

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 03CA27
 :
 vs. :
 :
 LEAH VANCE, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

APPELLANT PRO SE:¹ Leah Vance, 10578 State Route 682, The Plains, Ohio 45780, Pro
Se

COUNSEL FOR APPELLEE: Garry E. Hunter, Law Director, and Lisa A. Eliason, Athens
City Prosecutor, Law Administration Building, Athens,
Ohio 45701

CRIMINAL APPEAL FROM ATHENS COUNTY MUNICIPAL COURT
DATE JOURNALIZED: 9-24-04

ABELE, J.

¹Appellant's brief contains no assignments of error as required by App.R. 16(A). Because appeals are decided on the basis of assignments of error, see App.R. 12(A)(1)(b), there is technically nothing for us to review in this case and we would be justified in summarily affirming the trial court's judgment. See In re Guardianship of Freeman, Adams App. No. 02CA737, 2002-Ohio-6386 at ¶2, fn. 1; King v. King (Mar. 8, 2002), Adams App. No. 01CA719; City Loan Financial Serv. v. Koon (Sep. 3, 1996), Hocking App. No. 95CA8. Nevertheless, because this Court affords considerable leniency to pro se litigants, we believe the interests of justice are better served by reviewing the merits of this case. Thus, we shall consider whether the Athens County Municipal Court erred in finding appellant guilty.

{¶ 1} This is an appeal from an Athens County Municipal Court judgment of conviction and sentence. After a bench trial, the trial court found Leah Vance, defendant below and appellant herein, guilty of disorderly conduct in violation of R.C. 2917.11(B)(2).

{¶ 2} On August 30, 2003, Athens County Sheriff's Deputies Fick and Maynard were dispatched to a home on State Route 682 where a male subject was reportedly trying to kill a dog. After they arrived, the deputies encountered appellant who was upset and screaming. She also admitted to them that she had consumed four large glasses wine. After the officer observed appellant exhibit several indicia of intoxication (including "glassy eyes" and "moderately slurred speech") and after enduring appellant's belligerent behavior both directed at them as well as at appellant's boyfriend who was inside the house, the deputies arrested appellant and charged her with a minor misdemeanor disorderly conduct offense.

{¶ 3} Appellant pled not guilty and the matter came on for a bench trial on September 18, 2003. Appellant appeared at her trial pro se. Initially, appellant requested a continuance so that her "victim's advocate" could be with her. The trial court denied her request. The prosecution then called Deputy Maynard who related his version of events. Although appellant did cross-examine Deputy Maynard, she offered no testimony of her own nor did she call any other witness on her behalf.²

{¶ 4} At the conclusion of the hearing, the trial court found appellant guilty and imposed a one hundred dollar fine. The court suspended the entire fine, however, so long as

² When asked if she had any evidence of her own to present, appellant told the court that she had "not had a chance to have [her] advocate in court with [her.]" It is not clear from the record what the advocate would have added to these proceedings. There is no indication that the advocate witnessed any of the events that transpired and could offer any evidence relating to the charged offense.

appellant complied with recommendations from her counselor at “Tri County Mental Health.” This appeal followed.³

{¶ 5} After our review of the record, as well as appellant’s brief, we discern two arguable assignments of error. The first is that the trial court erred by not granting her a continuance so that her “victim’s advocate” could attend the proceedings. The decision to grant or to deny a continuance rests with the sound discretion of the trial court, State v. Mason (1998), 82 Ohio St.3d 144, 155, 694 N.E.2d 932; State v. Claytor (1991), 61 Ohio St.3d 234, 241, 574 N.E.2d 472; State v. Unger (1981), 67 Ohio St.2d 65, 423 N.E.2d 1078, at the syllabus, and that decision will not be reversed on appeal absent an abuse of discretion. Carver v. Map Corp. (Sep. 18, 2001), Scioto App. No. 01CA2757; State v. Bomar (Oct. 23, 2000), Scioto App. No. 00CA2703; State v. Meredith (Jun. 22, 2000), Lawrence App. No. 99CA2. We note that an abuse of discretion is more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, {tc \l1 "unreasonable, }arbitrary or unconscionable. State v. Herring (2002), 94 Ohio St.3d 246, 255, 762 N.E.2d 940; State v. Clark (1994), 71 Ohio St.3d 466, 470, 644 N.E.2d 331; State v. Adams (1980), 60 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 6} On September 2, 2003, the Clerk of the Municipal Court provided the appellant a document that stated, inter alia, “[i]f you wish a continuance in the matter, a written motion must be filed with the clerk of the Municipal Court before the scheduled trial

