

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-16-1166

Appellee

Trial Court No. CR0201502015

v.

Michael Sykes

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Frank H. Spryszak, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Michael Sykes, appeals the July 14, 2016 nunc pro tunc order of the Lucas County Court of Common Pleas. For the reasons that follow, we affirm and remand the matter to the trial court to make corrections to the nunc pro tunc order as described in this decision.

{¶ 2} On March 13, 2015, appellant, a patient at Northwest Ohio Psychiatric Hospital, hit a therapeutic programmer for the hospital in the jaw. The programmer became light-headed and the side of her face swelled, for which she received an ice pack.

{¶ 3} On March 15, 2015, appellant punched a fellow patient at the hospital (“the victim”) in the back of the head. The victim fell onto the concrete floor and was injured.

{¶ 4} On June 25, 2015, appellant was indicted on one count of assault, a violation of R.C. 2903.13(B) and (C)(1), a first degree misdemeanor, for hitting the programmer, and one count of felonious assault, a violation of R.C. 2903.11(A)(1) and (D), a second degree felony, for punching the victim.

{¶ 5} On October 13, 2015, the trial court held a hearing to determine if appellant was competent to stand trial. On October 15, 2015, the court found appellant was incompetent to stand trial, but there was a substantial probability that appellant would become competent to stand trial within one year, with treatment. The court ordered appellant committed to a mental health facility.

{¶ 6} On June 10, 20 and 27, 2016, the trial court held a hearing to review its previous competency ruling in order to determine if appellant was a mentally ill person subject to court-ordered hospitalization, and whether appellant committed the offenses with which he was charged. At the conclusion of the hearing, the court found appellant was not competent to stand trial and was not restorable. In addition, the court found the state did not prove by clear and convincing evidence that appellant committed the offense of assault, but the state did prove by clear and convincing evidence that appellant

committed the offense of felonious assault. The court ordered appellant committed to a mental health facility for eight years.

{¶ 7} On June 28, 2016, the court memorialized some of its findings in an order. The order set forth appellant was found incompetent to stand trial and there is a substantial probability appellant will become competent to stand trial within one year, with treatment. The court ordered appellant committed to a mental health facility for a maximum of eight years. The court dismissed the assault charge.

{¶ 8} On July 14, 2016, the trial court issued a nunc pro tunc order correcting its June 28, 2016 order to reflect that there is *not* a substantial probability that appellant will become competent to stand trial within one year. Appellant appealed.

{¶ 9} Appellant set forth two assignments of error:

- 1) The Trial Court failed to make the required findings under R.C. 2945.39(A)(2) to retain jurisdiction over Appellant.
- 2) The Trial Court's findings were not supported by clear and convincing evidence.

First Assignment of Error

{¶ 10} Appellant contends the trial court did not make the findings required by R.C. 2945.39(A)(2) in its journal entries. More specifically, appellant claims the court did not journalize its findings that appellant was a mentally ill person subject to court order or that the court found by clear and convincing evidence that appellant committed the act of felonious assault.

{¶ 11} R.C. 2945.39(A)(2) provides:

(A) If a defendant who is charged with an offense described in division (C)(1) of section 2945.38 of the Revised Code is found incompetent to stand trial, after the expiration of the maximum time for treatment as specified in division (C) of that section or after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, one of the following applies:

* * *

(2) On the motion of the prosecutor or on its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

(a) The defendant committed the offense with which the defendant is charged.

(b) The defendant is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order.

{¶ 12} It is well settled that a court speaks only through its journal. *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 131 N.E.2d 390 (1955), paragraph three of the syllabus. It is also settled that clerical mistakes in a judgment or order and errors in the record which arise from oversight or omission may be corrected by the court by the use

of a nunc pro tunc entry at any time. Crim.R. 36. A nunc pro tunc entry is limited “to reflecting what the court actually decided, not what the court might or should have decided.” (Citations omitted.) *State v. Miller*, 127 Ohio St.3d 407, 2010-Ohio-5705, 940 N.E.2d 924, ¶ 15.

{¶ 13} Here, the transcript of the June 27, 2016 hearing shows the trial court found appellant was incompetent to stand trial and was not restorable to competency. The court further found it was clearly convinced that appellant committed the offense of felonious assault, but it was not clearly convinced that appellant committed the offense of assault. Thus, at the hearing the court made the required findings under R.C. 2945.39(A)(2) to retain jurisdiction over appellant. However, the trial court failed to set forth all of its findings in a journalized entry. A nunc pro tunc entry reflecting all of the judicial findings made on June 27, 2016, is the appropriate means for the trial court to correct this omission. It follows that appellant’s first assignment of error is not well-taken.

Second Assignment of Error

{¶ 14} Appellant argues the trial court’s findings were not supported by clear and convincing evidence. Appellant contends the facts and evidence presented failed to show “serious physical harm” to the victim, as set forth in R.C. 2901.01(A)(5). Appellant asserts “[t]here was no evidence that the harm created such acute pain to result in substantial suffering, that any disfigurement was serious or permanent, or any substantial incapacity.”

{¶ 15} Clear and convincing evidence requires proof which “produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 16} R.C. 2903.11(A)(1) provides “[n]o person shall knowingly do either of the following: * * * Cause serious physical harm to another or to another’s unborn.”

{¶ 17} “Serious physical harm” means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement.

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain. R.C. 2901.01(A)(5).

{¶ 18} Here, the evidence shows appellant approached the victim from behind and punched the victim in the head or neck causing the victim to fall forward onto the concrete floor. The victim lost consciousness. The victim sustained a compound fracture

to his nose and bit through his lip with his teeth causing a laceration which required stitches to repair. The victim's teeth were also damaged. The victim spent two days in the hospital where he received treatment for his injuries. The victim indicated when he woke up in the hospital it was "[p]ainful" and his face felt slightly numb. More than a year after the incident, the victim stated his face "[s]till kind of hurts." In describing his face after the incident, the victim said, "It was, it was a mess."

{¶ 19} In addition to the victim's testimony, the photographic evidence and the victim's hospital records demonstrate the victim suffered injuries to his face and head as a result of being hit by appellant and falling onto the concrete floor. The photographic evidence shows the victim's nose, lips and mouth are bloodied. The hospital records admitted into evidence indicate the victim suffered from a nasal fracture, an abrasion to the bridge of his nose, laceration to the upper lip, fractures of the upper incisors and injury to the back of the head. The records also reveal the victim complained of a headache and constant pain affecting his face.

{¶ 20} At the June 27, 2016 hearing, the trial court discussed the victim's injuries as well as case law pertaining to "serious physical injury." The court found appellant committed the offense of felonious assault by clear and convincing evidence.

{¶ 21} In *State v. Lee*, 6th Dist. Lucas No. L-06-1384, 2008-Ohio-253, ¶ 25, the victim was struck by Lee in the back of the head and lost consciousness. The victim's eyes were swollen shut, her lips were swollen and she had bruises on her lips, chin, nose

and arm. *Id.* at ¶ 25-26. The victim was treated at the hospital where x-rays were taken and a nasal fracture was discovered. *Id.* at ¶ 26. We found:

In determining whether the state proved the “serious physical harm” element, Ohio appellate courts have held that “[w]here injuries are serious enough to cause him or her to seek medical treatment, the finder of fact may reasonably infer that the force exerted on the victim caused serious physical harm as defined by R.C. 2901.01(A)(5).” *State v. Lee*, 8th Dist. No. 82326, 2003-Ohio-5640, ¶ 24, citing *State v. Wilson* (Sept. 21, 2000), 8th Dist. No. 77115, 2000 Ohio App. LEXIS 4295. * * * Further, courts have held that “[w]here the assault causes a bone fracture, the element of serious physical harm is met.” *Lee*, ¶ 24 (citations omitted.). *Id.* at ¶ 30. *See also State v. Pinkelton*, 6th Dist. Ottawa No. OT-07-047, 2009-Ohio-264, ¶ 55-56.

{¶ 22} Here, just as in the *Lee* case from this district, the victim suffered a blow which caused a loss of consciousness as well as injuries to the victim’s head and face, including a fractured nose. The victim sought treatment for the injuries at the hospital. After the incident, the victim suffered from a headache as well as pain and numbness in his face.

{¶ 23} Based on the evidence presented, as well as the applicable case law, we find the trial court’s finding that appellant committed felonious assault is supported by clear and convincing evidence since the evidence demonstrates the victim suffered “serious

physical harm” as defined in R.C. 2901.01(A)(5). Accordingly, the second assignment of error is not well-taken.

{¶ 24} The judgment of the Lucas County Court of Common Pleas is hereby affirmed. This matter is remanded to the trial court for the sole purpose of preparing a revised nunc pro tunc entry incorporating its findings under R.C. 2945.39(A)(2).

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Arlene Singer, J.

James D. Jensen, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE