

[Cite as *State v. Williams*, 2004-Ohio-1939.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :  
 Plaintiff-Appellee : C.A. CASE NO. 20039  
 vs. : T.C. CASE NO. 03CRB2542  
 CAROLYN S. WILLIAMS : (Criminal Appeal from  
 Defendant-Appellant : Municipal Court)

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O P I N I O N

Rendered on the 16<sup>th</sup> day of April, 2004.

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Patrick J. Bonfield, Acting Law Director; Deirdre E. Logan, Chief  
 Prosecutor; Andrew D. Sexton, Asst. City Prosecutor, 335 West  
 Third Street, Room 372, Dayton, Ohio 45402, Atty. Reg. No.  
 0070892  
 Attorney for Plaintiff-Appellee

Arvin S. Miller, Asst. Public Defender, 117 South Main Street,  
 Suite 400, Dayton, Ohio 45422, Atty. Reg. No. 0016355  
 Attorney for Defendant-Appellant

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GRADY, J.

{¶1} Defendant, Carolyn Williams, appeals from her  
 conviction and sentence for assault.

{¶2} On March 21, 2003, around 10:30 a.m., Defendant  
 Williams went to the home that Sharon Johnson shared with her ex-  
 husband, Michael, at 2305 Rugby Road in Dayton. Defendant and  
 Sharon Johnson got into a fight which led to Defendant's  
 conviction. Both Defendant and Johnson were involved at the time  
 in a relationship with a man named David Montgomery.

{¶3} Defendant and Johnson gave very different accounts at trial of their altercation.

{¶4} According to Johnson, after Defendant questioned her about whether she had been at David Montgomery's house on the morning of March 21, which Johnson admitted, Defendant then began to tell Johnson's ex-husband, Michael, how Johnson was interfering in Defendant's relationship with David Montgomery. Defendant then slapped Johnson in the face, grabbed her and pulled Johnson down the porch steps. In response, Johnson hit Defendant in the head with a telephone she had in her hand. Johnson's ex-husband then broke up the fight and Defendant left. As a result of the fight, Johnson sustained scratches to her face. Later that afternoon, Defendant made several phone calls to Johnson threatening to hurt her if she didn't stay away from David Montgomery. Those phone calls prompted Johnson to call police.

{¶5} According to Defendant, before she went to Johnson's home she called David Montgomery's home and heard Johnson in the background. While Johnson was at Montgomery's home, Defendant decided to go to Johnson's home and speak with Johnson's ex-husband about scratches Johnson had put on Defendant's truck. While Defendant was talking to Johnson's ex-husband, Johnson came out of the house and hit Defendant with a phone. Defendant hit Johnson back and a fight ensued. Johnson's ex-husband broke up the fight. Defendant then went on to work. Later, Defendant called Johnson's home and told Johnson where she worked in case Johnson wanted to continue their fight. Around 4:00 p.m. police

arrested Defendant at work.

{¶6} Defendant was charged with one count of assault in violation of R.C. 2903.13(A). Following a trial to the court, Defendant was found guilty. The trial court sentenced Defendant to one hundred eighty days in jail, suspended on condition that Defendant have no future violations of this kind. The court also placed Defendant on unsupervised probation for a period not to exceed two years.

{¶7} Defendant has timely appealed to this court from her conviction and sentence.

ASSIGNMENT OF ERROR

{¶8} "CAROLYN WILLIAMS' CONVICTION OF ASSAULT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶9} A weight of the evidence argument challenges the believability of the evidence, and asks which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15562, unreported. The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶10} "[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 lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Accord *State v. Thompkins*, 78

Ohio St.3d 380, 1997-Ohio-52.

{¶11} Defendant was found guilty of "knowingly causing or attempting to cause physical harm to another." R.C. 2903.13(A). This case presents a classic credibility contest: Johnson's version of the events against Defendant's version of the events. Each woman accused the other of being the aggressor and starting the fight. In this appeal Defendant complains that the trial court, sitting as the trier of facts, chose to believe Johnson's testimony rather than Defendant's.

{¶12} In *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288, we observed:

{¶13} "[b]ecause the factfinder . . . 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." *Id.*, at p. 4.

{¶14} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶15} The trial court in this case did not lose its way

simply because it chose to believe Johnson's version of the events rather than Defendant's, which it was entitled to do. In reviewing this record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the jury lost its way, or that a manifest miscarriage of justice has occurred. Defendant's conviction is not against the manifest weight of the evidence.

{¶16} The assignment of error is overruled. The judgment of the trial court will be affirmed.

Judgment affirmed.

FAIN, P.J., and YOUNG, J., concur.

Copies mailed to:

Andrew D. Sexton, Esq.  
Arvin S. Miller, Esq.  
Hon. Bill C. Littlejohn