

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
CRAWFORD COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 3-14-05

v.

JACOB K. LAURENCE,

OPINION

DEFENDANT-APPELLANT.

**Appeal from Crawford County Common Pleas Court
Trial Court No. 13 CR 0231**

Judgment Affirmed

Date of Decision: May 18, 2015

APPEARANCES:

Adam Charles Stone for Appellant

Ryan M. Hoovler for Appellee

ROGERS, P.J.

{¶1} Defendant-Appellant, Jacob Laurence, appeals the judgment of the Court of Common Pleas of Crawford County convicting him of one count of aggravated robbery. On appeal, Laurence argues that the trial court erred by entering a guilty verdict that was not supported by sufficient evidence. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On November 13, 2013, the Crawford County Grand Jury returned a one count indictment against Laurence charging him with one count of aggravated robbery in violation of R.C. 2911.01(A)(3), a felony of the first degree. A bench trial was held on July 21, 2014, where the following testimony was presented.

{¶3} Gordon Sessions was the first witness to testify for the State. Sessions stated that he worked for CVS Pharmacy in Bucyrus as the store manager. He testified that his responsibilities include general store operations, merchandising, hiring and firing of personnel, and loss prevention.

{¶4} Sessions testified that on November 1, 2013, he was working at CVS. He stated that at approximately 1:00 p.m., two young men entered the store together. He explained that he became suspicious because the two quickly separated, which he stated was a common practice of shoplifters. Sessions testified that his office is located directly above several beverage coolers. From his office, Sessions stated that he observed one of the men, later identified as

Laurence, take two Red Bull energy drinks, step back into another aisle, and place the drinks into his pants pockets. Sessions also observed Laurence place beef jerky in his pockets. Sessions testified that he immediately contacted the police and reported a shoplifting in progress. After calling the police, Sessions went downstairs to intercept the shoplifters. Sessions stated that when Laurence approached the exit, Sessions asked Laurence to return the merchandise. He added that Laurence denied having taken anything and ran out the door. Sessions stated that he followed Laurence out the door to see if the police had arrived yet.

{¶5} The events from when Laurence arrived at the store until when Laurence fled were captured on the store's surveillance cameras. A recording was played for the trial court and admitted into evidence.

{¶6} Sessions testified that while in pursuit of Laurence, he saw Chief Koepke in the parking lot and yelled "that's him, officer." Trial Tr. p. 27. Then the following discussion took place:

Q: What did you do when the shoplifter started running?

A: Just started walking and following and watch[ed] as the officer intercepted [Laurence] at the end of the sidewalk. And [the officer] grabbed a hold of him and there was a struggle for awhile. Then the officer had his arms around from behind and the gentleman kept going, trying, struggling to get away and the officer started sliding down, down, down, down. And he finally got to the sidewalk and he kicked him, you know, to get loose and he ran off.

* * *

Q: Okay. Thank you. Let's talk a little bit more about the collision that you spoke of. Can you describe - - in great detail what you recall happening?

A: Uhm, the shoplifter was running south, pretty much full speed as far as I could tell. And the officer, upon my pointing him out where he visually seen him, I guess, I don't know, but he went and ran intercepted him and grabbed him around his shoulders, waist area like a football player and they both slammed into the wall.

Q: So your testimony is you saw Chief Koepke slam into the wall?

A: Both of them I believe because he forced the shoplifter to the wall, so.

Id. at 27, 29-30.

{¶7} After witnessing the collision, Sessions testified that he approached Chief Koepke and asked if he was okay. Sessions stated that Chief Koepke appeared to be unconscious. He explained that Chief Koepke was not moving and was bleeding.

{¶8} Sessions was further questioned regarding how Chief Koepke apprehended Laurence, during which the following exchange took place:

Q: Mr. Sessions, can you please describe when you first saw Chief Koepke how did he respond to the running male that you were following?

A: He ran at him and attacked, tried to tackle him or apprehend him.

Q: And how would you describe how he ran?

A: Fast. He ran towards him and intercepted him. I mean, he - -

Q: Okay. And when he was at the male that was the suspect that was running would you characterize him under control?

A: Yes.

Q: And describe that if you would?

A: Well, he just ran up to him and grabbed him like this. (Indicating) They both got, you know, by the momentum got pushed into the wall.

Id. at 42-43.

{¶9} On examination by the court, Sessions testified that Laurence could have either stopped or avoided a collision with Chief Koepke by changing direction.

{¶10} On cross-examination, Sessions testified more regarding the collision, during which the following exchange took place:

Q: You testified earlier that when my client was running down the sidewalk after he had taken these Red Bulls and beef jerky, correct?

A: That's correct.

Q: All right. That the Chief was coming at an angle, correct?

A: Angle? Yes.

Q: Towards him?

A: Hm-hmm. Yes.

Q: All right. And that essentially my client's coming this way, correct?

A: Hm-hmm.

Q: South?

A: Yes.

Q: And then the Chief is coming at him in an easterly direction, correct?

A: Yes.

Q: All right. And when the two collide which way do they go? Do they go south or do they go east?

A: East.

Q: Into the wall?

A: Yes.

* * *

Q. So the momentum that you talked about was in fact the momentum of Chief Koepke running into my client and knocking him into the wall, correct?

A. That's correct.

* * *

Q: You've got my client running south, Chief running east as you're telling where they are, the Chief didn't stop and grab him, did he?

A: No.

Q: The Chief kept going?

A: That's right.

Q: Running through him and into the wall, correct?

A: With him, yes.

Id. at 46-47, 54.

{¶11} On redirect examination, Sessions testified that he could be remembering the collision wrong, but he added that it seemed to him to have occurred with Chief Koepke tackling from the side.

{¶12} Chief David Koepke of the Bucyrus Police Department was the next witness to testify. Chief Koepke testified that he was working at the station on November 1, 2013. He stated that at approximately 1:00 p.m., he responded to a possible shoplifting call at the local CVS store. He left the station and proceeded on foot to CVS.

{¶13} He testified that he walked north, passing a local bakery. After passing the bakery, Chief Koepke stated that he walked at an angle towards a sidewalk that ran north and south on the west side of CVS. Before he could reach the sidewalk, Chief Koepke testified that he saw Laurence exit the store running south on the sidewalk. The following exchange then occurred:

Q: And when you first saw the suspect come, started running out of the exit what did you do?

A: I immediately, I moved quickly over to the sidewalk where he was directing his sprint which was directly along the front west wall of the building so I could apprehend him.

* * *

Q: And where was [Laurence] looking at that time?

A: South, directly at me.

* * *

Q: And what happened next?

A: I tried to apprehend him. I could tell that he wasn't deviating from his path and that I was going to apprehend him. At that point my best option was to try to grasp him. I attempted to grab him and tackle him.

Id. at 62-63. Chief Koepke testified that after the collision, he felt dazed and disoriented. He also testified that he has a permanent scar on his face from the collision.

{¶14} On cross-examination, Chief Koepke was further questioned regarding the moments leading up to the collision and the collision itself. He testified that when he tackled Laurence, he was in front of Laurence. Chief Koepke admitted that his memory of the collision and the events directly after the collision was unclear.

{¶15} On redirect examination, Chief Koepke clarified his movements leading up to the collision.

Q: Chief Koepke, [the defense attorney] in one of his first questions to you was trying to get you to admit that you came in from the side to the suspect when he was running. Is that true?

A: At an angle? That I came from the side? Yes, I moved from east, or to the east northeast, yes.

Q: Okay. So you moved to the side. Why did you move to the side?

A: Because I started out, I started out in the parking lot and I moved over to the sidewalk.

Id. at 95.

