[Cite as *State v. Ritchie*, 2009-Ohio-5280.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO/CITY OF HAMILTON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-12-304
	:	O P I N I O N
- vs -		10/5/2009
	:	
JENNIFER RITCHIE,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 08CRB05617-A

Mary K. Dudley, Hamilton City Prosecutor, 345 High Street, Hamilton, OH 45012-0515, for plaintiff-appellee

Christopher P. Frederick, 304 North Second Street, Hamilton, OH 45011, for defendant-appellant

POWELL, J.

{¶1} Defendant-appellant, Jennifer Ritchie, appeals her conviction in the Hamilton Municipal Court for assault.

{¶2} At approximately 9:00 p.m. on September 1, 2008, Cyndi Hunley was attacked and beaten while she was talking to Charles Tempton, appellant's boyfriend, in the front yard of his mobile home. Following a police investigation, appellant was arrested and charged

with assault in violation of R.C. 2903.13(A), a first-degree misdemeanor. Appellant was convicted following a bench trial.

{¶3} Appellant now appeals her conviction, raising three assignments of error.[1] For ease of discussion, appellant's first and second assignments of error will be addressed together.

{¶4} Assignment of Error No. 1:

{¶5} "THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT APPELLANT OF ASSAULT IN VIOLATION OF R.C. 2903.13."

{¶6} Assignment of Error No. 2:

{¶7} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶8} In her first and second assignments of error, appellant argues that her conviction for assault was not supported by sufficient evidence and was against the manifest weight of the evidence. Specifically, although she concedes that Hunley was involved in an "altercation" in which she received significant facial injuries, appellant claims that "the state failed to prove that [she] was responsible." We disagree.

{¶9} Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Whitaker*, Butler App. No. CA2008-01-034, 2009-Ohio-926, ¶6; *State v. Everitt*, Warren App. No. CA2002-07-070, 2003-Ohio-2554, ¶25. In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *In re D.B.*, Butler App. No. CA2005-12-524, 2006-Ohio-3240, ¶4; *State v. Lattire*,

1. Appellee, State of Ohio/City of Hamilton, did not file an appellate brief in this case, and, pursuant to App. R. 18(C), this court may accept appellant's statement of facts and issues as correct and reverse the judgment if her brief reasonably appears to sustain such action. See *State v. Campell*, Butler App. No. CA2007-12-313, 2008-Ohio-5542, fn. 1.

Butler App. No. CA2004-01-005, 2004-Ohio-5648, ¶21; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52; *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. The relevant inquiry is whether, after viewing 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. *State v. Smith*, 80 Ohio St.3d 89, 113, 1997-Ohio-355; *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37; *State v. Haney*, Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶10} Unlike a sufficiency of the evidence challenge, a manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Ghee*, Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶9, citing *Thompkins* at 387. In turn, "weight is not a question of mathematics, but depends on its effect in inducing belief." *Ghee* at ¶9. A court considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶39; *State v. Lester*, Butler App. No. CA2003-09-244, 2004-Ohio-2909, ¶33; *State v. James*, Brown App. No. CA2003-05-009, 2004-Ohio-1861, ¶9. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide since it is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence. *State v. Gesell*, Butler App. No. CA2005-08-367, 2006-Ohio-3621, ¶34; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Therefore, upon review, the question is whether in resolving conflicts in the evidence, the trial court clearly lost its way and created

such a manifest miscarriage of justice that the conviction must be reversed. *State v. Good*, Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25; *State v. Blanton,* Madison App. No. CA2005-04-016, 2006-Ohio-1785, ¶7; *Thompkins*, 78 Ohio St.3d at 387.

{¶11} Furthermore, as this court has previously noted, "a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Smith*, Fayette App. No. CA2006-08-030, 2009-Ohio-197, ¶73; *State v. Urbin*, 148 Ohio App.3d 293, 2002-Ohio-3410, ¶31. In turn, this court's determination that a conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *State v. Rodriguez*, Butler App. No. CA2008-07-162, 2009-Ohio-4460, ¶62.

{¶12} Appellant was charged with one count of assault under R.C. 2903.13(A), a first-degree misdemeanor, which provides, in pertinent part, "[n]o person shall knowingly cause or attempt to cause physical harm to another * * *."

{¶13} At trial, Cyndi Hunley testified that on the evening of September 1, 2008, she was talking to Charles Tempton, appellant's boyfriend, in the front yard of his mobile home when appellant "came up behind [her], grabbed [her] by [her] hair and pulled [her] down."[2] Hunley continued by testifying that she "begged" Tempton to help her, but that he just "stood there and watched" while appellant punched and kicked her "over, over, over again." Hunley also testified that the beating left her with "contusions," "two black eyes," "almost a shattered cheek bone," and "bruises on [her] legs and [her] arms."[3] After describing the injuries she sustained that evening, Hunley made an in-court identification of appellant as her attacker.

{¶14} In her defense, appellant testified that she was not at Tempton's mobile home

2. Although her attacker approached from behind, Hunley later testified that she "saw [appellant's] face" after she was "let go." Hunley also testified that even though she "didn't know what her name was at the time," she "[knew] who attacked [her]."

