[Cite as *State v. Fletcher*, 2009-Ohio-3255.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 08CA22
vs.	:	
ERIC T. FLETCHER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Stephen C. Rodeheffer, 630 Sixth Street, Portsmouth, Ohio 45662

COUNSEL FOR APPELLEE: J.B. Collier, Jr., Lawrence County Prosecuting Attorney, and W. Mack Anderson, Lawrence County Assistant Prosecuting Attorney, Lawrence County Courthouse, 1 Veteran's Square, Ironton, Ohio 45638

CRIMINAL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED: 6-26-09

ABELE, J.

{¶ 1} This is an appeal from an Ironton Municipal Court judgment of conviction and sentence. Eric T. Fletcher, defendant below and appellant herein, was found guilty of (1) assault in violation of R.C. 2903.13, and (2) aggravated menacing in violation of R.C. 2903.21.

{¶ 2} Appellant assigns the following error for review:[1]

[1] Appellant neglected to include in his brief a separate statement of the assigned error. See App.R. 16(A)(3). We take the assignment of error from his "statement of the case."

"THE TRIAL COURT'S FINDING OF GUILTY BEYOND A REASONABLE DOUBT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 3} Appellant has known the DeLong family for several years and participates with them in Civil War re-enactments.[2] Appellant also occasionally spends time at the DeLong home where, apparently, a favorite activity is to shoot each other with a taser.[3] It was uncontroverted that appellant, with permission from his victims, "tasered" fourteen year old Cassandra DeLong and her mother, Teresa DeLong. Also, a neighbor (Chad) apparently stops by the home and occasionally "tasers" himself.

{¶ 4} In February 2008, appellant "tasered" fourteen year old Morgan Cox, a friend and relative of Cassandra DeLong, without her permission. He also held a gun to Cox's head and, on one occasion, asked Teresa DeLong if he should shoot her. Teresa said "no". On another occasion, he threatened to kill Cox.

{¶ 5} Subsequently, a criminal complaint was filed that charged appellant with assault and aggravated menacing. At trial, Morgan Cox related her version of events. Appellant denied the allegations. After hearing the evidence, the trial court found appellant guilty and sentenced him to serve six months in the county jail, but suspended five months of the jail sentence. This appeal followed.

{¶ 6} Appellant asserts in his assignment of error that the guilty verdict is

---

[2] Appellant's brief erroneously combines the "statement of facts" and "argument" into one section. App.R. 16(A)(6)&(7) requires they each be separate.

[3] A taser is described as an electroshock weapon that uses electrical current to disrupt voluntary control of muscles. It is mostly used by police as a less than lethal weapon to subdue fleeing, belligerent and potentially dangerous suspects. As an aside, we question the grammatical correctness of conflating a noun (taser) to a verb, but do so to remain consistent with the language used at trial.

against the manifest weight of the evidence. We disagree.

{¶ 7} In reviewing a claim that a verdict is against the manifest weight of the evidence, an appellate court may not reverse the conviction unless it is obvious that the trier of fact lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. See State v. Earle (1997), 120 Ohio App.3d 457, 473, 698 N.E.2d 440; State v. Garrow (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814. The weight of the evidence and credibility of witnesses are issues that the trier of fact must decide. State v. Dye (1998), 82 Ohio St.3d 323, 329, 695 N.E.2d 763; State v. Ballew (1996), 76 Ohio St.3d 244, 249, 667 N.E.2d 369; State v. Williams (1995), 73 Ohio St.3d 153, 165, 652 N.E.2d 721. Generally, the trier of fact is free to believe all, part or none of the testimony of each witness. State v. Nichols (1993), 85 Ohio App.3d 65, 76, 619 N.E.2d 80; State v. Caldwell (1992), 79 Ohio App.3d 667, 679, 607 N.E.2d 1096; State v. Harriston (1989), 63 Ohio App.3d 58, 63, 577 N.E.2d 1144.

{¶ 8} After our review of the evidence adduced at trial, we are not persuaded that the trier of fact lost its way and the judgment of conviction must be reversed. Morgan Cox testified that appellant (1) "tasered" her leg and caused a bruise, (2) sent a message to her "myspace" page and threatened to kill her, and (3) and once held a gun to her head. This evidence, if believed, is sufficient to sustain convictions for assault and aggravated menacing.[4]

[4] R.C. 2903.13(A) (assault) prohibits anyone from knowingly causing harm to another. R.C. 2903.21(A) (aggravated menacing) prohibits anyone from knowingly causing someone to believe that serious physical harm will be inflicted.

{¶ 9} Appellant offers a number of arguments in rebuttal. First, he contends that the trial court judge was biased against him. In support, he cites an incident at trial in which Cassandra DeLong testified, but changed her account of the events. DeLong originally gave a statement to detectives that corroborated Cox's version of the assault, but at trial recanted and said that she did not see appellant "taser" Cox. Further, DeLong claimed that she lied to the detective who questioned her because he scared her, swore at her and caused her to have a "panic attack." When it became clear that the witness recanted her earlier statement, the trial court warned DeLong that it wanted "no games here today" and that sanctions could be brought against her if she did not tell the truth.[5] Appellant argues that his conviction should be reversed because this indicates the trial court's bias against him. We disagree.

{¶ 10} First, appellant did not raise the alleged bias issue as an assignment of error. Generally, appellate courts may only determine the merits of the appeal on grounds of the "assignments of error set forth in the briefs." App.R. 12(A)(1)(b). If appellant wanted this court to review the matter for potential trial court bias, he could

---

[5] The trial transcript includes the following statement from the trial court judge:

> JUDGE: Wait a minute, just a moment. Let me slow down here. Now, I don't' know what you said to Detective Bollinger, but the main thing is, you have come to court. I have sworn you. And I expect whatever you say today to be the truth. Do you understand that? Now if you don't tell the truth you can be prosecuted. Do you understand that? Okay, I just want to make it clear now. Whatever you say here today, answering their questions, either counsel, I expect you to tell the truth. Okay? Because there are sanctions if you don't. Okay? Alright. We are in the adult world right now and this is serious. And you have been sworn to tell the truth. I expect you to do that. Okay? Because you can end up with criminal charges if you don't. I want to make it clear, now games here today.

have incorporated that issue in a separate assignment of error.

{¶ 11} Second, although the trial court's reaction to the witness's recantation of her prior statement may have been pointed, we are not persuaded that it rose to the level of "brow beat[ing]," as argued in appellant's brief. The trial court simply warned the witness, albeit emphatically, of the consequences of perjured testimony. Trial courts are usually afforded discretion in the manner in which they conduct witness examination and witness recantation of prior statements. See, generally, State v. Perkins, Clinton App. No. CA2005-01-002, 2005-Ohio-6557, at ¶¶16-17; State v. Norris (Jun. 4, 2001), Muskingum App. No. CT2000-0030. Furthermore, the trial court judge did not instruct the witness to testify in accordance with her earlier statement. Rather, the court instructed the witness to tell the truth. We find nothing in the case sub judice to persuade us that the trial court abused its discretion in warning the witness about the consequences of perjury.

{¶ 12} We also point out the following comment from the trial court judge before passing judgment on this case:

> "You know the last case I had I complimented everybody because I thought both sides came in and told the truth. I am not so sure I can compliment everybody on this one. This one was pretty bizarre.

This passage is telling. The circumstances in this case are bizarre and the fact that a prosecution witness recanted her prior statement that corroborated the victim's testimony only adds to the unusual events. Here, it is especially appropriate that we rely on the trier of fact's determinations concerning evidence weight and witnesses

---

Okay? We want nothing but the truth.

credibility. See 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.

{¶ 13} We certainly recognize and readily acknowledge the conflicting nature of the evidence adduced at trial. Nevertheless, in the final analysis it is obvious that the trial court found the victim's testimony more credible. We will not second-guess that determination in this matter. We believe that ample competent, credible evidence supports the conclusion that appellant violated the elements of the statements.

{¶ 14} Finally, appellant argues that his conviction should be reversed because, in light of Cassandra DeLong's recantation, no evidence corroborates the victim's testimony. However, the victim's testimony, if found credible, is sufficient to support the conviction.

{¶ 15} For all these reasons, we hereby overrule appellant's assignment and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

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

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Kline, P.J. & McFarland, 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.