

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	No. 09AP-1059
Plaintiff-Appellee,	:	(C.P.C. No. 09CR-03-1753)
v.	:	No. 09AP-1060
Eldar Z. Veliev,	:	(C.P.C. No. 08CR-07-5040)
Defendant-Appellant.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on December 23, 2010

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*Ron O'Brien*, Prosecuting Attorney, *Steven L. Taylor*, and *Sheryl L. Prichard*, for appellee.

*Yavitch & Palmer Co., LPA*, *Stephen E. Palmer*, and *Nicholas Siniff*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Defendant-appellant, Eldar Z. Veliev, appeals from judgments of sentence and conviction entered by the Franklin County Court of Common Pleas following a jury trial in which appellant was found guilty of felonious assault and attempted murder.

{¶2} On July 11, 2008, appellant and a co-defendant, Garri Ambartsoumov, were each indicted on one count of felonious assault, in violation of R.C. 2903.11. The indictment arose out of an incident on May 17, 2008, in which two individuals, Tigran Safaryan and Arut Koulian, sustained knife wound injuries outside a restaurant. On March 24, 2009, appellant and Ambartsoumov were also indicted on one count each of

attempted murder, in violation of R.C. 2923.02 and 2903.02, arising out of the same incident.

{¶3} The state subsequently filed a motion for joinder of appellant's trial with that of co-defendant Ambartsoumov. The trial court granted the state's motion, and the matter came for trial before a jury beginning August 24, 2009. The following summary of the record evidence is detailed in this court's prior decision addressing the appeal of co-defendant Ambartsoumov. See *State v. Ambartsoumov*, 10th Dist. No. 10AP-1054, 2010-Ohio-6293.

{¶4} On the evening of May 17, 2008, Safaryan and Koulian joined another friend, Alex Nercessian, at the "Hawa Russia," a Russian club/restaurant located on East Dublin Granville Road, Columbus. Appellant, an employee of a body shop owned by Ambartsoumov, was at the restaurant that evening with Ambartsoumov.

{¶5} Safaryan testified on behalf of the state and gave the following account. After arriving at the restaurant that evening, Safaryan received a phone call, and he went outside to a patio area to continue the conversation. As Safaryan finished his call, Ambartsoumov, appellant, and two other individuals came outside. Safaryan and Ambartsoumov were acquainted with each other. Ambartsoumov started walking toward Safaryan, and Safaryan noticed what appeared to be a knife in Ambartsoumov's hand. Safaryan said to Ambartsoumov: "[W]hat do you say to my cousin." (Tr. Vol. I, 50.) Ambartsoumov then slashed at Safaryan with a knife. Safaryan attempted to block the attack, but he received a ten-inch knife wound to his right arm. Just before the attack, Safaryan heard Ambartsoumov say "kill" in Russian. (Tr. Vol. I, 80.) After being cut, Safaryan punched Ambartsoumov and attempted to get away from the patio area.

{¶6} When Ambartsoumov first came outside the restaurant, appellant was walking directly behind him. Safaryan's friend, Koulian, was also outside at the time, standing in the vicinity of appellant. Safaryan observed a silver knife in appellant's hand, and then he saw "blood all over" Koulian's shirt. (Tr. Vol. I, 55.)

{¶7} Police officers were dispatched to the restaurant, and when Ambartsoumov refused to get on his knees, the officers subdued him with a Taser gun. At the time, Ambartsoumov was speaking in Russian, threatening to kill Safaryan and his family. At trial, Safaryan identified Ambartsoumov as his assailant.

{¶8} Koulian gave the following account of the events that evening. Shortly after arriving at the restaurant with Safaryan, Koulian went outside to smoke. Koulian heard a commotion and he observed Ambartsoumov holding a knife in his hand, threatening Safaryan. Ambartsoumov then struck Safaryan on the right arm with the knife. Safaryan punched Ambartsoumov and retreated. Koulian observed Ambartsoumov get to his feet with the knife in his hand.

