[Cite as *State v. Godfrey*, 2011-Ohio-512.]

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

STATE OF OHIO	C.A. No. 09CA009703
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JACK GODFREY	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellee	CASE No. 08CR077302

DECISION AND JOURNAL ENTRY

Dated: February 7, 2011

MOORE, Judge.

{¶1} Appellant, Jack Godfrey, appeals from the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On the afternoon of August 7, 2008, Godfrey was an inmate at Grafton Correctional Institute in Lorain County. As a result of what he described as uncontrolled anger issues, he punched a hole in a shower door at the prison. The shift commander directed corrections officers Mark Warner and Gary Childress to transport Godfrey to segregation in response to his destruction of prison property. As the officers approached Godfrey's cell, he retreated to an area between the bunks and a metal cabinet and tucked his right arm behind the cabinet. The officers were unsuccessful in their attempts to persuade Godfrey to come out so that they could handcuff him. The officers spent close to five minutes, an unusually long time, reasoning with Godfrey to come out of his cell and be handcuffed. Godfrey refused. Once it

became clear that Godfrey would not comply, the officers attempted to remove him by force from between the bunks and cabinet.

{¶3} When they pulled him out of the space, he dove onto the lower bunk. Warner attempted to secure Godfrey's arms and wrest from his grasp a pen that he was wielding as a weapon. Childress was at Godfrey's feet and was attempting to secure his lower body. During the scuffle, Godfrey "mule-kicked" Childress twice in the groin, twice in the lower abdomen and in the side of his back. A third corrections officer, Frank Petrovich, aided in securing Godfrey's head so that he was unable to spit or bite. A psychiatric registered nurse assigned to the same unit also aided the corrections officers by securing Godfrey's ankles and pinning his legs to the bed. The four were then able to handcuff Godfrey and transport him to segregation.

{¶4} As a result of being kicked, Childress was transported to the hospital and missed one week of work. He experiences residual problems with pain and numbness in his back and leg. He was prescribed Tramadol for a period of time and then began taking large doses of ibuprofen and Tylenol twice a day. At the time of trial, Childress remained on light duty at work and he was seeing a chiropractor three times per week.

{¶5} On December 10, 2008, the Lorain County Grand Jury indicted Godfrey on one count of assault, in violation of R.C. 2903.13(B), a felony of the fifth degree, and one count of obstructing official business, in violation of R.C. 2921.31(A), a felony of the fifth degree. On July 13, 2009, Godfrey waived his right to trial by jury and a trial to the court was held. The court found Godfrey guilty on both counts. On October 5, 2009, the trial court sentenced Godfrey to one year of incarceration on each count and ordered that the sentences be served concurrently.

{¶6} Godfrey timely filed a notice of appeal. He has raised two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> "THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT [GODFREY'S] CONVICTIONS OF ASSAULT, A FELONY OF THE FIFTH DEGREE, AND OBSTRUCTING OFFICIAL BUSINESS, A FELONY OF THE FIFTH DEGREE."

{¶7} In his first assignment of error, Godfrey contends that his convictions for assault and obstructing official business are supported by insufficient evidence.

{¶8} When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution has met its burden of production. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). To determine whether the evidence in a criminal case was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the prosecution:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

Assault

{¶9} Under R.C. 2903.13(C), assault is generally a misdemeanor of the first degree. There are various aggravating circumstances, however, that elevate assault to a felony. See R.C. 2903.13(C)(1)-(5). Godfrey contends that the State failed to present sufficient evidence to raise the level of his assault offense from a misdemeanor of the first degree to a felony of the fifth

degree for sentencing purposes. Specifically, he contends that the State failed to prove that the victim of the assault was employed by the department of rehabilitation and correction and that the offense occurred on the grounds of a state correctional institution. He contends that Grafton Correctional Institute could be a private rather than state facility. We do not agree.

{¶10} R.C. 2903.13(C)(2)(a) provides that a violation of R.C. 2903.13(B) becomes a felony of the fifth degree when:

{¶11} "The offense occurs in or on the grounds of a state correctional institution * * *, the victim of the offense is an employee of the department of rehabilitation and correction, * * * and the offense is committed by a person incarcerated in the state correctional institution[.]"

{¶12} Petrovich testified that on August 7, 2008, he observed Godfrey angrily punch a hole in the shower door at the facility. As a result, Petrovich testified that he "did a conduct report on [Godfrey] for destruction of State property." He further identified Godfrey as "Inmate Godfrey" and stated that at one point in the resulting confrontation, Godfrey was in a two-bunk cell while two other corrections officers attempted to handcuff and transport him to segregation. At the time of trial Childress had been employed as a corrections officer at the prison for sixteen-and-one-half years.

{¶13} Petrovich testified that the shower door, which was part of the correctional institution, constituted State property. From this testimony, it is reasonable to infer that Grafton Correctional Institute is a state correctional institution for the purposes of R.C. 2903.13(C)(2)(a). Petrovich identified Godfrey as an inmate at the facility. The only remaining issue is whether Childress was an employee of the department of rehabilitation and correction.

> "Circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. When the state relies on circumstantial evidence to prove an essential element of the offense charged, there is no need for such evidence to be irreconcilable with

> any reasonable theory of innocence in order to support a conviction." *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus.

{¶14} Childress testified that he has worked as a corrections officer at Grafton Correctional Institute for more than sixteen years. Having determined that the State proved that Grafton Correctional Institute is a state facility, the duration of Childress' employment also provides circumstantial evidence that he is an employee of the department of rehabilitation and correction. The duration of his employment makes clear that he is not a temporary employee of an outside agency. Although Godfrey suggests in passing that Childress could be an employee of a private enterprise, the trier of fact could reasonably believe that as a long-time employee of a state correctional facility, Childress was an employee of the department of rehabilitation and correction.

{¶15} Moreover, even if Grafton Correctional Institute were privately operated, the Eleventh District Court of Appeals has held that an assault on a corrections officer at a privately operated correctional institution is to be treated as an assault on a corrections officer at a state facility. *State v. Varner*, 11th Dist. No. 2002-A-0083, 2004-Ohio-2790, at ¶20, citing *State v. Johnson*, 11th Dist. No. 2001-A-0043, 2002-Ohio-6570, at ¶20.

Obstructing Official Business

{¶16} With respect to his conviction for obstructing official business, Godfrey contends that the State failed to present sufficient evidence to prove that he obstructed a public official.

{¶17} R.C. 2921.31(A) provides that:

> "No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties."

{¶18} A "public official" is "any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers." R.C. 2921.01(A).

{¶19} Godfrey specifically contends that the State failed to present sufficient evidence to prove that he obstructed "official business" or that employees of the correctional institution are "public officials." We do not agree.

{¶20} We previously determined that Petrovich and Childress are employees of the department of rehabilitation and correction who also work at a state correctional facility. Petrovich testified that his duties as a corrections officer included maintaining control of the institution and enforcing the rules and regulations. Childress testified similarly. R.C. 2921.01(A) defines "public official" to include employees of the state or any political subdivision. We have previously determined that Childress was an employee of the state. Moreover, at least one other appellate court has treated correctional officers as public officials. *State v. Rhines*, 5th Dist. No. 07 CA 60, 2009-Ohio-710, at ¶13-20. We, too, consider correctional officers to be "public officials" for the purposes of R.C. 2921.31(A).

{¶21} Having determined that Petrovich and Childress are public officials for the purposes of R.C. 2921.31(A), we must determine whether Petrovich and Childress were conducting official business during the confrontation with Godfrey. Childress testified that the order to place Godfrey into segregation came from the shift commander, Childress' superior officer. Petrovich and Childress were employees of the department of rehabilitation and correction following orders from a superior officer. Godfrey had damaged State property. Therefore, the order to place Godfrey in segregation pertained to maintaining control of the

institution and enforcing rules and regulations. Taken together, this evidence demonstrates that Godfrey and Childress were engaged in official business at the time of the confrontation with Godfrey. There can be little argument that Godfrey's actions in assaulting Childress by "mule-kicking" him repeatedly in the groin, lower abdomen and back were taken with the purpose other than to prevent, obstruct or delay Childress in transporting Godfrey to segregation as ordered.

{¶22} After viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the State proved each element of assault on an employee of the department of rehabilitation and correction and obstructing official business beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus. Godfrey's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> "[GODFREY'S] CONVICTION FOR ASSAULT AND OBSTRUCTING OFFICIAL BUSINESS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF ARTICLE IV, SECTION 3, OF THE OHIO CONSTITUTION."

{¶23} In his second assignment of error, Godfrey contends that his convictions for assault and obstructing official business are against the manifest weight of the evidence. We do not agree.

{¶24} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, at *1, citing *Thompkins*, 78 Ohio St.3d at 390.

{¶25} A determination of whether a conviction is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State

to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

> "an appellate court must review 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.

This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. Id.

{¶26} In support of his second assignment of error, Godfrey states only that his "conviction was against the manifest weight of the evidence, and in support the arguments in Section I are resubmitted." Godfrey has failed to separately discuss each assignment of error. Loc.R. 7(B)(7). At trial, the defense did not present any evidence or witnesses. The trial court was left only to evaluate the evidence presented by the State. We previously determined that the evidence, if believed, was sufficient to support Godfrey's convictions. "The weight to be given the evidence and the credibility of the witness[es] are primarily for the trier of the facts." *State v. Jackson* (1993), 86 Ohio App.3d 29, 32, citing *State v. Richey* (1992), 64 Ohio St.3d 353, 363. Accordingly, we cannot say that Godfrey's convictions created a manifest miscarriage of justice that must be reversed. *Otten*, 33 Ohio App.3d at 340. Godfrey's second assignment of error is overruled.

III.

{¶27} Godfrey's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

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.

CARLA MOORE
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

ERIN A. DOWNS, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.