[Cite as *State v. Young*, 2013-Ohio-1247.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-314 (C.P.C. No. 11CR-06-2998)
Edward L. Young,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 29, 2013

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Dustin M. Blake, for appellant.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Edward L. Young ("appellant"), appeals from his conviction in the Franklin County Court of Common Pleas of criminal offenses charged against him based on his actions in a dispute with his girlfriend. The trial court sat as the finder of fact and found appellant guilty of felonious assault, abduction, and domestic violence. The court merged the felonious assault charge with the domestic violence charge and sentenced appellant to three years of community control. Appellant contends that the findings of guilt were against the manifest weight of the evidence. We reject this contention and affirm appellant's conviction and sentence.

{¶ 2} The state called two witnesses in prosecuting its case. The first witness to testify was Arianna Howard ("Howard"). She testified that on the date of the dispute, December 26, 2010, she and appellant had been boyfriend and girlfriend off and on for six

years and had lived together for approximately three years. She stated that she and appellant began arguing in the car on the way to church, prompting the couple to return to the apartment. She described appellant as snatching things from her once they were back in the apartment and "getting up in [her] face." (Tr. 18.) When appellant attempted to grab her laptop from her, Howard told him "You're not going to do this to me anymore." (Tr. 18.) Appellant then struck her on the left side of her face, causing her intense pain in her lower jaw. Howard testified that she then was "screaming and crying and running through the house asking him to get out." (Tr. 22.) Appellant prevented Howard from leaving the apartment through the backdoor. She testified that she then entered a bedroom, closed the door, and tried to leave the apartment through a bedroom window, but appellant broke through the closed bedroom door and snatched her away from the window. Howard testified that she was scared and hysterical during the incident. Approximately 20 or 30 minutes later, she was able to contact her mother by cell phone, who contacted the police. Appellant called his cousin, who then transported appellant away from the apartment. Howard testified that, prior to leaving the apartment, appellant "started crying and apologizing." (Tr. 25.)

{¶ 3} The police and paramedics arrived at the apartment. The police advised Howard to seek a protection order. Howard testified that the paramedics told her that they did not believe her jaw was broken and advised her to ice it and take ibuprofen.

{¶ 4} The following day, Howard reported the incident to the city prosecutor's office in order to seek a protection order. Members of the prosecutor's staff took photographs of Howard's face. Howard testified that the photos correctly reflected bruises, swelling, and other discoloration of her face on the day following the dispute. The court accepted the photos into evidence.

{¶ 5} Several days after the incident, Howard went to the emergency room because the pain in her jaw remained intense and was worsening. X-rays disclosed a fracture of her jaw. Howard underwent surgery to set the jaw, which was wired shut for seven weeks. During that period, appellant could not eat or drink except through a straw. For the first several days after surgery, she was unable to talk. She missed approximately eight weeks of work as a schoolteacher and was not offered a teacher's contract for the following school year.

{¶ 6} The state's second witness was Walter Lang Bernacki, M.D. ("Dr. Bernacki"), a board-certified plastic surgeon, who performed Howard's surgery. He testified that he first examined Howard on January 4, 2011, and that he reviewed the hospital x-rays. He diagnosed a minimally displaced single fracture of the left mandible (lower jaw) and recommended surgery to repair the fracture. He testified that the most common cause of sustaining a broken jaw is having been struck in the face either with a fist or a foreign object. The surgery involved aligning the jaw and using a series of screws and wire to hold it in position while the fracture healed.

{¶ 7} On cross-examination, Dr. Bernacki acknowledged that a fracture of the jaw could occur as the result of a fall or other causes.

{¶ 8} Based on the evidence presented by the state, the trial court found appellant guilty of felonious assault, in violation of R.C. 2903.11; abduction by placing the victim in fear, in violation of R.C. 2905.02; and domestic violence, in violation of R.C. 2919.25. The court merged the counts of felonious assault and domestic violence, finding them to be allied offenses of similar import. The court further advised appellant that, if he violated the conditions of community control, he would receive a two-year prison sentence on the felonious assault count and a twelve-month sentence on the abduction count, the sentences to be served concurrently.

{¶ 9} Appellant assigns three errors for this court's review:

> [1.] THE TRIAL COURT'S JUDGMENT OF CONVICTION OF FELONIOUS ASSAULT AGAINST APPELLANT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.
>
> [2.] THE TRIAL COURT'S JUDGMENT OF CONVICTION OF ABDUCTION AGAINST APPELLANT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.
>
> [3.] THE TRIAL COURT'S JUDGMENT OF CONVICTION OF DOMESTIC VIOLENCE AGAINST APPELLANT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.

{¶ 10} In reviewing an assertion that the trial court has convicted a defendant contrary to the manifest weight of the evidence, the appellate court sits as a thirteenth juror. *State v. Clouse*, 10th Dist. No. 11AP-857, 2012-Ohio-3471, ¶ 11, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). "An appellate court should reverse a conviction as against the manifest weight of the evidence in only the most 'exceptional case in which the evidence weighs heavily against the conviction,' instances in which the [fact finder] 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). 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,' [and] we afford great deference to the fact finder's determination of witness credibility." *In re B.K.*, 10th Dist. No. 12AP-343, 2012-Ohio-6166, ¶ 11, quoting *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). See also *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

Felonious Assault

{¶ 11} The trial court found appellant guilty of felonious assault in violation of R.C. 2903.11(A)(1). That statute provides that "no person shall knowingly * * * [c]ause serious physical harm to another." In his first assignment of error, appellant asserts that the trial court's finding that he was guilty of the crime of felonious assault was against the manifest weight of the evidence. Appellant claims that the state failed to establish that appellant possessed the requisite mental state of acting knowingly to cause serious physical harm to Howard. He contends that the evidence merely shows that appellant acted recklessly. He further contends that reasonable doubt exists as to whether Howard's broken jaw was caused by appellant's hitting her in the face as opposed to some other cause.

{¶ 12} We first address appellant's manifest-weight argument that he did not "knowingly"cause serious physical harm to Howard. "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." R.C. 2901.22(B). The issue presented, therefore, is

whether appellant was aware that striking appellant in the face would probably cause her serious physical harm.

{¶ 13} Appellant did not testify at trial and, therefore, there is no direct evidence as to appellant's mental state at the time he struck Howard. Intent to cause serious physical harm in a felonious assault case may, however, be determined from the surrounding facts and circumstances. *State v. McClelland*, 10th Dist. No. 08AP-205, 2008-Ohio-6305, ¶ 18, citing *State v. Robinson*, 161 Ohio St.2d 213 (1954). Moreover, "a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." *State v. Johnson*, 56 Ohio St.2d 35, 39 (1978). Further, " 'it is not necessary that the accused be in a position to foresee the precise consequence of his conduct; only that the consequence be foreseeable in the sense that what actually transpired was natural and logical in that it was within the scope of the risk created by his conduct.' " *McClelland*, quoting *State v. Losey*, 23 Ohio App.3d 93, 96 (1985). Accordingly, in a felonious assault case, the state need not prove that a defendant knew that his conduct would produce a specific injury, here a broken jaw, but only that the actual injury was a natural and logical consequence and within the scope of the risk created by his conduct. *Id.*

{¶ 14} We acknowledge that Howard's testimony concerning appellant's act of striking her was limited. She could not remember whether appellant struck her with an open fist or with an open hand. But there is no dispute that Howard suffered a broken jaw, nor was there evidence contradicting her testimony that she immediately suffered intense pain in her lower jaw when struck by appellant and that her "face wasn't stinging as if [she] had been slapped." (Tr. 22.) Moreover, photographs taken the day following the incident reinforced her testimony that she was struck hard enough to produce swelling and red marks on the left side of her face.

{¶ 15} In light of this evidence, we conclude that the trial court judge, who observed both the appellant and his victim, did not clearly lose his way or create a manifest miscarriage of justice in finding that appellant knowingly caused Howard severe physical harm. Appellant hit her hard enough to break her jaw. That fact supports the trial court's conclusion that appellant was aware that his act would cause Howard serious physical harm. *Accord State v. Horton*, 10th Dist. No. 95APA04-455 (Dec. 19, 1995) (nature of victim's injuries, including prolonged blurred vision, a swollen eye, and a

bleeding lip, justified rejection of manifest-weight challenge to felonious assault conviction).

{¶ 16} We further reject appellant's argument that the trial court judge lost his way in determining that Howard's broken jaw was, in fact, caused by appellant's hitting her in the face, as opposed to some other cause. No evidence was produced of any other cause, and the argument is, at root, a challenge to Howard's credibility. We will not question the trial court's acceptance of Howard's testimony that her jaw was broken as a result of appellant striking her.

{¶ 17} We therefore find that appellant's first assignment of error is without merit, and we overrule it.

Abduction

{¶ 18} In his second assignment of error, appellant asserts that a finding of guilt of the crime of abduction was against the manifest weight of the evidence.

{¶ 19} R.C. 2905.02(A)(2) provides that "[n]o person, without privilege to do so, shall knowingly * * * [b]y force or threat, restrain the liberty of another person under circumstances that * * * place the person in fear." Restraint of liberty means " 'to limit one's freedom of movement in any fashion for any period of time.' The restraint may be for any particular duration, even momentary." (Citation omitted.) *State v. Worrell*, 10th Dist. No. 04AP-410, 2005-Ohio-1521, ¶ 53.

{¶ 20} R.C. 2901.01(A)(1) defines "force" to mean "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." The term "threat" is not defined in the Ohio Revised Code. However, the Supreme Court of Ohio has defined "threat" to include "a range of statements or conduct intended to impart a feeling of apprehension in the victim, whether of bodily harm, property destruction, or lawful harm, such as exposing the victim's own misconduct." *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501, ¶ 39. A "threat" is the " 'intentional exertion of pressure to make another fearful or apprehensive of injury or harm.' " *Id.*, quoting *Planned Parenthood League of Massachusetts, Inc. v. Blake*, 417 Mass. 467, 474 (1994).

{¶ 21} Appellant contends that the state failed to provide evidence sufficient to show that appellant used "force or threat" to restrain her liberty. He notes that Howard did not testify that appellant did not put his hands on her to prevent her from leaving the

apartment except for pulling her away from a bedroom window to prevent her from jumping through it. Appellant notes that he himself left the residence shortly thereafter and suggests that he would not have done so had his intent been to prevent appellant from leaving.

{¶ 22} Appellant's argument ignores the fact that appellant had shortly before hit Howard enough to break her jaw. Certainly that act, combined with his conduct immediately thereafter in blocking her retreat through both a door and window, justified a finding that his conduct was threatening. Accord *State v. Banks*, 10th Dist. No. 03AP-1286, 2004-Ohio-6522, ¶ 27 ("clearly, holding someone at gunpoint could be perceived to be a 'force or threat' "). Moreover, Howard specifically testified that she was in fear of Howard, undoubtedly prompting her wish to leave the apartment to avoid the threat of additional physical abuse. In finding appellant guilty of abduction, the trial court determined that appellant had knowingly restrained Howard's liberty by force or threat under circumstances that put Howard in fear. That finding was not contrary to the manifest weight of the evidence. The fact that appellant eventually abandoned his restraint of Howard's liberty and left the apartment does not change the conclusion that he had earlier committed the crime of abduction.

{¶ 23} Accordingly, appellant's second assignment of error is without merit and is overruled.

Domestic violence

{¶ 24} In his third assignment of error, appellant asserts that the court's finding that he was guilty of the crime of domestic violence was against the manifest weight of the evidence. That crime is established by R.C. 2919.25, which provides that "no person shall knowingly cause or attempt to cause physical harm to a family or household member." Appellant reiterates his argument that the state's evidence did not establish that Howard's broken jaw occurred as a result of appellant's hitting her. He further claims that there was no evidence to corroborate Howard's testimony that the parties were cohabitating at the time of the assault so as to make appellant and Howard members of the same household.

{¶ 25} But, again, appellant's argument merely challenges the truth of Howard's testimony. She testified that she and appellant were living together on the date of the crimes and that her broken jaw was the result of appellant's violent conduct towards her.

The trial court accepted her testimony, and the court's conclusion that appellant was guilty of domestic violence was not contrary to the manifest weight of the evidence.

{¶ 26} Accordingly, appellant's third assignment of error is without merit and is overruled.

{¶ 27} For the foregoing reasons, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
