

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24437

Appellee

v.

CHARLES A. WORKMAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 02 0562

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 24, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Charles Workman, appeals from the decision of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On February 18, 2008, a gas station attendant in Akron, Ohio, called 911. Shortly thereafter, Akron Police Officer Robert Miller arrived on the scene to find Workman pacing back and forth outside the station. Officers determined that there was an outstanding warrant for Workman’s arrest. In response, Officer Miller and his partner attempted to place Workman in their police cruiser. During this attempt, Workman bit Officer Miller’s finger. Officer Miller commanded Workman to release his finger, and when Workman did not comply it became necessary for Officer Miller to utilize “forced compliance.” Workman was ultimately arrested.

{¶3} On February 29, 2008, Workman was indicted on one count of assault, in violation of R.C. 2903.13(A). Because the assault was on a peace officer while in the

performance of his official duties, the charge was classified as a fourth degree felony. Workman pled not guilty to this charge. On April 29, 2008, the State filed its notice of intent to use “other acts” evidence and Workman responded. Immediately prior to the August 12, 2008 trial, the trial court ruled that it would allow the State to present the “other acts” evidence. The jury found Workman guilty. The trial court sentenced him to 12 months of incarceration. He timely appealed his conviction and sentence and he has raised two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED BY DENYING WORKMAN’S CRIMINAL RULE 29 MOTION BECAUSE THE STATE FAILED TO MEET ITS BURDEN OF PRODUCTION AT THE CLOSE OF ITS CASE-IN-CHIEF.”

{¶4} In his first assignment of error, Workman contends that the trial court erred in denying his Crim.R. 29 motion because the State failed to meet its burden of production at the close of its case-in-chief.

{¶5} When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution has met its burden of production, while a manifest weight challenge requires the court to examine whether the prosecution has met its burden of persuasion. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). To determine whether the evidence in a criminal case was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the prosecution:

“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. 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, paragraph two of the syllabus.

{¶6} Workman was convicted of assault on a corrections officer, in violation of R.C. 2903.13(A), which prohibits a person from knowingly causing or attempting to cause physical harm to another.

{¶7} Here, Workman contends that the State did not show that he knowingly caused physical harm to Officer Miller. More specifically, Workman argues that the testimony offered by the State demonstrated that he accidentally bit the officer while he was screaming for help. This, he argues, does not amount to a showing that he knowingly caused or attempted to cause physical harm to Officer Miller.

{¶8} According to the Ohio Revised Code, “[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature.” R.C. 2901.22(B). Further, “[a] person has knowledge of circumstances when he is aware that such circumstances probably exist.” *Id.* To determine if the knowledge element exists, “[a] defendant’s state of mind may be inferred from the totality of the surrounding circumstances.” *State v. Harper* (Mar. 29, 2000), 9th Dist. No. 19632, at *2.

{¶9} Officer Miller testified that on February 18, 2008, he responded to a call at a gas station in Akron, Ohio. Upon arrival, he observed that other police officers had already separated two individuals. He testified that Workman was one of the individuals and was pacing and acting erratically. He stated that while the officers were investigating, Workman refused to follow the instructions that he was given. Because he had not been searched and would not comply with officers’ commands to keep his hands out of his pockets, Workman was handcuffed and searched. Officer Miller determined that Workman had an outstanding warrant for contempt of court. He stated that he led Workman to his police cruiser and told him to get in the vehicle to discuss the warrant. He testified that he intended to advise him that he had missed a court date

and to tell him that he needed to resolve the issue. He stated that had Workman complied with his requests, Workman would have been released with a summons to appear in court.

{¶10} Officer Miller stated that when he brought Workman to the cruiser, Workman became belligerent and refused to get into the vehicle. Another officer forced him to sit in the backseat of the cruiser, but he would not put his feet into the vehicle. Therefore, Officer Miller entered the passenger side and tried to pull Workman inside so that the officers could close the door on the driver's side. Officer Miller stated that to accomplish this, he grabbed Workman and started pulling him towards him. He testified that as he pulled him towards him, he felt a pain in his hand, and when he looked down, Workman was biting his left middle finger. Officer Miller testified that while he was attempting to get Workman into the vehicle, Workman was screaming for help. He stated that he did not think it was possible that his finger accidentally slipped into Workman's mouth and that Workman did not immediately release his finger. Officer Miller stated that he instructed Workman to release his finger but Workman did not. He had to push on the pressure points on Workman's face to accomplish "painful compliance." He stated that he was trained to utilize this method.

{¶11} Officer Miller's testimony provided sufficient evidence by which a reasonable juror could have found that Workman knowingly bit Officer Miller. Officer Miller stated that Workman was belligerent and was not following officer commands. Regardless of how Officer Miller's finger ended up in Workman's mouth, Workman ignored Officer Miller's command to release his finger, which required Officer Miller to utilize the "painful compliance" technique. From this testimony, a reasonable juror could find that Workman "acted knowingly (i.e., he is presumed to have known the result of his conduct) because he initiated a course of conduct which increased the likelihood of violence and injury." (Internal citations and quotations

omitted.) *State v. Bailey*, 9th Dist. No. 05CA008848, 2006-Ohio-5286, at ¶19 (holding that inmate’s action of ignoring a correction officer’s command to return to his bunk area, thus requiring the officer to use force during which the inmate punched the correction officer was sufficient to sustain a conviction that the inmate acted knowingly). Accordingly, Workman’s first assignment of error is overruled.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED BY ALLOWING THE PROSECUTION TO USE [WORKMAN’S] PRIOR CONVICTION IN THE STATE’S CASE-IN-CHIEF.”

{¶12} In his second assignment of error, Workman contends that the trial court erred by allowing the prosecution to use his prior conviction in the State’s case-in-chief.

{¶13} A trial court possesses broad discretion with respect to the admission of evidence. *State v. Ditzler* (Mar. 28, 2001), 9th Dist. No. 00CA007604, at *2, citing *State v. Maurer* (1984), 15 Ohio St.3d 239, 265. An appellate court will not overturn the decision of a trial court regarding the admission or exclusion of evidence absent a clear abuse of discretion that has materially prejudiced the defendant. *Ditzler*, supra, at *2, see, also, *State v. Ali* (Sept. 9, 1998), 9th Dist. No. 18841.

{¶14} The Supreme Court of Ohio has articulated two requirements for the admission of “other acts” evidence. *State v. Broom* (1988), 40 Ohio St.3d 277, 282. First, substantial evidence must prove that the other acts were committed by the defendant as opposed to another person. *Id.* at 282. Second, the other acts evidence must fall within one of the theories of admissibility enumerated in Evid.R. 404(B). *Id.* at 282, see, also, *State v. Lowe* (1994), 69 Ohio St.3d 527, 530.

{¶15} Evid. R. 404(B) provides that evidence of prior criminal acts completely independent of the crime for which a defendant is being tried may be admissible for purposes other than proving the conformity of an accused with a certain character trait exhibited during the incident in question. Specifically, Evid.R. 404(B) provides the following:

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. *It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.*” (Emphasis added).

{¶16} Proof of one of the purposes set forth in Evid.R. 404(B) must go to an issue which is material in proving the defendant’s guilt for the crime at issue. *State v. DePina* (1984), 21 Ohio App.3d 91, 92, citing *State v. Burson* (1974), 38 Ohio St. 2d 157, 158.

{¶17} Workman contends that presenting evidence of a previous conviction of assault of a peace officer violated Evid.R. 404(B) and Evid.R. 609. However, Workman’s

“application of Evid.R. 609 to the facts of this case is incorrect. Evid.R. 609 provides, that, when attacking the credibility of a witness, certain prior convictions of the accused or a witness may be introduced into evidence, subject to certain limitations as set forth in that rule. In the instant case, evidence of these prior convictions was introduced on direct examination, and not in the process of impeaching these witnesses.” *State v. McAdory*, 9th Dist. No. 21454, 2004-Ohio-1234, at ¶27.