{¶9} Koulian attempted to back away from the scene, but another individual, later identified as appellant, was "coming towards" him. (Tr. Vol. I, 129.) Koulian raised his arms and said, "hey, stop." (Tr. Vol. I, 129.) Koulian observed "something that resembled a medical scalpel" in appellant's hand. (Tr. Vol. I, 129.) Koulian took a step backward and appellant shoved Koulian in the shoulder area; appellant then pulled his hand back, and Koulian immediately "saw blood coming down like crazy from my neck." (Tr. Vol. I, 130.) Someone pulled Koulian away, and Nercessian came outside to assist him. Koulian later learned that his assailant was named "Eldar." At trial, Koulian identified appellant as the individual who assaulted him. Koulian suffered an eight-inch

wound to his neck, and he experiences numbness in the area of the wound; doctors informed him that some nerve endings had been damaged.

{¶10} Following the incident, Koulian testified before a grand jury proceeding, and he subsequently received a threatening phone call in which the caller stated: "You will die tonight." (Tr. Vol. I, 177.) Koulian immediately closed his jewelry business and left the Columbus area. He subsequently obtained an airline flight to Russia after receiving paperwork from the Russian consulate in California.

{¶11} Alexander Dashovsky, who was attending a birthday party at the Hawa Russia restaurant on the night of the incident, gave the following testimony. During the evening, Safaryan got up from his table and went outside to smoke. Shortly thereafter, Ambartsoumov got up from his table and went to the restroom. Dashovsky then went outside to smoke; as he was walking toward the door, Dashovsky observed Ambartsoumov pass a knife to appellant. Dashovsky, who was acquainted with Ambartsoumov, recognized the knife from when Ambartsoumov "used to cut hair." (Tr. Vol. II, 86.) Dashovsky walked outside and observed Safaryan walking away, "holding his arm." (Tr. Vol. II, 87.) Safaryan was bleeding; his arm was "severely cut down to the veins." (Tr. Vol. II, 87.)

{¶12} Dashovsky then heard Koulian yelling "I got cut, I got cut." (Tr. Vol. II, 87.) Koulian's neck had been cut, and Dashovsky ran inside the restaurant to get some towels and blankets. Dashovsky turned his attention to Safaryan's wounds because he "didn't think Arut [Koulian] would make it." (Tr. Vol. II, 88.) Ambartsoumov and appellant went back inside the restaurant. Dashovsky testified he did not observe either appellant or Ambartsoumov being hit or punched during the incident. At trial, the state played a

recording of a 911 call placed by Dashovsky that evening in which he told the dispatcher that one of the assailants was of "Armenian descent, first name Garri." (Tr. Vol. II, 96.)

{¶13} Dmitry Semikin testified he was standing outside the restaurant that evening when he heard screams and observed between 10 to 15 individuals near the restaurant entrance. Semikin observed a knife in Ambartsoumov's hand, and Safaryan's "arm was already cut and he was holding it with another hand." (Tr. Vol. III, 19.) Semikin saw Safaryan punch Ambartsoumov. He also observed Koulian "holding his neck, which was bleeding." (Tr. Vol. III, 21.) Appellant was standing across from Koulian at the time. As Ambartsoumov was taken into custody by police, he was making "[h]is usual threats, that he will kill everybody and he will avenge everybody." (Tr. Vol. III, 25.)

{¶14} Columbus Police Officer Matthew Ewing accompanied Ambartsoumov in a medical vehicle to the hospital; the officer observed that he was bleeding from a cut to his right hand, near the thumb. Columbus Police Detective Glenn Siniff spoke with Safaryan later that night at the hospital. The next day, Detective Siniff interviewed Koulian, who named the individual that cut his throat. After being shown a photo array, Koulian picked out appellant's picture from the array. The detective also spoke with Semikin, who identified appellant as being involved in the incident.

{¶15} Sabina Shvets, a cousin of Safaryan, testified that she was at a nightclub in 2007 and had a conversation with Ambartsoumov. After Shvets told Ambartsoumov that she was related to Safaryan, "he got mad and he started saying that he hates him, that he's going to kill his son, his family." (Tr. Vol. III, 82.) Ambartsoumov once told Shvets: "I'm the king of the city, and if I don't like someone, I'm going to kill the person." (Tr. Vol. III, 84.)

