

[Cite as *State v. English*, 2009-Ohio-5300.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22810
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-1133
v.	:	
	:	
SCOTTIE ENGLISH	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 2nd day of October, 2009.

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FRENCH, J. (by assignment)

{¶ 1} Defendant-appellant, Scottie J. English, appeals his conviction, following a jury trial, for felonious assault. Having concluded that sufficient evidence supports the conviction, and it is not against the weight of the evidence, we affirm.

{¶ 2} On March 17, 2008, at about 7:00 p.m., English picked up his girlfriend, Antonia Marshall, from work, and they went to the Northtown Bar and Grill. They

both drank and played pool. When English began talking to other women, Marshall became upset. Marshall testified that she left the bar and waited outside for English. When he did not come outside, she went back inside. She does not remember what happened after that, and her next memory is waking up in the hospital several hours later.

{¶ 3} Dayton Police Officer Jason Phillips, while on routine patrol at about 9:30 p.m. that evening, pulled behind a vehicle, which he believed to be disabled, stopped on Main Street in Dayton. He saw a man, who was standing on the driver's side of the vehicle, kick the driver one time, and then punch the driver several times. Officer Phillips pulled the man away from the driver, handcuffed him, and "saw there was blood all over the vehicle." (Trial Tr. 181.) Officer Phillips identified English as the man he encountered that evening.

{¶ 4} Officer Phillips testified that the driver, later identified as Marshall, was spitting blood on the doorframe and surrounding ground. She had blood coming from her nose and mouth, and she was barely conscious. He detected a slight odor of alcohol.

{¶ 5} Dayton Police Officer Joseph Saluke arrived to assist Officer Phillips. Officer Saluke administered first aid to Marshall. She was bleeding from her mouth, her head was bent slightly forward, and her eyes were closed. He noticed a knot on her forehead, and the knot grew bigger while he attended to her. She was spitting up blood and vomited twice. Officer Saluke did not detect an odor of alcohol.

{¶ 6} English testified on his own behalf. After Marshall became angry at him at the bar, he told her he wanted to leave, go to her house to get some clothes,

and then go to his sister's house. He said that Marshall, despite being intoxicated, got into her car and started to drive home with English as her passenger. Marshall's erratic driving at high speed made English fear for his safety, but Marshall refused to let him drive. She slammed on the brakes and stopped the car on Main Street, about a block from his sister's house and in the area where his aunt lives. English got out and went to the driver's side to take the keys, "to protect [himself] and to protect her." (Trial Tr. 306.) When he bent down to get the keys out of the ignition, Marshall started hitting him in the head. English hit Marshall once with a closed fist, and her head hit the steering wheel. He denied kicking her.

{¶ 7} The jury found English guilty of felonious assault. The trial court sentenced English to eight years imprisonment.

{¶ 8} English filed a timely appeal, and he raises a single assignment of error:

{¶ 9} "THE TRIAL COURT ERRED IN CONVICTING [ENGLISH] OF FELONIOUS ASSAULT."

{¶ 10} In his brief, English argues that his conviction for felonious assault was not supported by sufficient evidence and was against the manifest weight of the evidence. These arguments present different standards of review.

{¶ 11} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential

elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶ 12} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we determine " 'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175.

{¶ 13} We consider, first, whether the state presented evidence that, if believed, was sufficient to support a conviction for felonious assault. A person commits second-degree felonious assault if he knowingly causes "serious physical harm to another." R.C. 2903.11(A)(1). Important for our purposes here, "serious

physical harm" includes physical harm that (1) carries a substantial risk of death, (2) involves some permanent incapacity or some temporary, substantial incapacity, (3) involves some temporary, serious disfigurement or (4) involves acute pain that causes substantial suffering or involves any degree of prolonged or intractable pain. R.C. 2901.01(A)(5).

{¶ 14} English argues that the state did not present evidence that he caused Marshall's injuries or that her injuries were serious. We disagree.

{¶ 15} First, Officer Phillips testified that he saw English kick Marshall and punch her several times. Even English testified that he hit Marshall with his fist. When asked whether he wanted the jury to believe that his single punch caused Marshall's injuries, he responded, "Yes, ma'am." (Trial Tr. 326.) This evidence was sufficient for the jury to determine that English caused Marshall's injuries to her head, neck, and face.

{¶ 16} Second, Officers Phillips and Saluke testified about the seriousness of Marshall's injuries when they arrived at the scene. Marshall had blood coming out of her nose and mouth. She was nearly unconscious. She had a knot on her forehead. Her injuries rendered her temporarily incapacitated and required a three-day hospitalization. Marshall testified that she awoke in pain at the hospital.

Her face was swollen, and she had knots on the side of her forehead. She wore a neck brace for two weeks. She sought medical care from a physician, a plastic surgeon, and a neurologist, and she still suffers from memory problems. This evidence was sufficient to show that Marshall's injuries were "serious."

{¶ 17} English also argues that his conviction was against the manifest weight

of the evidence. Again, we disagree. English, by his own testimony, had been drinking and was angry at Marshall for not allowing him to drive. Although he claimed that she was injured when her head hit the steering wheel, he admitted to hitting her. While English testified that he only hit Marshall once and did not intend to hurt her, Officer Phillips presented compelling testimony that he observed English kick Marshall and then punch her repeatedly. Marshall's injuries to both sides of her face and on her head were consistent with Officer Phillips' testimony.

{¶ 18} English also contends that he presented evidence to show that he acted in self-defense. To prove self-defense, English had to prove that (1) he was not at fault for creating the situation giving rise to his altercation with Marshall, (2) he had reasonable grounds to believe that he was in imminent danger of death or great bodily harm and his only means of escape was his use of force, and (3) he did not violate any duty to retreat or avoid the danger. *State v. Barnes*, 94 Ohio St.3d 21, 24, 2002-Ohio-68, citing *State v. Robbins* (1979), 58 Ohio St.2d 74, paragraph two of the syllabus. English did not meet this burden.

{¶ 19} Even if we were to accept English's argument that he did nothing to create the situation that caused the altercation with Marshall, we cannot accept his arguments that he had reasonable grounds to believe that he was in immediate danger of death or great bodily harm and could only avoid the danger by using force.

While English testified that Marshall's erratic driving caused him to fear for his safety, he admittedly hit Marshall after she had stopped the car and the immediate danger had ended.

{¶ 20} English also argues that he was in danger of bodily harm from Marshall

hitting him. He testified that Marshall hit him on the head two or three times with her open hand. Marshall described herself as being five feet tall and weighing 120 pounds. English described himself as being five feet, eight inches tall and weighing about 250 pounds. English did not prove that Marshall hitting him presented imminent danger of death or great bodily harm. But even if Marshall's actions had presented such a danger, English did not prove that he could only escape that danger by using force. He could have left the scene, gone to his sister's house just a block away or just backed away from the car or Marshall. Instead, he reacted, by his own account, by hitting Marshall with his fist and knocking her head into the steering wheel. Officer Phillips' testimony shows that English's reaction was far more serious than English admitted and greater than necessary to avoid any danger presented by Marshall.

{¶ 21} For all these reasons, we overrule English's single assignment of error. We affirm the judgment of the Montgomery County Court of Common Pleas.

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GRADY and FROELICH, JJ., concur.

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

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