

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 10CA009781

Appellee

v.

DANIEL E. ROSEBROUGH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 09CR078873

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 7, 2011

WHITMORE, Judge.

{¶1} Defendant-Appellant, Daniel Rosebrough, appeals from the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I

{¶2} On August 11, 2009, Rosebrough visited his girlfriend, Jeanna Geiger, at her grandmother’s house and began to argue with Jeanna’s great uncle, Jerry Geiger. The argument escalated and led to an altercation, as a result of which Jerry Geiger sustained a facial laceration. Several members of Geiger’s family identified Rosebrough as Geiger’s attacker. Rosebrough spoke with the police later the same day, but insisted that Geiger had been the one to attack him. According to Rosebrough, Geiger was injured by some object he was holding after he attempted to hit Rosebrough with it and Rosebrough “blocked the blow.”

{¶3} On September 16, 2009, a grand jury indicted Rosebrough on two counts of felonious assault, in violation of R.C. 2903.11(A)(1) and R.C. 2903.11(A)(2), respectively. Both

counts also contained repeat violent offender specifications, based on Rosebrough's prior convictions. Rosebrough waived his right to a jury trial, and the matter proceeded to a bench trial on December 16, 2009. The trial court found Rosebrough guilty of both counts and both specifications, but merged the counts as allied offenses. The court sentenced Rosebrough to a total of six years in prison.

{¶4} Rosebrough now appeals from the court's judgment and raises one assignment of error for our review.

II

Assignment of Error

"THE VERDICTS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF MR. ROSEBROUGH'S RIGHTS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO STATE CONSTITUTION."

{¶5} In his sole assignment of error, Rosebrough argues that his guilty verdicts are against the manifest weight of the evidence. We disagree.

{¶6} In determining whether a conviction is against the manifest weight of the evidence an appellate 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. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 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.

{¶7} R.C. 2903.11 prohibits a person from "[c]aus[ing] serious physical harm to another" or "[c]aus[ing] *** physical harm to another *** by means of a deadly weapon or dangerous ordnance." R.C. 2903.11(A)(1)-(2). Rosebrough argues that his felonious assault verdicts are against the manifest weight of the evidence because there were two equally plausible explanations for Geiger's injuries. He argues that the court erred by refusing to believe his version of the events because the conclusion that Geiger was injured by his own hand "is just as plausible as the conclusion that [he] cut Mr. Geiger with a knife." We disagree.

{¶8} Geiger testified that he asked Rosebrough to leave several times before the two of them began to argue. According to Geiger, he never attacked Rosebrough. Geiger admitted that he might have been holding a beer bottle in his hand when he was arguing with Rosebrough, but denied ever using it to hit him. Geiger testified that, as the two men were fighting, Rosebrough quickly reached in his back pocket, removed a box cutter, and used it to slash Geiger's face before running away. Geiger sustained a deep laceration to his face as a result of the attack and had to have it surgically repaired at the hospital.

{¶9} John Davis and Dontaye Blakely also testified that they were present when the altercation between Geiger and Rosebrough occurred. Both men testified that Geiger was holding a beer bottle when he began fighting with Rosebrough, but that he smashed the bottle out of anger and never used it to attack Rosebrough. Both men also testified that they saw

Rosebrough cut Geiger with something he removed from his back pocket. Blakely was able to specify that he thought the object was a shiny, silver box cutter.

{¶10} Sergeant Edward Super II testified that, after he spoke with several witnesses and identified Rosebrough as a suspect, he found Rosebrough walking down the street on the night of this incident. Although Rosebrough told Sergeant Super that he was walking to the police station to report this incident, Sergeant Super testified that Rosebrough had been walking in a direction opposite that of the police station when he stopped him. Sergeant Super also testified that he did not observe any injuries on Rosebrough and that Rosebrough did not complain of any injuries.

{¶11} The only witness who testified in Rosebrough's defense was his girlfriend, Jeanna. Jeanna testified that her great uncle, Geiger, instigated the incident with Rosebrough by "get[ting] up in [] Rosebrough's face" earlier in the night and later trying to poke him with a stick. Jeanna testified that, after the situation escalated, Geiger hit Rosebrough in the head with a 40-ounce beer bottle and knocked him to the ground. Rosebrough then brought his hands up to defend himself and Geiger sustained the injury to his face. Jeanna claimed that she did not know what cut Geiger's face because the bottle never broke, but she denied ever seeing any weapon in Rosebrough's hands. Jeanna insisted that her entire family was lying about the incident because they disliked Rosebrough.

{¶12} On rebuttal, Officer Jeffrey Lacock testified that he interviewed Jeanna shortly after the altercation took place. Officer Lacock further testified that Jeanna said nothing about Geiger having a bottle in his hands during the fight and never claimed that Geiger used a bottle to strike Rosebrough in the head.

{¶13} Upon review of the record, we cannot conclude that Rosebrough's guilty verdicts are against the manifest weight of the evidence. Several witnesses saw Rosebrough attack

Geiger and use a weapon to cut his face. Further, Rosebrough's only witness did not present the same version of events at trial that she presented to Officer Lacock on the night in question. As such, this is not "the exceptional case in which the evidence weighs heavily against the conviction." *Martin*, 20 Ohio App.3d at 175. Rosebrough's sole assignment of error is overruled.

III

{¶14} Rosebrough's sole assignment of error is overruled. The judgment of the Lorain 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 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

CARR, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.