{¶16} Aydin Gasanov, Ambartsoumov's father-in-law, was called as a witness by the defense. Gasanov was at the Hawa Russia on May 17, 2008, and he gave the following account of the events. During the evening, Ambartsoumov and appellant got up from their table; a short time later, Safaryan, Koulian, Nercessian, and several other individuals went outside to smoke. Later, Gasanov heard screaming, and he went outside and observed appellant lying on the floor, while Ambartsoumov was on his knees attempting to get up. Gasanov testified that nine or ten individuals "were beating Garri and Eldar with their feet." (Tr. Vol. IV, 35-36.) Gasanov attempted to stop the fight, and appellant and Ambartsoumov eventually went back inside the restaurant.

{¶17} Ambartsoumov testified on his own behalf. Ambartsoumov, who graduated from National Beauty Academy after moving to the United States from Azerbaijan, currently owns a body shop. He has known Safaryan for 15 years, and he has known appellant for 12 years. On May 17, 2008, Ambartsoumov was having dinner at the Hawa Russia restaurant with some friends and relatives. During the evening, Ambartsoumov went to the restroom, and then went outside with appellant to smoke.

{¶18} Ambartsoumov testified that Safaryan, Koulian, and Nercessian "started coming closer." (Tr. Vol. IV, 68.) As the men approached, Safaryan told Ambartsoumov that he wanted to talk to him. Ambartsoumov told Safaryan that he was with his family and that he did not "want any problems." (Tr. Vol. IV, 69.) Ambartsoumov testified that Safaryan then "smacked me twice. And I walked back and tried to go." (Tr. Vol. IV, 69.) After being hit twice, Ambartsoumov "hit him back." (Tr. Vol. IV, 69.) Safaryan then hit Ambartsoumov a third time, causing him to fall down. When Ambartsoumov fell, he "tried to push this guy. I get \* \* \* cut very badly." (Tr. Vol. IV, 70.) Ambartsoumov's father-in-

law came outside, and Ambartsoumov then went back inside the restaurant. When police officers arrived, Ambartsoumov refused an officer's order to get on his knees. He told the officer to "cuff me" instead. (Tr. Vol. IV, 72.) The officer then used a Taser gun on him. Ambartsoumov denied having a knife that evening, and he denied observing a knife in appellant's hand.

{¶19} Dimitri Zubrich was at the Hawa Russia restaurant that evening, and he testified that "everybody knows that Tigran [Safaryan] doesn't like Garri [Ambartsoumov] and has been trying to get him for something." (Tr. Vol. IV, 151.) During the evening, Ambartsoumov and appellant went outside to smoke, and individuals seated at Safaryan's table then got up and also went outside. Zubrich observed Safaryan hit Ambartsoumov; Zubrich did not want to get involved, so he went back inside the restaurant. A short time later, Ambartsoumov, appellant, and Ambartsoumov's father-in-law came back inside the restaurant and Zubrich heard screams. Five or six individuals came running inside the front door of the restaurant and headed toward the back kitchen door.

{¶20} The jury returned verdicts finding appellant guilty of felonious assault and attempted murder. The jury also returned a verdict finding co-defendant Ambartsoumov guilty of felonious assault. Following a sentencing hearing, the trial court merged appellant's sentences, imposing a sentence of eight years incarceration on the conviction for attempted murder.

{¶21} On appeal, appellant sets forth the following seven assignments of error for this court's review:

Assignment of Error No. 1:

The trial court improperly excluded defense witnesses under Evidence Rule 404 and 608 that rebutted the State's characterizations of an alleged victim's good character, thereby violating Appellant's right to present a meaningful defense as guaranteed by the Compulsory Process Clause of the Sixth Amendment, the Due Process [C]ause of the Fourteenth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.

Assignment of Error No. 2:

The trial court improperly quashed Appellant's subpoena of a non-confidential criminal investigation that rebutted the State's characterizations of an alleged victim's good character, thereby violating Appellant's right to present a full defense as guaranteed by the Compulsory Process Clause of the Sixth Amendment, the Due Process [C]ause of the Fourteenth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.

