

STATE OF OHIO                    )  
  )ss:  
COUNTY OF MEDINA         )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       09CA0042-M

Appellee

v.

STEPHEN P. WILLIAMS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE No.     08-CR-0443

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 29, 2010

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BELFANCE, Judge.

{¶1} Defendant-Appellant Stephen Williams appeals from his aggravated assault conviction in the Medina County Court of Common Pleas. For reasons set forth below, we affirm.

FACTS

{¶2} On the evening of October 7, 2008, Jennifer Farnsworth, nka McKee, and John DeMell were returning to Dale Reinhart’s trailer where they both were staying. Upon reaching the trailer, Farnsworth and DeMell encountered Reinhart and Williams who were getting tools from Williams’ truck to fix Reinhart’s door. Williams was holding a flashlight and was standing near the bed of his truck. Williams, who was formerly homeless, befriended Reinhart when Williams was staying in the park near the trailer. At the time of the incident Williams had been living with a couple in Valley City for five years whom he met through a church program; however, Williams still often returned to the trailer to visit and help out.

{¶3} Farnsworth approached Williams and the two argued. Farnsworth confronted Williams because Williams told Farnsworth's boyfriend, Brian McKee that Farnsworth was seeing her ex-boyfriend. Williams alleges that Farnsworth slapped him, although Farnsworth denies it. The incident ended when Williams hit Farnsworth on the top, left side of her head with the flashlight, resulting in an approximately two-inch laceration which required staples to close.

{¶4} Williams was charged with two counts of felonious assault in violation of R.C. 2903.11(A)(1),(2). After a bench trial, the trial court found Williams not guilty of both counts of felonious assault, but guilty of aggravated assault in violation of R.C. 2903.12(A)(2), a felony of the fourth degree, and sentenced him to two years of community control and ninety days in jail.

{¶5} Williams has timely appealed raising one assignment of error for our review. He argues that his conviction is based upon insufficient evidence and is against the manifest weight of the evidence as the knowingly element was not established and the injury was accidentally inflicted while Williams was defending himself.

#### SUFFICIENCY

{¶6} “Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo.” *State v. Williams*, 9th Dist. No. 24731, 2009-Ohio-6955, at ¶18, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. When assessing the sufficiency of the evidence, this Court examines 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.

{¶7} Williams was convicted of aggravated assault in violation of R.C. 2903.12(A)(2).

R.C. 2903.12(A)(2) provides that

“[n]o person, 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, shall knowingly: [] [c]ause or attempt to cause physical harm to another \* \* \* by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the 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. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶8} It appears Williams first argues that because the trial court acquitted him of felonious assault, it could not find him guilty beyond a reasonable doubt of aggravated assault. We disagree.

{¶9} R.C. 2903.11(A), the statute prohibiting felonious assault, provides that: “No person shall knowingly do either of the following: (1) Cause serious physical harm to another or to another's unborn; (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.” While the offenses are similar, an acquittal of one would not necessarily require an acquittal of the other. The trial court clearly believed that Williams was sufficiently provoked. Sufficient provocation, a mitigating element, differentiates aggravated assault from felonious assault.

{¶10} Williams also contends only that the State failed to prove beyond a reasonable doubt that Williams knowingly caused the injury to Farnsworth.

{¶11} The State presented the testimony of DeMell, who was a friend of Farnsworth since the two were in high school and was with her on the evening of October 7, 2008. DeMell stated that he and Farnsworth only had a platonic relationship. A few days prior to the incident,

Williams told DeMell that he would buy Farnsworth narcotics in exchange for sexual favors. DeMell was the sole witness who actually observed Williams strike Farnsworth with the flashlight. DeMell testified that he and Farnsworth were walking back from a nearby Citgo to Reinhart's trailer where they were staying. Several people were staying at the trailer and many of them, including DeMell and Farnsworth used illegal drugs. However, DeMell denied using them that evening and claims that he did not see Farnsworth using drugs either, but acknowledged that they both were drinking. As Farnsworth and DeMell approached the trailer, they saw Williams and Reinhart standing outside by Williams' truck. Williams was holding a flashlight.

{¶12} When Farnsworth got closer to the trailer she confronted Williams about what Williams told her boyfriend, Brian McKee, concerning the time she spent with her ex-boyfriend. DeMell did not see anything in Farnsworth's hands. The two argued back and forth and then Williams told Farnsworth that "This wouldn't have happened if you weren't a whore." Farnsworth became angry. She approached Williams and began yelling at him. DeMell observed pushing and that "both their hands were up." DeMell then saw Williams hit Farnsworth with the flashlight. DeMell stated that Williams swung it "[s]traight down \* \* \* [l]ike a club or a bat[]" and hit her on the top of her head. Farnsworth "went down to her knees, was holding her head, and [DeMell] could see [] the blood pouring through her fingers. And then she was screaming[.]" DeMell then saw Williams wiping down the flashlight with a rag. DeMell also testified that when Williams was striking Farnsworth with the flashlight, he "[could] see anger in [Williams'] face."

{¶13} Williams appears to contend that there was insufficient evidence presented to establish that he knowingly caused physical harm to Farnsworth when his actions were a

combination of self-defense and accident. However, when this Court examines the sufficiency of the evidence we examine the evidence in a light most favorable to the prosecution. *Cepec* at ¶5, citing *Jenks*, 61 Ohio St.3d at 279. Based on the above testimony we conclude that there was sufficient evidence presented which if believed, would convince the average mind beyond a reasonable doubt that Williams’ actions were knowing. *Flynn* at ¶8, quoting *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus. Williams appeared to be angry and swung the flashlight in a downward manner which suggests that Williams was aware that his actions would probably result in an injury to Farnsworth. We cannot conclude that Williams’ conviction is based upon insufficient evidence.

#### MANIFEST WEIGHT

{¶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 the discretionary power to grant a new trial 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. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶15} Essentially Williams argues that his conviction is against the manifest weight of the evidence because the evidence supports the conclusion that he accidentally hit Farnsworth with the flashlight while he was defending himself from her and thus his actions were not knowing. We disagree.

{¶16} The State presented the testimony of four witnesses to support its case: Farnsworth, an officer, the doctor who treated Farnsworth, and DeMell. DeMell's direct testimony was previously detailed above.

{¶17} On cross-examination, DeMell confirmed that his relationship with Farnsworth was only a friendship, despite the fact the two often slept in the same bedroom when they stayed at the trailer. DeMell was questioned about his drug and alcohol use and confirmed that at the time of the incident he was a drug addict, but had not been using the day of the incident. DeMell testified that the week before the incident he was with Farnsworth at a bar and she spoke with her ex-boyfriend. DeMell also indicated that Farnsworth was picked up by someone around three or four in the morning; DeMell was told the person who picked her up was her ex-boyfriend.

{¶18} Farnsworth, who was five feet two inches tall and 125 pounds at the time of the altercation, testified. Farnsworth found out that Williams told her boyfriend, Brain McKee, that Farnsworth was seeing her ex-boyfriend. Farnsworth testified that prior to the incident, Williams asked her to perform sexual favors in exchange for money on a few different occasions. Farnsworth admitted to previously being convicted of forgery and theft. On the evening of October 7, 2008, Farnsworth went to a Citgo with DeMell in order to call McKee from a pay phone as she did not have her own phone. Farnsworth admitted to drinking that night and indicated that she had two drinks, including the one she carried with her on her way back to Reinhart's trailer. She admitted to using illegal drugs but stated that she had not used drugs for twenty to twenty-eight days prior to the date of the incident.

{¶19} When Farnsworth and DeMell returned to the trailer, they saw Reinhart and Williams outside by Williams' truck. Williams had a flashlight in his hand. Farnsworth confronted Williams about what he told McKee. The two exchanged words. Williams called

Farnsworth a “pill-chasing whore.” The next thing Farnsworth remembered was feeling pain and then she was bleeding and screaming. Farnsworth denied hitting or touching Williams in any manner and testified that nothing prevented Williams from walking away from the argument.

{¶20} Angela Miliano came outside when she heard Farnsworth screaming and put a towel on her head to help stop the bleeding. There was so much blood, Farnsworth and Miliano went back outside to wait for the ambulance that Williams had called. Farnsworth was taken to the hospital where she received pain medication, antibiotics and seven staples in her scalp to close the laceration.

{¶21} On cross-examination, Farnsworth acknowledged that she had seen her ex-boyfriend within a few days prior to the incident. Farnsworth was asked if she remembered telling Miliano not only that Williams hit her with the flashlight, but that he also hit her on the other side of her face. She answered in the affirmative and explained that she told Miliano that because she believes that is what happened; not only did Farnsworth have a laceration on her scalp, she claimed she had a lump on the other side of her head, which she believed was also caused by Williams. Farnsworth said that she only had vague recollections of the details of the actual incident and what happened afterward. Farnsworth was also asked if she threatened harm to Miliano if Miliano did not testify the way Farnsworth wanted her to. Farnsworth denied this and denied threatening Miliano at all.

{¶22} Officer Frederick Geissman also testified for the State. At the time of the trial, Officer Geissman had been a police officer for the Lodi Police Department for twenty-seven years. Officer Geissman responded to the scene. He spoke with Williams. Williams said there had been an argument, that he pushed Farnsworth away, and that he accidentally hit her in the head with the flashlight. As Williams was giving a written statement, he became sick and could

not complete the statement. He asked Officer Geissman if he was going to be charged with felonious assault.

{¶23} Officer Geissman testified that the flashlight was over fourteen inches long and weighed 2.6 pounds. Officer Geissman arrested Williams after the ambulance took Farnsworth to the hospital. He indicated that Williams is five feet, eleven inches tall. Officer Geissman talked to Farnsworth at the hospital and noticed that she smelled of alcohol. He noted that she was hysterical and that her injury was on the left side of her head, mid-way back.

{¶24} On cross-examination, Officer Geissman clarified that when Williams became ill while completing the written statement, Williams indicated that he thought maybe he should talk to a lawyer first.

{¶25} Dr. Godale, who treated Farnsworth for her injury, also testified for the State. Dr. Godale stated that Farnsworth told her she was assaulted by an acquaintance who was making sexual advances towards her. Farnsworth told the doctor that after she declined the advances, he hit her on the head with the flashlight. The injury to Farnsworth's head was about two inches long and required staples to close. Imaging scans revealed no broken bones or other injuries requiring surgery. Farnsworth denied narcotic use that day, but admitted to using in the past. Farnsworth admitted to having six beers that day. Farnsworth rated her pain a "ten" out of ten. Dr. Godale closed the injury with staples and prescribed Farnsworth antibiotics and pain medication. The doctor testified that an injury like Farnsworth's would leave a scar. Dr. Godale did not believe that Farnsworth was merely engaging in drug-seeking behavior and believed her pain was genuine and warranted a prescription for pain medication. Dr. Godale also testified that Farnsworth did not appear to be under the influence of drugs or alcohol.



{¶26} Williams testified in his defense. Additionally he presented the testimony of Reinhart, Miliano, and Mr. and Mrs. Berger.

{¶27} Reinhart acknowledged that illegal drug use occurred in his trailer. However, he testified that Williams did not use drugs. He stated that Farnsworth was seeing her ex-boyfriend and did not want her current boyfriend, McKee to know about it. McKee would call Williams' cell phone in order to ask Williams about what Farnsworth was doing. Williams told McKee that Farnsworth was seeing her ex-boyfriend. On the day of the incident, Williams came over to help Reinhart fix his door. The two were outside looking for a tool and because it was dark, Williams had a flashlight. Farnsworth and DeMell then returned to the trailer. Farnsworth confronted Williams and the two began arguing. Reinhart turned around. Reinhart heard a scuffle and when he turned back around, Farnsworth was on the ground screaming. Williams appeared surprised. Reinhart testified that both DeMell and Farnsworth appeared to be drunk.

{¶28} On cross-examination Reinhart denied using illegal drugs the night of the incident, but admitted to using them in the past. Reinhart admitted that he did not see Williams hit Farnsworth with the flashlight and testified that Williams called Farnsworth a "pill-chasing whore."

{¶29} Miliano testified that she was living at Reinhart's trailer during October 2008. She indicated that she knew Farnsworth was seeing her ex-boyfriend as she talked about what a good time she had with him. On October 7, 2008, Miliano was inside the trailer at the time of the altercation. She heard Farnsworth screaming and ran outside. Farnsworth told Miliano that Williams hit her with a flashlight and that she had slapped Williams first. Miliano testified that Williams appeared shocked after the incident. Miliano averred that after the incident both Farnsworth and McKee called her and threatened her, her boyfriend and her son. Farnsworth

told Miliano that if she did not support Farnsworth's case she would beat her up. Farnsworth and McKee also showed up to Miliano's house threatening her. Miliano filed a police report. Miliano testified that Farnsworth was a drug user and that Farnsworth sometimes lied about some things.

{¶30} On cross-examination Miliano testified that she and Farnsworth had a falling out after the drug task force raided the trailer. After the raid, Farnsworth began threatening Miliano and telling her that she had better tell the drug task force that Reinhart and his girlfriend were making the meth lab and not Farnsworth and McKee. Miliano acknowledged that most of the threats she received were about the raid and not about the incident with Williams. Miliano also admitted that even after Farnsworth had threatened her she still had Farnsworth watch her child. Miliano hoped that doing so would repair their friendship.

{¶31} On re-direct, Miliano testified that Farnsworth only began threatening her about the Williams incident after Farnsworth learned that Miliano had not seen the alleged assault. Farnsworth wanted Miliano to testify that she saw the whole thing and that Williams struck Farnsworth intentionally.

{¶32} Mr. and Mrs. Berger also testified for the defense. Mrs. Berger testified that her family came in contact with Williams through a program in her church for homeless people. At the time of the trial, Williams had been staying with her and her husband for about five years. Mrs. Berger testified that Williams was allowed to use her husband's truck and that he had a cell phone through their family plan. She believed Williams to have integrity.

{¶33} Mr. Berger testified that he considered Williams to be part of the family and that Williams helped with the family's gardening and produce business. Mr. Berger indicated that the only way he would lose confidence in Williams' integrity is if Williams lied to him or took

money from him. Mr. Berger testified that he overheard Williams having a conversation with a “Jen” the day before the incident. He heard Williams say “Jen, I didn’t know I was supposed to lie for you.”

{¶34} Finally, Williams testified in his own defense. He stated that he became acquainted with Reinhart when he was homeless and staying in a park near Reinhart’s trailer. Reinhart would help Williams out and the two became friends. Several people stayed in Reinhart’s trailer and many of them used illegal drugs. After Williams started living with the Bergers, he still often visited and stayed over at Reinhart’s trailer. Williams would let the people staying at Reinhart’s trailer use his cell phone. Williams said that Farnsworth came home from the bar one night around the time of the incident bragging that she was “making out” with her ex-boyfriend. A few days later Farnsworth used Williams’ phone to call her ex-boyfriend. Early that morning, around 4:30 a.m., her ex-boyfriend came and picked her up. Because Farnsworth would often use Williams’ phone, McKee would call Williams to ask about Farnsworth and what she was doing. During one of these phone calls, Williams told McKee that Farnsworth was seeing her ex-boyfriend.

{¶35} On October 7, 2008, Williams went to Reinhart’s trailer after work and ended up helping Reinhart fix his door. Reinhart told Williams that if Farnsworth started trouble while he was there, Reinhart would ask her to leave. Reinhart and Williams were standing at the back of Williams’ truck and Williams was using a flashlight to locate a tool. Farnsworth came back and confronted Williams. The two argued and Williams called her a “pill-chasing whore.” Williams then turned back to the truck and Farnsworth began slapping him. Williams turned around and continued to get slapped in the face and the head. He indicated he was right up against the truck and could not go anywhere. Williams averred that he was just trying to push her off of him and

did not intend to strike her with the flashlight. He denied swinging it like a club or a bat. However, Williams did acknowledge that he believed the flashlight did strike Farnsworth. He stated that he pushed Farnsworth in self-defense, and that resulted in him accidentally hitting Farnsworth with the flashlight. He further stated that he was conscious that he had the flashlight in his hand. After the incident Williams called 911. He began to give a statement to the police, but became ill mid-way through when he began to realize that someone might blame him for the altercation.

{¶36} On cross-examination Williams testified that he had used marijuana in the past and smoked one joint on the day of the alleged assault. Williams stated that he did not tell DeMell that he would give Farnsworth drugs in exchange for sex. Instead Williams contended that DeMell said that Williams could probably have sex with Farnsworth in exchange for drugs. Williams indicated that he weighed 250 pounds at the time of the alleged assault and was five foot ten.

{¶37} In light of the all the testimony and evidence presented, we cannot determine that the trier of fact “lost its way” and “created such a manifest miscarriage of justice” in finding Williams guilty of aggravated assault. *Cepec* at ¶6, quoting *Otten*, 33 Ohio App.3d at 340. While there was conflicting testimony presented to the trial court and several of the witnesses’ credibility was questionable, we cannot say that the trial court lost its way by the manner in which it resolved conflicts in the testimony and credibility issues related to the witnesses. The trial court was faced with the unenviable task of determining the credibility of several witnesses whose testimony was not always consistent and who were likely biased to some extent based upon their relationships to each other.

{¶38} Williams implicitly appears to argue that his conviction is against the manifest weight of the evidence because the evidence overwhelmingly established that Williams' actions were accidental and/or in self-defense. Without question, Williams presented testimony as to both. However, it is clear from the transcript that the trial court, as trier of fact, considered both self-defense and accident and found neither to be available to Williams. We begin by noting that:

“‘[t]he defenses of accident and self-defense are inconsistent by definition.’ *State v. Barnd* (1993), 85 Ohio App.3d 254, 260. While accident ‘involves the denial of a culpable mental state and is tantamount to the defendant not committing an unlawful act,’ one claiming self-defense ‘concedes [that] he had the purpose to commit the act, but asserts that he was justified in his actions.’ *Id.*” *State v. Howe* (Jul. 25, 2001), 9th Dist. No. 00CA007732, at \*2.

Nonetheless, “courts may occasionally find instruction on both defenses to be warranted in cases presenting certain factual scenarios[.]” *Id.* Assuming, without deciding, that it was appropriate to consider both accident and self-defense in this case, we determine that the trial court did not err in concluding that neither was applicable. “As this [C]ourt has pointed out before, one may use such force as the circumstances require to protect oneself against such danger as one has good reason to apprehend.” *State v. Kewer*, 9th Dist. No. 07CA009128, 2007-Ohio-7047, at ¶6, quoting *Akron v. Dokes* (1986), 31 Ohio App.3d 24, 25.

{¶39} Williams, who was five foot ten to five foot eleven and 250 pounds at the time of the incident, was confronted by Farnsworth, who was five foot two and 125 pounds at the time. The only thing Farnsworth had in her hands was a beer can. There were no allegations that Farnsworth used the beer can as a weapon nor were there allegations that she threatened to do so. Thus, Williams was faced with an angry woman who was significantly smaller, and likely weaker, than himself who, if she was attacking him, was attacking him only with her hands. It is hard to believe that Williams who had a flashlight in his hand and access to other tools in his

truck reasonably feared injury from Farnsworth. While the trial court did not find that the facts of the case supported Williams' contention that he acted in self-defense, it did believe that Williams was provoked by Farnsworth to retaliate. Given the totality of the circumstances detailed above, this is not unreasonable.

{¶40} Nor can we conclude that it was unreasonable for the trial court to find that Williams' actions were not accidental. The court was presented with an eye-witness who provided testimony evidencing that Williams acted with the appropriate mens rea. DeMell testified that Williams, who appeared to be angry, swung the flashlight like a club and hit Farnsworth on the top of her head. If DeMell's testimony is believed, it is reasonable to conclude that Williams was not only aware that his actions probably would result in physical harm to Farnsworth, but that such was his intention as well. In reviewing the weight of the evidence on this point, although Williams disputed DeMell's testimony we were not confronted with additional and substantial evidence that supported Williams' version of what occurred. The trial court also asked Williams to recreate the incident and thus was presented with visual evidence that this Court cannot review. From this demonstration, it appears the trial court concluded based upon the location of Farnsworth's injury that the action of the flashlight had to be directed at least slightly downward; while certainly not definitive, this factual finding could be used to support the conclusion that Williams' actions were not accidental. Clearly the trial court was faced with conflicting testimony which it resolved, at least in part, in the State's favor. There is no error in that determination. Based upon our independent review of the record we are unable to conclude that "the evidence presented weighs heavily in favor of [Williams]." *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340.

## CONCLUSION

{¶41} In light of the foregoing, we affirm the judgment of the Medina County Court of Common Pleas.

Judgment affirmed.

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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 Medina, 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.

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EVE V. BELFANCE  
FOR THE COURT

CARR, J.  
CONCURS

DICKINSON, P. J.  
CONCURS IN JUDGMENT ONLY, SAYING:

{¶42} Mr. Williams's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Accordingly, I concur in the majority's judgment.

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL A. HOPKINS, Assistant Prosecuting Attorney, for Appellee.