[Cite as *State v. Williams*, 2002-Ohio-2212.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. JONATHAN WILLIAMS Appellant	C.A. No. 01CA007867 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 00 CR 056287

DECISION AND JOURNAL ENTRY

Dated: May 8, 2002

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Defendant-Appellant Jonathan B. Williams has appealed the judgment of the Lorain County Court of Common Pleas that found him guilty of felonious assault. This Court affirms.

I

{¶2} On August 31, 2000, Appellant was indicted on two counts of felonious assault in violation of R.C. 2903.11(A)(1) and R.C. 2903.11(A)(2). A

jury found Appellant guilty on both counts. Appellant has appealed his conviction, asserting one assignment of error.

II

{¶3} Assignment of Error

{¶4} [Appellant's] conviction was against the manifest weight of the evidence.

{¶5} In his sole assignment of error, Appellant has asserted that his conviction was against the manifest weight of the evidence. Specifically, Appellant has argued that the state's witnesses' testimony was uncorroborated, inconsistent, unreliable, and incredulous.

{¶6} In determining whether a conviction is against the manifest weight of the evidence, this Court must:

> **{¶7}** [R]eview the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, 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.

State v. Otten (1986), 33 Ohio App.3d 339, 340. An appellate court that overturns a jury verdict as against the manifest weight of the evidence acts in effect as a "thirteenth juror" setting aside the resolution of testimony and evidence as found by the trier of fact. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. This action is reserved for the exceptional case where the evidence presented weighs heavily in favor of the defendant. *Otten*, 33 Ohio App.3d 339. "A conviction is not against the manifest weight of the evidence merely because there is conflicting

evidence before the trier of fact." *State v. Haydon* (Dec. 22, 1999), 9th Dist. No. 19094, at 14, appeal not allowed (2000), 88 Ohio St.3d 1482. Additionally, it is well established that "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶8} Appellant was charged with felonious assault under R.C. 2903.11. Pursuant to R.C. 2903.11(A)(1) and (A)(2):

{¶9} No person shall knowingly do either of the following:

{¶10} Cause serious physical harm to another ***;

{¶11} Cause or attempt to cause physical harm to another *** by means of a deadly weapon or dangerous ordnance.

The charges stem from an altercation Appellant had with his long-term girlfriend's nephew, Willie Lee, in which Lee suffered a stab wound to the stomach.

{¶12} The evidence adduced at trial showed that on the evening of July 5, 2000, Appellant argued with his girlfriend, Sandra Maben ("Maben"). The argument occurred in Maben's bedroom at her mother's home. Maben, Jamar Williams, Maben's son with Appellant, Howard Hollis, Maben's son from a previous relationship, and Lavada Maben ("Lavada"), Maben's mother, lived together in Lavada's house.

{¶13} Maben testified that after she and Appellant began arguing, she attempted to leave her bedroom, but Appellant would not let her out of the room. Maben stated that Appellant hit her in the head and the two fell onto the bed

"tussling." She testified that Hollis began knocking on the door and Appellant finally let her out.[1] Upon leaving the bedroom, Maben said she went next door to her sister's house. Maben stated that she did not witness the stabbing.

{¶14} Hollis testified that he was in his bedroom when he heard a big thump. After hearing Maben argue with Appellant, Hollis started banging on the door. When Maben came out of the room Hollis took her outside and then next door. Hollis testified that he felt like Appellant wanted to start a fight with him and that Appellant looked really angry. Hollis testified that he saw Lee go into the house with Donald Frazier, Maben's sister's husband. Hollis testified that Lee came out of the house and fell onto the grass, bleeding from the stomach. According to Hollis, Appellant then left the house yelling "I'm nobody to be fucked with." Hollis testified that Appellant drove away in Maben's car before the police and ambulance arrived.

{¶15} Frazier began his testimony by admitting to prior convictions for aggravated robbery in 1980 and 1985 and a prior conviction for drug possession in 1999. Frazier then testified that on the night in question, he was taking a shower when he was told to go to Maben's house to intervene in a fight between Maben and Appellant. Frazier explained that he talked with Appellant and tried to get

[1] The bedroom door locked automatically and could only be opened by depressing an interior latch or button.

him to leave. Frazier testified that Appellant said he might have to kill someone that night. Frazier continued in his attempts to persuade Appellant to just leave.

{¶16} According to Frazier, Lee was in the house when the fight occurred between Maben and Appellant and Lee came past him in the hallway, walked down the hall and asked Appellant why he jumped Maben. Frazier admitted that once Lee reached Appellant his back was to both of them because he was walking in the opposite direction. Frazier testified that the next thing he knew Lee was running out of the house screaming, "He done stabbed me." Frazier then asked Appellant why he stabbed Lee and Appellant answered that he did not stab Lee and that he must have struck Lee with a "key or something." Frazier testified that Appellant told him he had a gun so Frazier let him take Maben's car.

{¶17} Lee testified that he was in the house at the time of the argument and that he joined Hollis at Maben's door and helped get her out of the bedroom. Lee said that he saw Frazier talking to Appellant and that he walked past Frazier on his way to talk to Appellant. Lee testified that he had no weapon, walked up to Appellant, at a normal pace, and asked him if he put his hand on Maben. Lee testified that Appellant responded, "You all motherfuckers better stop fucking with me." Lee testified that Appellant then ran past him and stabbed him in the stomach. Lee stated that he did not know why Appellant stabbed him.

{¶18} Patrolman Jason Metz of the Elyria Police Department was dispatched to pick up Appellant on warrants in relation to this case. Metz testified

that Appellant told him that the knife Lee was stabbed with was still in Maben's car. Metz confirmed that the knife was found in Maben's car. Metz testified that Appellant said he thought Lee was going to hurt him. According to Appellant's statements to Metz, Appellant did not stab Lee, Lee ran into the knife.

{¶19} Appellant took the stand in his own defense. Appellant testified that someone was threatening him from outside the bedroom and that he was leaving with Frazier when Lee was stabbed. Appellant stated that Frazier was next to him the entire time in the hallway. He testified that he was trying to put his pocket knife away when Lee ran into him and was stabbed. According to Appellant, a police officer took his knife and put it in Maben's car. Appellant testified that he did not knowingly cause physical harm to Lee and that everyone else that testified was lying.

{¶20} Appellant has argued that the jury could not have properly reached a guilty verdict because the evidence is contradictory and no evidence was presented to establish that Appellant knowingly stabbed Lee. Specifically, Appellant has asserted that inconsistencies in the state's witnesses' testimony show they were not credible. As such, Appellant has asserted that the evidence did not support his conviction for felonious assault. This Court finds no merit in Appellant's contentions because the jury had the opportunity to listen to the witnesses' testimony, observe them, and adjudge their credibility; therefore, we must give

deference to the jurors' judgments. See *State v. Lawrence* (Dec. 1, 1999), 9th Dist. No. 98CA007118, at 13.

{¶21} Upon careful review of the testimony and evidence presented at trial, this Court cannot conclude that, given the evidence before it, the jury lost its way or created a manifest miscarriage of justice such that Appellant's conviction for two counts of felonious assault must be reversed. Appellant's contention that his conviction was against the manifest weight of the evidence is without merit. Accordingly, Appellant's sole assignment of error is overruled.

III

{¶22} Appellant's sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

BETH WHITMORE
FOR THE COURT

SLABY, P. J.
CARR, J.
CONCUR

APPEARANCES:

MICHAEL D. DOYLE, Attorney at Law, 134 Middle Ave., Elyria, Ohio 44035, for Appellant.

GREGORY A. WHITE, Prosecuting Attorney, and VASILE C. KATSAROS, Assistant Prosecuting Attorney, 226 Middle Avenue, 4th Floor, Elyria, Ohio 44035, for Appellee.