Assignment of Error No. 3:

The trial court improperly quashed Appellant's subpoena of a non-confidential criminal investigation that rebutted the State's characterizations of an alleged victim's good character, thereby violating the Due Process [C]ause of the Fourteenth Amendment and comparable provisions of the Ohio Constitution.

Assignment of Error [No.] 4:

The trial court improperly limited Appellant's cross-examination and implied in the presence of the jury that Appellant should testify at trial thereby violating Appellant's Fifth Amendment right to remain silent, Sixth Amendment right to a trial by jury, and Sixth Amendment right to [confront] his accusers, the Due Process [C]ause of the Fourteenth Amendment and comparable provisions of the Ohio Constitution.

Assignment of Error No. 5:

The court improperly excluded evidence that rebutted Arut Koulian's assertions that his motive for leaving town was due



to threats from Ambartsoumov's family with evidence of his financial difficulty, thereby violating Appellant's right to present a meaningful defense as guaranteed by the Compulsory Process Clause of the Sixth Amendment, the Due Process [C]ause of the Fourteenth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.

Assignment of Error No. 6:

The trial court erred in overruling Appellant's motion for a mistrial when the State elicited testimony from two Columbus Police Officers that Appellant's co-defendant did not tell them how he cut his hand and that he did not tell them he was the victim of an assault and thus commenting on his constitutional right to remain silent, thereby violating Appellant's Fifth Amendment right to remain silent, and his right to Due Process under the Fourteenth Amendment.

Assignment of Error No. 7:

The Trial Court violated Appellant's right to Due Process as Guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution by entering verdicts of Guilty, as the jury's verdict was against the manifest weight of the evidence.

{¶22} Appellant's first, second, and third assignments of error are interrelated and will be considered together. Under these assignments of error, appellant argues that the trial court erred in excluding testimony by former law enforcement officials concerning a task force criminal investigation, and in excluding and sealing subpoenaed documents with respect to that investigation. Appellant further argues that the task force criminal investigation report may have contained evidence favorable to the defense and subject to disclosure under *Brady v. Maryland* (1963), 372 U.S. 83, 83 S.Ct. 1194.

{¶23} As noted under the facts, appellant and co-defendant Ambartsoumov were convicted at the same trial. In Ambartsoumov's direct appeal of his conviction, he raised the identical issues as presented under appellant's first, second, and third assignments of

error in the instant appeal, i.e., (1) that the trial court erred in precluding former law enforcement officials from testifying as to a criminal task force investigation, (2) that the court erred in excluding and sealing subpoenaed documents relating to the task force investigation, and (3) that the trial court's decision to quash appellant's subpoena of those records prevented the defense from obtaining favorable evidence in violation of *Brady*. As in the instant appeal, the co-defendant asserted that the prosecution presented testimony by Safaryan that portrayed the witness as a successful businessman who had won a Governor's award. Ambartsoumov argued that the testimony of former law enforcement officials would have rebutted the assertion that Safaryan ran a legitimate business; he further argued that such evidence was admissible under Evid.R. 616 and/or 404(B), and that it was not precluded under Evid.R. 608(B).

{¶24} This court addressed and rejected those arguments in *Ambartsoumov*. Specifically, with respect to the trial court's decision to preclude the testimony of former law enforcement officials, this court held in pertinent part:

[Th]e record does not indicate that the prosecution questioned Safaryan extensively during direct examination about his business interests. Further, while precluding the admission of extrinsic testimony by retired law enforcement officers as to an investigation initiated in 1999, the trial court permitted defense counsel to cross-examine the witness about whether he had ever been involved in stolen automobiles, trafficking in stolen vehicles or extorting other businessmen. The court ruled it would allow counsel to "ask those questions, but he's stuck with the answers." (Tr. Vol. I, 103-04.) As also noted above, evidence that Safaryan received a governor's award was elicited on redirect in response to questions raised during cross-examination.

