

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009628

Appellee

v.

ALEXANDER J. HAMRICK

APPEAL FROM JUDGMENT
ENTERED IN THE
AVON LAKE MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. CRB 0800769

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 16, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Alexander Hamrick, appeals from his conviction in the Avon Lake Municipal Court. This Court affirms.

I

{¶2} During the early morning hours of December 21, 2008, Hamrick and his former girlfriend, Amanda Brooks, consumed several alcoholic beverages and became involved in an altercation. The incident occurred in Hamrick's driveway where he parked his truck after driving Brooks home from a bar. According to Brooks, Hamrick pulled her from the car, threw her to the ground, and kicked her repeatedly. As a result of the incident, Hamrick was charged with misdemeanor assault, in violation of R.C. 2903.13(A). The matter proceeded to a bench trial on June 18, 2009. Subsequently, the court found Hamrick guilty and sentenced him to a suspended jail term and a fine.

{¶3} Hamrick now appeals from the court’s judgment and raises three assignments of error for our review. For ease of analysis, we combine two of the assignments of error.

II

Assignment of Error Number One

“THE VERDICT OF THE TRIAL COURT FINDING HAMRICK GUILTY OF MISDEMEANOR ASSAULT IN VIOLATION OF O.R.C. § 2903.13 WAS NOT SUPPORTED BY EVIDENCE SUFFICIENT ENOUGH TO SUSTAIN A CONVICTION AND THE DECISION MUST BE REVERSED.”

{¶4} In his first assignment of error, Hamrick argues that his assault conviction is based on insufficient evidence. Specifically, Hamrick argues that there was no evidence that he knowingly pushed Brooks. We disagree.

{¶5} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

“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.” *Id.* at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

“In essence, sufficiency is a test of adequacy.” *Thompkins*, 78 Ohio St.3d at 386.

{¶6} R.C. 2903.13(A) provides that “[n]o person shall knowingly cause or attempt to cause physical harm to another[.]” Physical harm means “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3). “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).

{¶7} Both Brooks and Hamrick testified at trial that Hamrick pushed Brooks to the ground. Brooks testified that she and Hamrick argued as they left a bar and drove to Hamrick’s house. According to Brooks, Hamrick pulled her from his car when they arrived at his home, threw her to the ground, and repeatedly kicked her. According to Hamrick, he pushed Brooks to the ground more than once because she “charged” at him after he called her “a f***ing bitch.” Hamrick admitted that he was much larger than Brooks and that Brooks struck both his truck and the ice on the ground when he pushed her. Further, Judith Welsh, the emergency room physician that examined Brooks shortly after the incident with Hamrick, testified that Brooks sustained numerous bruises to her arms and torso, consistent with blunt force trauma. Hamrick’s argument that there is no evidence he acted knowingly lacks merit. The record contains sufficient evidence that Brooks suffered injuries, which Hamrick was aware would probably occur when he grabbed her and pushed her down. Thus, his first assignment of error is overruled.

Assignment of Error Number Two

“THE VERDICT OF THE TRIAL COURT FINDING HAMRICK GUILTY OF MISDEMEANOR ASSAULT IN VIOLATION OF O.R.C. § 2903.13 WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND AS SUCH THE TRIAL COURT MUST BE REVERSED.”

Assignment of Error Number Three

“THE TRIAL COURT ERRED TO THE DETRIMENT OF HAMRICK AND THE CASE SHOULD BE DISMISSED AS HAMRICK ESTABLISHED BEYOND A PREPONDERANCE OF THE EVIDENCE AT TRIAL THAT HE ACTED IN SELF-DEFENSE ABSOLVING HIM OF GUILT FOR ANY PERCEIVED WRONG-DOING. HOWEVER THE TRIAL COURT APPLIED THE LAW FOR SELF-DEFENSE WHEN USING DEADLY FORCE INSTEAD OF NON-DEADLY FORCE.”

{¶8} In his second assignment of error, Hamrick argues that his assault conviction is against the manifest weight of the evidence. Specifically, he argues that the evidence only tended to show, at most, that he acted recklessly when he pushed Brooks. In his third assignment of error, Hamrick argues that the court erred in convicting him because he proved, by a preponderance of the evidence, that he used reasonable force against Brooks in self-defense.

{¶9} When considering a manifest weight argument, the Court:

“[M]ust 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* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.* Therefore, this Court’s “discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶10} Both parties admitted that they were intoxicated when this incident occurred and were arguing with each other up until the point that Hamrick pulled his truck into his driveway. Brooks testified that Hamrick parked the truck, walked over to the passenger’s side, pulled her out of the truck, threw her on the ground, and repeatedly kicked her while wearing boots. Dr. Welsh testified that Brooks’ injuries were consistent with blunt force trauma and could have

been caused by Hamrick kicking her. Photographs of Brooks from the hospital depict multiple bruises on Brooks' arm as well as redness and some bruising to her torso.

{¶11} Hamrick testified that Brooks became very angry with him while they were out and slammed the door of his truck after he drove her to his house. At that point, Hamrick called Brooks “a f***ing bitch,” and she “charged” at him. Hamrick testified that Brooks repeatedly came at him and tried to grab his t-shirt. Hamrick denied ever kicking Brooks, but admitted that he pushed her at least twice. The second time, Hamrick “pushed her harder and [Brooks] fell.” Hamrick then “made fun of her for a minute or two” and called her a “sloppy drunk.” He also “gave her the finger” when she got into her car and drove away. Hamrick conceded that Brooks struck both his truck and the ice on the ground when he pushed her. He further conceded that he weighs about 210 pounds and thought Brooks weighed about 130 pounds.

{¶12} The definition of physical harm only requires an injury, no matter how slight. R.C. 2901.01(A)(3). The record reflects that Brooks suffered several injuries to her legs and torso. Thus, she incurred physical harm. A reasonable trier of fact could have believed that Brooks sustained her injuries either because Hamrick kicked her or because he forcibly pushed her and caused her to strike his truck and the ice on the ground. Under either scenario, Hamrick's assertion that he only acted recklessly is meritless. Hamrick was much larger than Brooks and admitted to giving her a hard push on icy ground and then “ma[king] fun of her” when she actually fell. The record supports the conclusion that Hamrick acted knowingly. The only remaining question is whether he acted pursuant to a privilege. Specifically, Hamrick asserts that he acted in self-defense.

{¶13} “A defendant has the burden of establishing the affirmative defense of self-defense by a preponderance of the evidence.” *State v. Gates*, 9th Dist. No. 24941, 2010-Ohio-2994, at ¶7.

“To establish self-defense for the use of less than deadly force in defense of one’s person, the defendant must prove: (1) he was not at fault in creating the situation which gave rise to the event in which the use of non-deadly force occurred; (2) he had honest and reasonable grounds to believe that such conduct was necessary to defend himself against the imminent use of unlawful force; and (3) the force used was not likely to cause death or great bodily harm.” *State v. Tanner*, 9th Dist. No. 3258-M, 2002-Ohio-2662, at ¶21.

“[I]n general, ‘one may use such force as the circumstances require to protect oneself against such danger as one has good reason to apprehend.’” *Gates* at ¶7, quoting *Akron v. Dokes* (1986), 31 Ohio App.3d 24, 25.

{¶14} Hamrick argues that Brooks used force against him “by charging him twice and clawing at him.” There is no evidence in the record that Brooks clawed at Hamrick or ever tried to strike him. Even overlooking Brooks’ testimony, Hamrick only testified that Brooks was trying to grab the Pantera t-shirt that he just bought and he pushed her because he did not want her to rip it. He further admitted that: (1) Brooks first came at him because he called her “a f***ing bitch,” knowing that such a statement would “get[] her fired up”; and (2) after he shoved Brooks “harder” a second time and she fell down he “made fun of her for a minute or two.” All of this occurred while, in Hamrick’s own words, Brooks was “sloppy drunk.” Based on the foregoing, the trial court could have determined that Hamrick, who outweighed Brooks by eighty pounds or more, did not have reasonable grounds to believe that his conduct was necessary. See *Tanner* at ¶21. Consequently, the court did not err by convicting Hamrick of misdemeanor assault, and Hamrick’s final argument lacks merit.

III

{¶15} Hamrick's assignments of error are overruled. The judgment of the Avon Lake Municipal 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 Avon Lake Municipal Court, 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.

BETH WHITMORE
FOR THE COURT

MOORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

KENNETH N. ORTNER, Attorney at Law, for Appellant.

D. CHRIS COOK, Attorney at Law, for Appellee.