3. The state also introduced a number of pictures taken by Hunley's daughter shortly after the attack. These pictures depict large welts on Hunley's temple, swelling around both of her eyes, as well as a gash and a stream of blood on her left forearm.

that evening, but instead, testified that she was at her mother's house in Carlisle, which is "about an hour drive." Appellant also testified that she did not learn about the "big fight that took place" until the next day, and that, because she did not know Hunley prior to this incident, she had no reason to attack her.

{¶15} In addition, Tempton, who admittedly "had too much to drink that day," testified that appellant was not at his mobile home that evening. Instead, Tempton testified that he saw Hunley, who was accompanied by another woman, walking a dog through the neighborhood, and that he "talked to [Hunley] for a minute," before the two women started to argue. Not wanting them to fight in his front yard, Tempton testified that he told the two women "to take it up the street." However, instead of leaving, Tempton testified that the two women acted "like they're going to fight" and then "started swinging." When asked to describe the woman who Hunley fought with that evening, Tempton testified that she was a "neighborhood person," but could not provide any further description.

{¶16} The outcome of this case hinged on the credibility of the witnesses who testified at trial. See, e.g., *State v. Dempsey*, Brown App. No. CA2002-02-004, 2003-Ohio-192. In turn, although confronted with conflicting testimony, the trial court, as the trier of fact, was in the best position to determine the credibility of the witnesses and was entitled to believe all, part, or none of the testimony presented. *State v. Woodruff*, Butler App. No. CA2008-11-824, 2009-Ohio-4133, ¶25; *State v. Hall*, Butler App. Nos. CA2005-08-217, CA2005-08-358, 2006-Ohio-4206, ¶76, citing *State v. Nichols* (1993), 85 Ohio App.3d 65, 76. As a result, upon reviewing the record, weighing the evidence and all reasonable inferences, and considering the credibility of witnesses, we find that the trial court did not clearly lose its way and create such a manifest miscarriage of justice that appellant's assault conviction must be reversed. As the evidence indicates, appellant attacked Hunley from behind causing her to suffer physical harm. Therefore, because we cannot say that appellant's assault conviction

created such a manifest miscarriage of justice, we find no reason to disturb the trial court's finding of guilt.

{¶17} As we have already determined that appellant's conviction was not against the manifest weight of the evidence, we necessarily conclude that the state presented sufficient evidence to support the trial court's finding of guilt in this case. Accordingly, appellant's first and second assignments of error are overruled.

{¶18} Assignment of Error No. 3:

{¶19} "APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL."

{¶20} In her third assignment of error, appellant argues that her trial counsel was ineffective. We disagree.

{¶21} To establish a claim of ineffective assistance of counsel, appellant must show her trial counsel's actions fell below an objective standard of reasonableness, and that she was prejudiced as a result. *State v. Wright*, Warren App. No. CA2008-03-039, 2008-Ohio-6765, ¶22; *Strickland v. Washington* (1984), 466 U.S. 668, 687-691, 104 S.Ct. 2052. In order to demonstrate prejudice, appellant must establish, but for counsel's errors, a reasonable probability exists that the result of her trial would have been different. *Wright* at ¶22, citing *Strickland* at 694; *Lattire*, 2004-Ohio-5648 at ¶10. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *State v. Lahmann*, Butler App. No. CA2006-03-058, 2007-Ohio-1795, ¶11.

{¶22} Initially, appellant argues that her trial counsel's representation was ineffective because he failed to file a notice of alibi. However, contrary to appellant's claim, and as this court has previously held, trial counsel's failure to file a notice of alibi is not prejudicial when the defendant is still given the opportunity to present an alibi at trial. *State v. Fink*, Butler App. No. CA2005-11-480, 2006-Ohio-5657, ¶11; *State v. Grant,* Butler App. No. CA2003-05-

114, 2004-Ohio-2810, ¶27. Here, even though her trial counsel did not file a notice of alibi, the trial judge clearly permitted appellant to submit evidence of her whereabouts on the night in question and the prosecution made no objection when she presented such evidence at trial. See *Fink* at ¶11. Therefore, because she was still able to present evidence of an alibi to the trial court, we find that appellant has failed to demonstrate that she was prejudiced by her trial counsel's failure to file a notice of alibi. Id.; *Grant* at ¶27.

{¶23} Next, appellant argues that her trial counsel was "deficient for not calling [her] mother as a witness." However, appellant's trial counsel's failure to call appellant's mother as a witness was not prejudicial if the testimony from her mother would have merely been corroborative. *State v. Wells*, Warren App. No. CA2005-04-050, 2006-Ohio-874, ¶12; *State v. Revels,* Butler App. Nos. CA2001-09-223, CA2001-09-230, 2002-Ohio-4231, ¶30, citing *Middletown v. Allen* (1989), 63 Ohio App.3d 443. After reviewing the record, we find the mother's testimony, which, according to appellant, "would have *verified* that [she] was not at Tempton's residence that [sic] night of the attack," was merely corroborative of her alibi defense that she had already presented. (Emphasis added.) Therefore, because her mother's testimony would have merely been corroborative, we find that appellant has failed to demonstrate that she was prejudiced by her trial counsel's failure to call her mother as a witness. Accordingly, appellant's third assignment of error is overruled.

{¶24} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

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