Even assuming that the evidence at issue was admissible, its admissibility is still subject to Evid.R. 403, which commits to the trial court's discretion the decision to exclude even relevant evidence if its probative value is substantially

outweighed by the danger of unfair prejudice. *State v. Buchanan*, 12th Dist. No. CA2008-04-001, 2009-Ohio-6042, ¶57. See also McCormick, Evidence (6th Ed.2006) 216, Section 45 (judge may exercise discretion under Evid.R. 403 to limit specific contradiction impeachment). Further, the Supreme Court of Ohio has noted that the "rights to confront witnesses and to defend are not absolute and may bow to accommodate other legitimate interests in the criminal process." *Boggs* at 422, citing *Chambers v. Mississippi* (1973), 410 U.S. 284, 295, 93 S.Ct. 1038, 1046. This includes discretion on the part of the trial court in considering the admission of extrinsic evidence that could "invite a trial within a trial" or lead to "juror confusion." *Boggs* at 422. In the present case, the trial court expressed concern about conducting a trial within a trial, and the potential for confusion and delay, based upon testimony regarding a law enforcement investigation of approximately 20 individuals conducted almost ten years prior to the events in question and which resulted in no charges against the witness. Upon review, we find no abuse of discretion by the trial court in finding that the probative value of the proffered extrinsic evidence was substantially outweighed by the danger of unfair prejudice.

*Ambartsoumov* at ¶49-50.

{¶25} This court also found no merit to co-defendant Ambartsoumov's challenges to the trial court's handling of the subpoenaed task force investigative records. In addressing the co-defendant's argument that the state failed to overcome its burden of showing that the investigatory records were exempt under Ohio's public records laws, this court noted that the trial court never made a determination as to the confidentiality of the documents under R.C. 149.43; rather, the trial court "reviewed the materials in camera and concluded they did not contain *Brady* material and were not relevant to the issues before the jury." *Ambartsoumov* at ¶53.

{¶26} This court then considered the co-defendant's contention that the sealed records may have contained *Brady* material. After conducting our own independent

review of the report, this court concluded that "we are satisfied that there is nothing contained in that report which would have altered the jury verdicts, nor do we find error with the trial court's determination that the report did not contain material required to be disclosed under *Brady*." *Ambartsoumov* at ¶55. This court further held that "the trial court did not abuse its discretion in excluding admission of the nearly ten-year-old investigatory report under Evid.R. 403." *Id.*

{¶27} The reasoning and analysis in our previous decision is applicable and dispositive of appellant's arguments, and we therefore find no error by the trial court with respect to its ruling as to the admissibility of evidence relating to the task force criminal investigation. Accordingly, appellant's first, second, and third assignments of error are overruled.

{¶28} Under his fourth assignment of error, appellant argues that the trial court improperly limited cross-examination of co-defendant Ambartsoumov, and that the court improperly implied to the jury that appellant should testify at trial, thereby violating his right to remain silent. Appellant points to a comment made by the trial court during the cross-examination of Ambartsoumov by counsel for appellant. Specifically, counsel questioned the witness about whether an individual, Dmitry Semikin, worked as security personnel at the Hawa Russia restaurant, and the transcript includes the following exchange between the trial court and counsel for appellant:

Q. And you're of the opinion or at least it appeared to everybody at your table that he was a security guard of some sort, right?

A. Yes, sir.

[Counsel for Appellant]: Judge, if I may ask this witness to come out and demonstrate what happened out on the patio that night from his point of view.

THE COURT: Well, Mr. Shamansky is his lawyer. He didn't do it, so I'm not going to allow it at this point. You can do it with your own client if you want to. But you don't represent this client. I'm not going to have any demonstrations at this point. Thank you.

(Tr. Vol. IV, 81-82.)

{¶29} Appellant argues that the obvious implication from the trial court's comments is that the court believed appellant needed to take the stand. Appellant contends that the comments deprived him of his Fifth Amendment right not to be a witness against himself, and left the jury with the impression that the court expected him to testify.

{¶30} In addressing a similar challenge to the above comments by co-defendant Ambartsoumov, this court interpreted the trial court's response "as exercising its discretion in whether to permit demonstrative evidence," and that, "when read in context, merely stress[es] that the attorney should have his own client perform demonstrations." *Ambartsoumov* at ¶59. We rejected the contention that the trial court indicated "a disbelief in [co-defendant's] testimony or somehow cast doubt on his credibility." *Id.* This court also noted that no objection was made to the comments, nor did defense counsel request a limiting instruction, and we found no plain error by the trial court.

