

[Cite as *State v. Monie*, 2004-Ohio-4515.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 20041

vs. : T.C. CASE NO. 02CRB2964

SHARON D. MONIE: (Criminal Appeal from
County Court)

Defendant-Appellant :

.

O P I N I O N

Rendered on the 27th day of August, 2004.

.

Dennis J. Adkins, Atty. Reg. No. 0034488; David P. Mesaros,
Atty. Reg. No. 0012725, 1700 One Dayton Centre, One South
Main Street, Dayton, Ohio 45402

Attorney for Plaintiff-Appellee

Ben Swift, 333 West First Street, Dayton, Ohio 45402, Atty.
Reg. No. 0065745

Attorney for Defendant-Appellant

.

GRADY, J.

{¶1} Defendant, Sharon Monie, appeals from her
conviction and sentence for assault.

{¶2} The evidence presented by the State demonstrates
that on the night of November 6, 2002, Datasha Stallworth
and a friend attended karaoke night at Frank & Jay's, a
Trotwood nightclub. Ms. Stallworth and her friend sat at a

table occupied by several other women. Nearby was another table occupied by Defendant and her friends. Several of the women at Stallworth's table got into an argument with the women at Defendant's table. That argument escalated into a brawl with ten or more women involved in the fight. Stallworth was not involved in the altercation and got out of the way when the fight broke out.

{¶3} The manager of the bar, Gregory Anderson, broke up the fight and told all of the women to leave. Stallworth attempted to help some of the women collect their purses and belongings from off of the floor. Stallworth was standing close to Mr. Anderson, who was between Stallworth and Defendant. Although Stallworth did nothing to provoke Defendant, when Stallworth bent down to get her jacket, Defendant reached over Anderson and hit Stallworth in the face with a glass. Anderson quickly grabbed Defendant and saw that she was holding the broken stem from the glass in her hand.

{¶4} Stallworth suffered a cut near her left eye that required three stitches at the hospital and left a scar. When Defendant went out into the parking lot after this incident, two or three women, not including Stallworth, attacked her. After Trotwood police officer Mike Richardson arrived on the scene, he determined that Defendant was intoxicated and kept changing her story about what had occurred.

{¶5} Defendant's evidence presents a very different

version of the events. According to Defendant, the argument between the two groups of women started when the women at Stallworth's table began calling Defendant's friend names and disparaging her singing. Stallworth threw a chair, and the women at her table attacked Defendant's friend and a brawl broke out. Ten or eleven women were fighting with chairs, fists, and glasses flying. Defendant denied hitting Stallworth with a glass or anything else.

{¶6} After Gregory Anderson broke up the fight and ordered all of the women to leave, he escorted Defendant out of the bar into the parking lot. At that time Anderson incited the women who had been at Stallworth's table to attack Defendant, and several of them did. Anderson also hit Defendant in the face. During the attack in the parking lot Defendant was hit or kicked in the head. When police arrived they initially considered Defendant the victim.

{¶7} Defendant was charged by complaint in Montgomery County Area One District Court with assault in violation of R.C. 2903.13(A). Following a trial to the court, Defendant was found guilty. The trial court sentenced Defendant to sixty days in jail but suspended fifty-nine of those days and gave Defendant jail time credit for one day served. The court fined Defendant three hundred dollars plus court costs but suspended two hundred dollars of the fine. The court also placed Defendant on six months of supervised probation.

{¶8} Defendant timely appealed to this court from her

conviction and sentence. Execution of Defendant's sentence was stayed pending this appeal.

ASSIGNMENT OF ERROR

{¶9} "APPELLANT'S CONVICTION IS AGAINST BOTH THE SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE."

{¶10} A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The proper test to apply to such an inquiry is the one set forth in paragraph two of the syllabus of *State v. Jenks* (1991), 61 Ohio St.3d 259:

{¶11} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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."

{¶12} Defendant was found guilty of violating R.C. 2903.13(A), which provides:

{¶13} "No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn."

{¶14} "Knowingly" is defined in R.C. 2901.22(B):

{¶15} "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶16} Defendant argues that the evidence is insufficient to prove that she hit Stallworth causing physical harm because Stallworth did not see Defendant hit her. However, the manager of the bar, Gregory Anderson, testified that he saw Defendant reach over him and hit Stallworth with a glass.

{¶17} Defendant further argues that even if she did hit Stallworth, causing her injuries, the evidence is insufficient to prove that she did so "knowingly." Defendant suggests that she may have been simply "flailing around in an attempt to gather her belongings and leave."

{¶18} Defendant's argument is completely unsupported by the record. The testimony of Stallworth and Gregory Anderson, if believed, is sufficient to prove that Defendant hit Stallworth in the face with a glass. The trier of facts could reasonably infer that Defendant was aware that such conduct would probably result in physical harm.

{¶19} Viewing the testimony of Stallworth and Anderson in a light most favorable to the prosecution, a reasonable trier of facts could find all of the elements of assault

6

proven beyond a reasonable doubt. Therefore, Defendant's conviction is supported by legally sufficient evidence.

{¶20} A weight of the evidence argument challenges the believability of the evidence, and asks which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15562, unreported. The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶21} "[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Accord: *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52.

{¶22} The evidence introduced at trial presents conflicting versions of the events that transpired. In resolving that conflict the trial court chose to believe Stallworth and Anderson, rather than Defendant. Defendant argues that Anderson's testimony about Defendant assaulting Stallworth is not worthy of belief because Anderson was a biased witness. For instance, once Defendant was outside in the parking lot, Anderson incited the women who had been at Stallworth's table to attack Defendant which they did. Moreover, at trial Anderson and Stallworth were observed discussing this case. Defendant also claims that

Stallworth's testimony is not worthy of belief because she testified that she did not know who threw the chair that started the brawl, but both Defendant and Defendant's friend, Twana Darnell, testified that Stallworth is the person who threw the chair.

{¶23} The credibility of the witnesses and the weight to be given to their testimony is a matter for the trier of facts, the trial court here, to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230. In *State v. Lawson* (August 22, 1997), Montgomery App. No. 16288, we observed:

{¶24} "[b]ecause the factfinder . . . has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *Id.*, at p. 4.

{¶25} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict. *State v. Bradley* (October 24, 1997), Champaign App. No. 97-CA-03.

{¶26} The trial court, sitting as the trier of facts, did not lose its way simply because it chose to believe

Stallworth and Anderson's version of the events rather than Defendant's, which it was entitled to do. In reviewing this record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the trial court lost its way, or that a manifest miscarriage of justice has occurred. Defendant's conviction for assault is not against the manifest weight of the evidence.

{¶27} The assignment of error is overruled. The judgment of the trial court will be affirmed.

Judgment affirmed.

FAIN, P.J., and BROGAN, J., concur.

Copies mailed to:

Dennis J. Adkins, Esq.
David P. Mesaros, Esq.
Ben Swift, Esq.
Hon. James A. Hensley, Sr.