

[Cite as *State v. Ellis*, 2010-Ohio-3609.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93801**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAMES ELLIS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-516342-A

**BEFORE:** Stewart, J., McMonagle, P.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** August 5, 2010

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, James Ellis, appeals from a Cuyahoga County Common Pleas Court judgment convicting him of one count of felonious assault and sentencing him to two years in prison. For the reasons stated below, we affirm.

{¶ 2} Appellant was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(1) and one count of kidnapping in violation of

R.C. 2905.01(A)(3). He entered pleas of not guilty, and a jury trial ensued during which the following facts were established.

{¶ 3} On August 25, 2009, Rosalind Shepherd was taking her 16-year-old granddaughter to a high school orientation. The two stopped in a local store to get change to ride the bus. When they entered the store, Shepherd was confronted by appellant, who recognized her as Nyree's mother. Shepherd testified that Nyree is her daughter and the mother of her granddaughter. Appellant became agitated and told Shepherd he wanted to get in touch with Nyree to tell her that her ten-year-old son, E.H., was very ill and possibly dying. Appellant is E.H.'s paternal uncle.

{¶ 4} Shepherd explained that Nyree gave E.H. up at birth and that she did not know he was ill. Appellant began arguing with Shepherd and called Nyree an unfit mother and Shepherd a "crack head." He was told to leave the store.

{¶ 5} After getting change for the bus, Shepherd and the granddaughter left the store and went across the street to the bus stop. Appellant came running up to them and struck Shepherd in the head and face. He knocked her down and continued to hit her. He bit her on the fingers of her right hand. The granddaughter tried to help her grandmother. Appellant hit her also. The granddaughter called out for help and some people stopped and helped her get her grandmother up off the ground. The

granddaughter got her grandmother back to her house and called her aunts and her uncle. They came to the house and took Shepherd to the hospital.

{¶ 6} At the hospital, Shepherd received a shot, x-rays, an IV, and had her right hand wrapped. Photographs showed swelling and bruising on her face. Shepherd testified that, months after the attack, she still has diminished use of the fingers on her right hand and continues to receive treatment for the pain. At the advice of a social worker, Shepherd contacted the police.

{¶ 7} Detective Hale of the Cleveland Police Department testified that he contacted Shepherd and showed her a photo array. Shepherd identified appellant as her attacker. The detective also separately interviewed the granddaughter who also identified appellant from a photo array. Detective Hale testified that he interviewed appellant and that he did not deny the confrontation, but stated that he did not strike anyone. He claimed that he was the one assaulted and that he had filed a police report.

{¶ 8} The defense called Craig Holden, appellant's step-cousin, to testify. Holden stated that appellant was at his house that day. Appellant left to go to the store to pick up some items. He returned a few minutes later and then, almost immediately, left again. Holden looked out the window and saw two women "locked up" on the ground and appellant trying to pull the women apart. He went out and tried to get appellant to his car. A group of

eight men came running up and attacked appellant who finally escaped from the crowd and drove away.

{¶ 9} Appellant took the stand in his own defense. He testified that he was diagnosed with multiple sclerosis in 2003. He testified that on August 25, 2008, he was in a store and saw Shepherd, whom he recognized as Nyree's mother. He asked her for Nyree's phone number so he could call her about her sick son. He said Shepherd became insulted by his comments and struck him in the face. He left the store and went to his cousin's house. He left there immediately and started walking to his car. He saw Shepherd and the granddaughter in the parking lot. When he asked Shepherd why she hit him, she struck him again. He grabbed her to stop her from hitting him again. The granddaughter then hit him in the head, causing him to bleed and causing him to lose strength. He fell against the women, and all three of them ended up on the ground. His cousin came and tried to help him up, but eight men showed up and beat him up. He went to the hospital later that night. Appellant denied hitting or biting Shepherd. He explained that the bite marks on Shepherd's fingers came from her striking him in the mouth.

{¶ 10} The jury found appellant guilty of felonious assault and not guilty of kidnapping. The trial court sentenced him to two years in prison. Appellant timely appeals raising a single assignment of error for our review, claiming that his conviction is against the manifest weight of the evidence.

Appellant argues that the state's witnesses gave conflicting accounts of the events of the day and that Shepherd's testimony lacked credibility and reliability.

{¶ 11} The manifest weight of the evidence standard of review requires us to review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact 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. Otten* (1986), 33 Ohio App.3d 339, 515 N.E.2d 1009, paragraph one of the syllabus. "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." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 12} We are mindful that the weight to be given the evidence and the credibility of the witnesses are matters primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. The trier of fact has the authority to "believe or disbelieve any witness or accept part of what a witness says and reject the rest." *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548.

{¶ 13} Appellant claims that Shepherd's and the granddaughter's testimonies are conflicting. However, the only conflict raised by appellant relates to the destination where Shepherd and the granddaughter were traveling that day. Shepherd testified that they were going to a high school orientation at Regina High School in South Euclid. The granddaughter said the orientation was at East Tech High School in Cleveland. The granddaughter stated that she was considering several high schools to attend in the fall. Appellant also questions why, since both women stated that they had given him Nyree's phone number, neither mentioned that the other had given him the phone number.

{¶ 14} Appellant claims Shepherd's memory of the incident is unreliable. He maintains that her physical ailments and the medications she was taking that day could have affected her memory. He argues that she was unable to remember the chronological order of the events, including whether she was upright or on the ground when appellant allegedly bit her and, therefore, it is possible that she may also have forgotten that she was the aggressor that day and struck him when they were inside the store, and not later in defending herself as she testified.

{¶ 15} We are unpersuaded by appellant's arguments. The jury heard testimony from both sides as to the events of the day. The jury was in the best position to judge the credibility of each of the witnesses. Shepherd and

the granddaughter gave consistent accounts of what happened to them after they left Shepherd's home that day. Their descriptions of the confrontation in the store and the subsequent attack correspond on the material facts. The minor inconsistency in their testimonies relating to their destination does not create such uncertainty as to show that appellant's conviction was a manifest miscarriage of justice.

{¶ 16} Appellant's single assignment of error is overruled.

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 issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

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MELODY J. STEWART, JUDGE

CHRISTINE T. McMONAGLE, P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR