[Cite as *State v. Willis*, 2011-Ohio-459.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94663

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TERIAL WILLIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525375

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

RELEASED AND JOURNALIZED: February 3, 2011

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FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Defendant-appellant, Terial Willis, appeals his convictions for two counts of assault, arguing that those convictions were based on insufficient evidence and were against the manifest weight of the evidence. After a thorough review of the record and relevant case law, we affirm.

{¶ 2} On June 5, 2009, Heather Young heard pounding on her apartment door. As she approached the door, two unknown individuals, one of whom was later identified as appellant, forced their way inside Young's apartment. Appellant immediately began hitting Young and then pushed Young's infant daughter into a glass table, which shattered. Young testified

that, although the door was locked, the lock was stripped and the door could be unlocked from the outside. Officer Brian Salamone with the Cuyahoga Metropolitan Housing Authority Police Department testified that he found no signs of forced entry.

{¶ 3} Appellant was charged in a four-count indictment with one count of aggravated burglary, two counts of assault, and one count of aggravated menacing. Appellant waived his right to a jury trial, and the matter was tried to the bench on October 15, 2009. The trial judge found appellant not guilty of aggravated robbery and aggravated menacing, but guilty of two counts of assault.[1] The trial judge sentenced appellant to six months in jail for each count. These sentences were to run concurrently to one another for an aggregate sentence of six months in the county jail. This appeal followed.

Law and Analysis

{¶ 4} Appellant argues that his convictions were based on insufficient evidence and were against the manifest weight of the evidence. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. When deciding whether a conviction was based on sufficient evidence the appellate court must determine, after viewing the evidence in a light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime proven beyond a

[1] R.C. 2903.13(A), first degree misdemeanors.

reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492; *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 5} The United States Supreme Court recognized the distinction in considering a claim based on the manifest weight of the evidence as opposed to sufficiency of that evidence. The Court held in *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 72 L.Ed.2d 652, that, unlike a reversal based upon the insufficiency of the evidence, an appellate court's disagreement with the jurors' weighing of the evidence does not require special deference accorded verdicts of acquittal. Id. at 43. Upon application of the standards enunciated in *Tibbs*, the court in *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, has set forth the proper test to be utilized when addressing the issue of manifest weight of the evidence. The *Martin* court stated that "[t]he 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." Id. at 175.

{¶ 6} Appellant was convicted of two counts of assault in violation of R.C. 2903.13(A), which prohibits an individual from knowingly causing or attempting to cause physical harm to another. The evidence presented at trial demonstrated that appellant entered Young's apartment, punched Young in the face, and pushed Young's infant daughter into a glass table.

This evidence, which was believed by the trial judge, was sufficient to prove that appellant caused or attempted to cause physical harm to Young and her daughter.

{¶ 7} Appellant points to portions of Young's testimony, which he claims are inconsistent or embellished, in order to argue that his conviction should be vacated or a new trial ordered. The trial judge was in the best position to observe Young's demeanor and assess her credibility. We see nothing in the record that causes us to question the trial judge's determination in this regard. Appellant's first and second assignments of error are overruled.

Conclusion

{¶ 8} The evidence presented at trial, when construed in a light most favorable to the state, was such that a reasonable factfinder could find appellant guilty of two counts of assault. There are no discrepancies in the record that cause this court to find that the trial judge lost his way. Ample evidence existed to support appellant's convictions, and his convictions are not against the manifest weight of the evidence.

Judgment affirmed.

It is ordered that appellee recover from 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

convictions 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.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR