

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

STATE OF OHIO,	:	APPEAL NO. C-061074
	:	TRIAL NO. B-0604202
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
SHAWN VANDUNK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Shawn Vandunk appeals his convictions for felonious assault. Because we conclude that his assignment of error has no merit, we affirm the judgment of the trial court.

Vandunk was indicted for two counts of felonious assault. During a bench trial, Summer Runion testified that Vandunk had come to her apartment on May 14, 2006. According to Runion, she, her two-year-old daughter, and Vandunk went to dinner that night and then returned to her apartment. Runion testified that Vandunk had been drinking before arriving at her apartment, and that he continued to drink after dinner. Runion and Vandunk argued about his drinking. According to Runion, Vandunk became angry when she refused to have intercourse with him. The two argued for a while before Runion went upstairs to go to bed. Runion testified that Vandunk had come upstairs and had struck her repeatedly in the head with an empty alcohol bottle. At some point, Runion lost consciousness. Runion testified

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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that she had sustained a skull fracture and cuts to her head. She had also suffered fractured eye sockets and crushed nasal cavities. While in the intensive-care unit for her injuries, she developed a blood clot on her brain.

Vandunk testified on his own behalf. According to Vandunk, he and Runion had argued, and she had referred to him by using a racial epithet. He testified that he had blacked out during the incident. But he admitted that he had hit Runion.

The trial court found Vandunk guilty of both counts of felonious assault. After a hearing, the court sentenced Vandunk to two concurrent prison terms of seven years.

In his sole assignment of error, Vandunk asserts that his conviction was against the manifest weight of the evidence. When reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.² We conclude that the trial court's finding of guilt was not against the weight of the evidence. Vandunk's alleged blackout during the incident was not a defense.³ And the trial court's conclusion that Vandunk had not been sufficiently provoked to reduce the offense to aggravated assault was not against the weight of the evidence. The sole assignment of error is overruled, and the trial court's judgment is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 13, 2008
per order of the Court _____
Presiding Judge

² See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

³ See *State v. Griffin* (Jan. 19, 1988), 10th Dist. No. 86AP-759.