

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 14AP-745
	:	(M.C. No. 14CRB-6826)
Darryl Green,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 21, 2015

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Melanie R. Tobias*, for appellee.

Yeura Venters, Public Defender, and *Emily L. Huddleston*, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶ 1} Darryl Green is appealing from his conviction on a charge of assault in violation of R.C. 2903.13(A). He assigns three errors for our consideration:

First Assignment of Error: Appellant's right to due process and a fair trial was violated when the trial court improperly overruled Appellant's motion for a mistrial after the state violated Crim.R. 16.

Second Assignment of Error: Appellant's right to a fair and impartial trial was violated when the state engaged in prosecutorial misconduct by withholding exculpatory discovery material in violation of Crim.R. 16 and *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Third Assignment of Error: Appellant's right to a fair and impartial trial was violated when the trial court improperly limited Appellant's cross examination of key witness, Michelle Barksdale by not allowing questioning on text messages she had previously sent, and statements she had previously made, and statements she had previously made, to Paul Sealey.

{¶ 2} There is no serious question about whether or not Darryl Green hit Marshale Green in the face, injuring her. The key issue for the jury to address was whether or not Darryl Green acted in self-defense. The jury apparently did not feel that Darryl Green had proved that affirmative defense and therefore found Darryl Green guilty of the assault charge.

{¶ 3} The jury also found Darryl Green guilty of disorderly conduct in violation of R.C. 2317.11. The trial court judge found that the disorderly conduct charge was an allied offense of similar import with the assault charge and entered a guilty finding only as to the assault charge. Only the assault charge is before this appellate court at this time.

{¶ 4} The first assignment of error asserts that the trial court judge should have ordered a mistrial after the State of Ohio arguably did not comply with Crim.R. 16 pertaining to discovery in criminal cases. Specifically, trial counsel for Darryl Green alleged that the State of Ohio had not provided medical records for Marshale Green supporting her allegations about injury she suffered. Trial counsel for Darryl Green also alleged the State of Ohio had withheld witness statements which conflicted with trial testimony of some of the State's witnesses and that the statements were therefore beneficial to the defense. The witness statements had purportedly been provided to the intake department of the Columbus City Attorney's office.

{¶ 5} The trial court judge found a violation of Crim.R. 16(B), but chose as a remedy only to recess the trial for a day.

{¶ 6} The assistant prosecutor who tried the case had apparently been aware that defense counsel was seeking the content of the witness statements but resisted providing the statements based on an opinion that the statements were attorney work product and based upon the fact that the intake officer who took the statements no longer worked for the city of Columbus.

{¶ 7} The information withheld by the state of Ohio and city of Columbus was not provided until after the trial was well underway. Thus, the information was not available to counsel for purposes of voir dire and jury selection, for purposes of opening statement and for purposes of cross-examination of Marshale Green, not to mention trial preparation and plea negotiations before trial. However, defense counsel previously had the full written statement of Marshale Green and had used it effectively in cross-examining Marshale Green when she had testified. The other two civilian witnesses had not testified before the information in the statements was shared.

{¶ 8} We note that the potential defenses to the assault charge were limited. A claim that Darryl Green was not involved was not viable since Darryl Green's friend Paul Sealey was transporting Darryl Green and the other witnesses when the fight broke out.

{¶ 9} The only defenses left were defenses that Darryl Green did not strike Marshale Green and the defense presented that Darryl Green acted in self-defense. As to the former, Marshale Green had significant, visible injuries to her face. No jury was going to believe that the other women in the car, Marshale Green's mother and cousin, were the reason Marshale Green's face was so injured and bloody. The driver of the car could not have inflicted the harm on Marshale Green's face while Marshale was in the back seat and the driver, Paul Sealey, was driving. This left self-defense as the only potentially viable defense.

{¶ 10} The injuries to Marshale Green included a cut to her mouth, two black eyes, a blood clot in her eye and a knot on her head. Darryl Green claimed he only struck Marshale one time. The jury understandably did not feel that all the physical harm inflicted by Darryl Green was inflicted in self-defense.

{¶ 11} At this point, we return to the potential impact of the withheld evidence on the fairness of the trial. We simply cannot find that the delay in providing the summaries of the other two civilian witnesses, Marshale's mother and cousin, compromised the fairness of the actual trial especially because counsel had the statements before he cross-examined the witnesses. Under that circumstance, we cannot find that the trial court judge abused her discretion in failing to order a mistrial.

{¶ 12} The first and second assignments of error are overruled.

{¶ 13} The third assignment of error involves a totally separate issue. Michelle Barksdale had allegedly sent texts to Paul Sealey, a friend of Darryl Green, who was the driver of the car in which the fight started. Barksdale allegedly offered to make the assault charge go away in return for a payment of \$2,500 to \$3,000. Although Barksdale had no legal authority to cause the case to be dismissed, in theory, she could have persuaded her daughter not to go to court. If none of the civilian witnesses appeared for the trial, dismissal of the charges was possible.

{¶ 14} Assuming that Barksdale made the offer to try to get the case dismissed in return for a payment of \$2,500 to \$3,000, the offer did not demonstrate Darryl Green's guilt or innocence. It also did not prove Barksdale's testimony had been inaccurate. As one extreme possibility, the offer was merely a request to get Marshale Green's hospital and medical bills paid. Once the bills were paid, the family might not have cared about whether Darryl Green was convicted of the assault charge. As a different extreme possibility, Barksdale was trying to make some money off of her daughter's misfortune and injuries.

{¶ 15} The trial court judge refused to place the offer before the jury for fear it would confuse the jury as to the real issues, namely, whether or not Darryl Green knowingly caused physical harm to Marshale Green and whether or not Darryl Green acted in self-defense.

{¶ 16} We cannot say the trial court judge abused her discretion in refusing to put the alleged bribery offer before the jury.

{¶ 17} The third assignment of error is overruled.

{¶ 18} All three assignments of error having been overruled, the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

SADLER and LUPER SCHUSTER, JJ., concur.
