

[Cite as *State v. Strozier*, 2009-Ohio-6104.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. **92722**

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JANYCE STROZIER

DEFENDANT-APPELLANT

JUDGMENT.

AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-486560

BEFORE: Blackmon, J., McMonagle, P.J., and Sweeney, J.

RELEASED: November 19, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building
Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

Ryan Bokoch
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Janyce Strozier (“Strozier”) appeals her conviction for felonious assault. Strozier assigns the following errors for our review:

“I. The State failed to present sufficient evidence to sustain a conviction against appellant.”

“II. Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Strozier’s conviction. The apposite facts follow.

{¶ 3} On August 29, 2006, a Cuyahoga County Grand Jury indicted Strozier on one count each of aggravated robbery and felonious assault. Arraignment was scheduled for October 16, 2006, but Strozier failed to appear, and a warrant was issued for her arrest. On July 22, 2008, Strozier was arrested and arraigned. At her arraignment, Strozier pled not guilty, and after several pre-trials, the matter proceeded to a jury trial, which commenced on December 8, 2008.

Jury Trial

{¶ 4} Appellant Janyce Strozier is the mother-in-law of the victim Kiwanike Middleton. Middleton testified that in the past Strozier had stolen from her and had abused crack cocaine. Furthermore, the victim indicated that Strozier was not welcome in her house.

{¶ 5} On the morning of August 16, 2006, Strozier came to her house and demanded money. When Middleton refused, a verbal altercation ensued, which culminated with Middleton asking Strozier to leave. Initially, Strozier refused to leave, but left after Middleton threatened to call the police.

{¶ 6} Later that day, Middleton encountered Strozier on the street near the rapid train station where she, her son and a friend were walking. As Middleton walked by, Strozier grabbed her by the neck and began to punch her numerous times in the face. Middleton testified that she fell to the ground while Strozier continued to punch her until she momentarily lost consciousness.

{¶ 7} Middleton testified that when she regained consciousness, Strozier threatened to kill her if she called the police. After Strozier left the scene, an ambulance was summoned. Middleton was treated and then transported to the hospital. At the hospital, Middleton was given a CAT scan and prescribed codeine.

{¶ 8} Following the attack, Middleton began suffering from month-long headaches and bouts of dizziness. Shortly thereafter, she noticed that she began to become forgetful. Almost two years after the incident, she continues to suffer from forgetfulness.

{¶ 9} Strozier testified in her own defense. She admitted that there was a verbal altercation between her and Middleton on the morning of August 16, 2006. Strozier also admitted assaulting Middleton later that same day. Strozier

further admitted that she punched Middleton in the mouth, and after Middleton fell to the ground, she got on top of her and punched her five more times.

{¶ 10} After the close of the evidence, the trial court instructed the jury on the lesser included offense of robbery and the lesser included offense of simple assault. The jury acquitted Strozier of aggravated robbery and also of the lesser included offense of robbery, but found her guilty of felonious assault. On January 13, 2009, the trial court sentenced Strozier to two years of community control sanctions.

Sufficiency

{¶ 11} In the first assigned error, Strozier argues the state failed to present sufficient evidence to convict her. We disagree.

{¶ 12} The sufficiency of the evidence standard of review is set forth in *State v. Bridgeman*:¹

“Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.”²

¹(1978), 55 Ohio St.2d 261, syllabus.

²See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23; *State v. Davis* (1988), 49 Ohio App.3d 109, 113.

{¶ 13} *Bridgeman* must be interpreted in light of the sufficiency test outlined in *State v. Jenks*,³ in which the Ohio Supreme Court held:

“An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted 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 the crime proven beyond a reasonable doubt. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

{¶ 14} In the instant case, Strozier claims that there was insufficient evidence to support a finding that she caused serious physical harm to Middleton.

Important for our purposes here, “serious physical harm” includes physical harm that (1) carries a substantial risk of death, (2) involves some permanent incapacity or some temporary, substantial incapacity, (3) involves some temporary, serious disfigurement or (4) involves acute pain that causes

³(1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

substantial suffering or involves any degree of prolonged or intractable pain. R.C. 2901.01(A)(5).⁴

{¶ 15} Here, the evidence established that Middleton experienced acute pain and prolonged suffering as a result of the attack. Middleton testified that Strozier punched her in the face numerous times, rendered her momentarily unconscious, and caused her to suffer a concussion.

{¶ 16} Middleton also testified that following the attack, she suffered from month-long headaches, dizziness, and forgetfulness. Middleton further testified that almost two years after the assault, she still suffers from forgetfulness.

{¶ 17} At the trial, the victim's husband, Jerome Middleton, testified that his wife was released from the hospital the day after the attack with a lump on her forehead. Jerome Middleton also stated that following the attack, his wife slept a lot and complained of headaches. These symptoms lasted for more than a month.

{¶ 18} Finally, Strozier admitted that she punched Middleton in the mouth and when she fell to the ground, she punched Middleton four or five more times.

⁴*State v. English*, 2nd Dist. No. 22810, 2009-Ohio-5300.

{¶ 19} Consequently, after reviewing the above evidence in a light most favorable to the state, we find that the evidence, if believed, could convince a rational trier of fact that the state had proven beyond a reasonable doubt that Strozier caused serious physical harm to Middleton. Moreover, the jury found Strozier guilty of felonious assault despite being given a jury instruction on the lesser included offense of simple assault. Accordingly, we overrule the first assigned error.

Manifest Weight of Evidence

{¶ 20} In the second assigned error, Strozier argues her conviction was against the manifest weight of the evidence. We disagree.

{¶ 21} In *State v. Wilson*,⁵ the Ohio Supreme Court recently addressed the standard of review for a criminal manifest weight challenge, as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether

⁵113 Ohio St.3d 382, 2007-Ohio-2202.

the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. Id. at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive --- the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony.' Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652."

{¶ 22} As discussed in the first assigned error, the state presented sufficient evidence to establish that Strozier caused serious physical harm to Middleton. The evidence is uncontroverted that Strozier punched Middleton in the face several times. Middleton was transported to the hospital, where she was given a CAT scan, and prescribed codeine to relieve her pain and suffering.

{¶ 23} Thus, based on the foregoing, we cannot say that the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction is against the manifest weight of the evidence. Accordingly, we overrule the second assigned error.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
JAMES J. SWEENEY, J., CONCUR