

[Cite as *State v. Adcox*, 2010-Ohio-1117.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23306
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-3308
v.	:	
	:	(Criminal Appeal from
WILLIAM R. ADCOX	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 19<sup>th</sup> day of March, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant William Adcox appeals from his conviction and sentence for Assault on a Police Officer, in violation of R.C. 2903.13(A). Following the conviction, Adcox was sentenced to five years of community control.

{¶ 2} Adcox contends that the judgment of conviction, entered after a bench

trial, is against the manifest weight of the evidence. We conclude that the conviction is not against the manifest weight of the evidence. The trier of fact did not lose its way and create a manifest miscarriage of justice. Although a dispute exists in the testimony, the trial judge found the State's witnesses more credible. The trier of fact is in the best position to assess credibility, and there is more than adequate evidence to support the judgment. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 3} In the late evening hours of August 16, 2008, Dayton police officers Jacquelyn Imwalle and Nancy Shields were dispatched to 2106 Bickmore Street on a domestic violence call. Allegedly, a live-in boyfriend was threatening his girl-friend. When Imwalle and Shields arrived, the alleged victim, Kymberly Pack, was standing in the middle of Bickmore Street. Pack was very upset, claimed her life was in danger, and pointed out her boyfriend, William Adcox, who was sitting on the front step of an apartment building.

{¶ 4} Upon approaching Adcox, both officers observed that he appeared to be under the influence of intoxicants. Adcox's speech was slurred, and the officers noticed an odor of alcohol. When the officers questioned Adcox about the alleged threats, he stated that could do whatever he wanted, because he owned the building. Adcox used profane language, calling his girlfriend a "bitch." Adcox continued to use profane language, and the officers decided to arrest him for domestic violence.

{¶ 5} The officers handcuffed Adcox and began walking him to the police cruiser. Initially he cooperated, but hesitated while he was cursing. Both officers

testified that Adcox directed a comment to Imwalle while she was giving him a verbal command. Adcox made a statement to the effect of: "You ain't no officer, you cunt, you're just a fucking woman." Trial Transcript, p. 13 (Imwalle's testimony) and p. 53 (Shields's testimony).

{¶ 6} As they approached the cruiser, Imwalle was on Adcox's right side, and Shields was on his left. Adcox's hands were cuffed behind his back, and Shields had her hand on his left arm. Adcox is a large man, about 6'3" tall and weighing about 250 pounds. Both officers are considerably smaller. The officers asked Adcox to get in the cruiser, but he refused. He told the officers that they had to ask him nicely.

{¶ 7} Adcox braced himself and would not go in as the officers directed. Adcox pushed back abruptly, threw his elbow back, and hit Imwalle on the right side of her jaw. Shields did not observe Adcox hit Imwalle, but heard Imwalle say, "You just hit me, now you are facing felony charges." Trial Transcript, p. 57. Shields then heard Adcox say, "That didn't hurt you. You're no girl." Id. at 58. Shields interpreted Adcox's action in pushing back as intentional, because it was quick and abrupt, and was in sync with the statement that he was not going in until he was asked nicely. Shields also stated that Imwalle's face was red, but she did not see specific bruising. However, Imwalle did not have a red mark on her jaw or neck area prior to the time she was hit.

{¶ 8} Dayton police officer James Mollohan subsequently arrived to assist. This was after Adcox had gotten into the cruiser. Mollohan could hear and see Adcox in the cruiser. Adcox was very angry and was making comments about

Imwalle's demeanor, saying she was a "cunt." Adcox asked what he was being charged with, and Imwalle responded that he had elbowed her. Adcox then stated, "Yes, I hit her, but she deserved it. She's a woman, she's a cunt." Trial Transcript, p. 88. Imwalle also testified that Adcox made these remarks in front of Mollohan.

{¶ 9} Adcox presented two witnesses to counter the testimony of the three officers, and testified himself as well. Adcox testified that he had a lame foot, due to a fall and prior surgery. On the day in question, he had stopped at a bar after work, and was drinking beer. His live-in-girlfriend, Kymberly Pack, came into the bar, was upset, called him a name, and drove away in his van. This left Adcox without transportation. After consuming four or five beers, Adcox walked home, which was about two and a half miles away. This aggravated his foot. When he arrived home, he found that Pack had changed the locks and he could not get into the apartment, which he owned.

{¶ 10} Adcox's sister, Marti Maldonado, lived across the street from Adcox's apartment building. Mrs. Maldonado was with Pack when Adcox arrived home. Pack was in front of Maldonado's house, calling names. Adcox denied threatening Pack, but indicated that he was upset at not being able to get into the house. Adcox also admitted that he kicked and dented a Cadillac that he had bought for Pack.

{¶ 11} After the officers spoke with Pack, Imwalle came over to Adcox. Adcox testified that he put his hands up, and said he had not touched Pack. Imwalle allegedly asked him why he was slapping Pack, because that is something "queers" would do. Adcox was upset at this remark, and used profanity toward Imwalle. However, he denied making the vulgar comments that the officers had mentioned.

{¶ 12} Adcox stated that Imwalle's attitude was a little hateful. He denied resisting in any way, and said he did not tell the officers that they had to ask him nicely to get in the cruiser. Adcox indicated that he had trouble getting in the cruiser because of his lame foot, and had to brace or prop himself on the cruiser because of a problem with the curb and his inability to bear weight on his foot. Adcox denied yanking back, and stated that while Imwalle did make an accusation that he had hit her, she did not say she was going to charge him. It was only later, after he was upset in the cruiser and they were having words, that Imwalle said he was going to jail. Adcox had told Imwalle that he was going to the ombudsman about her having called him a "queer," and said he was going to have her job. Adcox testified that Imwalle asked another officer if she could lose her job for calling someone a "queer," and the officer said that she could. Adcox claimed that Imwalle then threatened him with an assault charge if he did not shut up. The police officers denied these accusations.

{¶ 13} Adcox's sister and her husband, Douglas Maldonado, also testified. Mr. Maldonado watched the events from his bathroom window, which was about thirty feet away. He indicated that Imwalle's attitude was "provoking," and that Adcox did not resist. Mr. Maldonado did not see Adcox strike anyone, nor did he hear Adcox curse at the officers. Mr. Maldonado saw Adcox lose his balance when he went to the curb to get into the cruiser. However, Mr. Maldonado admitted that the cruiser was between his house and the officers. He claimed he could see over the top of the cruiser.

{¶ 14} Mrs. Maldonado testified that she was talking outside with Pack before

and after the police arrived. She described Imwalle as being disrespectful and unprofessional toward Adcox from the start. Mrs. Maldonado stated that her brother did not put up any resistance to being frisked or handcuffed. She claimed to have been less than a yard behind Adcox as he was being taken to the cruiser. Mrs. Maldonado stated that Adcox lost his balance and went back while trying to get into the cruiser. She did not see him strike anyone. She admitted that Adcox was yelling when he was put in handcuffs and was in the back of the cruiser. He was upset, because he was being arrested and had not done anything wrong. Mrs. Maldonado never heard Adcox call Imwalle a “fucking bitch,” or other names, nor did she hear him say that he had hit Imwalle and that she deserved it.

{¶ 15} After hearing the testimony, the trial court found Adcox guilty as charged. The court specifically based its decision on credibility determinations. After finding Adcox guilty, the court sentenced him to five years of community control, with various conditions, including alcohol treatment. Adcox appeals from his conviction and sentence.

## II

{¶ 16} Adcox did not include a formal assignment of error in his brief, but the gist of his sole assignment of error is as follows:

{¶ 17} “THE CONVICTION FOR FELONIOUS ASSAULT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶ 18} Under this assignment of error, Adcox contends that the trial court’s decision is contrary to the weight of the evidence, because Imwalle is a questionable

witness. According to Adcox, Imwalle's "sole" version of the assault is suspect, because she was allegedly stuck on the right side while holding Adcox's left arm and presenting her left profile to Adcox. Adcox further notes that Officer Shields also did not see the injury, even though she was only separated from Imwalle by the width of Adcox's body.

{¶ 19} "A court considering a manifest-weight claim ' review[s] the entire record, weighs the evidence and all reasonable inferences, [and] considers the credibility of witnesses .' \* \* \* The question to be determined is ' 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.' " *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, at ¶ 100, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 20} "Because the factfinder, be it the jury or, as in this case, the trial judge, has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288, 1997 WL 476684, \* 4.

{¶ 21} In the case before us, the trial court believed the State's witnesses. All

three police officers gave essentially the same account of events, and an officer who was not at the scene during the alleged assault, heard Adcox subsequently admit that he hit Imwalle, and that she had deserved it. As the State suggests, disbelieving all three officers would require the court to conclude that the officers were engaged in some type of conspiracy. Not only is there no proof of any conspiracy, even the defense witnesses indicate that Adcox was angry and was cursing at various times. Upon seeing the witnesses testify, the trial court found the State's witnesses more credible, and this was within the court's province. Our review of the record indicates that there is more than adequate evidence to support the judgment. Accordingly, Adcox's sole assignment of error is overruled.

III

{¶ 22} Adcox's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and BROGAN, J., concur.

Copies mailed to:

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