[Cite as *State v. Townsend*, 2009-Ohio-3190.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. TERRENCE TOWNSEND Appellant	C.A. No. 24311 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 07 09 2974

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

BELFANCE, J.

{¶1} Defendant-Appellant Terrence Townsend appeals his conviction in the Summit County Court of Common Pleas for felonious assault. For reasons set forth below, we affirm.

I.

{¶2} On August 24, 2007, Laurie Martin and a stranger she met at a party, Terrence Townsend, went to the home of Townsend's friend, Zechary Harper, to continue drinking and smoking crack cocaine.

{¶3} While at Harper's home, Martin alleges that Townsend hit her in the face for disrespecting him. Martin then told Townsend and Harper that she wanted to leave. Townsend went out to Martin's car and Martin told Townsend that if he left in her car she would call the police. Martin alleges this caused Townsend to punch her in the face, splitting her lip. Townsend told Martin to go inside and to tell the police that she fell if they came to the house. If Martin did not comply, Townsend told her he would kill her.

{¶4} One of the neighbors saw the altercation between Townsend and Martin and reported it to the police. A police officer arrived and spoke with Martin outside the home. Martin told the police that she fell and that she did not want to go the hospital. The officer did not believe her story, but Martin maintained that she fell.

{¶5} The police left and Martin went back inside Harper's residence. Martin alleges that while she was in Harper's bathroom, Townsend raped her. Townsend also hit her again and spit in her face. Martin called her ex-boyfriend Neal Collins and told him to come pick her up. As Martin was trying to leave the house, Townsend saw her and demanded that she get in her car and drive. Martin was driving Townsend around when Collins spotted Martin's car. Collins followed the car and eventually Townsend told Martin to stop the vehicle and Martin got in Collins' car. Martin told Collins she was raped and he took her to the hospital.

{¶6} Townsend was charged with one count of rape in violation of R.C. 2907.02(A)(2) and one count of felonious assault in violation of R.C. 2903.11(A)(1). The case proceeded to a jury trial. The jury found Townsend guilty of felonious assault but could not reach a verdict on the rape charge. Subsequently, Townsend pled guilty to the charge of gross sexual imposition. Townsend was sentenced to a total of five and one-half years in prison.

{¶7} Townsend has now appealed, asserting two assignments of error. For ease of review, we will address the assignments of error out of order and combine a portion of Townsend's first assignment of error with the second assignment of error.

II.

ASSIGNMENT OF ERROR I.

> "I. THE VERDICT FINDING TERRENCE TOWNSEND GUILTY OF FELONIOUS ASSAULT IN VIOLATION OF OHIO REVISED CODE [SECTION] 2903.11(A)(1) IS AGAINST THE * * * SUFFICIENCY OF THE EVIDENCE AND AS SUCH THE VERDICT SHOULD BE REVERSED."

ASSIGNMENT OF ERROR II.

> "II. THE TRIAL COURT ERRED WHEN IT OVERRULED A TIMELY DEFENSE MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29 AS THERE WAS NOT SUFFICIENT EVIDENCE PRESENTED BY THE STATE OF OHIO TO ESTABLISH A PRIMA FACIE CASE OF FELONIOUS ASSAULT TO WARRANT THE CASE BEING SUBMITTED TO THE JURY."

{¶8} "When reviewing the trial court's denial of a Crim.R. 29 motion, this [C]ourt assesses the sufficiency of the evidence 'to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.'" *State v. Flynn*, 9th Dist No. 06CA0096-M, 2007-Ohio-6210, at ¶8, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. In reviewing challenges to sufficiency, we must view the evidence in a light most favorable to the prosecution. *State v. Cepec*, 9th Dist No. 04CA0075-M, 2005-Ohio-2395, at ¶5, citing *Jenks*, 61 Ohio St.3d at 279.

{¶9} In order to convict Townsend of felonious assault the State had to prove that Townsend knowingly caused serious physical harm to Martin. See R.C. 2903.11(A)(1). "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. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B). R.C. 2901.01(A) provides that:

> "[a]s used in the Revised Code:
>
> "* * *
>
> "(5) 'Serious physical harm to persons' means any of the following:
>
> "(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
>
> "(b) Any physical harm that carries a substantial risk of death;
>
> "(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

> "(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
>
> "(e) Any 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."

