

[Cite as *State v. Foster-Jones*, 2010-Ohio-5758.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO | : | |
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| Plaintiff-Appellee | : | C.A. CASE NO. 23681 |
| v. | : | T.C. NO. 09 CRB 5306 |
| | : | |
| PRISCILLA FOSTER-JONES | : | (Criminal appeal from Municipal Court) |
| | : | |
| Defendant-Appellant | : | |

OPINION

Rendered on the 24th day of November, 2010.

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FROELICH, J.

{¶ 1} Priscilla Foster-Jones was convicted after a bench trial in the Dayton Municipal Court of domestic violence and assault. The court sentenced her to a suspended 180-day jail sentence and two years of supervised probation, including mental health counseling.

{¶ 2} Foster-Jones appeals from her convictions, claiming that her convictions were based on insufficient evidence and were against the manifest weight of the evidence. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} The State's evidence at trial established the following facts:

{¶ 4} In May 2009, Foster-Jones and Gent Jones had been married for eight years and were the parents of three daughters, ages four, six, and eight. The couple was in the process of divorcing; each had a protective order against the other. Jones was the residential parent for the three girls, and Foster-Jones had visitation with the children on Wednesdays and every other weekend.

{¶ 5} Jones testified that he typically transported the children to Foster-Jones's home at 830 Glendale Avenue in Dayton for visitation. When he arrived at Foster-Jones's house, he would call her on his cell phone to let her know that he was outside. The girls then would get out of the car and run up to the front door of the house.

{¶ 6} On May 15, 2009, a Friday, Jones drove the children to Foster-Jones's home for visitation. Once the car was stopped (Jones did not turn off the vehicle), the girls got out of the car and ran up to house. Jones "saw their mother in the door so [he] knew they were ok." Before pulling away, Jones reached behind him to close the rear doors that the children had left open. As he was doing so, one of the girls came down the hill in front of Foster-Jones's house to tell Jones that she loved him. The daughter then began to return to Foster-Jones's

house.

{¶ 7} Jones put his car into reverse and was getting ready to pull away from the curb when the front passenger door opened and Foster-Jones leaned into the vehicle. Jones asked her what was going on. Foster-Jones responded by calling him “Mr. Mom,” making “little gay innuendos,” and saying other similar remarks. The couple’s daughters returned to the vehicle, became upset, and asked Foster-Jones to stop. The girls got back into Jones’s car. Jones asked Foster-Jones not to berate him in front of the children.

{¶ 8} While still in his seatbelt and pressing on the brake, Jones reached over to grab the front passenger door with his right hand. Foster-Jones grabbed his arm and began digging her nails into his arm. When Jones only smiled at her, she “dug them deeper and deeper and [Jones] just smiled to keep [him]self from getting upset.” Jones’s arm bled due to several deep scratches. Jones took his foot off the brake and quickly re-applied it, causing the car to jerk. Foster-Jones “jumped out,” and Jones drove off with the children. Later that evening, Jones contacted the police.

{¶ 9} Jones met Dayton Police Officers Justin Saunders and Robert Clinger near 800 Glendale Avenue. Officer Saunders observed visible scratch marks on Jones’s inner right forearm. The officers attempted to make contact with Foster-Jones at her residence, but Foster-Jones was not there.

{¶ 10} Jones did not seek medical attention for his injuries; he used peroxide and bandaged the scratches himself.

{¶ 11} Foster-Jones and her sister, Coretta Foster, testified on

Foster-Jones's behalf. Both women contradicted Jones's testimony that he had remained in the car when he dropped off the children. Foster-Jones testified that the girls rang the doorbell and entered the house without closing the door behind them. As Foster-Jones was hugging and embracing them, Jones walked into Foster-Jones's kitchen with cake and ice cream for their middle daughter's birthday.

Foster-Jones stated that Jones was uninvited and that she was "shocked" and "surprised" that he would enter her home contrary to the protection order. Foster-Jones and her sister both indicated that Jones remained in Foster-Jones's house for approximately two minutes. Coretta Foster saw Jones head towards the front door, but she did not observe what happened after he went outside.

{¶ 12} According to Foster-Jones, their middle child "began to not understand what was going on" and started clinging to Jones. When Jones returned to his car, the middle daughter ran out the door after him and got back into his car. Foster-Jones went to the rear passenger side of Jones's car and tried to coax her daughter back to her house. Jones would not encourage the couple's daughter to return with her mother.

{¶ 13} As Foster-Jones beckoned toward her daughter, Jones "made his way over from the driver's side to the passenger side" inside the car and "end[ed] up with his right arm swinging toward me" through the open front passenger window. Foster-Jones stated that Jones had abused her in the past and that she was afraid of him. She testified that his arm "brushed so close" and, in response, her "fingers did brush up against" his arm. She testified that she touched him unintentionally and "was in defense and trying to defend myself." After Foster-Jones brushed up

against his arm, she backed away and Jones drove off with the three children. (The other two children had come outside and gotten into Jones's car while their mother was outside.)

{¶ 14} After considering the evidence presented at trial, the trial court found Foster-Jones guilty of domestic violence and assault. The court sentenced her accordingly.¹

{¶ 15} Foster-Jones raises two assignments of error on appeal.

II

{¶ 16} Foster-Jones's assignments of error state:

{¶ 17} "I. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT APPELLANT OF DOMESTIC VIOLENCE AND ASSAULT.

{¶ 18} "II. THE VERDICT SHOULD BE REVERSED BECAUSE IT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 19} Foster-Jones claims that her convictions were based on insufficient

¹On December 1, 2009, we issued a Show Cause Order stating that it appeared that the September 8, 2009, sentencing entry issued by the trial court may not be a final appealable order under *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. We ordered Foster-Jones to show cause why her appeal should not be dismissed for lack of jurisdiction. On December 16, 2009, we deemed our Show Cause Order to be satisfied after Foster-Jones provided us with a courtesy copy of two entries time-stamped on December 15, 2009, containing findings of guilty for assault and domestic violence, Foster-Jones's sentence, and the trial judge's signature.

Although the record certified by the clerk of the Dayton Municipal Court contains the entries submitted by Foster-Jones in December 2009, the entries in the record are not time-stamped. On October 28, 2010, the trial court filed a "Sentencing Entry" nunc pro tunc from September 8, 2009, which also contains the court's findings of guilty for assault and domestic violence, Foster-Jones's sentence, and the trial court's signature.

evidence and were against the manifest weight of the evidence.

{¶ 20} “A sufficiency of the evidence argument disputes 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. Wilson*, Montgomery App. No. 22581, 2009-Ohio-525, ¶10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d. 560. A guilty verdict will not be disturbed on appeal unless “reasonable minds could not reach the conclusion reached by the trier-of-fact.” *Id.*

{¶ 21} In contrast to the sufficiency of the evidence standard, “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.” *Wilson* at ¶12. When evaluating whether a conviction is contrary to the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, 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.” *Thompkins*, 78 Ohio St.3d at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 22} Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. However, we may determine which of several competing inferences suggested by the evidence should be preferred. *Id.*

{¶ 23} The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence. *Wilson* at ¶14. A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin*, 20 Ohio App.3d at 175.

{¶ 24} Foster-Jones was convicted of assault, in violation of R.C. 2903.13(A), and domestic violence, in violation of 2919.25(A). R.C. 2903.13(A) reads: "No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn." R.C. 2919.25(A) proscribes assaulting a family or household member. *Id.* It states: "No person shall knowingly cause or attempt to cause physical harm to a family or household member." *Id.* "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration. R.C. 2901.01(A)(3); *State v. Totty*, Montgomery App. No. 23372, 2010-Ohio-1234, ¶18. "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." R.C. 2901.22(B).

{¶ 25} Foster-Jones claims that the State's evidence was insufficient to prove that she assaulted or committed domestic violence against Jones. She

argues that the injuries that Jones sustained did not require medical attention. Jones testified that Foster-Jones scratched his right forearm, causing his arm to bleed, and the State presented two photographs – identified by Jones as pictures of his forearm that were taken on May 18, 2009 – that showed red scratches along the inside of his right forearm. Jones testified that there were additional injuries to the back of his arm that were not photographed. Dayton Police Officer Justin Saunders, who responded to Jones’s complaint, testified that he observed “visible scratch marks on [Jones’s] inner right forearm.” Jones’s injuries were sufficient to establish physical harm under R.C. 2903.13(A); the State was not required to prove that Foster-Jones caused serious physical harm, as required by R.C. 2903.13(B).

{¶ 26} Foster-Jones further argues that the State presented insufficient evidence to support her convictions, because there was conflicting evidence about whether Jones exited his vehicle and entered her home while dropping off the children. In reviewing the sufficiency of the evidence, we review whether *the State’s evidence* was adequate to prove each element of the offense, and we do not consider any contradictory evidence offered by the defense. In this case, the State’s evidence, if believed, established that Foster-Jones opened the front passenger door of Jones’s vehicle as he was preparing to drive away from her residence. And, as Jones reached over to close the front passenger door, Foster-Jones dug her nails into Jones’s forearm, causing him to bleed. It is undisputed that Foster-Jones and Jones were married and were in the process of divorcing when the altercation occurred; accordingly, Jones was a “family or household member” for purposes of the domestic violence statute. R.C.

2919.25(F)(1)(a)(i). The State's evidence was sufficient to establish that Foster-Jones committed assault and domestic violence against Jones.

{¶ 27} The first assignment of error is overruled.

{¶ 28} Foster-Jones argues that her convictions were against the manifest weight of the evidence, because the preponderance of the evidence established that she was acting in self-defense.

{¶ 29} Under Ohio law, self-defense is an affirmative defense for which the defendant bears the burden of proof. Because it functions as an admission and avoidance, as affirmative defenses do, a claim of self-defense presupposes that the alleged crime took place. *State v. Kucharski*, Montgomery App. No. 20815, 2005-Ohio-6541, ¶16. In order for Foster-Jones to have established self-defense involving the use of nondeadly force, she was required to show, by a preponderance of the evidence: “(1) that the defendant was not at fault in creating the situation giving rise to the altercation and (2) that [she] had reasonable grounds to believe and honest belief, even though mistaken, that [she] was in imminent danger of bodily harm and [her] only means to protect [herself] from such danger was by the use of force not likely to cause death or great bodily harm.” *State v. Fritz*, Montgomery App. No. 20796, 2005-Ohio-4736, ¶20.

{¶ 30} In support of her self-defense argument, Foster-Jones testified that Jones initiated the altercation by “swinging” at her from inside the car, brushing her chest. Foster-Jones asserted that she did not grab Jones, but her fingers brushed his arm as she reacted to his conduct. She testified that Jones had abused her and she feared him.

{¶ 31} During Jones's testimony, Jones acknowledged that Foster-Jones may have felt threatened when he reached for the passenger door. He testified:

{¶ 32} "Q: I mean did you grab her and prevent her from getting in the car?"

{¶ 33} "A: No, I didn't do anything. I just stayed where I was until the point where all my girls had jumped back in the car and they were hollering (inaudible) Daddy Daddy. You know? Tell Mommy to stop and everything. And then that's when I reached over. I didn't touch her I just grabbed the door part and then I guess she thought maybe I was going to hit her or something. She kind of backed up a little bit. I grabbed the door and then she just grabbed her nails and started digging in my arm."

{¶ 34} The trial court could have elected to believe Foster-Jones's version of events; however, we cannot find that the trial court "lost its way" in convicting Foster-Jones of assault and domestic violence. The photographs of the scratches on Jones's right forearm reflect several scratches, deep enough to have bled, at various locations along his forearm. The photographs do not support Foster-Jones's assertion that she merely "brushed" against Jones with her nails. Moreover, considering that Jones was seated inside his vehicle and Foster-Jones was outside along the passenger side, the trial court could have reasonably concluded that Foster-Jones acted unreasonably when she caused several deep scratches to Jones's arm with her nails, even if her actions were in response to Jones's actions. Finally, it was the province of the trial court to determine whether Jones or Foster-Jones was more credible. We cannot state that the trial court erred in apparently crediting Jones's testimony.

{¶ 35} The second assignment of error is overruled.

III

{¶ 36} The trial court's judgment will be affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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Hon. Daniel G. Gehres