[Cite as *State v. Badgett*, 2011-Ohio-1245.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95146

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LYNN BADGETT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-532023

BEFORE: Stewart, J., Kilbane, A.J., and E. Gallagher, J.

RELEASED AND JOURNALIZED: March 17, 2011

ATTORNEY FOR APPELLANT

Ruth R. Fischbein-Cohen
3552 Severn Road, Suite 613
Cleveland Hts., OH 44118

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Marcus L. Wainwright
Assistant County Prosecutor
The Justice Center
1200 Ontario Street, 8th Floor
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Lynn Badgett, appeals his conviction entered by the Cuyahoga County Court of Common Pleas on one count of abduction, a felony of the third degree, in violation of R.C. 2905.02. Appellant raises two errors for review in which he challenges the sufficiency of the evidence supporting his conviction and argues that the conviction is

against the manifest weight of the evidence. Upon review of the record, and for the reasons stated below, we affirm.

{¶ 2} The incident leading to appellant's arrest occurred on December 7, 2009. At trial, the victim, a 14-year-old boy named T.W.,[1] testified he was walking home from boxing practice with his friends at around 7:30 p.m. when appellant called out to him from the front porch of a house they were passing. T.W. knew some children who lived in the house and he thought that he knew the person calling out to him. T.W. went over to the house and was up on the porch steps when he realized that he did not know appellant. Appellant was smoking something that T.W. believed was a marijuana cigarette and asked T.W. if he wanted to smoke. T.W. told him "no, I am too young." Appellant then pulled a knife out of his pocket. Holding the knife in one hand, appellant grabbed T.W. by the left shoulder of his jacket and told him to "get over here." When T.W. tried to run, appellant held onto the jacket. T.W. punched appellant on the side of the head near his temple or ear and, when appellant released him, T.W. ran and caught up with his friend, T.S. Together they ran to T.W.'s home and told his uncle what had happened. T.W. told his uncle that appellant "tried to rape me or do something."

---

[1]In accordance with this court's established policy, minors will be referred to by initials.

{¶ 3} T.S. testified that he, T.W., and another friend were walking home from boxing practice when appellant called out to the group. He said appellant pointed at T.W., and when T.W. went over to talk to appellant, T.S. kept walking down the street. About three minutes later, T.W. caught back up to him. T.W. was out of breath and "kind of like frightened." He said that appellant had pulled a knife on him and tried to get him to smoke something. Both boys then ran to T.W.'s house.

{¶ 4} T.W., his uncle, and his uncle's friend went up the street to confront appellant. T.W. said appellant refused to give the knife to his uncle and tried to jab him with it. His uncle was able to get the knife away from appellant and they returned to the house where T.W.'s grandmother called the police. The police responded and found appellant disoriented and smelling of alcohol with a fresh injury by his right ear lobe. They arrested him and conducted a cold stand identification. T.W. identified appellant as the man on the porch who had threatened him with a knife. The police recovered appellant's knife from T.W.'s uncle. Appellant was charged with abduction, felonious assault, and corrupting another with drugs.

{¶ 5} Appellant waived a jury and the case was tried to the bench. At the close of the state's case, the court granted appellant's Crim.R. 29 motion as to the felonious assault and corrupting another with drugs charges. The case proceeded on the single abduction charge.

{¶ 6} Appellant took the stand and testified that he was a disabled veteran with bipolar disorder. He claimed that on December 7, 2009 he was on the porch making a recording on his tape recorder about the true meaning of Christmas. T.W., who was walking by with friends, heard him and came over and said that the true meaning of Christmas was a Christmas tree and getting lots of presents. Appellant said he was smoking a cigarette and drinking a can of beer at the time and told T.W. not to be like him, not to smoke or drink. He wanted to give T.W. a present so he reached into his pocket and took out his pocketknife. Appellant said he showed the knife to T.W., but told him that he could not give him the knife until he got permission from T.W.'s grandmother. He suggested T.W. run and catch up with his friends because it was getting dark. Appellant denied grabbing T.W.'s jacket or touching him at any time. He said the pocketknife was closed at all times. He also said T.W. did not punch him, but that five or six young men came by later and beat him up and took the knife out of his pocket.