{¶10} Martin testified at trial that Townsend slapped her, punched her in the mouth, hit her in the face, and spit on her. The punch to her mouth left her lip hanging and bleeding and she had two black eyes. At the hospital, Martin received stitches in her lip and narcotics for the pain. Martin had a scar on her lip at the time of trial and said at the time of trial that she did not have "regular feeling" in her lip.

{¶11} This evidence is sufficient to take the felonious assault charge to the jury. The State provided evidence that Townsend hit Martin, leaving her with an injury requiring stitches and leaving a scar. We have stated that a "lingering scar on the victim's head currently constitutes a permanent disfigurement." *State v. Brown*, 9th Dist. No. 04CA008510, 2005-Ohio-2141, at ¶17; see, also, *State v. Adcox* (Apr. 19, 2000), 9th Dist. No. 98CA007049, at *5 ("The medical report indicates that Hughes received stitches in his lip. The report notes that Hughes would have a scar on his lip, but it would not be a bad scar. The jury could have reasonably found Hughes's injury to be a disfigurement of a permanent nature, constituting serious physical harm.").

{¶12} Townsend contends that the above described evidence was insufficient to support a conviction because "[t]he only testimony and supporting evidence came from Laurie Martin – not doctors or plastic surgeons." Townsend cites to no authority for this proposition. Further, photos taken at the hospital and the testimony of a forensic nurse examiner corroborated Martin's injuries. Townsend's argument is without merit.

{¶13} Townsend also contends that a stipulation admitted into evidence concerning the events requires us to conclude the State's evidence was insufficient to sustain a conviction. Prior to trial, Collins told the prosecutor and Townsend's attorney that Martin told him she had consensual sex with Townsend. She asked Townsend to beat her up so that Martin's boyfriend would not think the sex was consensual. When Collins' testimony differed from what he had previously told both the prosecutor and Townsend's attorney, a stipulation was entered into the record indicating: (1) that Martin told Collins subsequent to the alleged assault and rape that Martin and Townsend had consensual sex and (2) that Martin asked Townsend to beat her up so that Martin's boyfriend would not think the sex was consensual. This evidence, however, goes to the weight and credibility of Martin's testimony, not the sufficiency of the evidence. We overrule Townsend's assignment of error.

III.

ASSIGNMENT OF ERROR I.

> "I. THE VERDICT FINDING TERRENCE TOWNSEND GUILTY OF FELONIOUS ASSAULT IN VIOLATION OF OHIO REVISED CODE [SECTION] 2903.11(A)(1) IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE * * * AND AS SUCH THE VERDICT SHOULD BE REVERSED."

{¶14} When determining whether a conviction is supported by the manifest weight of the evidence,

> "an appellate 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." *Cepec* at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke this discretionary power in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340.

{¶15} At trial, Martin detailed the events that she alleged occurred at Harper's home. She stated that Townsend hit her for being disrespectful and at this point she informed Harper and Townsend that she wanted to leave. Townsend went to Martin's car and Martin told Townsend that if he left in her car, she would call the police. Townsend then punched her in the mouth, splitting her lip. Upon Townsend's orders, they went back inside. The police came to Harper's residence and Martin told the officer that she fell, just as Townsend told her to do. Martin went back inside. Martin stated that Townsend then raped her in the bathroom and hit her in the face again at least once and spit on her. Martin kept trying to come up with a plan to escape, but Townsend kept coming in and out of the residence. Finally, Martin was able to call Collins and ask him to come get her. When Martin went outside, Townsend saw her and demanded that she get in the car and drive. As she was driving around, Collins spotted Martin's car and followed it, as Martin signaled him to do. When Townsend told Martin to stop the car, Martin got out and got into Collins' vehicle.

{¶16} Edward Patalon, a police officer with the City of Akron testified that on the day of the assault he received a dispatch call directing him to proceed to the area near Harper's residence to investigate a disturbance reported by a neighbor. The caller indicated that a "female was getting beat up by a male" and that the altercation was occurring around a green car. Martin's car was green. Officer Patalon went to Harper's residence and spoke with Martin outside the house. Officer Patalon observed that Martin's lip was injured and Martin indicated

that she was intoxicated and fell. Officer Patalon did not believe that Martin fell and believed she was assaulted, but Martin maintained that she fell and refused medical treatment.

{¶17} The forensic nurse examiner, Jill Bunnell, who treated Martin on the night of the assault, also testified. She examined and discussed photographs taken the day of the assault which demonstrated Martin's appearance and injuries. Bunnell testified that when she examined Martin, Martin was tearful and indicated that her pain level was an "eight" on a scale of one to ten.

{¶18} Neal Collins, Martin's ex-boyfriend, testified that Martin called him on the night of the assault and asked him to pick her up. Collins stated that when he first spotted Martin's car he was not sure if she was trying to evade Collins. The car finally pulled over and Collins noticed that Martin's face was bloody and her lip was hanging. Martin indicated to Collins that she fell. Collins told Martin there was an emergency. As Martin went to get in the vehicle, Townsend grabbed her arm and said something to her. Martin then explained to Collins that she had been raped and beaten. Collins then testified that at some point after the assault, Martin told him that "she had wanted to get beaten up because she felt guilty for being there. And she did not want her new boyfriend to feel that she was there willingly."

{¶19} However prior to trial, Collins told the prosecutor and Townsend's defense attorney that Martin told him that she asked Townsend to beat her up to make it appear that she had been raped, to cover up the fact that she had consensual sex with Townsend. Thus, a stipulation to the above conversation was entered into the record.

{¶20} Harper, the owner of the residence where the assault occurred, also testified. He indicated that had been friends with Townsend for forty years. He stated that while Martin and Townsend were at his home, Townsend became upset with Martin and spit on her. Harper asked

the two to leave and all three went outside. Harper testified that Townsend slipped and fell outside and at that point Harper went back inside. Moments later, Townsend was knocking on Harper's door asking if they could use the bathroom because Martin fell. Harper did not see how Martin became injured, but noticed that her lip was bleeding. Harper stated that after being in the bathroom, Martin and Townsend came out, sat on the couch and were being all "lovey-dovey, kissing and everything." Then Harper stated that the police came and Martin told them that she fell. Thereafter, Harper asked Townsend to leave, and Townsend and Martin left together. Harper indicated that he was not aware of the rape allegations until police came to his home later that evening.

{¶21} While the testimony of Martin, Collins, and Harper is not perfectly congruous, it certainly is not irreconcilable with the determination that Townsend committed felonious assault. Even the stipulation, which Townsend argues requires us to determine that the jury lost its way, actually provides evidence to support the conclusion that Townsend committed felonious assault. As stated above, R.C. 2903.11(A)(1) provides that "[n]o person shall knowingly * * * [c]ause serious physical harm to another or to another's unborn[.]" Lack of consent is not listed in the statute as an element of the offense.

> "[T]he statutory scheme embodied in Chapter 29 suggests that it was not the intent of the General Assembly to make consent available as a general defense to criminal conduct. On the contrary, where consent was deemed appropriate as a defense, lack of consent was made a specific element of the crime. See, for example, R.C. 2907.02 (rape), R.C. 2913.02 (theft), and R.C. 2913.03 (unauthorized use of a vehicle)." *State v. Gerhardt* (Aug. 14, 1986), 2nd Dist. No. CA 2177, at *2.

The stipulation provides that Martin requested that Townsend beat her up. The stipulation does not indicate that Townsend did not comply with that request. If Martin made such a request, it actually provides further support that Townsend knowingly hit Martin, resulting in injuries

which constitute serious physical harm under the statute. After reviewing the entire record, we cannot conclude that the jury lost its way when it convicted Townsend of felonious assault. See *Cepec* at ¶6.

IV.

{¶22} Finally, in the conclusion of Townsend's brief he requests that this Court allow him to withdraw his guilty plea to the gross sexual imposition charge and to remand this matter for a new trial because Townsend's felonious assault conviction was based on insufficient evidence and was against the manifest weight of the evidence. We have, however, affirmed the jury's verdict. Nonetheless, even if we had not, Townsend asserts this argument in his conclusion, not as an assignment of error, and provides no citations to legal authority or the record to support his brief statement. As Townsend has not developed this argument we decline to address it. See App.R. 16(A)(3), (7).

V.

{¶23} In light of the foregoing, we overrule Townsend's assignments of error and affirm the judgment of the Summit County Court of Common Pleas.

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.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
CARR, J.
CONCUR

APPEARANCES:

EDDIE SIPPLEN, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.