

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 08CA009465

Appellee

v.

ADAM B. GREENE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR075295

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 1, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Adam B. Greene ran away from Officer Eric Alten after Officer Alten told him he was under arrest for disorderly conduct. When Officer Alten tried to tackle him, Mr. Greene turned and struck Officer Alten in the face. The trial court convicted Mr. Greene of assaulting a police officer, obstructing official business, and resisting arrest. This Court affirms because there was sufficient evidence to convict Mr. Greene of assault and obstructing official business, and his convictions are not against the manifest weight of the evidence.

FACTS

{¶2} Officer Leslie Palmer testified that he was on patrol one evening when the car in front of him suddenly drove left-of-center. He then noticed that there was a car parked along the curb with its driver-side door wide open that the car in front of him had apparently swerved around. He stopped his patrol car, activated his overhead lights, and shined his spotlight into the

parked car to see who had opened the door into oncoming traffic. He saw Jeremiah Hamilton standing outside the car, Mr. Greene in the front passenger seat, and Jamaur Fenderson in the back seat. He also saw what appeared to be an open can of beer in the center console.

{¶3} Officer Palmer said that he exited his vehicle and approached the parked car. As he got near it, he smelled marijuana. He verified that the can in the center console was a beer can, and he also saw Mr. Greene pass the can to Mr. Fenderson, who put it on the floor behind the front seat. Officer Palmer said he secured Mr. Hamilton in the back of his patrol car and asked Mr. Greene and Mr. Fenderson to get out of the car. He patted them down for safety and took them to the rear of the car.

{¶4} According to Officer Palmer, after Officer Alten arrived to assist him, he searched the car. He said that Mr. Greene became loud and boisterous during the search and began taunting Officer Alten and him. Despite Officer Palmer warning Mr. Greene two or three times to calm down, he continued to cause a disturbance. Officer Palmer said that he finally told Mr. Greene that he was under arrest and directed Officer Alten to handcuff him. When Officer Alten attempted to handcuff him, however, Mr. Greene pulled away and took off running.

{¶5} According to Officer Alten, he chased Mr. Greene through a field and eventually caught up to him. He attempted to grab him by the shoulders, but he pulled out of his jacket. Officer Alten then attempted to tackle him, but Mr. Greene turned to his left. The officer said that, as Mr. Greene turned, his right hand came around and struck him in the face. Officer Alten said he fell to the ground, but got up and continued chasing Mr. Greene. After he and some other officers finally caught Mr. Greene, the other officers noticed that Officer Alten was bleeding from his nose and mouth. Officer Alten said that he received three stitches to repair a deep laceration on the inside of his lower lip.

{¶6} The Grand Jury indicted Mr. Greene for felonious assault, obstructing official business, and resisting arrest. Mr. Greene waived his right to a jury trial. The trial court found him not guilty of felonious assault because it did not believe that he knowingly caused Officer Alten harm. It found him guilty of the lesser-included offense of assault, however, because it determined that he recklessly caused serious physical harm to a peace officer. It also found him guilty of obstructing official business and resisting arrest. Mr. Greene has appealed his convictions for assault and obstructing official business, assigning two errors.

ASSAULT

{¶7} Mr. Greene’s first assignment of error is that the trial court lost its way when it found him guilty of assault because the State failed to provide sufficient evidence that he caused Officer Alten serious physical harm. Mr. Greene’s assignment of error combines two separate legal concepts: sufficiency and manifest weight. Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. This Court must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced the average finder of fact of Mr. Greene’s guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991). When a defendant argues that his conviction is against the manifest weight of the evidence, however, this Court “must 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*, 33 Ohio App. 3d 339, 340 (1986). “Inasmuch as a court cannot weigh the evidence unless there is

evidence to weigh,” to the extent that Mr. Greene has argued that his conviction is not supported by sufficient evidence, this Court will consider that argument first. *Whitaker v. M.T. Automotive Inc.*, 9th Dist. No. 21836, 2007-Ohio-7057, at ¶13.

{¶8} The trial court found Mr. Greene guilty of assault under Section 2903.13(B) of the Ohio Revised Code, which provides that “[n]o person shall recklessly cause serious physical harm to another.” Mr. Greene has argued that his conviction should be overturned because there was no evidence to support a finding that he caused Officer Alten “serious physical harm.” “Serious physical harm to persons” is defined as: “(a) [a]ny mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment; (b) [a]ny physical harm that carries a substantial risk of death; (c) [a]ny physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; (d) [a]ny physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; [or] (e) [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).