{¶31} Again, we view the trial court's comments as directed toward the issue of its control over the presentation of evidence, i.e., demonstrative evidence, but we do not construe those comments as implying that appellant was required to testify. Further, the trial court instructed the jury that appellant's "choosing not to testify is not evidence, and

you may draw no negative conclusion against Mr. Veliev simply because he exercised his constitutional right." (Tr. Vol. V, 97.) There is a presumption that a jury follows the instructions provided by the trial court. *State v. Sibert* (1994), 98 Ohio App.3d 412, 425, citing *Pang v. Minch* (1990), 53 Ohio St.3d 186, paragraph four of the syllabus.

{¶32} Finding no plain error, we overrule appellant's fourth assignment of error.

{¶33} Under his fifth assignment of error, appellant argues that the trial court erred in excluding testimony by the property manager and the attorney for Gahanna Creekside Investments, the property management company that leased space for Arut Koulian's jewelry business. Appellant argues that this testimony was relevant to refute evidence that Koulian fled the country because of threats on his life, including a threat by co-defendant Ambartsoumov's sister. Appellant maintains that Koulian was in financial trouble, and that evidence he was behind in his rent would have shown another motive for his flight.

{¶34} The trial court's ruling on this evidence was addressed by this court in the co-defendant's appeal. Specifically, in *Ambartsoumov* at ¶63-64, this court held:

We find no abuse of discretion by the trial court's ruling. To the extent counsel sought to show that the witness was a "liar," extrinsic evidence of such matters would be limited by Evid.R. 608(B). *Weissenberger* at 169. Further, while the court precluded testimony by the management of the Creekside property, defense counsel cross-examined Koulian about whether he listed his business as an LLC, and whether he was behind in his lease payments prior to leaving the country. Defense counsel also presented a copy of the lease to Koulian during cross-examination, reflecting that the name "Koulian Design, LLC" appeared on the document. (Tr. Vol. I, 198.) Koulian acknowledged during cross-examination that he had been late in some of his rental payments, and that he had received eviction notices. He also acknowledged that his landlord offered to restructure some of the lease payments.

Koulian was further questioned as to whether his father later removed his jewelry inventory from the store.

Even accepting that extrinsic evidence showing Koulian was behind in his rent was relevant and admissible under Evid.R. 616, the trial court was within its discretion in finding the evidence at issue subject to Evid.R. 403. Nor does it appear that extrinsic evidence would have added substantially to evidence elicited from Koulian during cross-examination with respect to late payments and his representation that the business was an LLC.

{¶35} Based upon the reasons stated in *Ambartsoumov*, we conclude that the trial court did not abuse its discretion in ruling on the admissibility of the evidence at issue. Accordingly, appellant's fifth assignment of error is without merit and is overruled.

{¶36} Under the sixth assignment of error, appellant asserts that the trial court erred in denying appellant's motion for mistrial based upon appellant's contention that the state elicited testimony from Officer Ewing that commented on co-defendant Ambartsoumov's right to remain silent. Appellant argues that a mistrial was the appropriate relief under *Doyle v. Ohio* (1976), 426 U.S. 610, 96 S.Ct. 2240.

{¶37} At trial, Officer Ewing, who accompanied the co-defendant to the hospital, testified that he asked Ambartsoumov how he cut his hand, but that Ambartsoumov never gave an explanation. Following this testimony, counsel for Ambartsoumov made a motion for mistrial, joined by counsel for appellant. The trial court denied the motion, finding "neither a due process nor a [*Doyle*] violation on this record." (Tr. Vol. IV, 7.) The trial court determined that no interrogation had taken place, and that the officer was not precluded from making such an inquiry of a person who was "bleeding and being transported on an emergency basis to a hospital." (Tr. Vol. IV, 8.)

{¶38} Co-defendant Ambartsoumov raised this same issue in his direct appeal, and this court found no error with the trial court's determination that "the limited questioning by the police with respect to \* \* \* how [co-defendant Ambartsoumov] was injured did not, under the circumstances, constitute interrogation." *Id.* at ¶73. This court further noted that the evidence supported the trial court's finding that the co-defendant "voluntarily offered statements about the altercation, but did not talk about the specific injury," and that "[u]nder similar circumstances, courts have found no *Doyle* violation." *Id.* For the reasons set forth in greater detail in *Ambartsoumov*, we overrule appellant's sixth assignment of error.

