

[Cite as *State v. Curry*, 2010-Ohio-441.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93027

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARY CURRY

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516168

BEFORE: Jones, J., Kilbane, P.J., and Cooney, J.

RELEASED: February 11, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Mary Curry (“Curry”), appeals her conviction. Finding no merit to the appeal, we affirm.

{¶ 2} In October 2008, Curry was charged with felonious assault. The matter proceeded to a trial before the bench.

{¶ 3} The following evidence pertinent to Curry’s conviction was adduced at trial.

{¶ 4} In July 2008, Jacqueline Matthews (“Matthews”) went to the Hook bar with her sister, cousin, and her cousin’s friend. While at the bar, Curry and three codefendants, Apache Hightower (“Hightower”), Takeshia Fuller (“Fuller”), and Samaria Moore (“Moore”), followed Matthews and her group around the bar calling them names. Curry and her friends were part of a local gang called the “Baby Mamas”.

{¶ 5} As this was occurring, Matthews called her other sister on her cell phone and told her what was happening because the sister was friends with the bar’s security guard. Matthews and her friends decided to leave the bar, and the security guard escorted them to the door.

{¶ 6} Matthews testified that Curry and her friends followed her outside and continued to harass her. As Matthews was arguing with Hightower, Curry punched Matthews in the face with what Matthews described as a dark

object. After Curry punched Matthews, Curry's friends began to hit Matthews in the back of her head and back. The assault lasted about two minutes.

{¶ 7} After the assault, Matthews's sister and mother came to the bar and took her back to her mother's house. Matthews eventually went to the hospital and received treatment for a broken nose.

{¶ 8} Curry testified that she was never in the Hook bar that evening but rather that she went to the bar after it closed to give her friends a ride. She saw Hightower and Matthews arguing in the parking lot. She testified that after she exited her car she saw Matthews with a switchblade.

{¶ 9} Hightower testified that Curry dropped her off at the bar earlier that evening. When Curry came to pick them up, she was arguing with Matthews. She testified that Curry was the one who observed that Matthews had a knife in her hand.

{¶ 10} Fuller's sister testified that she saw Matthews eating at "Dion's" after the assault and Matthews did not appear to be injured at that time. Another eyewitness testified that she was at the bar at the time of the incident and observed Curry pull into the parking lot to pick up Hightower. She testified that Matthews had a knife and she later observed Matthews at Dion's where she overheard her saying "I be cutting bitches all night."

{¶ 11} The trial court convicted Curry of the lesser included offense of assault. The trial court sentenced her to six months in jail, suspended the sentence, and placed her on one year of community control sanctions.¹

{¶ 12} Curry now appeals, raising one assignment of error, in which she argues that her conviction is against the manifest weight of the evidence.

{¶ 13} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether 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.” (Internal citations and quotations omitted.) *State v. Leonard*, 104 Ohio St.3d 54, 68, 2004-Ohio-6235, 818 N.E.2d 229.

{¶ 14} Curry contends that the trial court lost its way in finding her guilty of assault because the evidence showed that Matthews fabricated her story. She claims that Matthews and her friends made up the story about the assault and that Matthews was not a credible witness. Curry claims that

¹Fuller did not appear for trial but was later arrested and pled guilty to misdemeanor assault. The court acquitted Moore and convicted Hightower of misdemeanor assault. Hightower is also appealing her conviction. See *State v. Hightower*, Cuyahoga App. No. 93024.

Matthews concocted the story that Curry started the assault because Hightower was in a relationship with the father of one of Matthews's children.

{¶ 15} The trial court, as the trier of fact, is free to accept or reject all or any part of the testimony of the witnesses and assess the credibility of witnesses. Although witnesses for both parties could be found to lack credibility due to conflicting testimony, the trial court weighed all the evidence and reasonable inferences and found the state's witnesses to be more credible.

See *State v. Anderson*, Cuyahoga App. No. 90460, 2008-Ohio-4240, citing *State v. Wilson*, Cuyahoga App. No. 88289, 2007-Ohio-2373.

{¶ 16} Matthews testified that she was arguing with Hightower in the bar parking lot when Curry punched her. Then all four women attacked her, hitting her in the head and back. She suffered a broken nose and received treatment at the hospital. Matthew's testimony was corroborated by her mother, sister, and cousin's friend.

{¶ 17} Despite some discrepancies in witness testimony, we find that other aspects of the state witnesses's descriptions were consistent. It was within the province of the trial court to determine whether the witness testimony was sufficiently reliable and accurate to be worthy of belief. We further find that any minor inconsistencies do not lead to the conclusion that Curry's conviction is against the manifest weight of the evidence.

{¶ 18} Accordingly, the sole assignment of error is overruled.

{¶ 19} Judgment is 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.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR