

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-10-1209

Appellee

Trial Court No. CRB 10-00908

v.

Dominique Young

DECISION AND JUDGMENT

Appellant

Decided: June 10, 2011

* * * * *

David Toska, Chief Prosecutor, and Arturo M. Quintero,
Assistant Prosecutor, for appellee.

Keith L. Mitchell, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the July 1, 2010 judgment of the Toledo Municipal Court, which sentenced appellant, Dominique Young, after she was convicted by a jury of violating R.C. 2903.13(A), assault on a peace officer. Upon consideration of the

assignments of error, we affirm the decision of the lower court. Appellant asserts the following assignments of error on appeal:

{¶ 2} "1. WHETHER THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUSTAIN APPELLANT'S CONVICTION FOR ASSAULT ON A PEACE OFFICER.

{¶ 3} "2. WHETHER THE APPELLANT'S CONVICTIONS ARE AGAINST A [SIC] MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 4} Appellant was arrested on January 18, 2010, and, pertinent to this appeal, charged with violating Toledo Municipal Code 537.03(A) and R.C. 2903.13(A) and (C)(3), assault on a peace officer. The court found appellant guilty of both offenses on June 30, 2010, and sentenced her on July 1, 2010. Her sentence was stayed pending appeal.

{¶ 5} Appellant argues in her first assignment of error that the prosecution had failed to present sufficient evidence to support her conviction for assaulting a police officer.

{¶ 6} A challenge to the sufficiency of the evidence is a question of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, reconsideration denied (1997), 79 Ohio St.3d 1451. The standard for determining whether there is sufficient evidence to support a conviction 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 the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph

two of the syllabus, citing *Jackson v. Virginia* (1979), 443 U.S. 307. Therefore, "[t]he verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact." *State v. Dennis* (1997), 79 Ohio St.3d 421, 430, certiorari denied (1998), 522 U.S. 1128, citing *State v. Jenks*, supra. In determining whether the evidence is sufficient to support the conviction, the appellate court does not weigh the evidence nor assess the credibility of the witnesses. *State v. Walker* (1978), 55 Ohio St.2d 208, 212, certiorari denied (1979), 441 U.S. 924.

{¶ 7} The following evidence was admitted at trial. Toledo police officers, Officer Stamper and Officer Hollingsworth, testified that they were patrolling an area of downtown Toledo around 1:30 a.m. on January 17, 2010, because at the time the bar patrons leaving the area often caused disturbances. The officers found a lot of people milling about in one area and dispersed the crowd. When they passed by the corner of Huron and Madison Streets, they saw two people fighting. They were punching each other, pulling hair, yelling, and screaming. Others were standing around watching the fight. The officers told the two people to stop fighting, but they did not. Because appellant indicated that she would not cooperate with officers, Officer Stamper threatened to use a Taser. Appellant continued to fight despite Officer Hollingsworth's attempt to pull the other woman away. Officer Stamper used the Taser on appellant to break up the fight, but appellant kept on fighting and taunted the officer to use the Taser again. The two women fought for another minute before Officer Hollingsworth removed the other person from the fight, handcuffed her, and placed her in the squad car.

Meanwhile, Officer Stamper forced appellant to the ground to handcuff her. Appellant was still acting belligerent, yelling, screaming, making racial remarks, pulling away, jerking, and yanking despite the commands by the officers to stop. Officer Hollingsworth returned to help pick appellant up and set her on her feet. He walked her to a patrol car about 10 or 12 steps away while they waited for the fire department to come and remove the Taser prongs from her back. Both officers testified that Officer Hollingsworth used hair and head control techniques on appellant, which involved holding appellant's head against the car because she was still out of control. They denied that appellant's head was banged against the car. Officer Stamper left the area to attend to the other person involved in the fight.

{¶ 8} Officer Hollingsworth testified that appellant behaved in the same manner for the fire department crew trying to help her. Eventually an ambulance was called, the prong was removed, and appellant was taken to the hospital, where the officers observed appellant treating the emergency room personnel in the same manner. While appellant was being loaded into the ambulance, she spit at Officer Hollingsworth. While he was trying to put a spit hood on her, she was screaming and twisted herself so that she could kick the officer in the head. He then placed a knee on her head and tried to hold her legs still so the fire department could work on her. She then calmed down enough that the crew was able to put an oxygen mask on her and tie her legs to the gurney. A few minutes later, she was again screaming and yelling.

{¶ 9} The officers believed that appellant was intoxicated because of her actions, the smell emanating from her, and her bloodshot eyes. Officer Hollingsworth denied that he tried to choke appellant or that he put his knee on her throat.

{¶ 10} Diane Layton, one of the EMS paramedics that responded that night, testified that when she arrived at the scene, she saw Officer Hollingsworth bang appellant's head on the front driver's side window of a car four-to-six times. An officer was also saying to appellant, "Where is your mama now?" and making racial slurs. When appellant would turn to respond or try to defend herself, Officer Hollingsworth would slam her head against the car again. Layton testified that she intervened by taking appellant by the arm and leading her to the emergency van cot while remarking to appellant about the slurs the officers were saying. Appellant cooperated with Layton and she was able to strap appellant onto the cot without any problem. Officer Hollingsworth continued to follow them and would not leave appellant alone while Layton was trying to take care of appellant. Layton believed that Officer Hollingsworth was totally out of control and became worse once they were inside the emergency vehicle. Layton testified that appellant did spit inside the vehicle, but Layton did not think that appellant was spitting at anyone in particular. Her partner was the closest to appellant at the time. After that, Officer Hollingsworth "went wacko," grabbed appellant, and began to choke her. He yelled at his partner to write appellant up, stating that she was trying to kick him. But, Layton believed that appellant was not trying to kick the officer but was trying to breathe. Officer Hollingsworth put his knee on her throat until she blacked out. Layton

placed an oxygen mask on appellant. No one ever attempted to put a spit hood on her. Layton testified that she has worked for 15 years in downtown Toledo and never been in a situation like this before. She was so disturbed by the incident that she spoke to the EMS director about the matter that same morning and filed a report.

{¶ 11} Appellant was charged with assault on a police officer under R.C. 2903.13. That statute provides: "(A) No person shall knowingly cause or attempt to cause physical harm to another * * *." Furthermore, "(C)(3) [i]f the victim of the offense is a peace officer * * *, while in the performance of their official duties, assault is a felony of the fourth degree."

{¶ 12} The trial court found beyond a reasonable doubt that appellant spit on Officer Hollingsworth and kicked him in the head. The trial court found Layton's testimony to be completely inconsistent with the officers' and, therefore, not credible. On appeal, appellant argues that the prosecution failed to establish that she knowingly attempted to kick or spit upon the officer.

{¶ 13} We find that the prosecution presented evidence by way of the testimony of the officers that appellant was intoxicated and acting out of control and that she kicked and spit upon Officer Hollingsworth. This evidence, if believed, was sufficient to support the conviction despite the conflicting testimony of Layton. Appellant's first assignment of error is found not well-taken.

{¶ 14} In her second assignment of error, she argues that her conviction was contrary to the manifest weight of the evidence.

{¶ 15} Even when there is sufficient evidence to support the verdict, a court of appeals may decide that the verdict is against the weight of the evidence. *State v. Thompkins*, supra, at paragraph two of the syllabus. When weighing the evidence, the court of appeals must consider whether the evidence in a case is conflicting or, where reasonable minds might differ as to the inferences to be drawn from the evidence, consider the weight of the evidence and consider the credibility of the witnesses to determine if 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." *State v. Thompkins*, supra, at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See, also, *State v. Smith* (1997), 80 Ohio St.3d 89, 114, certiorari denied (1998), 523 U.S. 1125.

{¶ 16} There was conflicting evidence presented in this case and the outcome depended totally upon a determination of the credibility of the witnesses. Such determinations are primarily within the province of the trier of fact who had the opportunity to observe the witnesses and their demeanor while they testified. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus, and *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80–81.

{¶ 17} Appellant argues that the trial court lost its way in its evaluation of the evidence because it characterized the paramedic's testimony as being that appellant was "calm and cool" when she took over the scene, which was not an accurate summary of her testimony. Furthermore, appellant argues that the trial court erred in relying on the testimony of Officer Stamper to support its finding that appellant knowingly spit at and

hit Officer Hollingsworth when Officer Stamper testified that she was not present when Officer Hollingsworth was with appellant in the ambulance. Finally, appellant argues that the trial court failed to meet its responsibility to weigh the interests of the witness when evaluating their credibility. She argues that the paramedic's view of the scene should have been given more credibility since she was not involved in the altercation.

{¶ 18} Upon an examination of all of the evidence, we cannot find that the trial court clearly "lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Appellant's conviction was not contrary to the manifest weight of the evidence and her second assignment of error is not well-taken.

{¶ 19} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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