[Cite as *In re J.J.*, 2016-Ohio-8567.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	JUDGES: Hon. W. Scott Gwin, P. J. Hon. John W. Wise, J. Hon. Craig R. Baldwin, J.
IN RE:	
J.J.,	Case No. 16 CA 44
MINOR CHILD	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Juvenile Division, Case No. A2015-730
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 20, 2016

APPEARANCES:

For Appellee	For Appellant J.J.
KENNETH W. OSWALT PROSECUTING ATTORNEY KARRIE PRATT KUNKEL ASSISTANT PROSECUTOR 20 South Second Street Fourth Floor Newark, Ohio 43055	ERIN J. McENANEY McENANEY LEGAL 23 1/2 South Park Place Newark, Ohio 43055 Guardian Ad Litem ROBIN LYN GREEN Post Office Box 157 Newark, Ohio 43058-0157

Wise, J.

{¶1} Appellant J.J., a delinquent child, appeals the decision of the Licking County Court of Common Pleas, Juvenile Division, which found him delinquent by reason of felonious assault. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} On or about October 11, 2015, Officer Zachary Kelemen of the Pataskala Police Department was dispatched to a residence in that city to investigate a reported assault. Medical personnel also responded to the residence, as the victim, appellant's adult sister Dasheka, had reported being struck in the mouth. Upon arrival, Officer Kelemen spoke to appellant, Dasheka, and their grandmother, Shirley. Officer Kelemen observed swelling on Dasheka's face and noticed her speech was impaired. He ascertained that the altercation stemmed from appellant's attempt to take control of the television remote. After the officer concluded his investigation, Dasheka was transported by the ambulance to Mount Carmel East emergency room. Once there, Dasheka spoke to the triage nurse on duty, who conducted the initial assessment. Dasheka reported to the nurse that her brother had hit her. It was determined that Dasheka's jaw was broken, and she would have to undergo surgery to repair it.

{¶3} The adjudicatory hearing before a magistrate in this matter occurred on April 6, 2016. Witnesses for the State were the emergency room triage nurse, the 911 call center supervisor, and Officer Kelemen. Dasheka did not testify. However, J.J. took the stand on his own behalf.

{¶4} Both sides agreed during closing remarks that Dasheka had suffered a fractured jaw, although appellant's trial counsel questioned whether the State had shown a link between appellant's actions and the injury. *See* Tr. at 93, 94.

{¶5} The magistrate found appellant to be delinquent for the offense of felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(1), specifically noting that his actions constituted serious physical harm. *See* Tr. at 102; Magistrate's Decision, April 6, 2016.

{¶6} A dispositional hearing was conducted on April 19, 2016. Appellant was subsequently committed to the custody of the North Central Ohio Rehabilitation Center and ordered to comply with the rules of the treatment center.

{¶7} In the meantime, on April 13, 2016, appellant filed an objection to the decision of the magistrate. Supplemental objections were filed on April 25, 2016 and May 9, 2016. The trial court issued a judgment entry overruling the objection and approving the decision of the magistrate on May 24, 2016.

{¶8} Appellant filed a notice of appeal on June 23, 2016. He herein raises the following sole Assignment of Error:

{¶9} "I. THE ADJUDICATION OF THE DEFENDANT-APPELLANT AS A DELINQUENT CHILD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PRESENTED BELOW."

I.

{¶10} In his sole Assignment of Error, appellant contends his juvenile delinquency adjudication by the trial court was against the manifest weight of the evidence. We disagree.[1]

{¶11} On review for manifest weight, an appellate court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the finder of fact clearly lost his or her way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *In re D.W.*, 5th Dist. Fairfield No. 11CA29, 2012-Ohio-319, ¶ 15, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. *See*, *also*, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶12} Appellant in the case *sub judice* was alleged to be delinquent by reason of violating R.C. 2903.11(A)(1), which states as follows: "No person shall knowingly * * * [c]ause serious physical harm to another or to another's unborn."

{¶13} At his adjudicatory hearing, appellant claimed he acted in self-defense, and this presently constitutes the focus of his appellate argument as well. This Court has recognized that self-defense is a "confession and avoidance" affirmative defense in which the defendant admits the elements of the crime but seeks to prove some additional element which absolves the defendant of guilt. *See Uhrichsville v. Losey,* 5th Dist.

---

[1] Appellant has failed to include or attach with his brief a copy of the judgment entry under appeal. *See* Loc.App.R. 9(A). We have nonetheless reviewed the original trial court judgment entry in the record.

Tuscarawas No. 2005 AP 03 0028, 2005–Ohio–6564, ¶ 9. To establish self-defense in the use of non-deadly force, the accused must show that (1) he was not at fault in creating the situation giving rise to the altercation; (2) that he had reasonable grounds to believe and an honest belief, even though mistaken, that some force was necessary to defend himself against the imminent use of unlawful force, and (3) the force used was not likely to cause death or great bodily harm. *State v. Vance,* 5th Dist. Ashland No. 2007-COA-035, 2008-Ohio-4763, ¶ 77. If the accused fails to prove any one of these elements by a preponderance of the evidence, then he has failed to show that he acted in self-defense. *State v. Hunt*, 8th Dist. Cuyahoga No. 94534, 2011-Ohio-92, ¶ 20.

{¶14} In the case *sub judice*, we reiterate appellant was found delinquent for causing serious physical harm to another pursuant to R.C. 2903.11(A)(1). There appears to be no present dispute that appellant was not at fault in initially creating the situation in question, as the evidence demonstrated that when J.J. went to grab the remote, Dasheka pushed him first. *See* Tr. at 58; Appellant's Brief at 4; State's Brief at 6. However, moving ahead to the third requirement set forth above, we note there again is no dispute that the altercation of October 11, 2015 resulted in Dasheka suffering a broken jaw. Indeed, the evidence reveals Dasheka's fracture required surgery and the placement of four screws. Furthermore, she later returned to the hospital complaining of the severity of the pain, and was referred to a plastic surgeon for follow-up treatment after surgery. *See* Tr. at 79, 100.

{¶15} In the context of non-deadly force self-defense, the concepts of "great bodily harm" and "serious physical harm" are substantially similar. *See State v. Juntunen*, 10th Dist. Franklin Nos. 09AP-1108, 09AP-1109, 2010-Ohio-5625 ¶22. *See*, *also*, *State v.*

Jeffers, 11th Lake No. 2007-L-011, 2008-Ohio-1894, ¶ 81 (noting lack of statutory definition of "great bodily harm"); *State v. Herrera,* 6th Dist. Ottawa No. OT-05-039, 2006-Ohio-3053, ¶ 53 (concluding, upon review of jury instructions as a whole, that trial court did not abuse its discretion in instructing the jury that "great bodily harm" and "serious physical harm" mean "the same thing").

{¶16} Accordingly, upon review, we are unpersuaded the finder of fact effectively lost his way in rejecting appellant's assertion of self-defense under the circumstances of this case. The magistrate's adjudication of delinquency by reason of felonious assault and the trial court's adoption thereof upon objection were therefore not against the manifest weight of the evidence.

{¶17} Appellant's sole Assignment of Error is overruled.

{¶18} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, Licking County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Baldwin, J., concur.

JWW/d 1130