction, the department of youth services, or a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is committed by a person incarcerated in the state correctional institution, by a person institutionalized in the department of youth services institution pursuant to a commitment to the department of youth services, by a parolee, by an offender under transitional control,

under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

{¶ 24} At the conclusion of the evidence portion of the trial, the court found that the evidence did not support Officer Hamrick’s testimony that he was brutally beaten. The court did, however, conclude that the evidence was sufficient to demonstrate that appellant attempted to cause Hamrick physical harm. Viewing the evidence presented at trial in a light most favorable to the state, *Jenks, supra*, we find that appellant’s conviction was supported by sufficient evidence. Appellant’s first assignment of error is not well-taken.

{¶ 25} Appellant next argues that his assault conviction was against the weight of the evidence presented at trial. We note that “[i]n a bench trial, the trial court assumes the fact-finding function of the jury.” *Cleveland v. Welms*, 169 Ohio App.3d 600, 2006-Ohio-6441, 863 N.E.2d 1125, ¶ 16 (8th Dist.). Accordingly, in examining a manifest weight of the evidence claim an appellate 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 evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.” *Id.*, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶ 26} It is undisputed that this case turns on the trial court’s assessment of the parties’ credibility. The court obviously grappled with the contradictory testimony when it ultimately concluded that the crime of attempted assault had been proven. Reviewing the evidence presented at trial and as set forth above, we cannot say that the trial court lost its way or created a manifest injustice in finding appellant guilty. Appellant’s second assignment of error is not well-taken.

{¶ 27} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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>.