

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA0013-M

Appellee

v.

CALEB KLINGSIEK

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 13CR0195

Appellant

DECISION AND JOURNAL ENTRY

Dated: April 20, 2015

HENSAL, Presiding Judge.

{¶1} Caleb Klinksiek appeals his conviction for felonious assault in the Medina County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} On the evening of March 23, 2014, Michael Heil and his girlfriend, Christina Paine, attended a bonfire at the home of Tiffany Allen in Medina, Ohio. Among the guests were Jason Donelon, Jeremy Gibson, and Mr. Klinksiek, who was Ms. Allen’s boyfriend. Many of the guests were drinking during the party, including Mr. Heil. Ms. Paine said that, after a while, she decided that she and Mr. Heil should leave because no one was talking to her. According to Mr. Heil and Ms. Paine, as they were preparing to go, Mr. Donelon and Mr. Gibson confronted Mr. Heil about a tattoo that Mr. Heil had started, but not finished, on Mr. Donelon. Mr. Donelon had paid for the tattoo up front and wanted half of the money returned to him. Mr. Heil offered to complete the tattoo, but that was unsatisfactory to Mr. Donelon, and he and Mr. Gibson began

punching Mr. Heil. When Mr. Heil fell down, the men began to kick him. Ms. Paine testified that, around that time, Mr. Klinksiek came over and also began punching and kicking Mr. Heil. When the attack stopped, she helped Mr. Heil to his car and drove him to the hospital.

{¶3} Deputy Frank Telatko testified that, after the sheriff's department learned about the attack, it dispatched him to Ms. Allen's house. When he arrived, he spoke with Ms. Allen and Mr. Klinksiek, who denied that there had been any kind of verbal or physical altercation during the bonfire. Mr. Klinksiek acknowledged that Mr. Heil had been in attendance but said that he was "in perfect shape" when he left the bonfire. During the conversation, Deputy Telatko noticed that Mr. Klinksiek's right hand appeared swollen. When he asked Mr. Klinksiek about it, Mr. Klinksiek told him that he had injured it at work. After speaking with another deputy, who had traveled to the hospital to speak with Ms. Allen and Mr. Heil, Deputy Telatko arrested Mr. Klinksiek.

{¶4} The State tested blood that was on Mr. Klinksiek's jeans, and identified it as Mr. Heil's blood. A couple of weeks after the incident, Mr. Klinksiek made a statement to a deputy, explaining that he had injured his hand while moving some old garage doors that were going to be used in the bonfire. He also said that the blood on his clothes must have gotten there when he broke up the fight and helped Mr. Heil up from the ground.

{¶5} The Grand Jury indicted Mr. Klinksiek for felonious assault with a repeat violent offender specification. A jury found him guilty of the offense, and the trial court found him guilty of the specification. The court sentenced him to six years imprisonment. Mr. Klinksiek has appealed, assigning as error that his conviction is against the manifest weight of the evidence.

ASSIGNMENT OF ERROR

APPELLANT CALEB KLINKSIEK’S CONVICTION FOR FELONIOUS ASSAULT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶6} Mr. Klinksiek argues that his conviction is against the manifest weight of the evidence. If a defendant asserts that his conviction is against the manifest weight of the evidence:

[A]n 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.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side.

State v. Thompkins, 78 Ohio St.3d 380, 387 (1997). An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases.

State v. Carson, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at 340.

{¶7} According to Mr. Klinksiek, the State’s main witness, Ms. Paine, was not credible. He argues that there were inconsistencies between the written statement that she gave police on the night of the attack and her testimony at trial. He asserts that she was inconsistent about how much money Mr. Donelon wanted Mr. Heil to refund to him, who threw the first punch, and which assailant she attempted to pull away during the attack. He also argues that she embellished her version of the facts at trial, claiming that Mr. Klinksiek was smiling while he kicked Mr. Heil and that Mr. Heil was able to “jump[]” into his car after the attack despite having been severely beaten by three men. Mr. Klinksiek also argues that parts of Ms. Paine’s testimony were not plausible, such as her testimony that she only had half of a beer to drink that evening, even though everyone else at the bonfire was drinking heavily, with the exception of the

two women who were pregnant. He also notes that Ms. Paine testified that she and Mr. Heil left the party around 11:30 p.m. and went immediately to the hospital, which is about 15 minutes away. Mr. Heil's hospital records indicate, however, that they did not arrive at the hospital until after 1:00 a.m.

{¶8} Mr. Klinksiek also argues that, although there was blood on his pants, there was no evidence that there was blood on his boots. He argues that, if he kicked Mr. Heil in the face and side, blood would have splattered on his boots. He further notes that Brook Rees, who was one of the pregnant women who did not drink during the party, testified that it was only Mr. Donelon and Mr. Gibson who attacked Mr. Heil.

{¶9} In determining whether a conviction is against the manifest weight of the evidence, this Court has recognized that issues of credibility are primarily reserved for the trier of fact. *State v. Carr*, 9th Dist. Summit No. 26661, 2014-Ohio-806, ¶ 42. "This Court will not overturn the trial court's verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witness[es]' testimony over the testimony of others." *State v. Hill*, 9th Dist. Summit No. 26519, 2013-Ohio-4022, ¶ 15.

{¶10} Although there are inconsistencies in Ms. Paine's account of the attack, she was consistent about Mr. Klinksiek's role in it. Mr. Klinksiek, on the other hand, initially told law enforcement that nothing had occurred during the bonfire, then said he had injured his hand at work, before finally claiming that he had dropped a garage door on it while preparing for the party. The State played telephone recordings that Mr. Klinksiek had with Ms. Allen while he was in jail, in which Ms. Allen suggested possible explanations for the blood on his jeans and their need to get everyone together to get their stories figured out. Ms. Rees was one the individuals that Ms. Allen mentioned should be part of those discussions. In Ms. Rees's written

statement from the night of the attack, she did not mention any sort of altercation during the bonfire, but she went to the sheriff's department with Ms. Allen to make a new statement the day after Mr. Klinksiek posted bond.

{¶11} Upon careful review of the record, we conclude that the jury did not lose its way when it found that Mr. Klinksiek feloniously assaulted Mr. Heil. Mr. Klinksiek's assignment of error is overruled.

III.

{¶12} Mr. Klinksiek's conviction is not against the manifest weight of the evidence. The judgment of the Medina 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 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(C). 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.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR.

APPEARANCES:

VICTORIA L. EARLE, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MATTHEW A. KERN, Assistant Prosecuting Attorney, for Appellee.