

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23712
v.	:	T.C. NO. 09 CR 1313
LORI BOOTES	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 25th day of February, 2011.

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DONOVAN, J.

{¶ 1} Defendant-appellant Lori D. Bootes appeals from her conviction and sentence for one count of felonious assault (serious physical harm), in violation of 2903.11(A)(1), a felony of the second degree.

I

{¶ 2} During the evening of April 17, 2009, at the North Town Sports Bar located at 4256 North Main Street in Harrison Township, Montgomery County, Ohio, the victim, Donna Gail Crooks, was working at the bar that day. At some point during the latter part of her shift, Crooks left briefly so that she could pick up her grandson from daycare. After she picked up her grandson, Crooks returned to the bar.

{¶ 3} While Crooks, her grandson, and a friend were sitting in a booth, Bootes entered the bar with her fiancée and another individual. Bootes is the niece of Crooks' ex-husband, Louis Daniels, who had died from pancreatic cancer a few days earlier on April 14, 2009. Crooks had allegedly been ordered by Bootes not to attend Daniels' funeral, which was held on the afternoon of April 17, 2009. Because she was upset at being told she could not attend, Crooks testified that she called Bootes on the morning of the funeral and stated that she planned to disrupt the service.

{¶ 4} Upon entering the bar, Bootes went directly to where Crooks was sitting, grabbed her by the shirt, and began striking her about the head and upper body. Immediately after the assault, Bootes left the bar. As a result of the assault, Crooks was bleeding profusely from her nose and the side of her head. Crooks attempted to clean herself up in the bar bathroom. Crooks then drove herself and her grandson to her residence, which was located approximately a mile away from the bar. Once she arrived at her house, Crooks called a friend to take her to the hospital.

{¶ 5} Upon arrival at the emergency room at Miami Valley Hospital, Crooks was immediately admitted to the trauma center where she was examined and treated by Dr. Mary

Chellis. Dr. Chellis testified that in addition to suffering two black eyes and other bruising on her face and chest, Crooks' nose was broken and she had a mild concussion. Dr. Chellis testified that Crooks' injuries could have been the result of a severe beating. After the examination, Dr. Chellis admitted Crooks to the hospital for 23 hour observation. Crooks complained of severe pain from her injuries and was administered the painkiller dilaudid. Crooks also was administered medication to treat her nausea, as well as an anti-anxiety drug in order to help her relax. Upon her discharge from the hospital, Crooks was prescribed vicodin for pain.

{¶ 6} On July 1, 2009, Bootes was indicted for one count of felonious assault (serious physical harm), in violation of R.C. 2903.11(A)(1), a felony of the second degree. At her arraignment on July 16, 2009, Bootes pled not guilty to the charged offense. Bootes executed a jury waiver on July 29, 2009. On August 27, 2009, a bench trial was held. Crooks testified that as a result of the assault, she still experienced ringing in her ears, constant headaches, recurring pain in her nose, and trouble sleeping. Bootes was ultimately found guilty of felonious assault and sentenced to five years of community control sanctions.

{¶ 7} It is from this judgment that Bootes now appeals.

II

{¶ 8} Because they are interrelated, Bootes' first and second assignments of error will be discussed together as follows:

{¶ 9} "THE DETERMINATION THAT SERIOUS PHYSICAL HARM EXISTED WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 10} “THE EVIDENCE WAS INSUFFICIENT TO PROVE THE ELEMENT OF SERIOUS PHYSICAL HARM.”

{¶ 11} In her first assignment of error, Bootes argues that the verdict finding her guilty of felonious assault is against the manifest weight of the evidence. Specifically, Bootes argues that the trial court’s determination that Crooks suffered serious physical harm through “temporary, serious disfigurement” and “acute pain of such duration as to result in substantial suffering” is against the manifest weight of the evidence. R.C. 2901.01(A)(5)(d) & (e). Lastly, Bootes argues that the evidence was insufficient to establish that Crooks suffered serious physical harm as a result of the assault.

{¶ 12} “A challenge to the sufficiency of the evidence differs from a challenge to the manifest weight of the evidence.” *State v. McKnight*, 107 Ohio St.3d 101,112, 2005-Ohio-6046. “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing 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.’ (Internal citations omitted). A claim that a jury verdict is against the manifest weight of the evidence involves a different test. ‘The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.’” *Id.* (Internal citations omitted).

{¶ 13} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

“Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288.

{¶ 14} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 15} “Serious physical harm” is defined in R.C. 2901.01(A)(5)(d) and (e) as follows:

{¶ 16} “(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

{¶ 17} “(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.”

Temporary Serious Disfigurement

{¶ 18} Initially, Bootes asserts that the trial court’s finding that the bruising on Crooks’ face and head depicted in State’s Exhibits 2, 3, and 4 constituted a temporary serious disfigurement was against the manifest weight of the evidence. We note that State’s Exhibits 2 and 3 depict Crooks’ two bruised and blackened eyes, as well as her broken,

swollen nose. Crooks testified that these injuries were caused by Bootes' repeated blows to her head and face. State's Exhibit 4 depicts a bloody bruise on Crooks' right temple. Crooks testified that the wound on the side of her right temple was originally a small spider bite which was in the late stages of healing until Bootes struck the area where the bite was located, thereby causing it to burst, bleed, and ultimately leave a bruise which was still visible at the trial four months after the attack.

{¶ 19} “The degree of harm that rises to the level of ‘serious’ physical harm is not an exact science, particularly when the definition includes such terms as ‘substantial,’ ‘temporary,’ ‘acute,’ and ‘prolonged.’” *State v. Irwin*, Mahoning App. No. 06MA20, 2007-Ohio-4996. Under certain circumstances, a bruise can constitute serious physical harm because a bruise may satisfy the statutory requirement for temporary serious disfigurement. *State v. Worrell*, Franklin App. No. 04AP-410, 2005-Ohio-1521, at ¶ 47-51, reversed on other grounds by *In re Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109. In *State v. Plemmons-Greene*, Cuyahoga App. No. 92267, 2010-Ohio-655, the Eighth District Court of Appeals found that the State presented sufficient evidence of serious physical harm where, as a result of the defendant's attack, the victim suffered a black eye, bruising and swelling to the right side of her face, scratches on her neck, and bruising on her thighs and buttocks. In *State v. Gibson*, Greene App. No. 09-CA-05, 2010-Ohio-1121, we held that a defendant's conviction for felonious assault with serious physical harm was not against the manifest weight of the evidence where the State adduced evidence that the defendant punched the victim in the face during an argument and broke her nose.

{¶ 20} As a result of Bootes' attack, the evidence adduced at trial established that Crooks suffered two black eyes, a broken nose, bruising and bleeding on her right temple, deep bruising to her upper body, and a mild concussion which caused vomiting and headaches. Clearly, ample evidence was presented which established that Crooks suffered temporary, serious disfigurement when Bootes assaulted her.

Acute Pain of Such Duration as to Result in Substantial Suffering

{¶ 21} Bootes next argues that the evidence did not support a finding that Crooks suffered serious physical harm involving acute pain of such duration as to result in substantial suffering. R.C. 2901.01(A)(5)(e). Specifically, Bootes points out that (1) immediately after the attack, Crooks was able to walk to the restroom, clean herself, and drive home without assistance; (2) Dr. Chellis testified that Crooks responded favorably to pain medication administered at the hospital; (3) Crooks reported her pain level at zero (on a scale of one to ten) during her last six hours at the hospital; and (4) Crooks did not receive any additional pain medication at her follow-up appointment with her family doctor one week after leaving the hospital.

{¶ 22} Crooks testified that she experienced "excruciating pain" immediately after the attack. Moreover, Crooks testified that she was in shock and did not remember cleaning herself or driving home after the attack. Once she arrived at the hospital, Crooks described her pain as being at a ten and was administered dilaudid, a powerful painkiller, three times during the course of her 23 hour observation period. Upon being discharged, Crooks was prescribed vicodin for pain from her injuries. At trial, Crooks testified that she still suffered from headaches and pain in her nose where it was broken. In light of the foregoing, we

cannot say that the trial court lost its way by finding that the injuries suffered by Crooks during Bootes' assault caused Crooks "acute pain of such duration as to result in substantial suffering." Thus, the trial court's determination that Crooks suffered serious physical harm was not against the manifest weight of the evidence.

{¶ 23} Lastly, Bootes argues that the evidence adduced by the State was insufficient to prove the element of serious physical harm. As previously noted, Bootes was charged with and convicted of felonious assault, in violation of R.C. 2903.11(A)(1) which states that "[n]o person shall knowingly *** cause serious physical harm to another ***." The court found that Bootes caused Crooks serious physical harm which involved "some temporary, serious disfigurement," which resulted in "acute pain of such duration as to result in substantial suffering." R.C. 2901.01(A)(5)(d) and (e).

{¶ 24} After thoroughly reviewing the record, we conclude that the evidence adduced by the State was clearly sufficient to prove that Crooks suffered serious physical harm as a result of Bootes' assault upon her. Bootes repeatedly struck Crooks in the face, head, and upper body. As a result, Crooks suffered two black eyes, a broken nose, bruising and bleeding from the right temple, various deep bruises on her upper chest area, and a mild concussion. Crooks described the immediate pain from the beating as "excruciating." Moreover, after she was admitted to MVH, Crooks was administered a powerful painkiller three times during her 23 hour observation period at the hospital. Upon being released, Crooks was given a prescription for another painkiller for her injuries. At the time of trial, Crooks testified that she still suffered constant headaches and pain in her nose resulting from the beating she endured. Crooks also testified that the bruise on her right temple was still

visible after four months since the attack.

{¶ 25} Bootes characterizes the assault as a simple bar fight that did not involve the use of any weapons. The evidence, however, establishes that Bootes severely beat Crooks about the head and shoulders. Moreover, Crooks still suffered from some of the injuries she sustained at the time of trial. Accordingly, there was sufficient evidence supporting Bootes' conviction for felonious assault with serious physical harm.

{¶ 26} Bootes' first and second assignments of error are overruled.

III

{¶ 27} On June 7, 2010, Bootes filed a supplemental brief asserting a third assignment of error regarding \$15,000.00 in restitution that the trial court ordered Bootes to pay Crooks in monthly installments of \$250.00. Bootes, however, voluntarily dismissed the third assignment. Thus, we need not address the third assignment regarding the restitution order.

IV

{¶ 28} All of Bootes' assignments of error having been overruled, the judgment of the trial court is affirmed.

GRADY, P.J. and FAIN, J., concur.

Copies mailed to:

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