

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91858

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TINEY COLLINS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-509954

BEFORE: Boyle, J., Kilbane, P.J., and Sweeney, J.

RELEASED: July 2, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Tiney Collins, appeals her conviction for assault.

Finding no merit to the appeal, we affirm.

{¶ 2} The grand jury indicted Collins on two counts: one count of felonious assault, a violation of R.C. 2903.11(A)(1), and one count of domestic violence, a violation of R.C. 2919.25(A). Collins pled not guilty, and the matter proceeded to a jury trial, where the following evidence was presented.

{¶ 3} The victim, Kim Torres, testified that on March 10, 2008, she went to a bar with a friend around midnight or 1:00 a.m. She was only there for approximately 20 to 30 minutes and had two to three drinks. While she was there, she saw Collins. She and Collins used to be friends; in fact, Collins stayed with Torres for several months when she needed a place to stay. Torres testified that Collins attempted to talk to her at the bar, but Torres said that she did not “want to be bothered,” so she went home.

{¶ 4} Torres stated that after she got home, she was getting ready for bed when she heard voices outside her door. She went downstairs to see if her door was locked and it was not. When she got to her door, Collins was attempting to come in her apartment, trying to push Torres out of the way. Collins told Torres that she wanted to “retrieve a bag she had left in the third floor attic.” Torres said that a struggle ensued between her and Collins. As they were struggling, Torres said that

Collins “punched” her in the face. Torres fell back and lost consciousness. Torres testified that Collins “wore many rings on her fingers.”

{¶ 5} When Torres woke up, she said that she heard Collins in Catherine Dyer’s apartment, who is her neighbor. Torres called the police who arrived within five minutes. Torres told the police that Collins used a weapon, “a knife or a gun,” and that she was in pain. Torres refused medical transport and told the police that she did not want to prosecute; she just wanted Collins to leave.

{¶ 6} After the police left that night, Torres said that she took oxycodone for pain and went to sleep. When she woke up the next morning, her pain was much more severe. She said that the side of her face was swollen, she had a black eye, and her head was swollen. She testified that she drank “shots of 151” for pain. She then went to the hospital where she learned she had a fractured bone in her nose. She had to have surgery because of it. She spent four days in the hospital. When she left the hospital, she went to the police station to give a statement.

{¶ 7} Dyer testified that she saw Collins and Torres fighting outside of her door. She further testified that she saw Collins “hit” Torres. She closed her door at that point, but still heard them fighting. She verified that Collins was in her apartment when the police arrived. Dyer stated that she also talked to the police on the night of the incident and after Torres was released from the hospital. Dyer testified that she did not see Torres hit Collins.

{¶ 8} Officer Thadius Wagaba of the East Cleveland Police Department testified that he responded to Torres’s apartment on the night of the incident. He

said that he saw that Torres's face and eyes were swollen and black-and-blue and stated that Torres complained of a headache. He spoke with Torres, Dyer, and Collins about the incident. He also searched Collins's person and searched Dyer's apartment for a weapon since Torres indicated that Collins had a knife or a gun, but he did not find any weapons. He did not make an arrest that night because he does not always make an arrest "when there are no serious injuries" and when the victim does not want to prosecute.

{¶ 9} Detective Henry McCurdy testified that he conducted a follow-up investigation about a month later. He interviewed Torres, Collins, and Dyer. He did not talk to the responding officers, but did review Officer Wagaba's report. He did not review Torres's medical records from her hospitalization, which were admitted into evidence by the defense. Detective McCurdy said that he was not aware that Torres's blood-alcohol level was .171 at 9:30 a.m. He agreed that would be a significant degree of intoxication.

{¶ 10} Detective McCurdy further testified that Collins denied hitting Torres, but admitted that she slapped Torres in self-defense. Collins told him that there was an argument over "jealousy" and that "she did not want to be involved" with Torres anymore. Collins also said that she went to Torres's apartment because Torres had called her to come and get her things.

{¶ 11} After the state rested, the defense moved for a Crim.R. 29 acquittal on each count. The state conceded that it did not provide sufficient evidence to support the element of domestic violence, i.e., "family or household member." Thus, the trial

court granted the Crim.R. 29 motion on the domestic violence charge. The court denied the motion with respect to felonious assault, but on Collins's request, agreed to charge the lesser included offense of assault to the jury. Collins then rested.

{¶ 12} The jury returned a verdict of not guilty of felonious assault, but guilty of the lesser included offense of assault. The trial court sentenced Collins to five months in jail. Collins appeals, raising a single assignment of error for our review:

{¶ 13} “[1.] The evidence was against the manifest weight of the evidence.”

{¶ 14} In reviewing a claim that a conviction is against the manifest weight of the evidence, the Ohio Supreme Court in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, explained the appropriate standard of review as follows:

{¶ 15} “Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence. *** Weight of the evidence concerns ‘the inclination of the greater amount of credible evidence, offered in trial, to support one side of the issue rather than the other. *** Weight is not a question of mathematics, but depends on its effect in inducing belief.’ (Emphasis added.)

{¶ 16} “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony. *** The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created

such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” (Internal citations omitted.)

{¶ 17} The jury convicted Collins of the lesser included offense of assault under R.C. 2903.13(A), which provides in pertinent part: “no person shall knowingly cause or attempt to cause physical harm to another.”

{¶ 18} Collins argues that the jury lost its way in believing Torres because (1) there was no arrest made or report of injuries when the police initially responded to Torres’s call; (2) that noses bleed, rings scratch, and the hospital records indicate “someone unknown” caused Torres’s injuries; and (3) Torres was highly intoxicated and her story is “unreliable, illogical and unbelievable”; and (4) Torres’s injuries happened after the police left or were self-inflicted. Finally, Collins argues that if the injuries were a result of her admitted slap, that it was in self-defense. We find her arguments to be unpersuasive.

{¶ 19} First, Torres described specific details surrounding the assault, which the police independently verified. Dyer testified that she heard Torres and Collins arguing outside her apartment and watched them struggle. Dyer further testified that she saw Collins “hit” Torres “several times” and that she did not see Torres hit Collins. And Officer Wagaba testified that he observed Torres’s injuries on the night the incident occurred; he saw that her face and eyes were swollen and black-and-blue.

{¶ 20} While the medical records show that Torres was intoxicated when she arrived at the hospital, Torres said that she had taken oxycodone shortly after she was punched and drank “shots of 151” for pain the next morning. This would account for her high level of intoxication at the hospital. Further, Torres denied that she told hospital personnel that her injuries were caused by someone unknown. The jury, as the fact finder, was free to believe Torres’s and Dyer’s testimony over Collins’s theory of what happened.

{¶ 21} Thus, after reviewing the entire record, weighing the evidence and all reasonable inferences, considering the credibility of witnesses and conflicts in evidence, we do not find that Collins’s conviction was such that “the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” See *Thompkins*, supra.

{¶ 22} Collins’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered 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 common pleas court 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR