

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

State of Ohio

Court of Appeals No. L-07-1396

Appellee

Trial Court No. CR-200702872

v.

Craig Glover

DECISION AND JUDGMENT

Appellant

Decided: June 4, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Robert A. Miller, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

COSME, J.

{¶1} Appellant, Craig Glover, was found guilty by a jury of felonious assault.

The Lucas County Common Pleas Court sentenced him to five years of incarceration and ordered that this sentence be served consecutive to a sentence imposed in a separate case.

On appeal, appellant's counsel advised the court that she had reviewed the record and

could discern no meritorious claims for appeal. Appellant's counsel moved to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. After independently reviewing the record, we agree the record does not contain meritorious claims upon which appellant could prevail on appeal. Therefore, we grant the motion of appellant's counsel to withdraw and affirm the judgment of the trial court.

I. BACKGROUND

{¶2} On July 24, 2006, Craig Glover punched his girlfriend, Amy Noonan, in the face, dragged her around the house, pushed her up against a wall, and hit her so hard that she "was seeing white." Noonan testified that she and appellant had been drinking, she had been using crack cocaine, and they got into an argument which escalated into a fight, during which she was beaten. Noonan stated that she tried to leave the house more than once, but each time appellant tackled her on the front lawn and took her back into the house. The assault continued until the next morning, when it was time for Noonan to go to work.

{¶3} According to Noonan, she rode the bus to the YWCA where she met with counselors Lynn Jacquot and Rebecca Facey. There, she stated that appellant had beaten her and that the beating had taken place downtown. Facey took Noonan to the hospital where Noonan was treated for a broken nose, lacerations, and contusions.

{¶4} At the Toledo Hospital, Toledo Police Officer Michael Shaffer interviewed Noonan. He observed "facial, head, and arm injuries that were visible." He testified that

Noonan told him appellant beat her and the beating had occurred at the TARTA stop downtown.

{¶5} Detective Gene Kutz of the Toledo Police Department also interviewed Noonan, and she again identified appellant as the assailant. At Noonan's request, Detective Kutz conducted a second interview where she admitted that the beating had not taken place downtown as she had previously reported. Instead, the beating had taken place at appellant's home despite the fact that Noonan had obtained a civil protection order against appellant two weeks prior to the incident.

{¶6} Appellant argues that Detective Kutz's supplemental reports raises inconsistencies in the location, the description of, and reason behind the assault. Thus, given these inconsistent statements, the jury's conviction was against the manifest weight of the evidence.

{¶7} At trial, the state argued that the identity of the assailant remained constant, and that the reasons for the fight, what happened during the fight, or where it happened were irrelevant. The state suggested that Noonan was too embarrassed to admit that she had gone back to appellant's home after obtaining a civil protection order against appellant just two weeks earlier.

{¶8} The trial court appointed counsel for purposes of appeal. Appellant's counsel filed an *Anders* brief and asked that she be permitted to withdraw. Appellant has not filed a supplemental brief although a copy of counsel's *Anders* brief was served upon

him. The state's brief merely states that this "court should find no error and permit such counsel to withdraw."

II. *ANDERS* BRIEF

{¶9} Upon receiving an *Anders* brief, we must "conduct 'a full examination of all the proceedings to decide whether the case is wholly frivolous.'" *Penson v. Ohio* (1988), 488 U.S. 75, 80, 109 S.Ct. 346, 102 L.Ed.2d 300, quoting *Anders*, 386 U.S. at 744. After fully examining the proceedings below, if we find only frivolous issues on appeal, we then may proceed to address the case on its merits without affording appellant the assistance of counsel. *Id.*; see *State v. Kent* (Mar. 4, 1998), 4th Dist. No. 96CA794; *State v. Hart* (Dec. 23, 1997), 4th Dist. No. 97CA18. If we find, however, that meritorious issues for appeal exist, we must afford appellant the assistance of counsel in order that counsel may address the issues. *Anders*, 386 U.S. at 744; *Penson*, 488 U.S. at 80; see, e.g., *State v. Alexander* (Aug. 10, 1999), 4th Dist. No. 98CA29. With the foregoing principles in mind, we turn our attention to the potential assignment of error counsel posited in the appellate brief and then to the record before us.

III. MANIFEST WEIGHT OF THE EVIDENCE

{¶10} Appellate counsel presents one potential assignment of error for our review:

{¶11} "I. Defendant's conviction was against the manifest weight."

{¶12} Appellate counsel suggests appellant's conviction is against the manifest weight of the evidence because Noonan's testimony was not credible - that she lied to the

police about the events that took place that day, about being strangled, the reasons for the fight, and where the beating occurred.

{¶13} We disagree.

{¶14} The manifest weight of the evidence indicates that the greater amount of credible evidence supports one side of an issue more than the other. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387.

{¶15} The appellate court considers all of the evidence, sits as a "thirteenth juror," and decides whether a greater amount of credible evidence supports an acquittal such that the jury "clearly lost its way" in convicting the appellant. *Thompkins*, 78 Ohio St.3d at 387. See *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652. See, also, *State v. Martin* (1983), 20 Ohio App.3d 172, 175. 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." *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175.

{¶16} Further, questions regarding the "[w]eight of evidence and credibility of witnesses are matters for the trier of fact. The factfinder can observe the body language, evaluate voice inflections, observe hand gestures, perceive the interplay between the witness and the examiner, and watch the witness's reaction to exhibits and the like. Determining credibility from a sterile transcript is far more difficult. A reviewing court must, therefore, accord due deference to the credibility determinations made by the

factfinder." *State v. York*, 6th Dist. No. WD-03-017, 2003-Ohio-7249, ¶ 10, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶17} The offense of felonious assault, R.C. 2903.11(A)(1), provides: "No person shall knowingly * * * [c]ause serious physical harm to another * * *." Noonan had a broken nose, lacerations, and contusions.¹ A review of the record supports the jury's finding of felonious assault as defined in R.C. 2903.11(A)(1).

{¶18} Accordingly, appellant's potential assignment of error is not well-taken.

IV. CONCLUSION

{¶19} Based on the entire record, we find appellant's conviction is not against the weight of the evidence and this appeal is wholly frivolous.

{¶20} Wherefore, based upon the foregoing, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Common Pleas Court is affirmed. The motion of appellant's counsel to withdraw is granted. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

¹"Serious physical harm to persons' means any of the following: (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment; (b) Any physical harm that carries a substantial risk of death; (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; (d) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement; (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain." R.C. 2901.01(A)(5).

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

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, 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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