{¶9} Officer Alten testified that Mr. Greene struck him in the face with his fist, causing him to fall on his left arm. He said that the other officers with him noticed that he was bleeding from the nose and mouth. Officer Alten said he went to the hospital, where medical personnel took x-rays of his arm and gave him three stitches to close a deep vertical laceration that stretched the entire height of his inner lower lip. He missed the remainder of his shift and could not eat normally until the stitches dissolved after seven to ten days. He also said that he was in pain throughout the duration of the healing process.

{¶10} Viewing the testimony in a light most favorable to the prosecution, there was evidence that Officer Alten suffered “temporary, serious disfigurement” to his lower lip and “physical harm . . . that involve[d] any degree of prolonged . . . pain.” R.C. 2901.01(A)(5)(d), (e). This Court, therefore, concludes that there was sufficient evidence to support the trial court’s finding that Mr. Greene caused serious physical harm to Officer Alten.

{¶11} Regarding whether Mr. Greene’s conviction for assault was against the manifest weight of the evidence, three other officers corroborated Officer Alten’s testimony about the severity of his injuries. Officer Palmer testified that, after Mr. Greene was arrested, Officer Alten “pulled his lower lip down and exposed [a] laceration on the inside of his lip . . . [that] looked pretty deep” and was still bleeding. Officer Schmittle testified that he saw “[b]lood . . . falling from [Officer Alten’s] nose and from his mouth.” Officer Payne said that he saw “quite a bit of blood coming from [Officer Alten’s] nose and . . . mouth.” He also said that he “observed what would be considered a rather large laceration for a lip.” Officer Payne, who said he is a paramedic, further said that he gave Officer Alten some gauze pads and an ice pack and told him that he needed to go to the hospital.

{¶12} The trial court did not lose its way in accepting Officer Alten’s testimony that he needed stitches to close the laceration of his inner lip or that he was unable to eat normally and suffered pain for seven to ten days while his mouth healed. Mr. Greene’s first assignment of error is overruled.

OBSTRUCTING OFFICIAL BUSINESS

{¶13} Mr. Greene’s second assignment of error is that the trial court lost its way when it found him guilty of obstructing official business. His argument, again, is that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence.

{¶14} Section 2921.31(A) of the Ohio Revised Code provides that “[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.” Mr. Greene has argued that his conviction is invalid because Officer Palmer was acting outside the scope of his official duties when he arrested him for disorderly conduct. He has argued that, because he was not convicted of underage consumption for passing the can of beer, Officer Palmer was not acting within the scope of his duties when he told him to get out of the parked car and searched him for weapons.

{¶15} This Court concludes there was sufficient evidence to support a finding that Mr. Greene purposely impeded Officer Palmer’s investigation and Officer’s Alten’s attempt to arrest him. Officer Palmer testified that it is against the law to open a door into oncoming traffic and to have an open container of beer in a car, and that he smelled marijuana as he approached the car. Officer Palmer also said that, while he was investigating those offenses, Mr. Greene was being loud and boisterous and was taunting Officer Alten and him. He further said that, after Mr. Greene failed to comply with his instructions and was told that he was under arrest, he pulled away and began running when Officer Alten attempted to handcuff him.

{¶16} Regarding whether Mr. Greene’s conviction is against the manifest weight of the evidence, Officer Alten also testified that Mr. Greene was being “loud and disorderly” during Officer Palmer’s investigation. Officer Alten said that Mr. Greene continued to act disorderly despite being told by Officer Palmer and him to quiet down. He verified Officer Palmer’s testimony that Mr. Greene “pulled away . . . and began running” when he tried to handcuff him.

The trial court did not lose its way when it convicted Mr. Greene of obstructing official business. Mr. Greene's second assignment of error is overruled.

CONCLUSION

{¶17} Mr. Greene's convictions of assaulting a police officer and obstructing official business are supported by sufficient evidence and are not against the manifest weight of the evidence. The judgment of the Lorain County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

KENNETH N. ORTNER, attorney at law, for appellant.

DENNIS WILL, prosecuting attorney, and MARY R. SLANCZKA, assistant prosecuting attorney, for appellee.