

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

STATE OF OHIO,	:	APPEAL NO. C-150325
	:	TRIAL NO. B-1405415
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MELVIN RICHARD,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Melvin Richard was found guilty, following a jury trial, of one count of felonious assault in violation of R.C. 2903.11(A)(1) and one count of assault in violation of R.C. 2903.13(A). Because the offenses involved the same victim, police officer Aaron Layton, the trial court merged the assault with the felonious assault. It sentenced Richard to six years in prison for felonious assault.

In his first assignment of error, Richard argues that his felonious-assault conviction is not supported by sufficient evidence. In his third assignment of error, he challenges the trial court's denial of his motion for a new trial. In his motion, Richard claimed that the state had failed to prove that Officer Layton had suffered serious physical harm. Because these assignments of error are interrelated, we address them together.

R.C. 2903.11(A)(1) provides that “No person shall knowingly * * * cause serious physical harm to another * * *.” R.C. 2903.11(D)(1)(a) provides that “if the victim of a violation of division (A) of this section is a peace officer * * * felonious assault is a felony of the first degree.” R.C. 2901.01(A)(5) defines serious physical harm, in pertinent part, as: “(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary substantial incapacity;” or “(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.”

Here, testimony from the state’s witnesses was sufficient to support Richard’s conviction for felonious assault. At trial, the state’s witnesses testified that a double shooting had occurred and the victims had been transported to University Hospital for treatment. A large group had gathered at the hospital emergency room. They became disruptive, prompting University Hospital safety officers to contact the Cincinnati police department for assistance.

When Cincinnati police officers Layton and Ken Kober arrived in uniform and marked police cruisers, they saw a large crowd in the street outside the hospital. Richard, who smelled of an alcoholic beverage, was standing in the middle of the street and screaming in an effort to “rile up” the crowd by referring to the Ferguson incident and repeatedly saying, “They are going to kill me.” After several unsuccessful attempts to persuade Richard to leave, Officer Layton told Richard he was placing him under arrest for disorderly conduct while intoxicated. He handcuffed Richard and walked him to his police cruiser where he began to search him. Because Richard was struggling against him, Officer Layton placed his left hand on the link to the handcuffs as he searched Richard. Officer Layton removed

some paperwork and two alcoholic beverages from Richard's pockets. Richard then grabbed Officer Layton's left thumb and began twisting his body, which caused Officer Layton's left thumb to bend backward. Officer Layton testified that he had to take Richard to the ground to free his thumb from Richard's grip. Only after Officer Kober threatened to tase Richard, did Richard stop struggling with Officer Layton. Officer Layton then placed Richard in the back of a police cruiser. As Officer Layton started filling out Richard's arrest paperwork, his left hand began hurting. It was red and swollen and he had difficulty moving it. Officer Layton thought his thumb had been broken, so he informed his supervisor, who then escorted him to the emergency room at University Hospital.

According to the emergency room records, which were admitted at trial, Officer Layton suffered a sprain to his thumb. His hand was placed in a soft cast and he was advised to follow up with a hand specialist. After following up with the hand specialist, Officer Layton learned that a nerve in his hand had been compressed, which was causing him to experience continuous pain in his arm. He had surgery a month later to address the problem. He was off work for two weeks. He went back to work for three to four weeks, but when he continued to experience weakness and constant shooting pain in his left arm and hand, he stopped working. He could no longer drive because of his prescribed pain medication and he could no longer safely transition a gun to his left hand.

Officer Layton testified that five months after his first surgery, he had a second surgery, where a catheter was inserted in his shoulder and a tube run down his arm to directly inject the nerve with medication in an effort to get his nerve to "switch off." That procedure, however, was unsuccessful, so at the time of trial he was awaiting approval for a third surgery where doctors would introduce leads going

up his spine from a neurostimulator to try to get the nerve to “turn off” and to relieve his pain. He testified that the medications he is currently taking for his injury prevent him from operating a vehicle and that he continues to lack long-term strength in his left hand. He can only carry things in his hand for one or two minutes, so he cannot qualify to hold a weapon, which is a part of his duties as a patrol officer. Officer Layton further testified that he cannot sustain another trauma to his arm or he will suffer permanent damage beyond what he has already suffered. He further testified that “from right now, all indications * * * are that I will not be able to be a patrol officer again.”

Contrary to Richard’s assertions, Officer Layton’s testimony was sufficient to show that Richard had knowingly caused serious physical harm to Officer Layton as set forth in R.C. 2901.01(A)(5)(c) and (e). *See State v. Cal*, 6th Dist. Ottawa No. OT-05-005, 2006-Ohio-120, ¶ 22-30; *State v. King*, 2d Dist. Champaign No. 90-CA-17, 1991 Ohio App. LEXIS 1013, *6-7 (Mar. 14, 1991). Thus, the trial court did not err in denying his motion for a new trial. We, therefore, overrule his first and third assignments of error.

In his second assignment of error, Richard argues that his conviction is against the manifest weight of the evidence.

Although Richard and the state presented testimony from multiple witnesses at trial, none of these witnesses saw Richard injure Officer Layton’s thumb. Only Richard testified contrary to Officer Layton. While Officer Layton testified that Richard had bent his thumb back, Richard testified that he had not struggled against Officer Layton and he had not bent Officer Layton’s thumb back. Thus, the jury had to determine whose version of the events was more credible. Given our review of the record, we cannot say that the jury lost its way and created such a manifest

miscarriage of justice in crediting Officer Layton's testimony that we must reverse Richard's conviction and order a new trial. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We, therefore, overrule Richard's second assignment of error.

In his fourth assignment of error, Richard contends the record does not support his sentence and that his sentence is contrary to law. He argues that the trial court should have imposed the minimum sentence of three years in prison. We disagree.

The six-year sentence that the trial court imposed was within the range of prison terms for a first-degree-felony offense. *See R.C. 2929.14(A)(1)*. The trial court, moreover, was not required to make any findings in this case before imposing the six-year prison sentence. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). The trial court's comments at the sentencing hearing, nonetheless, reflect that it took into account Richard's prior criminal history as well as the facts of the offense when fashioning his six-year sentence. We, therefore, overrule the fourth assignment of error and affirm the judgment of the trial court.

Further, 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.

FISCHER, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on January 22, 2016
per order of the court _____.
Presiding Judge