

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23383
v.	:	T.C. NO. 2008 CR 4368
LEWIS R. LEFTWICH	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 25th day of September, 2009.

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FROELICH, J.

{¶ 1} Lewis R. Leftwich was found guilty by a jury in the Montgomery County Court of Common Pleas of felonious assault and abduction, and a firearm specification with respect to each offense. He was sentenced accordingly. Leftwich appeals from his

conviction.

{¶ 2} For the following reasons, we conclude that Leftwich's felonious assault conviction and the firearm specifications were supported by sufficient evidence, that his Crim.R. 29 motion was properly denied, and that his conviction for abduction was not tainted by the trial court's ruling in the Crim.R. 29 motion for acquittal.

I

{¶ 3} The State's evidence established the following facts.

{¶ 4} Leftwich and Laura Rodgers were coworkers and dated for eight years, although Leftwich was married to another woman. On November 6, 2008, Leftwich came to Rodger's house in the morning, as he frequently did, and he rode with Rodgers when she drove her daughter to school. On the way home, Leftwich began to argue with Rodgers and call her names while questioning her about her whereabouts the previous night. Leftwich did not believe Rodgers' statement that she had been out with a cousin. When they returned to Rodgers' house, she walked to her bedroom; Leftwich followed her and closed the door behind them. Leftwich then "tossed" Rodgers on the bed with a "forceful shove" and covered her face, nose, and mouth with his hand. He lay on top of her and held her hands and arms above her head. Leftwich told Rodgers that he would kill her if he found out she "was in the wrong."

{¶ 5} Rodgers' seventeen-year-old son, Corey Moss, heard a "mumbling, quiet scream" from his mother's bedroom and opened the door to investigate. He yelled for Leftwich to get off of Rodgers, who was crying, and he did. Leftwich and Rodgers then

started “talking it out,” and Moss left the room, thinking that “everything would be okay.”

{¶ 6} When Moss left the bedroom, Leftwich closed and locked the door, and Rodgers unsuccessfully attempted to leave the room through the adjoining bathroom. Leftwich again tossed Rodgers onto her bed and got on top of her, covering her face with his hand. Rodgers said that at that time she saw the barrel of a gun, which was black and had a small metal piece on top; she also heard a click. Leftwich put the object to Rodgers’ temple and threatened that he would kill her if she did not tell the truth. In the course of this altercation, Rodgers sustained a cut on her chin, although she was unsure whether it had been caused by her glasses or the gun.

{¶ 7} Moss, who had become concerned when he heard Leftwich lock the door, kicked down the door to regain access to the room. Upon doing so, he saw Leftwich’s arms wrapped around Rodgers; Moss saw only one of Leftwich’s hands, and he did not see a gun.

{¶ 8} After Moss entered the second time, Rodgers ran out the room to the phone, and Leftwich followed. When Rodgers angrily stated, in front of Moss, that Leftwich had held a gun to her head, Leftwich claimed that he never would have hurt her, but he did not respond to the accusation of his having a gun. According to Rodgers, Leftwich told Moss that it was a water gun, not a real gun, but Moss did not recall this statement.

{¶ 9} Leftwich later told the police that the gun had been a “squirt gun,” but that he had thrown it in Eastwood Lake after the altercation. He could not explain why he disposed of the item – be it a squirt gun or otherwise. He claimed that he had been trying to be “playful” with Rodgers and had said “I’m going to get you” when he produced the squirt gun. Leftwich initially denied to the police that he owned a handgun, but when they stated

that they intended to check this claim through gun registration records, he admitted having purchased a Sig Sauer handgun a few years earlier. He claimed that the gun had been stolen from his mother's home in Virginia, although he had not reported the alleged theft. A police officer testified at trial that a Sig Sauer can be black and have a little tip, or sight, on the end of the barrel.

{¶ 10} Rodgers, Moss, and two police officers testified for the State at Leftwich's jury trial. Leftwich called two character witnesses, who testified that he was not known to be a violent person. Leftwich did not testify.

{¶ 11} At the end of the State's case, and again at the end of all of the evidence, Leftwich moved for a Crim.R. 29 judgment of acquittal, which the trial court denied. The jury found him guilty of felonious assault and abduction, with a firearm specification on each count. He was sentenced to three years of imprisonment on the felonious assault and one year on the abduction; the firearm specifications were merged into one three-year term of actual incarceration. The trial court ordered that the sentences be served consecutively, for an aggregate term of seven years.

{¶ 12} Leftwich raises three assignments of error on appeal, each of which is based on his claim that the State presented insufficient evidence that he had a gun in his possession at the time of the alleged offenses. We will address the assignments of error together.

