

[Cite as *State v. Churn*, 2018-Ohio-1089.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105782

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EMANUEL C. CHURN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-603947-C

BEFORE: Keough, J., McCormack, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 22, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, Emanuel Churn (“Churn”), appeals his convictions. For the reasons that follow, we affirm.

{¶2} In 2016, Churn was named in a four-count indictment charging him with aggravated murder, in violation of R.C. 2903.01; murder, in violation of R.C. 2903.02(B); felonious assault, in violation of R.C. 2903.11(A)(1); and kidnapping, in violation of R.C. 2905.01(A)(3). Churn waived his right to a jury trial and the following evidence was presented to the trial court.

{¶3} On January 21, 2016, Churn, and codefendants, Everett Gunn (“Gunn”) and Andrew Hilton (“Hilton”), were at Hilton’s house. Hilton was the store manager at a Dollar General where Churn’s wife and the victim, Dontez Curlee (“Curlee”), worked. While together, Hilton received a telephone call about whether Curlee could leave work. Churn discovered that the

subject of the telephone call was Curlee, prompting Churn to state, “I need to holler at him.” Accordingly, Churn, Gunn, and Hilton decided to confront Curlee.

{¶4} Conflicting versions of why Churn was interested in speaking with Curlee were presented to the trial court. Hilton and Gunn testified that Churn believed that Curlee was involved in a robbery at the Dollar General while Churn’s wife was working there alone. However, Hilton admitted he told police that Curlee made a romantic advance toward Churn’s wife while at work.

{¶5} After confirming that Curlee was waiting at the bus stop next to the Dollar General store, Gunn drove the group to the area. Hilton pointed out Curlee, and Churn exited the vehicle with Gunn, walking toward the bus stop. Upon reaching Curlee, Churn immediately began the attack. According to Gunn, Curlee did not have an opportunity to defend himself and appeared “knocked out” after the second punch. Gunn further stated that Curlee was unconscious, yet Churn continued to hit Curlee in the face, throw him to the ground, and stomp on his head and body. According to Gunn, Curlee was bleeding and unconscious when the group walked away.

{¶6} A bystander waiting for the bus, Timothy Whiting, witnessed the assault. Whiting testified that he saw Churn punch, stomp, and kick Curlee in the head. Additionally, the entire attack was captured on surveillance video. The video corroborated the events as described by Gunn, Hilton, and Whiting. The trial court was able to view the events leading up to the assault and the entirety of the attack, including the number of times Curlee was struck.

{¶7} City of Cleveland EMS employee, Frank Guelker, testified that he was dispatched to provide medical assistance to an assault victim. Upon arriving on scene, Guelker noticed that Curlee had lacerations to his forehead, a deformity to his nose, contusions, and bruising around his face and head. According to Guelker, Curlee was confused, repeating himself, and unable to

communicate with them verbally or through the use of sign language. Guelker also told the court that Curlee's clothing was soaked in blood and there was blood on the curb nearby.

{¶8} Curlee passed away from his injuries on January 22, 2016. Based on the autopsy, Dr. Joseph Felo, chief deputy medical examiner and forensic pathologist for Cuyahoga County, testified that the cause of death was blunt impacts to the head with skull and brain injuries, and the manner of death was homicide. Dr. Felo testified that Curlee suffered from broken bones in the skull, subarachnoid and subdural hemorrhages, a large hematoma, and cerebral edema. The examination revealed that the injuries occurred around the same time, and the trauma that caused Curlee's death was related to the brain injuries.

{¶9} According to Hilton, after Churn learned that Curlee passed away, he burned the shoes he was wearing during the attack on Curlee. Additionally, Churn told Hilton he was not worried because "the police don't know anything." (Tr. 102.) However, Gunn, Hilton, and Churn were subsequently arrested for the murder of Dontez Curlee. In exchange for agreeing to testify against Churn, Hilton pleaded guilty to attempted involuntary manslaughter, and Gunn pleaded guilty to involuntary manslaughter.

{¶10} Following the close of evidence, Churn requested that the trial court consider the lesser-included offense of involuntary manslaughter. The court found Churn not guilty of aggravated murder, but guilty of murder, felonious assault, and kidnapping. Following merger and the state electing that the court sentence on the murder offense, Churn was sentenced to life in prison with a possibility of parole after 15 years. He now appeals, raising three assignments of error.

I. Lesser-Included Offense

{¶11} In his first assignment of error, Churn contends that the trial court committed error by refusing to consider the lesser-included offense of involuntary manslaughter.

{¶12} It is well settled that involuntary manslaughter, R.C. 2903.04, is, as statutorily defined, a lesser-included offense of murder, R.C. 2903.02. *State v. Thomas*, 40 Ohio St.3d 213, 215, 533 N.E.2d 286 (1988). However, the mere fact that an offense can be a lesser-included offense of another does not mean that a court must instruct on both offenses where the greater offense is charged. Even though a lesser-included offense has been established, the Ohio Supreme Court has stated that a charge on the lesser offense is warranted only if the evidence adduced at trial would support it. *Thomas* at 216; *State v. Davis*, 6 Ohio St.3d 91, 451 N.E.2d 772 (1983).

[E]ven though an offense may be statutorily defined as a lesser-included offense of another, a charge on the lesser-included offense is required only where the evidence presented at trial would reasonably support both an acquittal on the crime charged and a conviction upon the lesser-included offense.

Thomas at *id.*; *State v. Kidder*, 32 Ohio St.3d 279, 513 N.E.2d 311 (1987). Accordingly, the trial court must first determine what constitutes a lesser-included offense of the crime charged, and then examine the facts and ascertain whether the jury could reasonably conclude that the evidence supports a conviction for the lesser offense and not the greater.