{¶16} Katina Shell was the next witness to testify. Shell testified that she is the owner of Morning Glory Bakery, which is located just south of CVS in Bucyrus. On November 1, 2013, Shell stated that she was assisting a customer outside of the bakery. Shell stated that she did not witness the collision between Laurence and Chief Koepke, but did hear loud footsteps and a shout. She testified that she looked in that direction and saw Chief Koepke on the ground holding onto Laurence's pants. She also stated that Laurence was able to get away and Chief Koepke remained on the ground.

{¶17} Officer Curtis Bursby of the Bucyrus Police Department was the next witness to testify. Officer Bursby testified that he was working on November 1, 2013, and that he responded to a possible shoplifting call at the CVS in Bucyrus.

{¶18} Officer Bursby testified that he spoke with the other individual involved in the alleged shoplifting, Jamie Fultz. Fultz led Officer Bursby to an apartment where Laurence was staying. Officer Bursby stated that he and another officer knocked on the apartment door, but no one answered. He briefly left the scene, but returned later. Officer Bursby testified that they were let in by an

unnamed individual and began searching the apartment for Laurence. While Officer Bursby was searching the apartment, Laurence jumped out a window, was quickly apprehended by police, and placed under arrest.

{¶19} Dr. Gary Osborn was the last witness to testify on behalf of the State. Dr. Osborn testified that he is employed as an emergency physician at the Bucyrus Hospital. He stated that he was working in the emergency room on November 1, 2013. He testified that he treated Chief Koepke for his injuries sustained in the collision. Dr. Osborn described Chief Koepke's injuries as follows: a concussion, lacerations to the face, two of which required stitches, and general scrapes and bruises on hands and elbows. Dr. Osborn prescribed Ibuprofen for Chief Koepke. He also referred Chief Koepke to the Occupational Health Clinic for further evaluation.

{¶20} At the end of Dr. Osborn's testimony, the State rested. At this time, defense counsel moved for acquittal pursuant to Crim.R. 29. The trial court denied the motion. The defense did not present any witnesses, rested its case, and renewed its motion for acquittal. The motion was again denied.

{¶21} On July 22, 2014, the trial court found Laurence guilty of one count of aggravated robbery. A sentencing hearing was held on October 3, 2014, where the trial court sentenced Laurence to five years in prison.

{¶22} Laurence filed this timely appeal, presenting the following assignments of error for our review.

Assignment of Error No. I

THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT¹ MADE IN ACCORDANCE WITH RULE 29 OF THE OHIO RULES OF CRIMINAL PROCEDURE, AND SUBSEQUENTLY FINDING THAT THAT [SIC] APPELLANT *INFLICTED* SERIOUS PHYSICAL HARM UPON THE VICTIM AS IT IS REQUIRED TO SUSTAIN A CONVICTION UNDER OR.C. § 2911.01(A)(3) FOR AGGRAVATED ROBBERY.

Assignment of Error No. II

THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT MADE IN ACCORDANCE WITH RULE 29 OF THE OHIO RULES OF CRIMINAL PROCEDURE, AND SUBSEQUENTLY FINDING THAT THE SERIOUS PHYSICAL HARM INFLICTED UPON THE VICTIM OCCURRED *IMMEDIATELY* UPON FLEEING AFTER THE THEFT OFFENSE AS IS REQUIRED TO SUSTAIN A CONVICTION UNDER O.R.C. § 2911.01(A)(3) FOR AGGRAVATED ROBBERY.

¹ We note that in both assignments of error, Laurence incorrectly claims his motion for a “directed verdict” was denied. Motions for a directed verdict are available in civil cases only. *See* Civ.R. 50. Motions for acquittal are available in criminal cases. *See* Crim.R. 29. Although they may seem similar, they are different remedies available only in their respective areas of the law. Additionally, “ ‘The purpose of a motion for judgment of acquittal is to test the sufficiency of the evidence and, where the evidence is insufficient, to take the case from the jury. In [a bench trial,] however, the defendant’s plea of not guilty serves as a motion for judgment of acquittal, and obviates the necessity of renewing a Crim.R. 29 motion at the close of all the evidence.’ ” *State v. Miller*, 3d Dist. Seneca No. 13-12-52, 2013-Ohio-3194, ¶ 27, fn. 3, quoting *City of Dayton v. Rogers*, 60 Ohio St.2d 162, 163 (1979), *overruled on other grounds by State v. Lazzaro*. Since Laurence plead not guilty to the charge of aggravated robbery, his Crim.R. 29 motions were unnecessary.

{¶23} Due to the nature of Laurence's assignments of error, we will address them together.

Assignments of Error Nos. I & II

{¶24} In his first and second assignments of error, Laurence argues that the verdict was not supported by sufficient evidence. Specifically, he argues that the State failed to offer any evidence showing either that he inflicted serious physical harm on Chief Koepke or that the harm inflicted occurred immediately upon fleeing from a theft offense. We disagree.

Sufficiency Standard

{¶25} When an appellate court reviews the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *State v. Monroe*, 105 Ohio St.3d 384, 2005-Ohio-2282, ¶ 47. Sufficiency is a test of adequacy. *State v. Thompson*, 78 Ohio St.3d 380, 386 (1997), *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89 (1997). Accordingly, the question of whether the offered evidence is sufficient to sustain a verdict is a question of law. *State v. Wingate*, 9th Dist. Summit No. 26433, 2013-Ohio-2079, ¶ 4.

{¶26} If a person inflicts or attempts to inflict serious physical harm to another while fleeing immediately after the attempt or commission of a theft offense, then he or she is guilty of aggravated robbery. R.C. 2911.01(A)(3). On appeal, Laurence does not dispute the fact that he committed a theft offense. Nor does he dispute that Chief Koepke suffered serious physical harm. Rather, Laurence argues that the State failed to provide sufficient evidence to prove that Laurence “inflicted” the harm and that the harm occurred “immediately” after the theft offense.

Infliction of serious physical harm

{¶27} The term “inflict” is not defined in the Ohio Revised Code. In the absence of a statutory definition, a word will be given its plain and ordinary meaning. *In re Luman*, 172 Ohio App.3d 461, 2007-Ohio-2565, ¶ 13 (3d Dist.), citing *David P. v. Kim D.*, 6th Dist. Lucas No. L-06-1164, 2007-Ohio-1865, ¶ 11, citing *Chari v. Vore*, 91 Ohio St.3d 323, 327 (2001).

{¶28} The verb “inflict” means “to lay (a blow) on” or to “cause (something damaging or painful) to be endured.” Webster’s Third New International Dictionary 1160 (2002). In Ballentine’s Law Dictionary 620 (3d Ed.1969), “inflicted injury” is defined as “Any bodily harm which is caused to be suffered by the act of one person upon another.” “Each of these definitions suggests that inflict connotes more than simple ‘but for’ causation, but implies

some direct action by one person upon another.” *State v. Bates*, 10th Dist. Franklin No. 97APA02-171, 1997 WL 750789, *4 (Dec. 2, 1997).

{¶29} Further support for this conclusion lies within the language of other criminal statutes. For example, felonious assault requires that the defendant “*cause* serious physical harm to another * * * [.]” (Emphasis added.) R.C. 2903.11(A)(1). “The legislature’s use of different terms to modify the serious physical harm element in the aggravated robbery and felonious assault statutes, strongly suggests that the legislature intended each term to have its own meaning, and did not intend the terms to be synonymous.” *Bates* at *4.

{¶30} Having found that “inflict” requires more than “but-for” causation, for Laurence to be guilty of aggravated robbery, the State must have put forth evidence showing that Laurence caused Chief Koepke serious physical harm by his own direct action.

{¶31} At trial, two witnesses testified to the collision between Laurence and Chief Koepke:² Sessions and Chief Koepke. Sessions testified several times that the collision was akin to a “football tackle.” Specifically, he stated that while Laurence was running south on the sidewalk, Chief Koepke ran east and tackled Laurence into the wall. However, Sessions also testified that Laurence could have

² Unfortunately, while the surveillance video that captured the incident inside the CVS, it did not capture the collision between Laurence and Chief Koepke.

easily stopped or changed direction to avoid Chief Koepke. Chief Koepke's testimony slightly contradicts that of Sessions.

