

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 09AP-13
Plaintiff-Appellee,	:	(C.P.C. No. 08CR-04-2748)
v.	:	
	:	(REGULAR CALENDAR)
Saudia Banks,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 27, 2009

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Brandi M. Stepp, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, Saudia Banks ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas entered after a bench trial convicting her of one count of felonious assault. The trial court concluded that appellant knowingly caused serious physical harm to Jennifer Clark ("Clark") when she struck Clark with her vehicle. For the reasons that follow, we affirm appellant's conviction.

{¶2} In two separate indictments based upon the same set of facts, appellant was indicted by the Franklin County Grand Jury on one count of felonious assault, in violation of R.C. 2903.11, a felony of the second degree, and one count of attempted

murder, in violation of R.C. 2903.02, a felony of the first degree. The following is a brief recitation of the facts relative to appellant's conviction as adduced at trial.

{¶3} Appellant and Clark grew up together and had maintained a friendship until high school, when they had a falling out. Although they continued to live in the same neighborhood, the two women were no longer friends and had at least one physical fight prior to April 4, 2008, the date of the incident at issue.

{¶4} On April 4, 2008, Clark and Lamar Reeves ("Reeves") were walking their son to school, when their route caused them to pass by the home of appellant, who at the time was sitting in her vehicle, which was parked in her driveway. Clark approached appellant to confront her about rumors that appellant had been allegedly spreading about her. When appellant was not responsive to Clark's questioning, Clark, who had been holding an umbrella, hit appellant in the face with the umbrella. Reeves interceded and de-escalated the situation. Clark then left with Reeves and their son and continued on their way.

{¶5} Shortly thereafter, appellant was driving her neighbor, Brittany Coffey ("Coffey") to school when appellant observed Clark and Reeves walking on the sidewalk in front of the East Central Health Center located on East Main Street in Columbus. Appellant stopped her vehicle and got out, whereupon another physical altercation between the two women ensued. During the fight, Clark got the better of appellant, banging her head into the sidewalk and ripping off appellant's shirt and bra. The fight ended when an unidentified male in a pickup truck stopped his vehicle and broke it up.

{¶6} Appellant retreated to her vehicle "still angry" and "upset" over what had transpired and embarrassed that her shirt had been ripped off and her breasts exposed.

(Tr. 262, 268.) Appellant pulled out from where she had been parked and headed eastbound on East Main Street. Traveling only a short distance, appellant spotted Clark and Reeves walking on East Main Street. Appellant crossed over two lanes of oncoming traffic and struck Clark with her vehicle, causing Clark to become wedged underneath the chassis. In an attempt to dislodge Clark from underneath the vehicle, appellant backed up and went forward twice. Clark was dragged approximately half a block before becoming disengaged from the underbelly of appellant's vehicle. As a result of being struck and run over twice, Clark suffered serious injuries.

{¶7} Following the presentation of evidence, the trial court did not find appellant guilty of attempted murder but did find her guilty of felonious assault. The trial court sentenced appellant to four years of incarceration. Appellant filed a timely appeal, setting forth the following two assignments of error:

FIRST ASSIGNMENT OF ERROR

The trial court erred in finding Appellant guilty of Felonious Assault, when there was insufficient evidence to support such a verdict; in the alternative, the court's guilty verdict was against the manifest weight of the evidence.

SECOND ASSIGNMENT OF ERROR

Appellant was denied the effective assistance of counsel in violation of the Sixth and Fourteenth Amendments of the United States Constitution and in violation of Article I, § 16 of the Ohio Constitution.

{¶8} In her first assignment of error, appellant challenges her conviction as not supported by sufficient evidence and as against the manifest weight of the evidence. We disagree.

{¶9} In cases involving a bench trial, "the trial court assumes the fact-finding function of the jury." *Cleveland v. Welms*, 169 Ohio App.3d 600, 2006-Ohio-6441, ¶16. A challenge to the sufficiency of the evidence "invokes a due process concern and raises the question of whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Scott*, 101 Ohio St.3d 31, 2004-Ohio-10, ¶31, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In considering "such a challenge, '[t]he 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.' " *Scott*, at ¶31, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶10} Appellant contends that there was insufficient evidence to support her conviction of felonious assault. Appellant was charged with a violation of R.C. 2903.11(A)(2), which provides that "[n]o person shall knowingly * * * [c]ause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance." Appellant does not dispute that her vehicle can be considered a deadly weapon within the meaning of R.C. 2923.11(A). See, also, *State v. Beatty*, 10th Dist. No. 08AP-52, 2008-Ohio-5063, ¶13 (car used as a weapon can be deemed a deadly weapon under R.C. 2923.11(A)). Nor does she dispute that Clark suffered serious physical harm. Rather, the gravamen of appellant's argument is that the evidence was insufficient to demonstrate that she acted knowingly. "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).

{¶11} Contrary to appellant's contentions, the state presented sufficient evidence, if believed, to enable a rational trier of fact to find beyond a reasonable doubt that appellant knowingly caused or attempted to cause physical harm to Clark when she struck Clark with her vehicle. The record undisputedly demonstrates that immediately before appellant struck Clark with her vehicle, the two women had a physical altercation, during which Clark had gotten the better of appellant and she was upset and humiliated. Indeed, appellant stated that when she got into her vehicle after the fight, she felt "embarrassed, ashamed" and was "still angry." (Tr. 268.) At the point where she began to drive her vehicle, appellant testified, "I wasn't thinking. I was angry. I was mad. I was really out of control. I wasn't thinking at all." *Id.* Upon seeing Clark, appellant admitted to having crossed over two lanes of oncoming traffic and striking Clark, who was on the sidewalk. (Tr. 288.) It is undisputed that Clark suffered physical harm as a result of being hit by appellant's vehicle.

{¶12} The state need not prove that appellant intended to harm Clark; the evidence is sufficient if the probable result of appellant's action is to cause or attempt to cause the prohibited result. *Beatty*, at ¶14. Upon review, the evidence presented by the state, including appellant's own testimony, was sufficient for the trial court to conclude that appellant acted knowingly when she struck Clark with her vehicle. Here, construing the evidence most strongly in favor of the prosecution, as we are required to do, the state presented sufficient evidence to support the elements of felonious assault. See, e.g., *Beatty*, at ¶15; *State v. Millender*, 9th Dist. No. 21349, 2003-Ohio-4384; *State v. Morrow*, 2d Dist. No. 2002-CA-37, 2002-Ohio-6527; *State v. Goodell* (Dec. 7, 1998), 5th Dist. No. 1998CA00024.

{¶13} The gravamen of appellant's manifest weight argument is that the state failed to show that appellant knowingly caused harm to Clark. Appellant alleges that inconsistencies existed between several of the witnesses that testified, and, thus, the trial court should have resolved the conflicting testimonies in appellant's favor by finding that she did not knowingly cause harm to Clark. Specifically, appellant contends that "[t]he offered evidence proves that Ms. Clark got caught under Ms. Banks' car and was drug along until Ms. Banks realized she was there and stopped to dislodge her." (Appellant's brief at 14.) Thus, appellant argues that her conviction for felonious assault is not supported by the manifest weight of the evidence.

{¶14} In order to warrant reversal from a bench trial under a manifest weight of the evidence claim, a reviewing 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 evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Welms*, ¶16, citing *Thompkins*, at 387. The appellate court, however, must bear in mind the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins*, at 387.

{¶15} Upon review, we disagree with appellant's position that inconsistencies exist between several of the witnesses that testified at trial. The statements of those witnesses are not inconsistent; they merely reflect the witnesses' different perceptions of

the event from their own vantage points. Contradictory details are not surprising given the physical locations of these witnesses at the time appellant struck Clark with her vehicle. The credibility of witnesses and the weight to be afforded their testimony are primarily matters for the trier of fact. *DeHass*, paragraph one of the syllabus. "Conflicting evidence and inconsistencies in the testimony, however, generally do not render the verdict against the manifest weight of the evidence." *State v. McDaniel*, 10th Dist. No. 06AP-44, 2006-Ohio-5298, ¶16, citing *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21; see also *State v. Tomak*, 10th Dist. No. 03AP-1188, 2004-Ohio-6441, ¶17 (inconsistencies in witness's testimony generally do not render a verdict against the manifest weight of the evidence); *State v. Rogers*, 10th Dist. No. 04AP-705, 2005-Ohio-2202, ¶19, discretionary appeal not allowed, 106 Ohio St.3d 1506, 2005-Ohio-4605 (the existence of conflicting evidence does not render the evidence insufficient as a matter of law). Thus, the trial court, as the trier of fact, was free to resolve or discount the alleged inconsistencies accordingly.

{¶16} Moreover, as previously set forth, appellant admitted that she crossed over two lanes of oncoming traffic and struck Clark with her vehicle. Appellant further testified that, at the time she committed that act, she was "really out of control." (Tr. 288.) Given appellant's own testimony, we cannot say that the trial court lost its way in convicting appellant. Therefore, we do not find that appellant's conviction for felonious assault is against the manifest weight of the evidence. See, e.g., *State v. Whalen*, 9th Dist. No. 08CA009313, 2008-Ohio-4152; *State v. Devol*, 2d Dist. No. 19733, 2004-Ohio-70. Accordingly, appellant's first assignment of error is overruled.

{¶17} In her second assignment of error, appellant contends she was denied effective assistance of counsel. Appellant's argument is twofold. First, appellant argues that her counsel failed to impeach Clark regarding her memory of the incident. And, second, appellant asserts that her counsel failed to make a Crim.R. 29 motion for acquittal.

{¶18} To prove ineffective assistance of counsel, defendant must first prove that counsel's performance was deficient. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 2064. To meet the requirement, a defendant must initially show counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Id.* "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.* 466 U.S. at 689, 104 S.Ct. at 2065. (Citation omitted.) "Even debatable trial tactics do not constitute ineffective assistance of trial counsel." *State v. Jordan*, 10th Dist. No. 04AP-827, 2005-Ohio-3790, ¶17, quoting *State v. Nichols* (1996), 116 Ohio App.3d 759, 764.

{¶19} If appellant successfully proves that counsel's assistance was ineffective, the second prong of the *Strickland* test requires appellant to prove prejudice in order to prevail. *Strickland*, 466 U.S. at 692, 104 S.Ct. at 2068. To meet that prong, appellant must show counsel's errors were so serious as to deprive her of a fair trial, a trial whose result is reliable. *Id.* 466 U.S. at 687, 104 S.Ct. at 2064. Appellant would meet this standard with a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. 466 U.S. at 694, 104 S.Ct. at 2069.

{¶20} Here, the facts of this case do not support appellant's contention that she received ineffective assistance of counsel. A review of Clark's testimony discloses neither the type nor degree of inconsistency that appellant claims exists. Even if such inconsistency did exist, and appellant's trial counsel could be deemed ineffective for failing to impeach Clark, appellant still suffered no prejudice in light of her admission that she struck Clark with her vehicle. Similarly, having previously found that the state presented sufficient evidence that appellant knowingly caused or attempted to cause physical harm to Clark when she struck Clark with her vehicle, we reject appellant's argument that her trial counsel was ineffective for failing to make a Crim.R. 29 motion for acquittal based upon insufficient evidence. Such motion would not have been granted, and, therefore, appellant suffered no prejudice as a result of her attorney's failure to raise the issue. *Beatty*, at ¶21. Accordingly, we overrule appellant's second assignment of error.

{¶21} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH, P.J., and SADLER, J., concur.
