

[Cite as *State v. Callahan*, 2010-Ohio-1211.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93341

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANIEL CALLAHAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516078-C

BEFORE: Gallagher, A.J., Rocco, J., and Cooney, J.

RELEASED: March 25, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Daniel Callahan, appeals his conviction for felonious assault in the Cuyahoga County Court of Common Pleas. For the reasons stated herein, we affirm.

{¶ 2} On October 1, 2008, Callahan was indicted on two counts of felonious assault in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). He pled not guilty to the indictment, and the case proceeded to a bench trial.

{¶ 3} At trial, the victim testified to an incident that occurred on September 4, 2008. The victim was in his front yard when several individuals arrived and confronted him about a house catching on fire. The victim told them they had the wrong person, but they proceeded to hit and punch the victim all over his body. He stated that they used their fists, a skateboard, and a brick when striking him. The victim was repeatedly hit in the head, and they hit his head against the ground. One of the individuals struck him in the head with the skateboard. The beating lasted several minutes. When the victim got up and ran toward the neighbor's driveway, one of the individuals struck him with a car. The victim stated: "[O]ne girl hit me with her car and knocked me against another car, and I rolled off that car and went up on to the porch."

{¶ 4} The victim began knocking on his neighbor's door for help, but nobody was home. A male threw a piece of pottery at the victim that missed him. After the attackers left, the victim was able to call 911. He was taken to a hospital and was treated for a head injury, a sprained neck, multiple abrasions, a sprained wrist, and a sprained ankle.

{¶ 5} The victim was given pain medication and a neck brace that he had to wear for three and one-half weeks. At trial, the victim indicated he still suffered from neck and wrist pain. He stated: "I wake up with a stiff neck every morning and it constantly hurts. It's about a seven or eight out of ten on the pain level." The victim indicated the pain was consistent since the assault. He also testified that he still had pain and a snapping sound in his wrist.

{¶ 6} The victim stated that he did not know the individuals who assaulted him, but he did get a visual look at them. At trial, he identified Callahan as one of those individuals. He stated that Callahan was there "until the fight ended."

{¶ 7} On cross-examination, the victim denied knowledge of a fire occurring in his neighborhood during the early morning hours on the day of his assault. He also denied hearing any sirens. He stated that his attackers, including Callahan, accused him of starting a fire at their house.

The victim indicated that Callahan was not the individual who hit him with the skateboard.

{¶ 8} Officer Daniel David testified that he responded to the scene and that he arrested Callahan. Detective Kevin E. Martin testified that he conducted a follow-up investigation.

{¶ 9} Callahan provided a statement to Detective Martin. Callahan stated that a car was set on fire next to his house and that his house caught on fire. Later that day, Callahan observed the victim rummaging through the garbage in Callahan's backyard. Callahan believed that the victim had set the fire, approached the victim, and punched him twice. Callahan stated the victim ran away from him, jumped a wall, and left his property. Detective Martin observed that Callahan's home was damaged by fire.

{¶ 10} Detective Martin spoke to the victim the day after the incident. He indicated that the victim was wearing a neck brace, a knee brace and a wrist brace. The detective observed small pieces of a broken ceramic statue on the neighbor's porch and a damaged car in the neighbor's driveway.

{¶ 11} The trial judge found Callahan guilty of both counts of felonious assault. The court sentenced Callahan to a prison term of two years on each count and merged the sentences. Postrelease control was also included as part of the sentence for three years.

{¶ 12} Callahan appealed his conviction to this court. We remanded the case to the trial court for the purpose of issuing a sentencing entry conforming to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3030, 893 N.E.2d 163. The trial court complied and issued a conforming journal entry.

{¶ 13} The matter is now before us for review. Callahan raises two assignments of error.¹ His first assignment of error provides as follows: “The state failed to meet its burden of proving all of the necessary elements of felonious assault beyond a reasonable doubt in that the state failed to show beyond a reasonable doubt that Callahan caused the victim to suffer ‘serious physical harm.’”

{¶ 14} The state is required to prove each of the elements of a charged offense beyond a reasonable doubt. *State v. Jenks* (1991) 61 Ohio St.3d 259, 272-273, 574 N.E.2d 492. When reviewing the sufficiency of the evidence to support a criminal conviction, “the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Leonard*, 104 Ohio St.3d 54, 67, 2004-Ohio-6235, 818 N.E.2d 229, quoting *Jenks*, *supra*, at paragraph two of the syllabus. The weight to be given the evidence and the credibility of the witnesses are

¹ No appellee’s brief was filed by the state.

primarily for the trier of fact. *State v. Tenace*, 109 Ohio St.3d 255, 260, 2006-Ohio-2417, 847 N.E.2d 386.

{¶ 15} Callahan was charged with felonious assault in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). The statute provides as follows: “No person shall knowingly do either of the following: (1) Cause serious physical harm to another * * *; Cause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance.”

{¶ 16} Callahan argues that the record does not support a finding that he used a deadly weapon or dangerous ordnance or that the victim suffered “serious physical harm.” This contention is without merit.

{¶ 17} In this case, the deadly weapon or dangerous ordnance in question was identified as the skateboard and/or the automobile. An automobile may be a “deadly weapon” when it is used in a manner likely to produce great harm or death. *State v. Tate*, Cuyahoga App. No. 87008, 2006-Ohio-3722, ¶23. The victim testified that Callahan was among the individuals who attacked him, that he was there until the end, and that during the incident, the victim was struck by an automobile driven by one of the individuals. Although Callahan was not identified as the driver of the vehicle that struck the victim, the trier of fact could conclude beyond a reasonable doubt that Callahan was complicit in knowingly causing physical harm to another by means of a deadly weapon. See R.C. 2923.03(A)(2); R.C. 2923.03(F). Therefore, we conclude that appellant’s

conviction for felonious assault under R.C. 2903.11(A)(2) was supported by sufficient evidence.

{¶ 18} To support a conviction under R.C. 2903.11(A)(1), the state was required to show that Callahan knowingly caused the victim serious physical harm. As applicable to this matter, “serious physical harm” is defined as “[a]ny 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)(e). We find no merit to Callahan’s argument that the state was required to present medical testimony to establish serious physical harm. See *State v. Driesbaugh*, Portage App. No. 2002-P-0017, 2003-Ohio-3866, ¶46 (rejecting a similar argument).

{¶ 19} As we noted previously, the victim testified that he sustained injuries to his head, neck, wrist, and ankle. He went to the hospital and had to wear a neck brace for more than three weeks. He also testified that he still experiences pain from the attack. In light of the testimony in the record, there was sufficient evidence upon which the trier of fact could reasonably conclude that Callahan caused the victim serious physical harm. Upon our review, we conclude that Callahan’s conviction for felonious assault under R.C. 2903.11(A)(1) was supported by sufficient evidence.

{¶ 20} Callahan’s first assignment of error is overruled.

{¶ 21} Callahan's second assignment of error provides as follows: "The verdict that Callahan committed felonious assault is against the manifest weight of the evidence."

{¶ 22} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether "there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether 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." (Internal citations and quotations omitted.) *Leonard*, 104 Ohio St.3d at 68.

{¶ 23} Callahan argues that the record does not support the verdict in this case. He essentially argues that his version of events was more credible.

{¶ 24} Our review of the record reflects that the victim provided a different account of the incident. The evidence obtained during the police investigation and the injuries sustained by the victim were consistent with the victim's version of events. The trial court was in the best position to weigh the credibility of the testimony. Upon our review, we hold that the trial court did not lose its way and create a miscarriage of justice in finding

the victim's version more credible. We find that Callahan's conviction was not against the manifest weight of the evidence.

{¶ 25} Callahan's second assignment of error is overruled.

Judgment 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., CONCURS;
COLLEEN CONWAY COONEY, J., CONCURS IN JUDGMENT ONLY