

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-1124
v.	:	(C.P.C. No. 11CR-05-2838)
	:	
Howard J. Ingram,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 6, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Howard Legal LLC, and *Felice Howard*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Howard J. Ingram, appeals from the judgment of the Franklin County Court of Common Pleas convicting him of aggravated assault, in violation of R.C. 2903.12, a felony of the fourth degree.

I. BACKGROUND

{¶ 2} On May 27, 2011, appellant was indicted on one count of attempted murder and one count of felonious assault. The charges arose out of an altercation between appellant and Jeffrey Armstrong. The altercation occurred on May 20, 2011, and resulted

in Armstrong being hospitalized and undergoing surgery for treatment of stab wounds. A jury trial was held on the indicted charges at which the following evidence was presented.

{¶ 3} The state first presented the testimony of Ronald Hagan, who witnessed the beginning of the altercation from his office window. According to Hagan, on May 20, 2011, he saw a white male and a black male, later identified as Armstrong and appellant, respectively, standing near the intersection of Livingston Avenue and Third Street. Appearing to be panhandling, Armstrong was holding a makeshift sign, and appellant was selling newspapers. Hagan testified he saw the two men talking to each other and that by their gestures, Armstrong appeared to be upset with appellant.

{¶ 4} Hagan saw appellant walk to another part of the intersection, but Armstrong followed him and "started throwing punches" at appellant. (Tr. Vol. I, 43.) At this time, Hagan ran outside of his office in an attempt to break up the fight. Once outside, the two men were partially obscured by bushes. However, Hagan testified that he could see appellant standing up and "punching downward," and that he saw appellant punch in a downward manner "about three or four" times. (Tr. Vol. I, 51.) After crossing the street, Hagan saw appellant walking northbound on Third Street. Hagan asked appellant where he was going, but appellant just turned around and kept walking. Hagan approached Armstrong who was sitting on the ground dazed and bleeding from his abdomen.

{¶ 5} Hagan called a receptionist in a nearby office and asked her to call for emergency personnel. In the meantime, Hagan was able to flag down a Columbus Police cruiser being driven by Officer Gary Leister. When Leister approached, he saw Armstrong lying on the ground with multiple stab wounds to his torso area. Armstrong was then transported to the hospital for treatment of his injuries. Leister testified that despite looking in the area, no weapons were found.

{¶ 6} Armstrong testified that on May 20, 2011, he was living with a friend and doing "odd jobs for people" in an attempt to make money. (Tr. Vol. II, 10.) Armstrong would also panhandle with a sign saying he did not have any money and that he was willing to work. According to Armstrong's testimony, the only thing he recalls from that day is the initial stabbing and the knife going "in and up." (Tr. Vol. II, 21.) Armstrong testified that the next thing he remembers is waking up in a rest home six weeks later.

While in the hospital, Armstrong underwent multiple surgeries, including one to repair his lungs and heart. Armstrong also suffered from a cut on his back and nicks in other parts of his body, such as his lower back, under his arm, and on his chest. (Tr. Vol. II, 22.)

{¶ 7} Columbus Police Officer David Larrison was called to the scene on the report of a fight. Based on the description of the man involved, Larrison began looking for the suspect. Larrison eventually found appellant sitting on a park bench at the corner of Main Street and Grant Avenue. After being identified by an eyewitness to the altercation, appellant was placed under arrest and transported to police headquarters. No weapons were found on or around appellant.

{¶ 8} The jury saw a redacted recording of appellant's interview at police headquarters. After waiving his *Miranda* rights, appellant told police detectives that as he neared the intersection that morning to sell his newspapers, Armstrong, who appeared intoxicated, started yelling at him. Therefore, appellant left to go to the other corner of the intersection, but Armstrong followed him and threw his things over a fence. Thereafter, Armstrong pushed appellant and appellant pushed him back. Armstrong went to sit down when a third person dressed in a shirt and tie told Armstrong that appellant was allowed to sell papers at that intersection. Appellant stated that at this time he left. Appellant denied stabbing Armstrong and further denied having a knife that day. Appellant told the detectives he had no idea how Armstrong came to be stabbed or who had stabbed him.

{¶ 9} Appellant presented the testimony of Paula Schuttera who witnessed a portion of the altercation. Schuttera was in her car stopped at a traffic light at the intersection where she saw Armstrong standing with his sign. Schuttera testified that Armstrong appeared to be yelling at someone so she cracked her car window in an attempt to hear what was being said. When Schuttera heard Armstrong say to appellant, "I'm telling you, there's gonna be trouble if you don't get away," she called 911. (Tr. Vol. II, 111.) As she was calling 911, Schuttera saw Armstrong start to throw punches at appellant. The two men scuffled and Schuttera heard appellant saying, "Hey, stop it," and try to pull away. (Tr. Vol. II, 115.) In response, Armstrong kept saying, "I told you to get away, I'm gonna kill you." (Tr. Vol. II, 116.) As she drove away from the intersection,

Schuttera saw appellant appear to fall to the ground with Armstrong on top of him. At no time did Schuttera see any weapons.

{¶ 10} Appellant testified on his own behalf. Appellant explained that at the time of the incident he was homeless and selling a newspaper entitled "Street Speech." Appellant testified that on the day of the incident he was carrying two bags, one containing his newspapers and the other containing his personal belongings. According to appellant, as he approached the intersection that day, Armstrong began yelling and cursing at him. Appellant testified Armstrong said, "This is my corner, you can't sell here. Get the 'F' away from here." (Tr. Vol. II, 172.) Armstrong then grabbed appellant by the collar. Appellant testified that though he was able to break away from Armstrong several times, Armstrong kept following him and punching him.

{¶ 11} The two men continued to scuffle until Armstrong let appellant go near the area where appellant had dropped his bags. Armstrong then picked up appellant's bags and threw them over a fence. Appellant stated that after throwing his belongings over the fence, Armstrong began walking quickly toward him, so appellant grabbed a knife that he had previously hidden at that intersection. When asked why he grabbed the knife, appellant responded, "I got tired of that guy punching me around." (Tr. Vol. II, 186.) Appellant testified that he held up the knife to show Armstrong that he had it, but Armstrong charged at appellant as if the knife "wasn't even there." (Tr. Vol. II, 189.) As the two men tussled again, they began fighting for control of the knife when Armstrong suddenly "froze." (Tr. Vol. II, 200.) At this time, appellant heard Hagan say, "You can work this corner, you can work this corner, so break it up you guys." (Tr. Vol. II, 201.)

{¶ 12} Appellant then retrieved his belongings from the other side of the fence and began walking away. Appellant heard Hagan ask him where he was going, to which appellant responded that he was going to the Street Speech office. Appellant testified that when he walked away from the scene, though Armstrong looked dazed and tired, appellant did not see any blood on Armstrong. According to appellant, instead of going to the Street Speech office to report the incident as he initially intended, he decided that he should walk to Grant Hospital; however, while walking to the hospital, feeling tired and as if he might have a seizure, appellant sat down on a bench. As appellant was sitting on the bench, police arrived and eventually he was taken to police headquarters. When asked

what happened to the knife, appellant testified that during his walk he threw the bag containing the newspapers into a garbage can and that the knife must have ended up in that bag. Appellant also testified that he initially lied during his interview with police because he is distrustful of law enforcement and other authority figures.

{¶ 13} Following the state's case, appellant moved for acquittal and said motion was denied. At the close of all evidence, the trial court instructed the jury on the offense of attempted murder, felonious assault, and the inferior-degree offense of aggravated assault. The trial court also instructed the jury on self-defense.

{¶ 14} Upon the evidence presented, the jury returned verdicts finding appellant not guilty of attempted murder and not guilty of attempted voluntary manslaughter. The jury also found appellant not guilty of felonious assault, but guilty of the inferior-degree offense of aggravated assault. Subsequently, appellant was sentenced to three years of community control and advised that if he violated the terms of his community control he would be sentenced to an 18-month term of incarceration.

II. ASSIGNMENTS OF ERROR

{¶ 15} This appeal followed and appellant brings the following two assignments of error for our review:

[1.] The trial court erred in denying Howard Ingram's Crim. R. 29 Motion for Judgment of Acquittal at the close of the state's case.

[2.] Howard Ingram's conviction is against the manifest weight of the evidence.

III. DISCUSSION

A. First Assignment of Error

{¶ 16} In his first assignment of error, appellant contends the trial court erred in denying his Crim.R. 29 motion for acquittal.

{¶ 17} A Crim.R. 29(A) motion for acquittal tests the sufficiency of the evidence. *State v. Reddy*, 10th Dist. No. 09AP-868, 2010-Ohio-3892, ¶ 12, citing *State v. Knipp*, 4th Dist. No. 06CA641, 2006-Ohio-4704, ¶ 11. We thus review the trial court's denial of appellant's motion for acquittal using the same standard applicable to a sufficiency of the

evidence review. *Id.*, citing *State v. Darrington*, 10th Dist. No. 06AP-160, 2006-Ohio-5042, ¶ 15.

{¶ 18} Sufficiency of the evidence is a legal standard that tests whether the evidence is legally adequate to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law, not fact. *Id.* In determining whether the evidence is legally sufficient to support a conviction, " '[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.' " *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 19} In a sufficiency of the evidence inquiry, appellate courts do not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence supports the conviction. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified truthfully and determines if that testimony satisfies each element of the crime").

{¶ 20} Appellant was convicted of aggravated assault. Defining said offense, R.C. 2903.12 states, "[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 * * * cause serious physical harm to another * * * [or] [c]ause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance." R.C. 2903.12(A)(1) and (2).

{¶ 21} The focus of appellant's sufficiency argument is the "knowing" element of aggravated assault. Specifically, appellant contends the jury could only find he acted knowingly by impermissibly stacking inferences drawn from circumstantial evidence.

{¶ 22} "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). When determining whether a defendant acted knowingly, his state of mind must be determined from the totality of the circumstances surrounding the alleged crime. *State v. Hill*, 10th Dist. No. 09AP-398, 2010-Ohio-1687, ¶ 26, citing *State v. Inman*, 9th Dist. No. 03CA0099-M, 2004-Ohio-1420. Culpable mental states are frequently demonstrated through circumstantial evidence. *State v. Ramey*, 10th Dist. No. 11AP-485, 2012-Ohio-1015, ¶ 26; *State v. Collins*, 89 Ohio St.3d 524, 530 (2000).

{¶ 23} "The rule prohibiting the stacking of one inference upon another prohibits 'the drawing of one inference solely and entirely from another inference, where that inference is unsupported by any additional facts or inferences drawn from other facts.' " *State v. Maynard*, 10th Dist. No. 11AP-697, 2012-Ohio-2946, ¶ 27, quoting *Donaldson v. N. Trading Co.*, 82 Ohio App.3d 476, 481 (10th Dist.1992), citing *Hurt v. Charles J. Rogers Transp. Co.*, 164 Ohio St. 329 (1955). " 'Although inferences cannot be built upon inferences, several conclusions may be drawn from the same set of facts.' " *State v. Bland*, 10th Dist. No. 10AP-327, 2010-Ohio-5874, ¶ 15, quoting *State v. Grant*, 67 Ohio St.3d 465, 478 (1993), citing *Hurt* at paragraph three of the syllabus. " 'And it is equally proper that a series of facts or circumstances may be used as the basis for ultimate findings or inferences.' " *Id.*, quoting *Hurt* at 334. " ' "Because reasonable inferences drawn from the evidence are an essential element of the deductive reasoning process by which most successful claims are proven, the rule against stacking inferences must be strictly limited to inferences drawn exclusively from other inferences." ' " *Id.*, quoting *State v. Evans*, 10th Dist. No. 01AP-594 (2001), quoting *Donaldson* at 481. *See also Motorists Mut. Ins. Co. v. Hamilton Twp. Trustees*, 28 Ohio St.3d 13, 17 (1986) (remarking on the rule's "dangerous potential for subverting the fact-finding process and invading the sacred province of the jury").

{¶ 24} Relying on Hagan's testimony and his initial police interview, appellant contends the jury could infer that (1) Armstrong was stabbed, (2) appellant's downward punches about which Hagan testified were actually stabs, and (3) appellant possessed a knife, but that these inferences had to be impermissibly stacked in order to find that he acted knowingly. We do not find appellant's position well-taken. When viewed in a light most favorable to the prosecution, as is required under this standard of review, the evidence presented at trial was legally sufficient to prove appellant acted knowingly.

{¶ 25} Appellant testified about the altercation and that the men continued to scuffle until Armstrong walked over to drop appellant's belongings over a fence. Additionally, appellant testified that as Armstrong was walking back toward him, he grabbed a knife that he had left at the intersection on a prior occasion. Though appellant testified the two men were fighting for control of the knife when Armstrong suddenly froze in an upright sitting position, Hagan testified that he saw appellant punching in a downward motion and that when he reached the area, Armstrong was on the ground with stab wounds to his torso. There is no prohibition against several conclusions being drawn from the same set of facts, and the evidence presented at trial allowed the jury to find that appellant acted knowingly.

{¶ 26} Based upon the evidence presented at trial, the jury could reasonably find, without the impermissible stacking of inferences, that appellant acted "knowingly" so as to be found guilty of aggravated assault. Because appellant's conviction of aggravated assault is supported by legally sufficient evidence, we overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶ 27} In his second assignment of error, appellant challenges the weight of the evidence supporting his conviction for aggravated assault.

{¶ 28} When presented with a manifest weight challenge, an appellate court may not merely substitute its view for that of the trier of fact, but 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. *Thompkins* at 387, citing *State v. Martin*, 20

Ohio App.3d 172, 175 (1st Dist.1983). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most "exceptional case in which the evidence weighs heavily against the conviction." *Id.*, citing *Martin*.

{¶ 29} As noted above, in conducting a manifest weight of the evidence review, we may consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting such review, "we are guided by the presumption that the jury, or the trial court in a bench trial, 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 30} Under this assignment of error, appellant chiefly maintains that the jury lost its way in failing to find that he was acting in self-defense. Self-defense is an affirmative defense, and the accused has the burden to prove it by a preponderance of the evidence. R.C. 2901.05(A); *State v. Smith*, 10th Dist. No. 04AP-189, 2004-Ohio-6608, ¶ 16. To establish self-defense through the use of deadly force, a defendant must prove (1) he was not at fault in creating the situation giving rise to the affray, (2) he had a bona fide belief that he was in imminent danger of death or great bodily harm and his only means of escape from such danger was the use of such force, and (3) he must not have violated any duty to retreat or avoid the danger. *State v. Robbins*, 58 Ohio St.2d 74 (1979), paragraph two of the syllabus. A defendant may only use as much force as is reasonably necessary to repel the attack. *State v. Harrison*, 10th Dist. No. 06AP-827, 2007-Ohio-2872, ¶ 25, citing *State v. Jackson*, 22 Ohio St.3d 281 (1986), cert. denied, 480 U.S. 917 (1987). The elements of self-defense are cumulative, so "[i]f the defendant fails to prove *any one* of these elements * * * he has failed to demonstrate that he acted in self-defense." (Emphasis sic.) *Jackson* at 284.

{¶ 31} In this case, appellant testified on his own behalf and the jury was instructed to consider the affirmative defense of self-defense. Appellant testified that he picked up the knife after Armstrong walked away and threw appellant's things over the fence. The jury was presented with testimony regarding the actual stabbing. While appellant testified that he was not certain how Armstrong got stabbed, but indicated it

must have happened during their struggle, Hagan testified that he ran outside to see appellant punching in a downward motion and then he discovered Armstrong lying on the ground bleeding.

{¶ 32} Though the evidence indicated Armstrong was the individual to throw the first punch, whether appellant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was the use of force, remained as questions for the jury to consider. As trier of fact, the jury was free to believe or disbelieve all or any of the testimony presented. *State v. Matthews*, 10th Dist. No. 11AP-532, 2012-Ohio-1154, ¶ 46, citing *State v. Jackson*, 10th Dist. No. 01AP-973, 2002-Ohio-1257. The jury could have rejected appellant's assertion that he believed he was in imminent danger when he picked up the knife or the jury could have concluded that appellant had other means of escape besides the use of force. A conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony. *State v. Anderson*, 10th Dist. No. 10AP-302, 2010-Ohio-5561, ¶ 19. Because the jury is in the best position to determine the credibility of each witness by taking into account inconsistencies, as well as witnesses' manner and demeanor, we cannot conclude this record presents a scenario where the jury clearly lost its way.

{¶ 33} Because the jury reasonably could have believed that appellant did not act in self-defense when he stabbed Armstrong, the jury's decision to reject appellant's claim of self-defense was not against the manifest weight of the evidence. *State v. Crawford*, 10th Dist. No. 03AP-986, 2004-Ohio-4652; *State v. Moore*, 2d Dist. No. 20005, 2004-Ohio-3398, ¶ 53. Accordingly, we overrule appellant's second assignment of error.

IV. CONCLUSION

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

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
