

[Cite as *State v. Jones*, 2007-Ohio-6817.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89315

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

MICHELLE JONES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-478154

BEFORE: Stewart, J., Gallagher, P.J., and Blackmon, J.

RELEASED: December 20, 2007

JOURNALIZED:

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant Michelle Jones appeals from a judgment of conviction finding her guilty of attempted murder and having a weapon while under disability. Her sole assignment of error in this appeal is that the court’s judgment of conviction is against the manifest weight of the evidence. We find that the court did not lose its way by finding Jones guilty, so we affirm.

{¶ 2} When reviewing a claim that a verdict is against the manifest weight of the evidence, we weigh all the reasonable inferences, consider the credibility of witnesses and, in considering conflicts in the evidence, determine whether 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. See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. In doing so, we remain mindful that the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. This deference is based on the recognition that the trier of fact is in the best position to weigh the credibility of the witnesses and has the authority to “believe or disbelieve any witness or accept part of what a witness says and reject the rest.” *State v. Antill* (1964), 176 Ohio St. 61, 67.

{¶ 3} The indictment charged that Jones shot the victim in the back. The state’s evidence showed that Jones and the victim had been involved in a romantic relationship for a time, but that the victim ended the relationship and moved out

about five months before the shooting. The victim testified that on the day of the shooting, he left his house and noticed that Jones had been following him down the street. Speaking incoherently, she fired two shots in the air. Afraid that he would infuriate Jones, the victim kept moving, but at a pace that allowed him to watch her. The victim entered a convenience store attached to a gas station and told the attendant that “there is a woman out there, you know, she has a gun, I think she is going to shoot me, I should call the police.” The victim did not actually call the police, but left and continued down the street.

{¶ 4} As the victim continued on his way, Jones followed. He entered a second gas station store, and this time Jones followed him inside, holding the gun inside her purse. The victim said that he told the store owner that Jones had a gun and “she is going to shoot me, da, da, da, and, you know, I left.”

{¶ 5} The victim said that Jones followed him as he left the second store and told him that “I was going to die today.” She then shot him in the back. The victim rose and walked toward Jones, but persons on the scene told him to get down because he could be badly hurt. Medical records confirmed that the victim had suffered a single gunshot wound to his back. While being treated at the hospital, the victim said Jones called him and mentioned the shooting, but he was sedated and could not remember the substance of the conversation apart from his recollection that the conversation was “kind of rough.”

{¶ 6} An eyewitness to the shooting testified and identified Jones as the shooter. She said that her daughter had dropped her off at the store. She was walking toward the store entrance, behind both Jones and the victim, when she saw Jones reach into her bag and “put a gun to his back and pulled the trigger.” She estimated Jones’ distance from the victim as being four or five feet. The eyewitness ran from the store and told her daughter what happened. They thought they saw Jones board a bus, so they tried to forewarn the bus driver and called the Regional Transit Authority. The eyewitness denied knowing either Jones or the victim.

{¶ 7} A police detective testified that he interviewed the victim the day after the shooting. The victim told the detective that Jones had been the shooter and that she was the victim’s “ex-girlfriend and he was fully aware that she had pursued him after he left his house.” The detective also interviewed the eyewitness and showed her a photo array. Even though the eyewitness “wasn’t quite sure” of her identification, she selected Jones’ photograph from the array.

{¶ 8} Jones testified and denied being present at the time of the shooting because she was attending a funeral that day. She did not, however, offer the testimony of the person whom she accompanied to the funeral. Jones also said that she knew the eyewitness from previous drug dealings and that the victim had somehow persuaded the eyewitness to make the accusations against her.

{¶ 9} When entering its findings on the indictment, the court stated:

{¶ 10} “[T]he eyewitness testimony of an individual standing next to the person who she believed to be Michelle Jones indicated that the defendant did immediately, upon entering between the two doors, pull a gun, put it to his back, and fire that gun. It was clear that he was hit in the back and that it was, in fact, one shot, from what the testimony seems to reveal.

{¶ 11} “Is that enough to convince me beyond a reasonable doubt that it was a purposeful attempt to cause the death? If that isn’t, I don’t know what is. Because a shot in the back at that close of a range could only be for that, and especially in the area that received the bullet. So she is found guilty of that, of the attempted murder contained in count 1.”

{¶ 12} Having reviewed the evidence, we find that the court did not lose its way by finding Jones guilty of attempted murder. As the court noted, hospital records verified the eyewitness’ account of a single shot fired from close range to the victim’s back. Moreover, Jones failed to substantiate her claim that she had been at a funeral at the time of the shooting by offering the testimony of the person whom she accompanied to the funeral.

{¶ 13} The court had some reservations about the victim’s testimony, noting that parts of it were “somewhat suspect.” However, it found the eyewitness testimony to be convincing, particularly the description of how Jones fired at the victim’s back. We agree with the court that certain peculiarities in the victim’s actions (for example, not immediately calling the police) did not detract from the

overall strength of the state's case in chief. The eyewitness testimony of the shooting confirmed the victim's testimony of the shooting in all substantive regard. We have no basis for finding this conclusion to be so manifestly incorrect that a miscarriage of justice occurred. The assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR