

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

State of Ohio
Appellee

Court of Appeals No. L-14-1172
Trial Court No. CR0201401431

v.

Joe Luna, Jr.
Appellant

DECISION AND JUDGMENT
Decided: July 31, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Melissa Nowakowski, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Joe Luna, Jr., appeals the July 3, 2014 judgment of the Lucas County Court of Common Pleas entering a jury verdict convicting him of felonious assault. For the reasons that follow, we affirm the trial court judgment.

I. Background

{¶ 2} On March 7, 2014, the Toledo Police Department responded to a report of a man lying unconscious in front of the Cherry Street Mission (“CSM”). The victim was

Jason Oldfield, a resident of CSM. He was transported to Mercy St. Vincent Hospital. Testing there revealed that Oldfield had suffered multiple skull fractures and an intracerebral hemorrhage. After speaking with Luna and other witnesses at the scene, police concluded that Luna perpetrated the assault on Oldfield. A grand jury indicted Luna on a single charge of felonious assault, a violation of R.C. 2903.11(A)(1) and (D).

{¶ 3} The case proceeded to a jury trial beginning June 9, 2014. Both Oldfield and Luna testified, as did Brandon Waites, a CSM employee, Officer Anthony Barwiler, one of the responding officers, and Detective Raynard Cooper, the Toledo police detective assigned to investigate the case.

{¶ 4} Waites testified that on the evening of March 7, 2014, CSM residents informed him that there was an unconscious man lying in front of the building. Waites found Oldfield unconscious, lying on his back on the concrete sidewalk at the entrance of the building. Bystanders were unwilling to relate how the victim had been injured, but Luna eventually told Waites that he and Oldfield had been involved in an altercation on the second or third floor of the building. Luna admitted that once outside the building, he hit Oldfield one time, knocking him to the ground. Waites contacted the police and convinced Luna to remain at the scene to give the police his statement. Waites testified that he had not observed any injuries on Luna, nor had Luna sought medical assistance for himself.

{¶ 5} Officer Barwiler testified that he and his partner were dispatched to CSM. They found Oldfield lying unconscious on his back on the concrete. Officer Barwiler

observed several people milling around near Oldfield's unconscious body, including Luna, who he described as looking "a little nervous, pacing back and forth." The bystanders were not particularly helpful, but they and Luna told him that Luna and Oldfield had been involved in an altercation on the second or third floor of the building over the sale of a car stereo. Officer Barwiler confirmed that Luna was carrying wire with him. Luna ultimately conceded that he had struck Oldfield. Luna appeared intoxicated, but it did not appear to Officer Barwiler that he was injured. He did not request medical attention and there was no sign of mutual combat.

{¶ 6} Detective Raynard Cooper testified that the sergeant on duty directed him to CSM to investigate the report of a felonious assault involving serious injuries. When he arrived at the scene, Officers Barwiler and Salazar were there. Luna was in the back of a patrol car. He smelled of alcohol and appeared to be intoxicated. Detective Cooper did not take Luna's statement right away because of his level of intoxication, but when he did speak to Luna, Luna told him that Oldfield had jumped him, so he hit him. Other witnesses at CSM were not cooperative. Detective Cooper learned that there was a video recording that may have captured the alleged altercation between Luna and Oldfield on the second or third floor of the building, but he was never able to secure the recording from CSM; it had been taped over. Detective Cooper further testified that Luna did not appear to have any obvious injuries and did not request any medical treatment.

{¶ 7} Luna testified in his own defense. He explained that he had been a resident of CSM for almost a year. He said that on March 7, 2014, he purchased a used car stereo

for \$25, intending to resell it for \$40. Oldfield, who was standing outside of CSM with Luna, offered to buy the stereo. After Luna gave it to him, but before paying for it, Oldfield handed it off to a woman in a car who drove away with it. Luna had kept the wires needed to operate the stereo and refused to relinquish them until Oldfield paid him. Luna testified that Oldfield asked him to accompany him to the second or third floor of CSM (he was unsure which), and Oldfield would get the money. Instead, upon getting upstairs, Luna said he was attacked by Oldfield and two other men. He escaped via the elevator and made his way outside where, while he was bent over in pain, Oldfield approached him asking for the stereo wires. Luna said that Oldfield swung at him, and, allegedly fearing that the previous attack was going to resume, he struck Oldfield once. He described that Oldfield fell backwards to the ground and hit his head on the door and the concrete ground, losing consciousness. Luna acknowledged that he did not seek medical care, but maintained that he struck Oldfield because he feared for his life.

{¶ 8} Oldfield recalled little about the March 7, 2014 incident. He was intoxicated at the time of the assault and he suffered memory loss from his injuries. He testified that the last thing he remembered about the day was having lunch with his girlfriend. He said that he was hospitalized a total of three weeks and is deaf in one ear. His skull fractures were not completely healed at the time of trial and he suffered nerve damage. The state admitted into evidence medical records corroborating the nature and extent of Oldfield's injuries.

{¶ 9} At the end of the state’s case-in-chief, Luna moved for acquittal, arguing that he acted in self-defense, no one witnessed him assault Oldfield, and there was no connection established between the assault and the injuries suffered by Oldfield. The court denied Luna’s motion.

{¶ 10} At the state’s request and over Luna’s objection, the trial court instructed the jury on felonious assault and the lesser-included offense of aggravated assault. At Luna’s request, and over the objection of the state, the court also instructed on self-defense. The jury found Luna guilty of felonious assault. The trial court sentenced Luna to three years’ imprisonment.

{¶ 11} Luna appealed the verdict and assigns the following errors for our review:

1) The State failed to provide legally sufficient evidence to sustain a conviction for Felonious Assault.

2) Appellant’s conviction for Felonious Assault fell against the manifest weight of the evidence.

II. Analysis

{¶ 12} In support of his first assignment of error, Luna argues that the state failed to provide legally sufficient evidence of a correlation between Oldfield’s injuries and Luna’s actions. In his second assignment of error, he claims that the jury’s verdict was against the manifest weight of the evidence for the same reason. He insists that the jury’s rejection of his self-defense claim was against the manifest weight of the evidence

because he presented testimony establishing all the elements of the defense. He contends that his claim of self-defense was corroborated by the state.

{¶ 13} Whether there is sufficient evidence to support a conviction is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997), *superseded by constitutional amendment on other grounds as stated by State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668 (1997). In reviewing a challenge to the sufficiency of the 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.” (Internal citations omitted.) *Smith* at 113. In making that determination, the appellate court will not weigh the evidence or assess the credibility of the witnesses. *State v. Walker*, 55 Ohio St.2d 208, 212, 378 N.E.2d 1049 (1978).

{¶ 14} When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the jury clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins* at 387. We do not view the evidence in a light most favorable to the state. “Instead, we sit as a ‘thirteenth juror’ and scrutinize ‘the factfinder’s resolution of the conflicting testimony.’” *State v. Robinson*, 6th Dist. Lucas No. L-10-1369, 2012-Ohio-6068, ¶ 15, citing *Thompkins* at 388. Reversal on manifest weight grounds is reserved for “the exceptional

case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 15} To prove a violation of R.C. 2903.11(A)(1), the state must establish that Luna knowingly caused serious physical harm to Oldfield. A person acts “knowingly” when “regardless of purpose, * * * the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature.” R.C. 2901.22(B). Luna argues that the state failed to present legally sufficient evidence that he knowingly caused serious physical harm to Oldfield because it introduced no evidence that it was Luna’s punch that directly caused Oldfield’s injuries. He argues that despite Luna’s admission that he struck Oldfield, “[t]here was no other testimony or evidence that linked Appellant to any kind of assault beyond a single blow.”

{¶ 16} The state presented evidence that the victim was found unconscious on the concrete and, in response to questioning as to what led to Oldfield being found on the pavement, Luna admitted punching him. The state also submitted evidence of the seriousness of Oldfield’s injuries, including medical records demonstrating that he suffered skull fractures, a brain bleed, nerve damage, and hearing loss. Luna may not have anticipated that he would cause such serious head trauma with a single blow, but as we have recognized before, “[t]he state [is] not required to show that appellant knew the specific nature or extent of the injuries that would result.” *State v. Witt*, 6th Dist. Williams No. WM-04-007, 2005-Ohio-1379, ¶ 27. As other Ohio courts have recognized, it is foreseeable that a person will fall to the ground after being punched.

State v. Dykas, 185 Ohio App.3d 763, 2010-Ohio-359, 925 N.E.2d 685, ¶ 28 (8th Dist.).

See also *State v. Vanover*, 4th Dist. Lawrence No. 98CA38, 1999 WL 354337, *4

(May 18, 1999). Here, Luna could reasonably have anticipated that striking Oldfield could cause him to fall onto the concrete and suffer serious injuries.

{¶ 17} We, therefore conclude that the state presented evidence going to each element of the offense of felonious assault, and we find Luna’s first assignment of error not well-taken.

{¶ 18} In his second assignment of error, Luna argues that the jury’s verdict was against the manifest weight of the evidence both because the state failed to correlate Oldfield’s injuries with the single punch Luna admitted to throwing, and because the jury rejected his claim of self-defense.

{¶ 19} We have addressed the sufficiency of the evidence offered by the state to support a conviction of felonious assault. Luna strengthened the state’s case when he admitted that Oldfield exited CSM from the third floor without assistance, but became unconscious after Luna’s punch caused him to fall to the ground and hit his head on the concrete. In this regard, we cannot say that the jury’s verdict was against the manifest weight of the evidence.

{¶ 20} Turning to Luna’s claim of self-defense, “[s]elf-defense is an affirmative defense that, if proved, relieves a defendant of criminal liability for the force that the defendant used.” *State v. Bundy*, 2012-Ohio-3934, 974 N.E.2d 139, ¶ 36-37 (4th Dist.), citing *State v. Kozlosky*, 195 Ohio App.3d 343, 2011-Ohio-4814, 959 N.E.2d 1097, ¶ 22

(8th Dist.). To establish self-defense, Luna bore the burden to show that “he was not at fault in starting the affray, and that he had a bona fide belief that he faced imminent danger of death or great bodily harm and that his only means of escape was the use of such force, and that he violated no duty to retreat or avoid the danger.” *State v. Roundtree*, 6th Dist. Lucas No. L-14-1052, 2015-Ohio-2230, ¶ 12.

{¶ 21} Luna argues that he presented uncontested evidence to support his claim of self-defense. He contends that Officer Barwiler corroborated his defense when he testified that he found stereo wire on Luna following the assault. Luna also urges that his lack of visible injuries should not act as a bar to his self-defense claim because injury is not a required element of the defense.

{¶ 22} Here, the state elicited testimony from Luna which called into question whether he acted in self-defense. Specifically, the state confirmed with Luna that according to his version of events, Oldfield’s friend drove away with the stereo; immediately thereafter, Oldfield told Luna to come upstairs with him so that he could pay him; and immediately after entering the upper floor, two men were waiting to jump him. The state inquired how Oldfield could have arranged this assault so quickly given this timeline, and it asked Luna whether he had fabricated the story.

{¶ 23} Under a manifest-weight standard we consider the credibility of witnesses, but we also extend special deference to the jury’s credibility determinations given that it is the jury who has the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities

such as hesitancy, equivocation, and candor. *State v. Fell*, 6th Dist. Lucas No. L-10-1162, 2012-Ohio-616, ¶ 14. Here, the jury observed Luna’s testimony and apparently disbelieved his version of events. We will not second-guess the jury’s credibility determination.

{¶ 24} We find Luna’s second assignment of error not well-taken.

III. Conclusion

{¶ 25} We find Luna’s assignments of error not well-taken and affirm the July 3, 2014 judgment of the Lucas County Court of Common Pleas. The costs of this appeal are assessed to Luna pursuant to App.R. 24.

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>.