[Cite as *State v. Bounds*, 2009-Ohio-4767.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-0063
WILLIAM D. BOUNDS	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal appeal from the Richland County Court of Common Pleas, Case No. 2007-CR-1047
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 10, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY By: KIRSTEN L. PSCHOLKA-GARTNER 38 South Park Street Mansfield, OH 44902	RANDALL E. FRY 10 West Newlon Place Mansfield, OH 44902

Gwin, P.J.

{¶1} Defendant-appellant, William Bounds, appeals from his convictions and sentences in the Richland County Court of Common Pleas on one count of aggravated burglary, a felony of the first degree in violation of R.C. 2911.11(A) (2); two counts of rape, felonies of the first degree in violation of R.C. 2907.02(A) (1) (c); and one count of attempted rape, a felony of the second degree in violation of R.C. 2923.02(A). The plaintiff appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On December 19, 2007, seventy year old Mary M. lived in an apartment in the West Park Senior Center located at 27 West Second Street in Mansfield, Ohio. (1T. at 192-193). In order to live in this apartment building, a person must be sixty-two years old or older and must be handicapped or disabled. (1T. at 190). Mary suffers from macular degeneration, which renders her legally blind. She is unable to see objects or faces that are straight ahead, but her peripheral vision allows her to see things that are close to her face. Mary's mobility is also limited by arthritis and severe scarring from burns she suffered as a child. (1T. at 104-106; 193).

{¶3} While she lived at the West Park Senior Center, Mary did not invite others into her apartment because she preferred to keep that as her own private space. However, she enjoyed a social relationship with some of the other residents in the building. She would sit on the porch and talk to various residents, or exchange pleasantries in the hallways. (1T. at 108; 111-112). Mary's neighbors were aware of her vision and health problems, and provided her with assistance. (1T. at 108-109; 134).

{¶4} Sometime around 3:00 p.m. on December 19, 2007, one of the other women who lived in the building knocked on Mary's door and asked if she could use Mary's phone because the phone in her apartment was not working. Mary invited her inside. After the woman made her phone call and left, Mary returned to wrapping Christmas presents at her kitchen table. She forgot to re-lock her apartment door. (1T. at 109).

{¶5} While Mary was standing with her back to the door, she was grabbed from behind. The intruder put his hand over her mouth and stuck a knife in front of her throat. (1T. at 109). Mary described the knife as having a black handle and a blade about three inches long. (1T. at 110). Despite her vision problems, Mary could tell that the intruder was a black man from what she could see of his hand, and from his voice. (Id.). Mary told the man that she could not see him so he did not have to hurt her. (1T. at 134).

{¶6} The man asked Mary if she would stay quiet if he removed his hand from her mouth. (1T. at 112). Mary's knees gave out, and she shook her head to indicate that she would not scream. (Id.). At trial, she testified that she was afraid the man would kill her if she did not do what he said. (1T. at 113). The man forced Mary into her bedroom. He removed her clothing and then his own. (1T. at 113-114). During this time, Mary pleaded with the intruder, saying, "What do you want, I am seventy years old, I haven't been with a man for twenty years and my body is ugly, you don't want me." (Id.). The man responded by telling Mary that her body was beautiful. (Id.).

{¶7} The man then proceeded to kiss and touch Mary's body, including her vaginal area. (1T. at 114; 117-118). He also attempted to force Mary to perform fellatio on him. She refused, telling him that she would rather die. (1T. at 115-116). At one

point, the man took the bedside lamp and removed the shade so he could see Mary's body better. (1T. at 115). After a first, unsuccessful attempt at penetration, the man vaginally raped Mary. (1T. at 116). Mary was in a great deal of pain throughout the rape because she had not had sexual intercourse since her husband broke his hip in 1987. (1T. at 116; 119). While he was having intercourse with her, the man was asking her questions like "does that feel good?" Mary said yes because she was afraid he would cut her with the knife if she did not appease him. (Id.).

{¶8} Mary testified that the man eventually ejaculated, and got dressed. (1T. at 117; 119-120). Mary grabbed her robe, which was lying on the bed, and put it on. (Id.). She was hoping to get semen on it for evidence. (Id.). Before he left, the man told Mary that he would come back, and asked if that was okay with her. Mary agreed because she was afraid. She also assured the man that she would not call the police because she just wanted him to leave without hurting her. (1T. at 118; 121-122). The man told Mary to look out the door and make sure there was no one in the hallway. When she told him that there was nobody there, he left her apartment. (1T. at 117).

{¶9} Mary immediately locked the door and used a dishtowel that was lying on the desk outside her room to wipe herself. She then went into the bathroom and washed off her legs with a washrag. (1T. at 117; 120-121). Mary then called her son, crying and hysterical. He told her to call 9-1-1, and he would be there right away. Mary hung up, called 9-1-1, and reported that she had been raped. (1T. at 121).

{¶10} Officers Patrick Williams and Ronee Bidlack of the Mansfield Police Department arrived approximately five to ten minutes later. (Id.). Mary provided Officer Williams with a description of her attacker, a black man, approximately 5'9" tall and 175

lbs., wearing tennis shoes, jeans, a t-shirt, a hooded pullover, a black jacket, a hat, and wire-rimmed glasses. (1T. at 127-128; 145-146; 158). This description was immediately relayed to other officers in the area; however, the intruder was not located. (1T. at 145-146). Officers Williams and Bidlack also collected the towel and washrag that Mary had used to wipe herself off, as well as the bedding and the lamp and lampshade. Mary's robe was collected at the hospital and submitted as a part of the sexual assault kit. (1T. at 158-160; 173).

{¶11} After Mary was interviewed by Officer Williams at the scene, she was transported to Med Central Hospital where she underwent a sexual assault examination. (1T. at 122-123). That examination revealed recent bruising on both of Mary's arms and on her thigh, as well as tenderness over Mary's pelvic region, and tears and petechia inside the vagina itself. (2T. at 266-270).

{¶12} Shortly after the first officers responded to the call, Sergeant Bret Snavely arrived on scene to supervise the collection of evidence and to assist in the search for the suspect. (1T. at 146). He noticed that security cameras monitored the front doors of the building, so he made contact with Teresa Perry, the manager of the West Park Senior Center. (1T. at 146-147). With Ms. Perry's assistance, Sergeant Snavely reviewed the surveillance video and found an individual who matched the description of the suspect. (Id.). Ms. Perry recognized the suspect as a man that had been with one of the other residents, Willie Thomas, earlier that day. (1T. at 147; 150-151; 193-195).

{¶13} At that point, Sergeant Snavely interviewed Mr. Thomas, who lived in apartment 401. (1T. at 147). Mr. Thomas indicated that he had just met the suspect, the appellant, that day. (1T. at 176). The appellant came up to the fourth floor looking for his

brother, Leroy Guiden, who lived downstairs in apartment 313. (Id.). Mr. Thomas advised appellant that his brother was at work, and invited the appellant to wait in his apartment. Mr. Thomas left the apartment building with appellant, and they walked up the street to Tobacco Road to buy beer. (1T. at 177). When they returned to Mr. Thomas' apartment, they drank a couple of the beers. At around 1:00 or 1:30 p.m., Mr. Thomas left appellant in his apartment and went to meet his sister at the Salvation Army to go Christmas shopping. The appellant was gone when he returned. (1T. at 177-178).

{¶14} After interviewing Mr. Thomas, Sergeant Snavely went to the appellant's brother's apartment. When they knocked on the door to apartment 313, Leroy Guiden informed them that his brother was not there. However, he provided the police with the appellant's first and last name and his parent's address on Johns Avenue. (1T. at 148). Based upon this information, the officers discovered that the appellant was a registered sex offender, whose previous convictions involved the attempted rape or rape of older women. (2T. at 287-289). This information was provided to Detective Eric Bosko, who prepared a photo lineup including the appellant's photograph from his sexual predator registration. (2T. at 237).

{¶15} Detective Bosko went to the hospital and showed Mary the photo lineup. She was unable to identify anyone out of that lineup because the pictures in the traditional lineup format were too small for her to see with her vision impairment. As a result, Detective Bosko enlarged the pictures to three by fives. When he showed Mary the enlarged photo lineup, she was able to identify the appellant as the man who entered her apartment and raped her. (1T. at 124-125; 2T. at 235-237). She recognized the appellant based upon his glasses and a silver necklace, which he was also wearing

at the time of the rape. (1T. at 125-126). Mary had seen the appellant in her apartment building before December 19, 2007; however, she had only exchanged pleasantries with him. (1T. at 126). Mary knew that the appellant had a relative who lived on the fourth floor of her apartment building. (1T. at 142).

{¶16} After Mary identified the appellant as her attacker, a warrant was issued for his arrest. (2T. at 238). After checking several possible addresses, the appellant was eventually located and arrested at 168 South Adams Street on December 24, 2007.

{¶17} After the appellant's arrest, the police obtained a DNA standard that the crime lab could use for comparison. Using the appellant's known DNA standard, forensic chemist Anthony Tambasco was able to positively identify the appellant as the source of semen found in the vaginal wash from the sexual assault kit. (2T. at 218-223; 224-225). Examination of the victim's robe and the towel she used to wipe herself off with after the rape also revealed the presence of semen. (2T. at 223-224, 226-228).

{¶18} Following his arrest, the appellant was indicted by the Richland County Grand Jury on February 6, 2008 for one count of aggravated burglary; one count of rape for engaging in vaginal intercourse; one count of rape for engaging in cunnilingus; and one count of attempted rape for attempting fellatio.

{¶19} The Appellant pled not guilty to all counts at arraignment, and his case was set for trial on March 6, 2008. On March 5, 2008, the trial court continued the case *sua sponte* because the trial judge was unavailable to preside over the trial. The appellant's jury trial was re-set for April 10, 2008, and went forward on that date.

{¶20} On the morning of trial, the defense filed a motion to dismiss for violation of the appellant's right to a speedy trial. The trial court ultimately overruled this motion, and the appellant's case proceeded to trial.

{¶21} The jury found the appellant guilty of all four counts in the indictment. The trial court sentenced the appellant to ten years on each of the two counts of rape; eight years on the attempted rape; and ten years on the aggravated burglary. The sentences were run consecutive for a total sentence of thirty-eight years in prison.

{¶22} Appellant timely appealed submitting the following two assignments of error for our consideration:

{¶23} "I. THE TRIAL COURT ERRED IN NOT GRANTING THE DEFENDANT-APPELLANT'S MOTION TO DISMISS THE CASE BASED UPON THE TIME LIMITATIONS SET FORTH IN OHIO REVISED CODE SECTION 2945.71 AND OHIO REVISED CODE SECTION 2945.72.

{¶24} "II. THE JURY'S VERDICT IN FINDING THE DEFENDANT-APPELLANT GUILTY ON COUNT ONE OF AGGRAVATED BURGLARY, COUNT TWO OF RAPE, COUNT THREE OF RAPE, AND COUNT FOUR OF ATTEMPTED RAPE, WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE THUS THE CONVICTION WAS IN VIOLATION OF ARTICLE I, 10 OF THE OHIO CONSTITUTION AND THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

I.

{¶25} In his first assignment of error, appellant contends the trial court erred and violated his constitutional rights by failing to rule on his pro se speedy trial motion to dismiss filed January 8, 2008. We disagree.

{¶26} "We begin by noting our lengthy history of Sixth Amendment jurisprudence, including the application of R.C. 2945.71. 'The right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Section 10, Article I of the Ohio Constitution guarantees an accused this same right. *State v. MacDonald* (1976), 48 Ohio St.2d 66, 68, 2 O.O.3d 219, 220, 357 N.E.2d 40, 42. Although the United States Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. *Barker v. Wingo* (1972), 407 U.S. 514, 523, 92 S.Ct. 2182, 2188, 33 L.Ed.2d 101, 113.'" *State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534 at ¶11. [Quoting *State v. Hughes* (1999), 86 Ohio St.3d 424, 425, 715 N.E.2d 540.].

{¶27} In Ohio, the right to a speedy trial has been implemented by statutes that impose a duty on the state to bring a defendant who has not waived his rights to a speedy trial to trial within the time specified by the particular statute. R.C. 2945.71 *et seq.* applies to defendants generally. R.C. 2941.401 applies to defendants who are imprisoned within the State of Ohio. *State v. Smith*, 140 Ohio App.3d 81, 85-86, 2000-Ohio-1777, 746 N.E.2d 678, 682.

{¶28} As Chief Justice Moyer wrote in *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 55-56, 661 N.E.2d 706:

{¶29} "Ohio's speedy trial statute was implemented to incorporate the constitutional protection of the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article I of the Ohio

Constitution. *State v. Broughton* (1991), 62 Ohio St.3d 253, 256, 581 N.E.2d 541, 544; see *Columbus v. Bonner* (1981), 2 Ohio App.3d 34, 36, 2 OBR 37, 39, 440 N.E.2d 606, 608. The constitutional guarantee of a speedy trial was originally considered necessary to prevent oppressive pretrial incarceration, to minimize the anxiety of the accused, and to limit the possibility that the defense will be impaired. *State ex rel. Jones v. Cuyahoga Cty. Ct. of Common Pleas* (1978), 55 Ohio St.2d 130, 131, 9 O.O.3d 108, 109, 378 N.E.2d 471, 472.

{¶30} "Section 10, Article I of the Ohio Constitution guarantees to the party accused in any court 'a speedy public trial by an impartial jury.' 'Throughout the long history of litigation involving application of the speedy trial statutes, this court has repeatedly announced that the trial courts are to strictly enforce the legislative mandates evident in these statutes. This court's announced position of strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial.' (Citations omitted.) *State v. Pachay* (1980), 64 Ohio St.2d 218, 221, 18 O.O.3d 427, 429, 416 N.E.2d 589, 591.

{¶31} "We have long held that the statutory speedy-trial limitations are mandatory and that the State must strictly comply with them. *Hughes*, 86 Ohio St.3d at 427, 715 N.E.2d 540. Further, 'the fundamental right to a speedy trial cannot be sacrificed for judicial economy or presumed legislative goals.' Id." *State v. Parker*, supra 2007-Ohio-1534 at ¶12-15.

{¶32} In Ohio, the right to a speedy trial has been implemented by statutes that impose a duty on the state to bring a defendant who has not waived his rights to a

speedy trial to trial within the time specified by the particular statute. R.C. 2945.71 *et seq.* applies to defendants generally. R.C. 2945.71 provides:

{¶33} "(C) A person against whom a charge of felony is pending:

{¶34} "(1) * * *

{¶35} "(2) Shall be brought to trial within two hundred seventy days after the person's arrest.

{¶36} "(D) A person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged, as determined under divisions (A), (B), and (C) of this section."

{¶37} A speedy-trial claim involves a mixed question of law and fact. *State v. Larkin,* Richland App. No. 2004-CA-103, 2005-Ohio-3122. As an appellate court, we must accept as true any facts found by the trial court and supported by competent, credible evidence. With regard to the legal issues, however, we apply a de novo standard of review and thus freely review the trial court's application of the law to the facts. Id.

{¶38} When reviewing the legal issues presented in a speedy-trial claim, we must strictly construe the relevant statutes against the state. In *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 57, 661 N.E.2d 706, 709, the court reiterated its prior admonition "to strictly construe the speedy trial statutes against the state."

{¶39} The time to bring a defendant to trial can be extended for any of the reasons enumerated in R.C. 2945.72, which provides:

{¶40} "The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

{¶41} "(A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability;

{¶42} "(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

{¶43} "(C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

{¶44} "(D) Any period of delay occasioned by the neglect or improper act of the accused;

{¶45} "(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

{¶46} "(F) Any period of delay necessitated by a removal or change of venue pursuant to law;

{¶47} "(G) Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order;

{¶48} "(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion;

{¶49} "(I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending."

{¶50} "When reviewing a speedy-trial issue, an appellate court must calculate the number of days chargeable to either party and determine whether the appellant was properly brought to trial within the time limits set forth in R.C. 2945.71." *State v. Riley,* 162 Ohio App.3d 730, 2005-Ohio-4337, 834 N.E.2d 887, ¶ 19.

{¶51} A *sua sponte* continuance must be properly journalized before the expiration of the speedy trial period and must set forth the trial court's reasons for the continuance. "The record of the trial court must ... affirmatively demonstrate that a *sua sponte* continuance by the court was reasonable in light of its necessity or purpose." *State v. Lee* (1976), 48 Ohio St.2d 208, 209, 357 N.E.2d 1095. Further, the issue of what is reasonable or necessary cannot be established by a *per se* rule but must be determined on a case-by-case basis. *State v. Saffell* (1988), 35 Ohio St.3d 90, 518 N.E.2d 934; *State v. Mosley* (Aug. 15, 1995), Franklin App. No. 95APA02-232. However, a continuance due to the trial court's engagement in another trial is generally reasonable under R.C. 2941.401. *State v. Doane* (July 9, 1992), Cuyahoga App. No. 60097; See also, *State v. Judd,* Franklin App. No. 96APA03-330, 1996 WL 532180. However, a continuance because the court is engaged in trial may be rendered unreasonable by the number of days for which the continuance is granted. See *State v. McRae* (1978), 55 Ohio St.2d 149, 378 N.E.2d 476.

{¶52} In *State v. Saffell*, the Ohio Supreme Court refused to find that the continuance of the defendant's trial beyond the statutory speedy trial period was unreasonable even though the trial could have been held but for the fact that the trial judge was on vacation and did not request the services of a visiting judge pursuant to R.C. 1901.10. (1988), 35 Ohio St.3d 90, 92, 518 N.E.2d 934, 935. See, also *State v. Hart*, 7th Dist. No. 06 CO 62, 2007-Ohio-3404 at ¶ 23; *State v. Dase*(Aug. 4, 1982), 1st Dist. No. C-810844.

{¶53} This court finds that the *sua sponte* continuance in the case sub judice was for good cause and was necessary and reasonable, given that the trial court entered upon the record that the trial judge was on vacation. The number of days for which the trial was continued was not unreasonable.

{¶54} Appellant's first assignment of error is overruled.

II.

{¶55} In his second assignment of error, appellant maintains that his convictions are against the manifest weight of the evidence[1]. We disagree.

{¶56} Weight of the evidence addresses the evidence's effect of inducing belief. *State v. Wilson,* 713 Ohio St.3d 382, 387-88, 2007-Ohio-2202 at ¶ 25-26; 865 N.E.2d 1264, 1269-1270. "In other words, a reviewing court asks whose evidence is more persuasive--the state's or the defendant's? Even though there may be sufficient evidence to support a conviction, a reviewing court can still reweigh the evidence and reverse a lower court's holdings." *State v. Wilson,* supra. However, an appellate court may not merely substitute its view for that of the jury, but must find that "the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must

[1] Appellant does not challenge the sufficiency of the evidence. See App .R. 16.

be reversed and a new trial ordered." *State v. Thompkins*, supra, 78 Ohio St.3d at 387. (Quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721). Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *State v. Thompkins,* supra.

{¶57} Employing the above standard, we believe that the State presented sufficient, credible evidence from which a jury could conclude, beyond a reasonable doubt that appellant committed the offenses charged in the indictment.

{¶58} In the case at bar, the appellant took the stand in his own behalf and testified essentially that he followed the victim into her apartment and that she had consented to the oral sex and intercourse. The State presented testimony from the responding officers and investigating detective, the rape crisis nurse, the forensic chemist and the victim.

{¶59} While challenged by appellant, the victim's version consists of an orderly sequence of events, reconciled with the corroborating testimony and medical evidence. Based on our review of the record, we find it reasonable that the jury would have believed the testimony and evidence presented by the State.

{¶60} “A fundamental premise of our criminal trial system is that ‘the *jury* is the lie detector.’ *United States v. Barnard,* 490 F.2d 907, 912 (C.A.9 1973) (emphasis added), cert. denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). Determining the weight and credibility of witness testimony, therefore, has long been held to be the ‘part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.’ *Aetna*

Life Ins. Co. v. Ward, 140 U.S. 76, 88, 11 S.Ct. 720, 724-725, 35 L.Ed. 371 (1891)". *United States v. Scheffer* (1997), 523 U.S. 303, 313, 118 S.Ct. 1261, 1266-1267.

{¶61} Although appellant cross-examined the witnesses and argued that he had permission to enter the victim's home, and further, she consented to the sexual relations, the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶62} The jury was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the jury may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence". *State v. Craig* (Mar. 23, 2000), Franklin App. No. 99AP-739, citing *State v. Nivens* (May 28, 1996), Franklin App. No. 95APA09-1236 Indeed, the jurors need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver,* Franklin App. No. 02AP-604, 2003- Ohio-958, at ¶ 21, citing *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548.; *State v. Burke,* Franklin App. No. 02AP-1238, 2003-Ohio-2889, citing *State v. Caldwell* (1992), 79 Ohio App.3d 667, 607 N.E.2d 1096. Although the evidence may have been circumstantial, we note that circumstantial evidence has the same probative value as direct evidence. *State v. Jenks* (1991), 61 Ohio St. 3d 259, 574 N.E. 2d 492.

{¶63} Based on our review, the mere fact that the jury chose to disbelieve the defense theory of the encounter, and instead chose to believe the State's version, is insufficient to find that the jury lost its way or created a manifest miscarriage of justice.

The jury heard the witnesses, evaluated the evidence, and was convinced of appellant's guilt.

{¶64} Appellant's second assignment of error is overruled.

{¶65} For the foregoing reasons, the judgment of the Richland County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Delaney, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

_____
PATRICIA A. DELANEY

WSG:clw 0825

[Cite as *State v. Bounds*, 2009-Ohio-4767.]

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
WILLIAM D. BOUNDS	:	
Defendant-Appellant	:	CASE NO. 2009-CA-0063

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs to appellant.

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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PATRICIA A. DELANEY