{¶13} Contrary to Churn's argument, the trial court did not "refuse" to consider the lesser-included offense of involuntary manslaughter. In a bench trial, it is presumed that "the court considered inferior and lesser-included offenses." *State v. Masci*, 8th Dist. Cuyahoga No. 96851, 2012-Ohio-359, ¶ 25; *State v. Perez*, 8th Dist. Cuyahoga No. 91227, 2009-Ohio-959; *State v. Waters*, 8th Dist. Cuyahoga No. 87431, 2006-Ohio-4895, ¶ 11.

{¶14} In this case, the record supports the presumption that the trial court considered all lesser-included offenses. The trial court expressly determined that the facts did not support a

conviction for the lesser-included offense of involuntary manslaughter but did support the greater offense of murder. The court stated:

Finding Mr. Churn guilty of the crime of murder, as charged in Count 2, this Court does not need to consider the defense's request for the lesser[-]included offense of involuntary manslaughter, pursuant to R.C. 2903.04

(Tr. 411.) We agree, and as will be more thoroughly addressed in our discussion of Churn's second and third assignments of error, the evidence presented at trial did not reasonably support both an acquittal on the murder charge and a conviction upon the lesser-included offense of involuntary manslaughter. The evidence clearly demonstrated that Churn acted knowingly in causing Curlee's death by the attack and repeated assault to Curlee's head and face. Accordingly, the trial court did not err when it determined that the lesser-included offense was not warranted based on the evidence.

{¶15} Churn's first assignment of error is overruled.

II. Sufficiency of the Evidence

{¶16} Churn contends in his second assignment of error that his conviction for murder was not supported by sufficient evidence.

{¶17} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. An appellate court's function when reviewing the sufficiency of the 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. *State v. Murphy*, 91 Ohio St.3d 516, 543, 747 N.E.2d 765 (2001). "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. Walker*, 150 Ohio St.3d 409, 2016-Ohio-829, 82 N.E.3d 1124, ¶ 12, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶18} Churn was charged with murder, in violation of R.C. 2903.02(B), which provides that “[n]o person shall cause the death of another as a proximate result of the offender’s committing or attempting to commit an offense of violence that is a felony of the first or second degree.” In this case, Churn was found guilty of causing Curlee’s death while committing felonious assault under R.C. 2903.11(A)(1). This statute provides that “[n]o person shall knowingly * * * cause serious physical harm to another.”

{¶19} The evidence presented at trial established that Curlee died after suffering from blunt impacts to his head that resulted in bruising, abrasions, lacerations, broken bones in the skull, subarachnoid and subdural hemorrhages, a large hematoma, and a cerebral edema. Dr. Felo testified that the cause of Curlee’s was blunt impacts to his head with skull and brain injuries. The evidence further established that the blunt impacts were the result of a severe beating at the hands and feet of Churn. Testimony established that Churn punched, kicked, and stomped on Curlee’s head and body. EMS responder Guelker testified that blood was found on the curb and that Curlee’s clothes were soaked in blood.

{¶20} From this evidence, the court could reasonably have found that Churn caused serious physical harm to Curlee that resulted in his death. And given the severity of the injuries that Curlee suffered prior to his death, the court could reasonably have inferred that Churn acted knowingly. Moreover, the video conclusively shows an attack where Churn punched, kicked, and stomped on Curlee. The nature of the attack and the injuries are consistent. Accordingly,

Churn's conviction for felony murder and the predicate offense of felonious assault were supported by sufficient evidence.

{¶21} Churn contends that based on Dr. Felo's testimony that "the injuries suffered by Curlee were delivered with 'mild to moderate' force, it was unreasonable to conclude that [he] would have anticipated that this 'mild to moderate' assault on [Curlee] would have caused injuries leading to his death." (Appellant's Brief, p. 9.). Although Churn relies on Dr. Felo's characterization of the force as "mild to moderate," Dr. Felo also testified that the type of brain injury suffered by Curlee "could be caused by one blow that caused the head to vibrate, or it could be a series of successions of softer blows that are just causing the brain to vibrate as well." (Tr. 303.) Accordingly, sufficient evidence was presented for the trial court to infer that Churn acted knowingly and was aware that his repeated punching, kicking, and stomping, even after Curlee was rendered unconscious, would cause whatever injuries resulted from his actions.

{¶22} Accordingly, viewing the evidence in the light most favorable to the prosecution, sufficient evidence was presented supporting Churn's conviction for murder in violation of R.C. 2903.02(B). Churn's second assignment of error is overruled.

III. Manifest Weight of the Evidence

{¶23} In his third assignment of error, Churn contends that his convictions were against the manifest weight of the evidence.

{¶24} In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion. *Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. A reviewing court "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.” *State v. Thompkins*, 78 Ohio St.3d 380, 388, 678 N.E.2d 541 (1997). A conviction should be reversed as against the manifest weight of the evidence only in the most “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶25} Churn contends that the manifest weight of the evidence demonstrates that his actions constituted misdemeanor assault that resulted in Curlee’s death; not felonious assault. He supports this argument on the inferences that could be drawn from Dr. Felo’s testimony and the testimony from Hilton and Gunn that suggest there was not a plan or discussion of assault.

{¶26} Churn’s arguments are not persuasive, and we conclude that the trial court did not lose its way and create a manifest miscarriage of justice. Although the attack may not have been a planned assault and there was no intention to kill Curlee, the weight of the evidence demonstrates that Churn’s repeated actions, even after Curlee was rendered unconscious, constituted felonious assault that resulted in Curlee’s death. Accordingly, this case is not the exceptional case in which the evidence weighs heavily against his convictions. The third assignment of error is overruled.

{¶27} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR