

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89238

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

SAMUEL MIMS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-483598

BEFORE: Dyke, J., Celebrezze, A.J., Boyle, J.

RELEASED: November 21, 2007

JOURNALIZED:

[Cite as *State v. Mims*, 2007-Ohio-6200.]

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[Cite as *State v. Mims*, 2007-Ohio-6200.]
ANN DYKE, J.:

{¶ 1} Defendant Samuel Mims appeals from his conviction for assault. For the reasons set forth below, we affirm.

{¶ 2} On July 13, 2006, defendant was indicted for one count of felonious assault. He pled not guilty and the matter then proceeded to a bench trial on November 29, 2006.

{¶ 3} The state's evidence demonstrated that on June 9, 2006, Anthony Brown was riding his bicycle in the area of East 133rd Street and Caine Avenue, near a crowd of people and heard someone call his name. Defendant, Brown's next door neighbor, approached and accused him of kicking the windows or cutting wires at his house. According to Brown, defendant had something in his hands, appeared ready for a fight, and said that he was going to "kick [his] ass." Brown fled on foot and defendant chased him wielding what Brown believed to be karate knives.

{¶ 4} Brown testified that defendant gained upon him and that he felt something hit him in the back. Brown then ran to a neighbor's porch and asked for someone to call the police. The neighbor refused and defendant then walked away. Brown went home and called the police. Brown stated that he sustained cuts to his back, neck and arms.

{¶ 5} On cross-examination, Brown admitted that he had been convicted of drug possession, but he maintained that he has been drug-free since completing rehabilitation in 2006. He also admitted that he refused medical treatment

{¶ 6} Cleveland Police Officer Willie Peterson testified that he responded to Brown's home and learned that he had been assaulted. He then apprehended defendant and recovered two martial arts-type sharp weapons in his pocket.

{¶ 7} Defendant elected to testify and also offered testimony from William Nix. Nix testified that he has known defendant for approximately thirty years. In this that time, defendant twice reported to Nix that he was having problems with Brown. During one incident, defendant informed Nix that Brown had a gun.

{¶ 8} Defendant testified that he and Brown had been friends and that Brown was welcome at his home. According to defendant, however, Brown is difficult to get along with when he drinks. Defendant stated that he argued with Brown after Brown urinated on his house and left stolen bikes in his yard which caused his cable to go out. On the day of the incident, Brown came to his house and drank beer. Defendant planned on having a cook out. He approached Brown in order to speak with him about moving a bicycle and Brown struck him, causing defendant to fall. During this time, the weapon that defendant had in his pocket became bent. Brown then got on top of him and the two tussled and defendant then called the police. He denied going after Brown with a weapon.

{¶ 9} Defendant was subsequently convicted of the lesser included offense of assault and sentenced to time served. Defendant now appeals and assigns two errors for our review.

{¶ 10} Defendant's first assignment of error states:

{¶ 11} “The trial court erred in denying Appellant’s motion for acquittal as to the charge when the state failed to present sufficient evidence to sustain a conviction.”

{¶ 12} Pursuant to Crim.R. 29, a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt. A Crim.R. 29(A) motion for acquittal "should be granted only where reasonable minds could not fail to find reasonable doubt." *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394; *State v. Jordan*, Cuyahoga App. Nos. 79469 and 79470, 2002 Ohio 590.

{¶ 13} The standard for a Rule 29 motion is virtually identical to that employed in testing the sufficiency of the evidence. *State v. Turner*, Franklin App. No. 04AP-364, 2004 Ohio 6609, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997 Ohio 52, 678 N.E.2d 541. An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Thompkins*, supra.

{¶ 14} The essential elements of assault are set forth in R.C. 2903.13 as follows:

{¶ 15} “(A) No person shall knowingly cause or attempt to cause physical harm

to another * * *.”

{¶ 16} In this matter, the state presented evidence that defendant accused Brown of damaging his property and went after Brown with a martial arts-type weapon. The state’s evidence further demonstrated that defendant scratched Brown on the back, neck and arm. The arresting officer found defendant in possession of the weapon. From the foregoing, a reasonable finder of fact could conclude that defendant knowingly caused physical harm to Brown, and could conclude beyond a reasonable doubt that defendant was guilty of the offense of assault.

{¶ 17} This assignment of error is without merit.

{¶ 18} Defendant’s second assignment of error states:

{¶ 19} “Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 20} In *State v. Thompkins*, supra, the court illuminated its test for manifest weight of the evidence as follows:

{¶ 21} "Weight of the evidence concerns ‘the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief." Black's [Law Dictionary (6 Ed.1990)], at 1594."

{¶ 22} When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. *Id.*, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S. Ct. 2211, 2220, 72 L.Ed.2d 652, 663. The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721.

{¶ 23} In this matter, the state's evidence established that defendant was angry because he believed that Brown had damaged his home and that he went after Brown with a sharp weapon. The state's evidence further demonstrated that Brown fled and that defendant scratched him on the back, neck and arm. Defendant admitted to being in possession of the weapon, and he presented a somewhat convoluted explanation of the incident which was inconsistent with the time of the assault, contained an illogical explanation about how the weapon become broken, and was vague as to the nature of the contact. We cannot say that the finder of fact lost its way in convicting defendant of the offense of assault.

{¶ 24} This assignment of error is without merit.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MARY J. BOYLE, J., CONCUR