

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

STATE OF OHIO,	:	APPEAL NO. C-150273
	:	TRIAL NO. B-1405290
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JOHN LEE,	:	
	:	
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.

Following a bench trial in the Hamilton County Court of Common Pleas, defendant-appellant John Lee was convicted of felonious assault and sentenced to eight years in prison.

In his first assignment of error, Lee challenges the weight and sufficiency of the evidence adduced to support his conviction. To find Lee guilty of felonious assault, the trier of fact had to find that he knowingly caused physical harm to Chelsea Stowe, his ex-girlfriend, by means of a deadly weapon. *See* R.C. 2903.11(A)(2). At trial, the state produced ample evidence that Lee had stabbed Stowe in the face, neck and chest with a knife, following her breaking off of their relationship. Consequently, we hold that a rational trier of fact, viewing the evidence in a light most favorable to the state, could have found that the state had proved

beyond a reasonable doubt that Lee had committed the offense of felonious assault. Therefore, the evidence was legally sufficient to sustain his conviction. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

The trial court was entitled to reject Lee's testimony that, when his ex-girlfriend attacked him with the knife, he had grabbed her "double-jointed" wrist and had forced the knife "kind of towards her \* \* \* [where it was] hitting her in weird places." The weight to be given the evidence and the credibility of the witnesses were for the trier of fact. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Moreover, our review of the record fails to persuade us that the trial court, acting as 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. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We overrule the first assignment of error.

In his second assignment of error, Lee argues that his right to a fair trial was denied by the prosecutor's improper vouching for the credibility of the state's witnesses during closing argument. In general, "[t]he test for prosecutorial misconduct is whether remarks are improper, and if so, whether they prejudicially affected substantial rights of the accused." *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990). Because Lee did not object to the prosecutor's remarks at trial, we review for plain error. *See State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, 776 N.E.2d 26, ¶ 24.

Even assuming that the prosecutor's comments were improper, we are unable to conclude, in the context of a bench trial, that the purported vouching affected the outcome of the trial. *Id.* We apply the usual presumption in a bench trial that the

court “considered only the relevant, material, and competent evidence in arriving at its judgment unless it affirmatively appears to the contrary.” *See Lott* at 166-167.

In this case, the record does not suggest that the trial court accorded any weight to the remarks of the prosecutor. On the contrary, the court specifically noted that after careful attention to the witnesses and their testimony, it concluded that Lee’s testimony lacked credibility and that it found the victim’s testimony “to be very credible.” Consequently, we overrule the second assignment of error and affirm the trial court’s judgment.

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.

**HENDON, P.J., DEWINE and STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on March 18, 2016

per order of the court \_\_\_\_\_.  
Presiding Judge