³ On January 15, 2004, this Court filed an entry stating that the trial court's judgment was not final and appealable because it did not comply with Crim.R. 32(C). We remanded the case for entry of a nunc pro tunc judgment. An acceptable entry was filed on February 4, 2004 and the matter is now properly before us despite appellant’s premature notice of appeal. See App.R. 4(C).

date.” (Emphasis added.) Appellant executed that document thus acknowledging its receipt. We note, however, that the appellant failed to file a “written motion” for continuance and waited until the day of trial to make her request. Additionally, we find nothing in the record to explain why the appellant could not have learned of her advocate’s inability to attend the trial sooner and then request a continuance earlier and in writing. Moreover, the appellant did not explain why the advocate was necessary to her defense. We find no indication that the advocate is a licensed attorney who could represent appellant⁴ and we find nothing in the record to suggest that the advocate witnessed the events in question and had evidence to offer the trial court. Without some showing of why the advocate’s presence was necessary or even beneficial to appellant, we cannot conclude that appellant was prejudiced by the advocate’s absence.

{¶ 7} For these reasons, we find no error in the trial court’s refusal to grant appellant a continuance.

{¶ 8} The only other arguable assignment of error is that insufficient evidence exists to support the guilty verdict.⁵ Here again, we find no reversible error. R.C.

2917.11(B)(2) provides, inter alia, that no person, while voluntarily intoxicated, shall engage in conduct or create a condition that presents a risk of physical harm to another. Deputy

⁴ Appellant’s brief refers to a “victim advocacy” provided by an organization known as “My Sister’s Place” which assists and counsels “abused women.” Although not entirely clear, it appears that the advocate to whom appellant referred is not a licensed attorney.

⁵ This is presumably appellant’s primary argument on appeal as she spends the first half of her brief telling her version of events (which account is not part of the record and, thus, not properly before us) and the second half challenging the testimony of Deputy Maynard and trial tactics/arguments of the prosecution.

Maynard testified that appellant appeared intoxicated, was belligerent and was physically violent toward Robert Betz, her boyfriend. This is sufficient to prove the elements of disorderly conduct under R.C. 2917.11(B)(2).

{¶ 9} To the extent that the appellant denied being intoxicated or violent toward her boyfriend, we note that the weight of evidence and credibility of witnesses are issues to be decided by the trier of fact. State v. Dye (1998), 82 Ohio St.3d 323, 329, 695 N.E.2d 763; State v. Frazier (1995), 73 Ohio St.3d 323, 339, 652 N.E.2d 1000; State v. Williams (1995), 73 Ohio St.3d 153, 165, 652 N.E.2d 721. As such, the trier of fact is free to believe all, part or none of the testimony of each witness who appears before it. See State v. Long (1998), 127 Ohio App.3d 328, 335, 713 N.E.2d 1; State v. Nichols (1993), 85 Ohio App.3d 65, 76, 619 N.E.2d 80; State v. Harriston (1989), 63 Ohio App.3d 58, 63, 577 N.E.2d 1144. We also acknowledge that the trier of fact is in a much better position than an appellate court to view witnesses and observe their demeanor, gestures and voice inflections, and to use those observations to weigh the credibility of testimony. See Myers v. Garson (1993), 66 Ohio St.3d 610, 615, 614 N.E.2d 742; Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 10} In the case sub judice, the trial court obviously found Deputy Maynard's account of what transpired that evening to be more credible and afforded little weight to appellant's view of the events. We will not second-guess the trial court's decisions as to the weight and credibility of witnesses. For these reasons, we discern no error in the trial court's finding of guilt.

{¶ 11} Having reviewed the proceedings below, as well as the brief on appeal, and after finding no reversible error we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant 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 Athens County Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Kline, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY:
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.