

[Cite as *State v. Hightower*, 2010-Ohio-1055.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93024

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

APACHE HIGHTOWER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516168

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

RELEASED: March 18, 2010

**JOURNALIZED:
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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), or a motion for consideration en banc with supporting brief, per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} In October 2008, defendant-appellant Apache Hightower was indicted on two counts of felonious assault against Jacqueline Matthews. The first count related to an incident that occurred on July 6, 2008; the second related to an incident that allegedly occurred in May 2008. The matter was tried to the bench. The trial court found Hightower guilty of the lesser included offense of assault on Count 1, a misdemeanor of the first degree, and sentenced her to six months in county jail, suspended, and one year of community control sanctions. The court found her not guilty on Count 2.

{¶ 2} Hightower appeals her conviction, contending that it was against the manifest weight of the evidence.

I. Trial Testimony

{¶ 3} Jacqueline Matthews testified at trial that she has known Hightower for some time and does not like her. According to Jacqueline, she, her sister Allison Matthews, her cousin Candace Matthews, and her friend Lois Marie Dent, went to the Hook bar in Cleveland at approximately 1:30 a.m. on July 6, 2008. According to Jacqueline, Hightower and three of her friends¹ followed Jacqueline and her group around the bar and verbally harassed them. When Jacqueline overheard Hightower's group talking

¹Codefendants Mary Curry, Takeshia Fuller, and Samaria Moore.

about fighting, she called another sister, who called one of the security guards at the Hook and asked him to escort Jacqueline and her friends out of the bar.

{¶ 4} According to Jacqueline, Hightower and her three friends followed her, Allison, and Lois Marie as they walked to their car. Jacqueline testified that as she and Hightower were “exchanging words” at the car, Curry suddenly struck her in the face with an unknown object. Jacqueline testified that when she dropped her head in response, Hightower and her friends hit her several times on the back of her head with their fists. The assault lasted approximately two minutes; Hightower and her group then left.

{¶ 5} Jacqueline’s sister Allison testified that Hightower and her group followed her, Jacqueline, Lois Marie, and Candace as they left the bar, and Hightower yelled derogatory comments to Jacqueline as they walked to their car. Allison testified that as she tried to get Jacqueline into the car, Curry hit Jacqueline in the face; Hightower and the others then “swarmed in on Jackie.”

{¶ 6} Allison testified that she and Jacqueline went to their mother’s house after the assault and then to her house. According to Allison, Jacqueline went to the emergency room at approximately 4 a.m. because her face was hurting and she was having trouble breathing. Records from the

Cleveland Clinic admitted at trial indicate that Jacqueline was treated in the emergency room that morning for a “nasal fracture.”

{¶ 7} Lois Marie Dent testified that she heard Hightower verbally harassing Jacqueline in the bar. She testified further that Hightower and her group followed them out of the bar and Hightower made more derogatory comments to Jacqueline in the parking lot. Dent testified that Hightower and her group “pinned” Jacqueline and Allison against the car and were yelling at them when one of the women suddenly hit Jacqueline in the face. According to Dent, then “all of them start[ed] swinging at [Jacqueline].”

{¶ 8} Hightower testified and denied committing the assault. She acknowledged that she and Jacqueline do not like each other, and said that Jacqueline threatened her the day before the incident at the bar and told her, “I’m going to beat your ass.”

{¶ 9} Hightower also denied saying anything to Jacqueline at the Hook. She testified that as she and codefendant Fuller began walking to her sister’s house after the bar closed, Jacqueline again threatened to “beat her ass,” and she and Jacqueline began arguing. According to Hightower, Jacqueline was “waving her hands around” when Hightower’s sister, codefendant Curry, pulled up, got out of her car, and pushed Hightower down because she saw a switchblade in Jacqueline’s hand. Hightower testified that Jacqueline was not injured in the incident.

{¶ 10} Curry testified that she took Hightower and Fuller to the Hook that evening, but did not go in. She testified that when she came back later to pick up Hightower, she saw Hightower arguing with Jacqueline. As she got closer, she saw a blade in Jacqueline's hand, so she knocked Hightower down and then dragged her to the car.

{¶ 11} Teres Taylor, a friend of Hightower's, testified that she was at the Hook on July 6, 2008, and saw no confrontations inside the bar between Hightower and Jacqueline and their respective friends. Taylor said that as she walked out of the bar at approximately 2:30 a.m., she saw Hightower and Jacqueline "having words" and "waving their hands." She then saw Curry pull up, get out of her car, and walk toward Hightower. Taylor testified that Curry told Hightower, "C'mon, she got a knife," and pushed her out of the way. Curry then pulled up Hightower and they walked to Curry's car, got in, and left.

{¶ 12} Taylor testified further that after the incident she went to Dion's, a restaurant near the Hook, and saw Jacqueline, her sister, and some other girls walk in. A few minutes later, she saw Jacqueline bump into another girl in the restaurant. According to Taylor, when the girl told Jacqueline, "you could say excuse me," Jacqueline replied, "I be cutting bitches up all night."

{¶ 13} Valerie Fuller, sister of codefendant Fuller, likewise testified that she saw Jacqueline, Allison, and some other girls at Dion's at approximately 2:45 a.m. on the morning of July 6, 2008. According to Valerie, Jacqueline had no injuries to her face.

II. Standard of Review

{¶ 14} When considering a manifest weight challenge, a reviewing court reviews the entire record, weighs the evidence and all reasonable inferences therefrom, considers the credibility of the witnesses, and determines whether the finder of fact clearly lost its way. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. A reviewing court “must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. A reviewing court will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a reasonable doubt.” *State v. Thompson*, 8th Dist. No. 90606, 2009-Ohio-615, ¶16. A judgment should be reversed as against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387.

III. Analysis

{¶ 15} Hightower argued at trial that Jacqueline and her friends were lying about the assault in the parking lot, and that Jacqueline was actually

injured that morning in a fight at Dion's. The trial court rejected that argument and found Hightower (and Curry) guilty of assault.²

{¶ 16} Hightower contends on appeal that her conviction was against the manifest weight of the evidence because the State's witnesses were not credible. She points to several inconsistencies in their testimony as evidence that Jacqueline and her friends fabricated the story of the assault, and contends that Jacqueline had a motive to lie, because at the time of the assault, Hightower was dating Jacqueline's ex-boyfriend, who is the father of one of Jacqueline's children. She argues further that her testimony and that of codefendant Curry was "more compelling" than that of Jacqueline and her friends.

{¶ 17} At sentencing, the trial judge specifically noted that he found the testimony of Hightower and her friends "not credible" and that "there was an assault." As the finder of fact, the trial court was free to accept or reject all or any part of the testimony of the witnesses and assess the credibility of the witnesses. *State v. Anderson*, 8th Dist. No. 90460, 2008-Ohio-4240, ¶18, citing *State v. Wilson*, 8th Dist. No. 88289, 2007-Ohio-2373.

{¶ 18} Despite some minor inconsistencies in the testimony of the State's witnesses, we cannot conclude that Hightower's conviction was against the

² Fuller did not appear for trial but was later arrested and pled guilty to misdemeanor assault. The court acquitted Moore.

manifest weight of the evidence. The State's witnesses were consistent in their description of the assault, and it was within the province of the trial court to determine whether their testimony was sufficiently reliable and accurate to be worthy of belief. Further, we note that despite Hightower's argument about inconsistencies in the testimony of the State's witnesses, there were inconsistencies in the defense witnesses' testimony as well that could have led the court to discount their testimony.

{¶ 19} After reviewing the record, weighing the evidence, and considering the credibility of the witnesses, we find that the trial court did not lose its way in finding Hightower guilty of assault and that her conviction was supported by the manifest weight of the evidence. Her assignment of error is therefore overruled.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. 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.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
COLLEEN CONWAY COONEY, J., CONCUR