{¶ 7} We will address appellant's two assignments of error together. In these assignments of error, appellant argues that his conviction was based upon insufficient evidence and was against the manifest weight of the evidence.

{¶ 8} "The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. Sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. Id. at 386. 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." Id. at 387 (emphasis deleted). Weight is not a question of mathematics, but depends on its effect in inducing belief. Id.

{¶ 9} When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court examines 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. 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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. A verdict will not be disturbed based upon insufficient evidence unless it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4, 739 N.E.2d 749; *Jenks* at 273.

{¶ 10} The manifest weight of the evidence standard of review requires us to review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Otten* (1986), 33 Ohio App.3d 339, 515 N.E.2d 1009, paragraph one of the syllabus. The discretionary power to grant a new trial should be exercised only in exceptional cases where the evidence weighs heavily against the conviction. *Thompkins*, 78 Ohio St.3d at 387.

{¶ 11} We are mindful that the weight to be given the evidence and the credibility of the witnesses are matters primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. The trier of fact has the authority to "believe or disbelieve any witness or accept part of what a witness says and reject the rest." *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548. "The choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan* (1986), 22 Ohio St.3d 120, 123, 489 N.E.2d 277.

{¶ 12} Under R.C. 2905.02(A)(2), a person commits abduction if he knowingly, "[b]y force or threat, restrain[s] the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear." The element of restraining another's liberty may be proven by evidence that the defendant has "limit[ed] one's freedom of movement in any fashion for any period of time." *State v. Wright*, 8th Dist. No. 92344, 2009-Ohio-5229, at ¶ 23 (citations omitted).

{¶ 13} Appellant claims that the state failed to provide sufficient evidence of the elements of force, restraint, or fear. He contends there is no evidence that he used violence or force and argues that the fact that T.W. hit him proves T.W. was not afraid of him. He further argues that the fact that T.W. ran away after hitting him proves T.W. could move around freely and was not restrained. Appellant claims that the entire incident was a misunderstanding, that he was just trying to offer T.W. the pocketknife as a Christmas present.

{¶ 14} As an alternative theory, appellant suggests that this was really a case of robbery and that he was the victim. He claims that his ear was injured when T.W. robbed him of his "fake diamond earring." He contends that T.W. made up the story about appellant threatening him with a knife so he would not get in trouble for the robbery.

{¶ 15} We find no merit to appellant's claims. T.W.'s testimony, if believed, is sufficient to convince an average trier of fact that appellant grabbed T.W. by the jacket with one hand and pulled a knife out of his pocket with the other, forcibly restraining T.W. from leaving and putting T.W. in fear for his safety. The evidence that was before the trial court, therefore, was sufficient to convict appellant of abduction.

{¶ 16} Neither is appellant's conviction against the manifest weight of the evidence. T.W. testified that appellant grabbed him by the jacket to prevent him from leaving and then pointed a knife at him. He said the knife was open and he was afraid. He punched appellant in the side of the head to get released, then ran home. This testimony is corroborated by T.S. who testified that T.W. went over to speak to appellant and then a few minutes later ran up, out of breath and afraid, and said that appellant pulled a knife on him and tried to get him to smoke something. When appellant was arrested later that evening, he had a fresh injury to his right ear.

{¶ 17} Appellant contends that he is a victim of a misunderstanding, that he was actually doing a good service by offering T.W. advice and a gift. However, appellant's testimony at trial was rambling, confused, and not credible. For example, at one point appellant testified that he was assaulted by five or six people who knocked him down, kicked him, beat him, and took his knife. He did not report this assault to the police when they arrested him

a short time later. In fact, appellant claimed he did not learn of the assault on himself until days later and, based upon the injuries he received, he believed it was probably five or six children who attacked him.

{¶ 18} The trial court found the state's witnesses to be more credible. Reviewing the record as a whole, we cannot say that the evidence weighs heavily against conviction or that the trial court clearly lost its way. Accordingly, appellant's two assignments of errors are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, A.J., and

EILEEN A. GALLAGHER, J., CONCUR