[Cite as *State v. Corbin*, 2010-Ohio-3819.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-01-001
	:	O P I N I O N
- vs -		8/16/2010
	:	
LAURA S. CORBIN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 09CRI00124

David B. Bender, Fayette County Prosecuting Attorney, First Floor Courthouse, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

Yavitch & Palmer Co., LPA, Nicholas Siniff, 511 South High Street, Columbus, Ohio 43215, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Laura S. Corbin, appeals from her conviction in the Fayette County Court of Common Pleas for two counts of assault on a peace officer. We affirm.

{¶2} On July 4, 2009 at approximately 3:45 p.m., Officer Charles Hughes, Officer Jeff Heinze, and Officer Jonathon Sever, all with the Washington Court House Police Department, were dispatched to a "very heated" domestic dispute at 521 East

Market Street located in Washington Court House, Fayette County, Ohio. Once the officers gained control of the situation, appellant was placed under arrest, transported to the hospital to receive treatment for injuries she allegedly sustained during the fracas, and charged with two counts of assault on a peace officer. Following the trial court's decision denying her motion to suppress, a jury found appellant guilty on both counts.

{¶3} Appellant now appeals her conviction, raising six assignments of error. For ease of discussion, appellant's assignments of error will be addressed out of order.

{¶4} Assignment of Error No. 3:

{¶5} "THE TRIAL COURT IMPROPERLY OVERRULED APPELLANT'S MOTION TO SUPPRESS HER STATEMENTS MADE WHILE SHE WAS IN POLICE CUSTODY THEREBY VIOLATING HER RIGHTS AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO."

{¶6} In her third assignment of error, appellant argues that the trial court erred by denying her motion to suppress statements she made to her mother that were overheard by Officer Sever at the hospital. In support of this argument, appellant claims "Officer Sever's presence constituted interrogation," thereby triggering the need to issue *Miranda* warnings. We disagree.

{¶7} Appellate review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8; *State v. Long* (1998), 127 Ohio App.3d 328, 332. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to resolve factual questions and evaluate the credibility of the witnesses. *State v. Smith,* 80 Ohio St.3d 89, 105, 1997-Ohio-355; *State v. Anderson* (1995), 100 Ohio App.3d 688, 691. An appellate court must defer to the trial court's factual findings if they are supported by

competent, credible evidence. *State v. Bryson* (2001), 142 Ohio App.3d 397, 402; *State v. Retherford* (1994), 93 Ohio App.3d 586, 593. After accepting the trial court's factual findings as true, the appellate court must then determine, "without deference to the trial court, whether the court has applied the appropriate legal standard." *Anderson* at 691; *State v. Cochran,* Preble App. No. CA2006-10-023, 2007-Ohio-3353, ¶12.

{¶8} It is well-established that the "prosecution may not use statements, whether exculpatory or inculpatory, stemming from a custodial interrogation unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *State v. Huysman,* Warren App. No. CA2005-09-107, 2006-Ohio-2245, ¶13, quoting *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 86 S.Ct. 1602. The issuance of *Miranda* warnings serves as a safeguard to protect a person's Fifth Amendment privilege against compelled self-incrimination. *State v. Baker*, Butler App. No. CA2007-06-152, 2008-Ohio-4426, ¶10. However, the issuance of *Miranda* warnings are only required when the police subject a person to "custodial interrogation." *State v. Byrne*, Butler App. Nos. CA2007-11-268, CA2007-11-269, 2008-Ohio-4311, ¶10, citing *State v. Biros*, 78 Ohio St.3d 426, 440, 1997-Ohio-204. Custodial interrogation occurs when there is "*questioning initiated by law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (Emphasis added.) *State v. Rodriguez*, Preble App. No. CA2009-09-024, 2010-Ohio-1944, ¶34, quoting *Miranda* at 444; see, also, *Rhode Island v. Innis* (1980), 446 U.S. 291, 300-303, 100 S.Ct. 1682; *State v. Knuckles*, 65 Ohio St.3d 494, 1992-Ohio-64, paragraph two of the syllabus.

{¶9} At the suppression hearing, Officer Sever testified that as he stood by the door to appellant's hospital room, he "allowed the mother to speak with [appellant]" when he overheard her say "she hit the officers just because she was so aggravated

with everything." When asked if he ever questioned appellant at the hospital, Officer Sever testified that he did not, and continued by testifying that she was "just speaking freely * * *."

{¶10} After a thorough review of the record, we find it readily apparent that appellant was not subject to any questioning initiated by law enforcement officers, and therefore, she was not subject to custodial interrogation triggering the need to issue *Miranda* warnings. See, e.g., *State v. Moore* (2000), 140 Ohio App.3d 278, 283 (mere presence of police officer monitoring suspect found insufficient to constitute interrogation). As the trial court found, and for which we agree, appellant's "statement was made freely and voluntarily to a third party in the presence of an officer" and "[w]as not in any way coerced, coached[,] or responsive to any suggestion that was initiated by the officer[.]" In turn, because appellant was not subject to custodial interrogation while speaking to her mother within earshot of Officer Sever, the trial court did not err by denying appellant's motion to suppress. Accordingly, appellant's third assignment of error is overruled.

{¶11} Assignment of Error No. 4:

{¶12} "OFFICER'S WARRANTLESS ENTRY APPELLANT'S HOME TO INITIATE AN ARREST VIOLATED APPELLANT'S RIGHTS AS GUARANTEED BY THE FOURTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATE CONSTITUTION AND COMPARABLE PROVISIONS OF THE OHIO STATE CONSTITUTION." [sic]

{¶13} In her fourth assignment of error, appellant argues that "Officer Hughes and Officer Heinze's warrantless entry into [her] home" to effectuate her arrest was

"illegal."[1] However, appellant did not challenge her "illegal" arrest in her motion to suppress, nor did she raise the issue at the suppression hearing. See *State v. Layne*, Clermont App. No. CA2009-07-043, 2010-Ohio-2308, ¶12. Therefore, although appellant did file a motion to suppress, her failure to raise the issue of her "illegal" arrest waived that issue on appeal. *State v. Mixner*, Warren App. No. CA2001-07-074, 5, 2002-Ohio-180, citing *State v. Shindler*, 70 Ohio St.3d 54, 58, 1994-Ohio-452; *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 218. Accordingly, appellant's fourth assignment of error is overruled.

{¶14} Assignment of Error No. 5:

{¶15} "APPELLANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WAS VIOLATED WHEN COUNSEL FAILED TO RAISE THE ISSUE OF APPELLANT'S ILLEGAL ARREST WHILE SHE WAS IN HER RESIDENCE."

{¶16} In her fifth assignment of error, appellant argues that she received ineffective assistance of counsel when her "trial counsel failed to properly raise the issue concerning [her] unlawful arrest." However, even assuming appellant properly raised this issue, as discussed more fully below, it is undisputed that Officer Hughes, Officer Heinze, and Officer Sever had probable cause to arrest appellant for disorderly conduct resulting from her actions outside her home, and therefore, were certainly entitled to pursue appellant as she fled into her home in an attempt to avoid her arrest. See *Blanchester v. Newland* (Sept. 17, 1984), Clinton App. No. CA83-07-008, 5-6; *State v.*

1. Appellant also argues that she "would have only been charged with a misdemeanor disorderly conduct" had the officers not illegally entered her home. Appellant's argument is misplaced, however, for a lawful arrest is *not* an element of assault on a peace officer. *State v. Peer*, Montgomery App. No. 19104, 2002-Ohio-4198, ¶10. Therefore, even assuming her arrest was "illegal," appellant's unlawful arrest would not justify the assault. See *State v. Cammon*, Cuyahoga App. No. 91547, 2009-Ohio-4706, ¶28; *State v.*

Lorenzo, Lake App. No. 2001-L-053, 2002-Ohio-3495, ¶29-30; see, also, *Middletown v. Flinchum,* 95 Ohio St.3d 43, 44, 2002-Ohio-1625, citing *United States v. Santana* (1976), 427 U.S. 38, 96 S.Ct. 2406; *State v. Hagstrom* (June 21, 1999), Butler App. No. CA98-07-157, 7-8; *State v. Etherington*, 172 Ohio App.3d 756, 2007-Ohio-4097, ¶27. In turn, because her arrest was not "illegal," appellant's trial counsel was not deficient for failing to raise the issue of her alleged "unlawful arrest." Accordingly, appellant's fifth assignment of error is overruled.

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE EVIDENCE ON RE-DIRECT EXAMINATION THAT WAS NOT RAISED ON CROSS-EXAMINATION THEREBY VIOLATING APPELLANT'S RIGHT TO A FAIR TRIAL AS GUARANTEED BY THE FOURTEENTH AMENDMENTS TO THE UNITED STATE CONSTITUTION AND COMPARABLE PROVISIONS OF THE OHIO STATE CONSTITUTION." [sic]

{¶19} In her second assignment of error, appellant argues that the trial court erred by allowing the state to introduce evidence on redirect examination of Officer Heinze that was not raised during cross-examination. This argument lacks merit.

{¶20} As a general rule, the scope of redirect examination is limited to matters inquired into by the adverse party on cross-examination. *State v. Thompson* (May 15, 1995), Butler App. No. CA94-07-147, 7, citing *Holtz v. Dick* (1884), 42 Ohio St. 23, syllabus. However, as stated by the Ohio Supreme Court, "[t]he control of redirect examination is committed to the discretion of the trial judge and a reversal upon that ground can be predicated upon nothing less than a clear abuse thereof." *State v. Wilson* (1972), 30 Ohio St.2d 199, 204; *State v. Bowling* (Dec. 30, 1993), Butler App.

Newsome, Ashtabula App. No. 2003-A-0076, 2005-Ohio-3775, ¶12.

No. CA93-01-006, 4. An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶130.

{¶21} Appellant's entire cross-examination of Officer Heinze consisted of one question; namely, whether he remembered "what type of shoes" appellant was wearing that day. After appellant concluded her cross-examination, and following an unrecorded sidebar conference, the state played a portion of a video taken from Officer Heinze's dashboard camera to the jury. Appellant did not object to the playing of the video on redirect, thereby waiving all but plain error.

{¶22} "To reverse a decision based on plain error, a reviewing court must determine that a plain (or obvious) error occurred that affected the outcome of the trial." *State v. Rohrbaugh*, Slip Opinion No. 2010-Ohio-3286, ¶6, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68; Crim.R. 52(B). Notice of plain error is taken with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice. *State v. Landrum* (1990), 53 Ohio St.3d 107, 111; *State v. Long* (1978), 53 Ohio St.2d 91, paragraph three of the syllabus.

{¶23} After a thorough review of the record, we find no error, let alone plain error, in the trial court's decision allowing the state to play the video during its redirect examination of Officer Heinze. Although the video taken from the dashboard camera was played during the state's redirect examination of Officer Heinze, the following discussion regarding the video occurred during the state's direct examination:

{¶24} "[THE STATE]: Okay now so I understand and the jury understands at this point do you have a video system in your cruiser?

{¶25} "[OFFICER HEINZE]: Yes I do.

{¶26} "* * *

{¶27} "[THE STATE]: At some point during this altercation did you activate this video recording devise? [sic]

{¶28} "[OFFICER HEINZE]: Yes when I hit my overhead lights * * * it automatically started recording the system.

{¶29} "[THE STATE]: And did you cause that to be preserved by burning that to a DVD of some nature?

{¶30} "[OFFICER HEINZE]: Yes I did take the original VHS and burned it to a DVD.

{¶31} "[THE STATE]: Okay and you've brought that to my office so we could have it here today?

{¶32} "[OFFICER HEINZE]: Yes that's correct.

{¶33} "[THE STATE]: Now I want to go forward with your story.

{¶34} "[OFFICER HEINZE]: Okay."

{¶35} In turn, although appellant's cross-examination merely addressed her shoes, the state had already identified and discussed the video recording during the state's direct examination of Officer Heinze. Therefore, because the video was already discussed and identified, we find no error in the trial court's decision allowing the state to play the video taken from Officer Heinze's dashboard camera on redirect examination. Accordingly, appellant's second assignment of error is overruled.

{¶36} Assignment of Error No. 1:

{¶37} "THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM PLAYING THE COMPLETE VIDEO RECORDING ONCE THE STATE PLAYED A SIGNIFICANT PORTION THEREBY VIOLATING OHIO RULES OF EVIDENCE 106 AND APPELLANT'S RIGHT TO PRESENT A MEANINGFUL DEFENSE AS GUARANTEED BY THE COMPULSORY PROCESS CLAUSE OF THE SIXTH

AMENDMENT, THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION."

{¶38} In her first assignment of error, appellant argues that the trial court erred by not playing "the complete audio from a video recording originally introduced into evidence by the state." We disagree.

{¶39} The admissibility of relevant evidence lies within the sound discretion of the trial court. *State v. Ford,* Butler App. No. CA2009-01-039, 2009-Ohio-6046, ¶36; *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. Absent an abuse of discretion, an appellate court will not disturb a trial court's ruling as to the admissibility of evidence. *State v. Noling,* 98 Ohio St.3d 44, 2002-Ohio-7044, ¶43; *State v. Martin* (1985), 19 Ohio St.3d 122, 129. As noted above, an abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Hancock*, 2006-Ohio-160 at ¶130. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *State v. Atkinson*, Warren App. No. CA2009-10-129, 2010-Ohio-2825, ¶7.

{¶40} After playing a portion of the video taken from Officer Heinze's dashboard camera to the jury, the following conversation occurred:

{¶41} "[OFFICER HEINZE]: From this part here on out the involvement with [appellant] pretty much is over on the video.

{¶42} "[APPELLANT'S TRIAL COUNSEL]: Your Honor I would ask that we continue to play it though. There is, some of the officers come forward at some point the ones [—]

{¶43} "[THE STATE]: Your Honor we would ask that we stop everything at this point since it's over it's all hearsay at this point." [sic]

{¶44} After holding another unrecorded sidebar conference, the court stated the following:

{¶45} "[THE COURT]: Okay Ladies and Gentlemen we're going to let you see the rest of the tape there maybe something on there that's relevant. However it's nothing that's being said so we're just going to take the volume down and you can just watch the images." [sic]

{¶46} The remaining portion of the video, albeit with muted volume, was then shown to the jury.

{¶47} After a thorough review of the record, we find that appellant did not object to the trial court's decision to play the remaining portion of the video recording without the accompanying audio, nor did appellant proffer what the muted audio allegedly contained. In turn, since appellant failed to proffer the muted audio contents of the video recording played to the jury, appellant has failed to preserve this issue on appeal. *State v. Roy*, Butler App. No. CA2009-06-168, 2010-Ohio-2540, ¶12; *State v. Bethel,* 110 Ohio St.3d 416, 2006-Ohio-4853, ¶97. Accordingly, appellant's first assignment of error is overruled.

{¶48} Assignment of Error No. 6:

{¶49} "THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION BY ENTERING VERDICTS OF GUILTY, AS THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶50} In her sixth assignment of error, appellant argues that her conviction was against the manifest weight of the evidence. In support of her claim, appellant asserts that the jury lost its way because"[a] multitude of events could have occurred that would

leave the officers with the impression that [she] struck them." We disagree.

{¶51} A manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Ghee,* Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶9, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. A court considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *Hancock,* 2006-Ohio-160 at ¶39; *State v. Lester,* Butler App. No. CA2003-09-244, 2004-Ohio-2909, ¶33; *State v. James,* Brown App. No. CA2003-05-009, 2004-Ohio-1861, ¶9. The credibility of witnesses and weight given to the evidence are primarily matters for the trier of fact to decide. *State v. Gesell,* Butler App. No. CA2005-08-367, 2006-Ohio-3621, ¶34; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Upon review, the question is whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Good,* Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25; *State v. Blanton,* Madison App. No. CA2005-04-016, 2006-Ohio-1785, ¶7.

{¶52} Appellant was charged with two counts of assault on a peace officer in violation of R.C. 2903.13(A), which prohibits any person from "knowingly caus[ing] or attempt[ing] to cause physical harm to another." While assault is generally a first-degree misdemeanor, when the victim of the assault is a peace officer engaged in the performance of his official duties, the charge is elevated to a fourth-degree felony. See R.C. 2903.13(C)(3).

{¶53} At trial, the state presented evidence indicating that on July 4, 2009 at approximately 3:45 p.m., Officer Hughes, Officer Heinze, and Officer Sever were

dispatched to a "very heated," "large domestic dispute" at 521 East Market Street located in Washington Court House. Upon arriving at the scene, a male, later identified as James Jones, the father of appellant's infant daughter, was seen exhibiting "very violent behavior, aggressive behavior" by "yelling, cussing, screaming at a female in a white vehicle," later identified as Tara Degenkolb, the mother of Jones' two other children. After Jones failed to heed to the officers' instructions to curtail his aggressive behavior, Officer Sever placed Jones under arrest for disorderly conduct.

{¶54} Once Jones was placed in the back of Officer Sever's cruiser, another female, later identified as appellant, came outside the house and "began cursing." Despite Officer Hughes' instructions to "quiet down," appellant continued to "be very vocal" by "cursing the female in the white vehicle." Appellant's behavior continued even after she was "escorted forcibly" back to her house by friends and family members.

{¶55} Hoping to diffuse the situation, Officer Hughes approached appellant, who was now standing on the front porch, and again told her to quiet down. However, instead of quieting down, appellant "yelled F you bitch," thus prompting Officer Hughes to inform her that she was under arrest for disorderly conduct. After being told she was under arrest, appellant "turned and took off inside the house" and Officer Hughes "went in after her."

{¶56} Upon entering the house, Officer Hughes chased appellant up the steps and grabbed hold her left hand, when she "turned[,] looked straight at [him], and punched [him] in the side of the face." As the pair continued to struggle, appellant then "punched [Officer Hughes] in the chest * * *." Thereafter, while Officer Hughes was attempting to subdue appellant, Officer Heinze, who had since followed Officer Hughes into the house to assist in appellant's arrest, "looked down at [her] briefly [when] she look[ed] up at [him] and [said] F you" before she kicked him in the leg. Officer Heinze

then grabbed appellant's right arm, "did an arm bar on her," pushed her to the ground, and placed her in handcuffs.

{¶57} After being taken into custody, appellant was transported to the hospital "claiming that her arm was broken." At the hospital, Officer Sever, who went to the hospital to simply transport appellant back to jail, overheard appellant tell her mother that "she swung on the officers just because she was so aggravated with everything."

{¶58} In her defense, appellant testified that while she was preparing for her daughter's birthday party, Degenkolb, the "woman in the white car" and mother of Jones' other children, started "circling the block" and "calling everybody that was there" claiming that she was also invited to the party. Not wanting Degenkolb to ruin her daughter's party, which was attended by numerous friends and family members, appellant testified that she "went down the street to confront her," but Degenkolb "refused to leave." Beginning to get upset, appellant testified that she went back inside her house only to see Jones being placed under arrest. Confused as to "why [Jones] was being arrested cause he wasn't the problem," appellant testified that she became angry and started yelling and cursing.

{¶59} Appellant continued by testifying that while she was "obeying" police orders to return to her home, she once again turned and yelled angrily when Officer Hughes, without telling her she was under arrest, went into her house, "came up behind [her,] * * * grabbed her hands[,] and threw [her] down." In response, appellant testified that she asked Officer Hughes "what the F are you doing" because she "didn't know why he was even in [her] house to begin with." Appellant continued by testifying that Officer Heinze, who arrived "in a matter of seconds," then "stepped on her foot," grabbed her

arm, and "twisted it * * * snapping it in the process."[2] When asked if she struck either Officer Hughes or Officer Heinze, appellant testified that she did not.

{¶60} After a thorough review of the record, and while appellant may claim that she did not strike either of the officers, it is well-established that "[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony." *State v. Bromagen,* Clermont App. No. CA2005-09-087, 2006-Ohio-4429, ¶38; *State v. Lloyd,* Warren App. Nos. CA2007-04-052, CA2007-04-053, 2008-Ohio-3383, ¶51; *State v. Woodruff,* Butler App. No. CA2008-11-824, 2009-Ohio-4133, ¶25. As a result, because we find the state presented competent, credible evidence indicating appellant struck both Officer Hughes and Officer Heinze as they attempted to effectuate her arrest, the jury did not clearly lose its way so as to create such a manifest miscarriage of justice requiring her conviction for two counts of assault on a peace officer to be reversed. See *State v. Moore*, Butler App. No. CA2002-12-307, 2003-Ohio-6255, ¶22; see, also, *State v. Totty*, Montgomery App. No. 23372, 2010-Ohio-1234, ¶20-22; *State v. Newton*, Lorain App. No. 07CA009303, 2008-Ohio-3210, ¶6-17. Therefore, as appellant's conviction was not against the manifest weight of the evidence, her sixth assignment of error is overruled.

{¶61} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.

2. Appellant later testified that she suffered a "bone bruise" that required her "to do physical therapy for two months."