II

{¶ 13} In his first assignment of error, Leftwich contends that the trial court erred in overruling his Crim.R. 29 motion for acquittal because there was insufficient evidence that

he had possessed a deadly weapon or dangerous ordnance at the time of the incident. In his second assignment, Leftwich similarly argues that the trial court should have granted his motion for acquittal on the firearm specifications because the State failed to prove, beyond a reasonable doubt, that he had a firearm at the time of the offenses. In his third assignment, he asserts that the State had not proved abduction beyond a reasonable doubt because the trial court made his conviction “more likely” by “allowing the jury to believe that there was evidence of a deadly weapon and/or a firearm.”

{¶ 14} Crim.R. 29(A) states that the trial court shall enter a judgment of acquittal on one or more offenses charged in the indictment if the evidence is insufficient to sustain a conviction of such offense or offenses. “[S]ufficiency” is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, quoting Black’s Law Dictionary (6 Ed.1990) 1433. When reviewing the sufficiency of evidence, the relevant inquiry is whether any rational factfinder, viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Dennis* (1997), 79 Ohio St.3d 421, 430, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560. A guilty verdict should not be disturbed on appeal unless “reasonable minds could not reach the conclusion reached by the trier-of-fact.” *Id.* at 430.

{¶ 15} Leftwich was convicted of felonious assault, in violation of R.C. 2903.11(A)(2), which states that no person shall knowingly “[c]ause or attempt to

cause physical harm to another *** by means of a deadly weapon or dangerous ordnance.” A “deadly weapon” is “any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.”

{¶ 16} Rodgers testified unequivocally that she saw a gun. Thus, the State presented evidence from which a rational factfinder, viewing the evidence in a light most favorable to the State, could have found that Leftwich had possessed a deadly weapon. If the jury found Rodgers’ testimony to be credible, it had a sufficient basis to conclude that Leftwich had had a deadly weapon.

{¶ 17} Leftwich raises a similar argument with respect to the firearm specifications. R.C. 2941.145 provides for the imposition of a three-year mandatory term of imprisonment if an offender is found to have “had a firearm on or about [his] person or under [his] control while committing [a felony] and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.” See, also, R.C. 2929.14(D)(1)(a)(ii). A firearm is defined as “any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant.” R.C. 2923.11(B)(1). It includes an unloaded firearm and any inoperable firearm that can readily be rendered operable. *Id.* Leftwich contends that the State presented insufficient evidence for the jury to find that he had a firearm in his possession.

{¶ 18} As we discussed above, Rodgers’ testimony, if believed, provided sufficient evidence from which the jury could have rationally concluded that Leftwich had a deadly weapon in his possession at the time of the offenses. Proof of a

firearm specification beyond a reasonable doubt also requires proof of operability, but circumstantial evidence can support a finding that a firearm was operable, including explicit or implicit threats made by the person in control of the firearm. *State v. Thomas*, Montgomery App. No. 19435, 2003-Ohio-5746, at ¶46, citing *Thompkins*, 78 Ohio St.3d 380, at paragraph one of the syllabus. We have repeatedly held that both a weapon's existence and its operability may be inferred from the facts and circumstances surrounding an offense. See *State v. Jeffers* (2001), 143 Ohio App.3d 91, 94-95; *State v. Greathouse*, Montgomery App. No. 21536, 2007-Ohio-2136, at ¶19; *State v. Knight*, Greene App. No. 2003 CA 14, 2004-Ohio-1941, at ¶19. A victim's belief that a defendant had a gun, together with the intent on the part of the defendant to create and use that belief for his own criminal purposes, is sufficient to prove a firearm specification. *Greathouse*, *supra*.

Leftwich's threat to kill Rodgers and his placement of the gun against her temple formed a sufficient basis from which the jury could have reasonably concluded that the gun was operable.

{¶ 19} Finally, Leftwich asserts that his conviction for abduction was improperly influenced by the trial court's erroneous decision on the Crim.R. 29 motion , which "allow[ed] the jury to believe that there was evidence of a deadly weapon and/or a firearm." Because we have concluded that the trial court properly overruled the motion, this argument is without merit. Moreover, abduction, as charged in the indictment, is defined as the restraint of the liberty of another person, by force or threat, under circumstances that create a risk of physical harm to the victim or place the other person in fear. R.C. 2905.02(A)(2). Even without

the presence of a weapon, the jury could have reasonably concluded that Leftwich’s act of pinning Rodgers to the bed, lying on top of her, and placing his hand over her face, nose, and mouth had created a risk of physical harm or had placed Rodgers in fear.

{¶ 20} Leftwich’s assignments of error are overruled.

III

{¶ 21} The judgment of the trial court will be affirmed.

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GRADY, J. and FRENCH, J., concur.

(Hon. Judith L. French, Tenth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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- Hon. Frances E. McGee