

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-140722
		C-140723
Plaintiff-Appellee,	:	TRIAL NO. 14CRB-28185A
		14CRB-28185B
vs.	:	
JUAN DUNN,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

These appeals arise from an altercation between defendant-appellant Juan Dunn and the victims, Dunn's neighbor, Lafayette Brown, Jr., and Brown's girlfriend, Prince Anna Patterson. The altercation occurred after Patterson allowed Dunn to borrow her cell phone to make a phone call. The victims alleged that after Dunn borrowed Patterson's cell phone, Dunn had made unwanted romantic advances towards Patterson. Brown then verbally confronted Dunn. Dunn hit Brown in the head multiple times and, according to Patterson, threw Patterson to the ground, after which she called the police. Dunn proceeded home, where he was arrested by the police shortly after the incident.

Dunn was charged with two counts of first-degree-misdemeanor assault, in violation of R.C 2903.13(A). He entered pleas of not guilty, and the case proceeded to a bench trial. The trial court heard testimony from Dunn, Brown, and Patterson,

whose accounts of the incident varied. At the conclusion of the bench trial, the trial court found Dunn guilty on both counts, sentenced him to 180 days on each count to be served concurrently, and imposed \$110 in court costs. Dunn filed a timely appeal.

In Dunn's sole assignment of error, Dunn contends that his convictions were based on insufficient evidence and were against the manifest weight of the evidence. Dunn argues that there was insufficient evidence to prove that he caused physical harm to Brown and Patterson, as neither victim sought medical attention and Patterson did not allege any observable harm.

In reviewing the record for sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. The elements of assault are defined by R.C. 2903.13(A), which states that "[n]o person shall knowingly cause or attempt to cause physical harm to another." Physical harm is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration" to a person. R.C. 2901.01(A)(3).

Here, Dunn admitted to striking Brown multiple times in the head. Brown testified that the scar on his face resulted from a cut caused by Dunn. Patterson testified that she went to aid Brown, but Dunn threw her to the ground, causing injury to her arm. Dunn admitted to grabbing Patterson's arms to move her hands off of him, but denied throwing her to the ground. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements of assault proven beyond a reasonable doubt. Therefore, Dunn's insufficient evidence argument is without merit.

Dunn also argues that his conviction is against the manifest weight of the evidence. Dunn contends that he was not at fault in the altercation and that his version of events was more credible than that of the two victims. Dunn specifically asserts that he was acting in self-defense.

For a manifest-weight claim, “[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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 and a new trial ordered.” *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). “The weight to be given to the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *See State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 90. “Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility.” *See State v. Dubose*, 1st Dist. Hamilton No. C-070397, 2008-Ohio-4983, ¶ 77, quoting *State v. Lawson*, 2d. Dist. Montgomery No. 16288, 1997 Ohio App. LEXIS 3709 (August 22, 1997). The appellate court’s discretionary power to grant new trials should be used only in exceptional cases where the evidence weighs heavily against conviction. *See Thompkins* at 387; *Martin* at 175.

The testimony of Brown, Patterson, and Dunn is the only evidence in this case. Brown and Patterson provided similar accounts of the incident; both victims alleged that Dunn was the aggressor and that Brown never hit Dunn. Dunn, however, claimed that he was acting in self-defense. Dunn denied making romantic advances towards Patterson, as he was on the phone with his girlfriend. Dunn

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alleged that Brown did not have a clear mind due to substance abuse, and became jealous and acted belligerent while he was using Patterson's phone. Brown denied using any illegal substance, but admitted to drinking one beer prior to the incident. Dunn testified that Brown aggressively stood up and reached into his pocket. Dunn, believing that Brown had a knife, punched Brown in the face. However, Dunn conceded that Brown never touched him. Additionally, Dunn denied shoving Patterson to the ground, but admitted grabbing her arms to get her off of him after she came to aid Brown. Dunn testified that Brown stood up again to confront him and Dunn admitted to punching him again. Dunn further testified that Brown tried to get up, but fell and hit his head. Dunn testified that Brown "would have been hurt bad if I did what they * * * said I did."

While there are conflicting accounts from the witnesses, we cannot say that the trial court lost its way and created a manifest miscarriage of justice such that the conviction must be overturned. Although the reason for the provocation is in dispute, Dunn testified that Brown never touched him. Also, there was no evidence presented by either party that Brown had a knife in his possession. The trial court had the opportunity to see and hear the witnesses, and subsequently found the state's witnesses to be more credible. Therefore, we overrule Dunn's sole assignment of error. We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on October 14, 2015
per order of the court _____.

Presiding Judge