{¶39} Under the seventh assignment of error, appellant challenges his convictions as against the manifest weight of the evidence. Specifically, appellant challenges the testimony of four of the state's witnesses: Semikin, Dashovsky, Safaryan, and Koulian.

{¶40} In considering a manifest weight challenge, a reviewing court examines "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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶41} R.C. 2903.11(A) sets forth the offense of felonious assault and states in part: "No person shall knowingly \* \* \* (1) [c]ause serious physical harm to another" or "(2) [c]ause or attempt to cause physical harm to another \* \* \* by means of a deadly weapon or dangerous ordnance." The elements of attempted murder, as set forth under R.C. 2923.02 and 2903.02, are "(1) purposely, (2) engaging in conduct which, if successful, would (3) cause another's death." *State v. Kidder* (1987), 32 Ohio St.3d 279, 283.



{¶42} Appellant argues, as did his co-defendant in *Ambartsoumov*, that Semikin's testimony was inconsistent because he gave differing accounts to a detective as to whether or not he actually observed anyone getting cut during the altercation. This court previously reviewed Semikin's testimony at trial with respect to whether he gave inconsistent accounts to the detective, and we concluded that "the jury was in the best position to consider any inconsistencies and assess the credibility of the witness." *Ambartsoumov* at ¶83.

{¶43} Appellant contends that Dashovsky's testimony was not trustworthy because, despite portraying himself as helping everyone that evening, he did not remain at the scene that evening to make a statement to police. Again, this same claim was raised in the appeal of co-defendant *Ambartsoumov*. This court noted that Dashovsky was questioned at trial as to why he did not remain at the scene, and we found "the jury was free to accept or reject as credible Dashovsky's testimony that he did not speak to police officers that evening because he did not want to get involved." *Id.* at ¶86.

{¶44} Appellant also argues that the testimony of Safaryan and Veliev was not credible because, according to appellant, their testimony did not match the physical evidence. This court also addressed those identical arguments in the co-defendant's appeal, holding in relevant part:

Appellant challenges Safaryan's testimony that he was able to punch appellant after having his right arm slashed; appellant maintains that such movement by Safaryan should have resulted in blood spewing on appellant. However, testimony that Safaryan was able to strike appellant came from several witnesses in addition to Safaryan, and we do not find such testimony as incompatible with the physical evidence.

Appellant also argues that Koulian's neck wound was more consistent with being attacked from behind. As noted above,

Koulian testified that Veliev came toward him holding a knife-like instrument that resembled a scalpel. Koulian put up his hands to say "hey stop," but Veliev "reached over" and "shoved me in the shoulder area \* \* \* and pulled his hand back." Blood immediately rushed from Koulian's neck. Koulian testified that Veliev was no more than two feet away when he began approaching him. Safaryan also observed a knife in Veliev's hand right before observing "blood all over" Koulian's shirt, and Dashovsky testified that he observed appellant pass a knife to Veliev just prior to the incident. Upon review, we do not view the testimony of a frontal assault as contrary to the physical evidence.

*Ambartsoumov* at ¶84-85.

{¶45} As previously determined in the appeal of *Ambartsoumov*, we similarly find in the instant appeal that the jury was in the best position to consider any alleged inconsistencies in the testimony of Semikin, and the trier of fact was free to accept or reject Dashovsky's claim that he did not speak to police officers at the time of the incident because he did not want to get involved. We also find no merit to appellant's claims that the testimony of the witnesses did not match the physical evidence. Based upon this court's review of the entire record, we find that the jury did not "lose its way" and create a "manifest miscarriage of justice." *Martin* at 175. Finding that the verdict was not against the manifest weight of the evidence, appellant's seventh assignment of error is overruled.

{¶46} Based upon the foregoing, appellant's seven assignments of error are overruled, and the judgments of the Franklin County Court of Common Pleas are hereby affirmed.

*Judgments affirmed.*

BRYANT and McGRATH, JJ., concur.

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