{¶32} Chief Koepke testified that when he saw Laurence running south, he was west of the sidewalk. Thus, to get in front of Laurence, Chief Koepke stated that he went east to get on the sidewalk. Chief Koepke testified that the two were looking directly at one another and were facing each other at the same angle from different directions, one south and one north.

{¶33} After viewing the evidence in a light most favorable to the State, we find that any rational trier of fact could have found beyond a reasonable doubt that Laurence inflicted serious physical harm when the two collided. Although Sessions' testimony suggests that Chief Koepke's decision and way of tackling Laurence was the direct action that led to his injury, Chief Koepke's testimony suggests that Laurence saw the Chief in his uniform and ran at him head on until the two collided. Moreover, both witnesses testified that Laurence could have either stopped or turned right to avoid the collision. This evidence is sufficient to find that Laurence inflicted serious physical injury on Chief Koepke.

Immediacy

Neither 'fleeing' nor 'immediately' is defined in the Revised Code. We begin, therefore, 'with the time-honored rule that words used by the General Assembly are to be construed according to their common usage.' To 'flee' is '[t]o run away from,' 'to try to escape,' '[t]o hasten for safety,' or '[t]o withdraw hastily.' 'Immediately' means '[w]ith no person, thing, or distance, intervening in time,

space, order, or succession,’ or ‘[w]ithout any delay or lapse of time.’ Black’s Law Dictionary does not define the word ‘flee.’ It defines ‘immediate’ as ‘[o]ccurring without delay.’

(Citations omitted.) *State v. Thomas*, 106 Ohio St.3d 133, 2005-Ohio-4106, ¶ 15.

Further, whether a person was fleeing immediately after a theft or attempted theft is fact specific. *Id.* at ¶ 16.

{¶34} The evidence at trial showed that only minutes passed from the time Laurence took possession of the merchandise till the collision took place. However, the mere lapse of time does not necessarily mean that Laurence was not immediately fleeing after the theft. Sessions testified that soon after Laurence took the drinks and beef jerky, Laurence tried to exit the store. At this point, Sessions stated that he confronted Laurence about the theft. Sessions testified, and the surveillance video showed, that Laurence immediately fled the scene at a full sprint. Within seconds from fleeing the store, Laurence collided with Chief Koepke. Viewing the evidence in a light most favorable to the State, we find that the State presented sufficient evidence to support the conclusion that Laurence inflicted serious physical harm while immediately fleeing after a theft.

{¶35} Laurence argues that this case is factually similar to *Thomas*. However, this case is distinguishable from *Thomas*. In *Thomas*, the defendant had taken groceries from a store without paying for them. *Id.* at ¶ 2. After leaving the store, he dropped the bags. An off-duty police officer, working security for the

store, followed the defendant into a local laundromat. *Id.* The officer asked the defendant to return with him to the store, which the defendant originally agreed to do. *Id.* While the two were walking back, a scuffle ensued and the officer was injured. *Id.* Ultimately, the Supreme Court of Ohio found that although the defendant inflicted serious physical harm on the officer, he did not do so while immediately fleeing from the theft. *Id.* at ¶ 16. Importantly, the Court stated that “[h]ad [the defendant] struggled with [the officer] in an attempt to flee immediately after [the defendant] left the store * * * then an ensuing injury * * * might justify elevation of the offense from theft to robbery.” *Id.*

{¶36} The facts of this case directly parallel that of the hypothetical discussed in *Thomas*. After being confronted by Sessions, the store manager, for shoplifting, Laurence immediately took off running in an attempt to flee from the scene.

{¶37} Finding that sufficient evidence existed to support a finding that Laurence inflicted serious physical harm to another while immediately fleeing from a theft, we overrule his first and second assignments of error.

{¶38} Having found no error prejudicial to Laurence in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

SHAW and PRESTON, J.J., concur.
/jlr