{¶18} As we will explain below, because the evidence of Workman’s prior conviction was offered for a proper purpose pursuant to Evid.R. 404(B) and not simply to impeach his testimony, “Evid.R. 609 has no application to [Workman’s] argument[.]” *Id.*

{¶19} We next turn to Workman’s contention that our decision in *State v. Bronner*, 9th Dist. No. 20753, 2002-Ohio-4248, is dispositive of this case. We do not agree.

{¶20} Workman cites to *Bronner* for the proposition that because Workman did not place his character into issue, the trial court erred by allowing the prosecution to introduce

Evid.R. 404(B) evidence during its case-in-chief. This reliance misses the mark for several reasons. First, as we noted above, the State did not present this evidence for purposes of impeachment, thus triggering the protection of Evid.R. 609. Second, Workman has selectively cited to certain portions of the *Bronner* opinion while neglecting to note that *Bronner* specifically stated that

“[t]he State has not argued at trial or on appeal that the disputed evidence was admissible for any purpose under Evid.R. 404(B). Instead, the State has argued that the evidence should come in because Bronner ‘opened the door’ to this evidence[.] *** On appeal, the State has also argued that the evidence is admissible to rebut arguments made by the defense.” *Bronner*, supra, at ¶32.

{¶21} In other words, the *Bronner* opinion’s main focus was not on Evid.R. 404(B). *Bronner* determined that the line of questioning at issue was an impermissible attack on Bronner’s character because he had not placed his character in issue. We further determined that none of the exceptions found in Evid.R. 404(B) were triggered. Accordingly, despite Workman’s urging, we do not conclude that the *Bronner* decision “sheds light on this controversy.”

{¶22} There is no dispute that Workman committed the other act at issue in this case. *Broom*, 40 Ohio St.3d at 282. With regard to the second element of the *Broom* test, Workman contends that the other act does not fit into an Evid.R. 404(B) exception. We do not agree.

{¶23} Workman does not contest the fact that he bit Officer Miller. Rather, his main contention below was that he accidentally bit Officer Miller’s finger while Officer Miller was attempting to pull him into the police vehicle. We conclude that evidence of Workman’s prior conviction of assault on a peace officer was properly admitted as proof of the absence of a mistake or accident. See *State v. Vinson*, 9th Dist. No. 23949, 2008-Ohio-2523, at ¶10 (concluding that based on the defendant’s contentions that the victim’s injury was accidental, we

could not conclude that the admission of evidence of prior convictions was an abuse of discretion because they tended to show that the victim's injuries were not an accident); *State v. Roper*, 9th Dist. No. 22566, 2005-Ohio-6327, at ¶13.

{¶24} Further, in light of our discussion regarding the sufficiency of the evidence above, we conclude that any error in admitting this evidence was harmless. *State v. Adams*, 9th Dist. No. 07-CA-0086, 2008-Ohio-4939, at ¶29. Officer Miller testified that he had to utilize “forced compliance” to get Workman to release his finger. In his own testimony, Workman admitted that he bit Officer Miller. He stated that Officer Miller put his finger in his mouth and his reaction was to bite him.

{¶25} Accordingly, Workman's second assignment of error is overruled.

III.

{¶26} Workman's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas 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 Summit, 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.

CARLA MOORE
FOR THE COURT

CARR, J.
CONCURS

DICKINSON, J.
CONCURS, SAYING:

{¶27} While I disagree with the majority's statement that abuse of discretion is the standard of review applicable to Mr. Workman's second assignment of error, I agree with its conclusion that the other acts evidence was properly received by the trial court because it tended to prove absence of mistake or accident.

APPEARANCES:

DONALD GALLICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.