

[Cite as *State v. Williams*, 2019-Ohio-992.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107249

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BROOKE WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART AND REVERSED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas

Case No. CR-17-021055-A

BEFORE: Blackmon, P.J., Laster Mays, J., and Headen, J.

RELEASED AND JOURNALIZED: March 21, 2019

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PATRICIA ANN BLACKMON, P.J.:

{¶1} Defendant-appellant, Brooke Williams, appeals from her convictions for aggravated burglary and assault. She assigns the following errors for our review:

I. [Williams's] conviction was against the manifest weight of the evidence as the evidence presented was not sufficient as a matter of law for finding defendant guilty.

II. The trial court erred when it denied the [Crim.R. 29] motions as venue was not proved beyond a reasonable doubt.

{¶2} Having reviewed the record and pertinent law, we affirm the assault conviction, but we reverse the conviction for aggravated burglary. The apposite facts follow.

{¶3} In September 2017, Williams was indicted for aggravated burglary, assault, and criminal damaging, following an altercation at the home of Christina Sanchez (“Sanchez”). The matter proceeded to trial to the court on March 14, 2018.

{¶4} The evidence presented by the state indicated that Sanchez resided on West 104th Street in Cleveland. She has a three year-old child with Pedro Rodriguez (“Rodriguez”), who was Williams’s boyfriend. Under the terms of an agreement with Rodriguez, Williams is to stay 1,000 feet away from Sanchez’s child, and Sanchez and Rodriguez were embroiled in visitation disputes.

{¶5} Sanchez testified that on August 31, 2017, Rodriguez went to her home on West 104th Street to give her a child support payment. A few minutes later, Williams drove to the home and began to beep her horn. Williams began pounding on the glass panel of the door, breaking it. According to Sanchez, Williams pushed her way inside and struck her multiple times before Rodriguez could push her back outside. During the scuffle, Williams dropped her cell phone inside the house and it fell under a table. At that point, Williams pulled her outside the house and continued the assault, tearing the railing off of the front steps. Rodriguez grabbed Williams and Sanchez ran inside to call police. Sanchez maintained that while she was inside, Williams keyed her car.

{¶6} On cross-examination, Sanchez admitted that when police responded to the scene, she told them that as soon as she saw Williams outside, she closed the door and locked it, then Rodriguez went outside and a struggle ensued between Rodriguez and Williams. In her 911 call, Sanchez maintained that “there’s blood everywhere” and that she talked to four 911 operators to report the incident, claims unsupported by our record.

{¶7} Cleveland Police Officer Lyniece Turner testified that she responded to the scene and spoke with Sanchez. Sanchez's toe was bleeding, and she explained that this injury occurred from being pulled down the steps.

{¶8} Rodriguez testified on behalf of Williams and stated that while he was inside with Sanchez, Williams came to the door, and he went outside. He testified that Williams did not go inside Sanchez's house. Rather, Sanchez followed him as he went outside. According to Rodriguez, the women began to fight in the yard. Sanchez ended up with Williams's phone and refused to return it. He denied that Williams caused damage to the house or to Sanchez's car, and he testified that the car had been keyed two weeks earlier.

{¶9} Williams testified on her own behalf and stated that she came to the door to speak with Rodriguez who had been ignoring her calls. While she was knocking, she broke the glass panel on the door. At that point, her cell phone flew through the hole in the glass. Rodriguez came outside. Sanchez subsequently came outside and they all began to argue, before Rodriguez pushed Williams into her car. Williams stated that she never went inside the house, and she denied breaking the front rail.

{¶10} The court acquitted Williams of criminal damaging, but convicted her of aggravated burglary and assault, and merged those offenses. The court sentenced Williams to eighteen months of community control sanctions and ordered her to pay Sanchez \$6,875 in restitution.

Manifest Weight of the Evidence

{¶11} In the first assigned error, Williams asserts that her convictions are against the manifest weight of the evidence. She maintains that she did not enter Sanchez's home and did not assault her, so the trial court erred in convicting her of aggravated burglary and assault.

{¶12} In reviewing a challenge to the manifest weight of the evidence supporting a conviction, a reviewing court “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.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A conviction should be reversed as against the manifest weight of the evidence only in the most “exceptional case in which the evidence weighs heavily against the conviction.” *Id.* In contrast to a challenge based on sufficiency of the evidence, a manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion at trial. *State v. Whitsett*, 8th Dist. Cuyahoga No. 101182, 2014-Ohio-4933, ¶ 26, citing *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541; *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13. Moreover, whereas reversals of convictions resulting from jury verdicts require the unanimous concurrence of the appellate panel, convictions resulting from a bench trial may be reversed by a majority of the panel. *Thompkins* at paragraphs three and four of the syllabus, citing Article IV, Section 3(B)(3), Ohio Constitution.

{¶13} Based on our review of the entire record in this case, weighing the strength and credibility of the evidence presented and the inferences to be reasonably drawn therefrom, we cannot say that the assault conviction is against the manifest weight of the evidence. There is clear, consistent, and credible evidence that Williams assaulted Sanchez. It is clear that Sanchez suffered a foot injury and various scrapes and bruises from this incident. However, this panel unanimously finds that the evidence weighs heavily against Williams’s conviction for aggravated burglary. Although the evidence indicated that Williams broke the front door glass with her cell

phone, we find that competent, credible evidence was lacking as to Williams's entry into the home. Photographs from the altercation depict damage to the front railing and Sanchez had grass stains from the incident, strongly suggesting that the altercation occurred outside only. We also recognize that prior to this incident, the parties had extreme animosity and ongoing visitation issues. Sanchez also indicated that she would use the incident against Rodriguez in their ongoing disputes. Further, Sanchez's statements to the 911 operator that "there's blood everywhere" and that she had to speak to four 911 operators are not supported in our record. Therefore, we conclude that the trial court lost its way in convicting Williams of aggravated burglary, so we reverse this conviction as being against the manifest weight of the evidence.

{¶14} Accordingly, we conclude that Williams's first assigned error is well taken in part.

Venue

{¶15} In the second assigned error, Williams asserts that the trial court erred in not granting her Crim.R. 29 motion for acquittal because the state failed to establish venue.

{¶16} Crim.R. 29 governs a motion for acquittal. Subsection (A) states the following:

The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶17} R.C. 2901.12(A) governs venue in criminal cases and states that the trial should be "held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element thereof was committed." Although venue is not a material element of the offense, it is a fact which must be proven by the state. *State v. Headley*, 6 Ohio St.3d 475, 477,

453 N.E.2d 716 (1983); *State v. Draggo*, 65 Ohio St.2d 88, 90, 418 N.E.2d 1343 (1981). Venue need not be proven in express terms so long as it is established by all the facts and circumstances in the case. *State v. Mohamed*, 178 Ohio App.3d 695, 2008-Ohio-5591, 899 N.E.2d 1071, ¶ 15 (8th Dist.); *State v. Davis*, 8th Dist. Cuyahoga No. 84610, 2005-Ohio-289, ¶ 15.

{¶18} In this matter, Sanchez testified that she lives on West 104th Street in Cleveland, Ohio, and that this was the location of the offenses. Accordingly, the state presented sufficient evidence to establish venue.

{¶19} The second assigned error lacks merit.

{¶20} Judgment is affirmed in part and reversed in part.

The trial court is ordered to carry this judgment into execution.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
RAYMOND C. HEADEN, J., CONCUR