

[Cite as *State v. Hunt*, 2011-Ohio-92.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94534**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SEAN P. HUNT**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-523584

**BEFORE:** Jones, J., Kilbane, A.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** January 13, 2011

## **ATTORNEY FOR APPELLANT**

Gayl Berger  
614 West Superior Avenue  
Suite 1425  
Cleveland, Ohio 44113

## **ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

BY: Mary McGrath  
Assistant Prosecuting Attorney  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

**LARRY A. JONES, J.:**

{¶ 1} Defendant-appellant Sean Hunt (“Hunt”) appeals his conviction for two counts of aggravated assault. Finding no merit to the appeal, we affirm.

{¶ 2} In 2009, Hunt was charged with two counts of felonious assault. The matter proceeded to a trial by the bench, at which the following evidence was presented.

{¶ 3} Kevin Pantalone (“Pantalone”) testified that he is a doctor at a local hospital and went with his fiancée, his friend Jason Dalrymple (“Dalrymple”), and a couple others to a concert at Cleveland Browns Stadium. After finding their seats, Pantalone and Dalrymple went to the concession stand. The two men got

in line and Hunt, who was with his wife and also in line for food, informed them that they had cut in front of someone. Pantalone and Dalrymple, who testified that they were not aware that they had cut in line, offered the people behind them to pass in front of them.

{¶ 4} Pantalone and Dalrymple testified that the exchange between Hunt and the two men continued. Pantalone testified that eventually he told Hunt to “shut the hell up,” and for Hunt and his wife to get their food and enjoy the concert.

Pantalone testified that nothing was said for about five minutes, and then suddenly Hunt turned around and punched him. Pantalone next remembered waking up on a stretcher. He later learned he broke his leg as the result of a fall he sustained when Hunt hit him. He told the court he had drank four beers that day but was not intoxicated.

{¶ 5} Dalrymple testified that he drank a total of six beers before and during the concert. When he was standing in line with Pantalone, he witnessed Hunt and Pantalone arguing. About three to five minutes later, he saw Hunt punch Pantalone and his friend fell to the ground. Dalrymple testified that Hunt next head-butted him and he “got knocked out.” Dalrymple testified that he suffered a broken nose, had a tooth knocked out, and had three teeth bent back as a result of the attack.

{¶ 6} Both Pantalone and Dalrymple denied making comments of a sexual nature towards Hunt or his wife.

{¶ 7} Pantalone's wife testified that she was sitting in her seat at the stadium when she received a call from her husband stating he was on a stretcher. When she found her husband, he was upset and would not let anyone help him. She saw that Dalrymple was holding his bloody nose.

{¶ 8} Jason Grimm ("Grimm") testified that he was in line at the concession stand, about eight to ten people behind Pantalone and Hunt's groups, and did not know anyone involved in the altercation. Grimm stated he had been watching Hunt, who was "clearly intoxicated" and "stumbling around," but had not noticed any commotion between the two groups. Grimm saw Hunt turn around and head-butt some guy who then fell down. He then saw Hunt hit someone else who also fell to the ground. Grimm testified he pushed his wife out of the way and watched Hunt and his wife flee. Grimm alerted the police to the situation and pointed out Hunt's wife, who had returned to the scene. Grimm then went to his seat, saw Hunt and his wife, and told another officer that Hunt was the guy who had hit Pantalone and Dalrymple.

{¶ 9} Joseph Repasky testified for the defense that he knew Hunt, who served as his son's football coach. He testified that he had never known Hunt to act aggressively. Christina Church testified that Hunt was a "big-hearted" guy. She testified that Hunt told her the men in line behind him were saying vulgar things to his wife, were intoxicated, and "one thing led to another."

{¶ 10} Hunt's wife, Amanda, testified that she was in line with her husband when Pantalone and Dalrymple came stumbling by and cut in front of the people

directly behind them. She stated that Pantalone and Dalrymple started saying vulgar things about women, and one of the men blew in her hair and asked the other man if he thought she were “f\*\*\*able.” She became upset and went to the women’s restroom.

{¶ 11} Amanda stated that when she returned, Pantalone and Dalrymple were “egging” her husband on by calling him offensive names. She told the two men to shut their mouths, and Dalrymple got in her face with his fists clenched and told her he did not have a problem hitting girls. Amanda testified that Hunt yelled “hey,” and Dalrymple got in her husband’s face. Hunt head-butted and punched Dalrymple. Then Hunt turned around and punched Pantalone.

{¶ 12} Amanda then told Hunt to leave so he would not get arrested. She was later kicked out of the stadium, but was allowed to return, and the couple stayed to watch the rest of the concert.

{¶ 13} Hunt testified that he was standing in line with his wife when Pantalone and Dalrymple came up and cut in line. The two men were drunk and began to talk about which women they would like to have sex with. The two men began directing their comments towards Hunt’s wife. After one of the men challenged his sexuality, Hunt testified that he told them, “you are the ones playing grab ass with each other, I’m here with my wife.” The argument escalated and went on for six to eight minutes with Pantalone and Dalrymple continuing to berate him and call him names. Hunt testified that he turned and told the two men to

“shut the f\*\*\* up.” Dalrymple then got in his (Hunt) wife’s face with clenched fists, and it appeared as though he wanted to strike her.

{¶ 14} Hunt told the court that he had already placed his order, so when he turned around he was backed up to the counter. Dalrymple got in his face and said “what the f\*\*\* are you going to do about it.” Hunt said it was at this time he head-butted Dalrymple in the face and then punched him in the mouth. He saw Pantalone approach him with clenched fists, so he punched Pantalone.

{¶ 15} Hunt admitted he left the scene because his wife told him to and that he watched the men receive medical treatment from a distance. He also admitted to going into the bathroom to wash his bloody fists and that he did not approach the police to tell them what happened.

{¶ 16} Later, when was returning to his seat from another trip to the restroom, a police officer stopped him. Hunt told the officer that Pantalone and Dalrymple were bullying his wife and he did not mean to hurt anyone. The officer let him go, and he returned to his wife and to watch the rest of the concert.

{¶ 17} The court convicted Hunt of the lesser included offense of aggravated assault, sentenced him to three years of community control sanctions, and ordered him to pay restitution.

{¶ 18} Hunt now appeals, raising the following two assignments of error, which will be combined for review:

“1. The trial court committed reversible error when it denied appellant’s affirmative defense of self-defense.

“II. Appellant’s convictions for aggravated assault are contrary to the manifest weight of the evidence.”

{¶ 19} On appeal, Hunt argues that the trial court erred in denying his claim that he acted in self-defense, and that his convictions for aggravated assault are against the manifest weight of the evidence presented at trial.

{¶ 20} Under Ohio law, self-defense is an affirmative defense for which the defendant bears the burden of proof. *State v. Foster-Jones*, Montgomery App. No. 23681, 2010-Ohio-5758. In order for Hunt to establish self-defense involving the use of nondeadly force, he was required to show, by a preponderance of the evidence: “(1) that the defendant was not at fault in creating the situation giving rise to the altercation and (2) that he had reasonable grounds to believe and honest belief, even though mistaken, that he was in imminent danger of bodily harm and his only means to protect himself from such danger was by the use of force not likely to cause death or great bodily harm.” *State v. Fritz*, Montgomery App. No. 20796, 2005-Ohio-4736, ¶ 20. If the defendant 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. See *State v. Jackson* (1986), 22 Ohio St.3d 281, 284, 490 N.E.2d 893, 897.

{¶ 21} When reviewing a claim by a defendant that evidence supports his claim of self-defense, the manifest weight standard is the proper standard of review since the defendant who claims self-defense is not seeking to negate an element of the offense charged; rather, he seeks to relieve himself from culpability. *State v. Carman*, Cuyahoga App. No. 90512, 2008-Ohio-4368, ¶18,

citing *State v. Martin*, supra; see, also, *In re D.P.*, Cuyahoga App. No. 82151, 2003-Ohio-5821.

{¶ 22} In evaluating a challenge to the verdict based on the manifest weight of the evidence, a court sits as the thirteenth juror and intrudes its judgment into proceedings that it finds to be fatally flawed through misrepresentation or misapplication of the evidence by the trier of fact that has “lost its way.” *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. In *Thompkins*, the Ohio Supreme Court stated:

“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.’ \* \* \*

{¶ 23} “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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” (Emphasis omitted.) *Id.*

{¶ 24} In *State v. Bruno*, Cuyahoga App. No. 84883, 2005-Ohio-1862, we stated that the court must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. A reviewing court



will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a reasonable doubt. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132. Moreover, in reviewing a claim that a conviction is against the manifest weight of the evidence, a conviction cannot be reversed unless it is obvious that 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. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814.

{¶ 25} Hunt claims that the evidence showed that he acted in self-defense because he did not provoke the attack, he was defending his wife, and he was unable to retreat.

{¶ 26} As to the first prong of self-defense, Hunt argues that he did not create the situation that gave rise to the force he had to use to protect himself and his wife. He blames Pantalone and Dalrymple, maintaining the two men are at fault for both starting the confrontation and escalating the situation. But Pantalone and Dalrymple testified that it was Hunt who started the verbal confrontation by accusing the two men of cutting in line. Although the testimony conflicted as to what each man said, Hunt admitted he was the first to comment about the two men cutting in line and that the verbal exchange went back and forth.

{¶ 27} As to the second prong, Hunt claims that he believed that both he and his wife were in imminent danger of being harmed. He testified that he saw Dalrymple in his wife's face with clenched fists and was afraid the man would strike his wife. But the trial court found that Hunt failed to establish that he was in imminent danger.

{¶ 28} Finally, even though the duty to retreat is not a necessary finding in a non-deadly force claim of self-defense, Hunt argues that Dalrymple had backed him up into the concession stand and the only way he could get free was to head-butt and then punch Dalrymple. Similarly, Hunt claims that he had to punch Pantalone because the man approached him with closed fists after Dalrymple fell to the ground. But both Pantalone and Dalrymple testified that Hunt hit Pantalone first and then head-butted Dalrymple. The trial court found that while it did not believe that the attack on Pantalone and Dalrymple was unprovoked, it also did not believe that Hunt was "in reasonable danger or fear for his life and that the use of force was necessary in order for him to quell an assault."<sup>1</sup>

{¶ 29} Therefore, the trial court did not err in finding that the defense of self-defense did not apply to relieve Hunt of any liability. We also do not find that the convictions for aggravated assault were against the manifest weight of the

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<sup>1</sup> We note that under a "non-deadly force" theory of self-defense, it is not necessary for the defendant to believe he was in fear for his life. But Hunt does not raise the issue and our review of the record does not conclusively show that the trial court was proceeding under the "deadly force" theory of self-defense. Therefore, we do not find plain error in the trial court's analysis of self-defense. See Crim.R. 52.

evidence. R.C. 2903.12, which governs the offense of aggravated assault, provides that “[n]o person \* \* \* shall knowingly cause serious physical harm to another \* \* \* while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force.”

{¶ 30} We find that the trial court could reasonably conclude from substantial evidence that the state proved the offense of aggravated assault beyond a reasonable doubt. The trial court, as the trier of fact in this case, was in the best position to judge the credibility of the witnesses and their testimony. Whether Dalrymple and Pantalone’s testimony was more credible than that of Hunt and his wife is a matter reserved to the trier of fact, not to a court reviewing a cold record. We do not find that the trial court’s decision created such a manifest miscarriage of justice as to require reversal of the convictions.

{¶ 31} The first and second assignments of error are overruled.

{¶ 32} Accordingly, judgment is affirmed.

It is ordered that appellee recover of 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. 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.

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LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, A.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR