

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: T.M. : APPEAL NO. C-200213
 : TRIAL NO. 18-1302Z
 :
 :
 : *JUDGMENT ENTRY.*

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, T.M. was adjudicated delinquent for felonious assault. The adjudication stemmed from a mutual fight between T.M. and Randy Schmidt that occurred in front of Angela West's home. West told police that T.M. and Schmidt had "squared off" in preparation of a fight, but that at some point Schmidt had turned away from T.M. West said that T.M. then approached Schmidt from behind and grabbed him around the arms and "then [T.M.] went to fall backwards." West said that, when he fell backwards, Schmidt went over T.M.'s shoulder, landing on his head on the cement sidewalk. Schmidt suffered a serious head injury, which required surgery to relieve bleeding on the brain.

T.M.'s nieces, who also witnessed the fight, testified at trial. Both recounted that Schmidt had thrown the first punch and that Schmidt had tried to pick T.M. up by the legs, which is what caused Schmidt and T.M. to fall to the ground. However, the trial court did not find the defense witnesses credible as they used the same language in describing the fight and kept repeating the same statements "over and over."

T.M. now appeals his adjudication, raising two assignments of error. For the following reasons, we affirm the trial court's judgment.

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In his first assignment of error, T.M. maintains that he was denied due process and a fair trial because the juvenile court was biased. We disagree.

Judicial bias is demonstrated by “a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.” *State v. Loudermilk*, 2017-Ohio-7378, 96 N.E.3d 1037, ¶ 21 (1st Dist.), quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 1919 (1956).

Under this assignment, T.M. references four different comments made by the trial court that he believes demonstrate the trial court’s bias. However, a review of the court’s comments in context, while possibly demonstrating impatience with defense counsel, reveals that the comments can more likely be viewed as the court trying to streamline the presentation of the evidence, as this was a bench trial. There was no comment made by the court that suggested that it possessed a fixed anticipatory judgment of this case and of T.M.’s alleged guilt.

Because there was no spirit of ill will documented in the record, we overrule the first assignment of error.

In his second assignment of error, T.M. contests the sufficiency and weight of the evidence underlying his adjudication. Specifically, T.M. argues that the state failed to prove that he knowingly caused serious physical harm to Schmidt. We are unpersuaded. Viewing the evidence in a light most favorable to the state, we hold that grabbing and pulling another so forcefully to the ground, particularly on concrete, so as to cause the victim to lose his memory about what had happened, and as a result the victim required hospitalization and surgery is sufficient evidence to support a felonious-assault adjudication. *See In re: D.W.*, 8th Dist. Cuyahoga No. 79262, 2002-Ohio-4173 (sufficient evidence to support felonious-assault conviction

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where defendant punched victim so hard victim fell to the ground, could not remember what had happened and victim required hospitalization and surgery).

Further, we cannot say that T.M.'s adjudication was against the weight of the evidence. The trier of fact is in the best position to judge the credibility of the witnesses, and there is nothing in the record to contradict the trial court's opinion that the defense witnesses were not credible.

Finally, T.M. maintains that the court's determination that he did not act in self-defense was against the weight of the evidence. Here, under the new self-defense statute, the state had the burden of disproving beyond a reasonable doubt that T.M. had acted in self-defense. *See State v. Parrish*, 1st Dist. Hamilton No. C-190379, 2020-Ohio-4807, ¶ 16. Based on the record before us, we cannot say that the trial court lost its way and created a manifest miscarriage of justice by determining that the state had met its burden.

The second assignment of error is overruled.

Having overruled both assignments of error, we affirm the trial court's judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., WINKLER and SUNDERMANN, JJ.

J. HOWARD SUNDERMANN, JR., retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on July 14, 2021,
per order of the court _____.
Administrative Judge