

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

STATE OF OHIO,	:	APPEAL NO. C-090898
Plaintiff-Appellee,	:	TRIAL NO. B-0903237
vs.	:	<i>JUDGMENT ENTRY.</i>
TANEKA MYRICK,	:	
Defendant-Appellant.	:	

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

Following a bench trial, defendant-appellant Taneka Myrick was convicted of two counts of felonious assault in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). The trial court imposed a two-year prison term for each count and indicated at the sentencing hearing that the sentences would merge. Myrick now appeals, bringing forth four assignments of error. For the following reasons, we affirm.

The evidence presented at trial demonstrated that Myrick twice hit Jimmy Williams, the father of her son, with the car she had been driving. According to Williams's testimony, he had agreed to meet Myrick near some apartments located on McHenry Road. When Myrick arrived, Williams entered the passenger side of her car. Williams testified that Myrick asked him to have sex, and that when he refused,

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

she began to hit him. Williams exited from the car and was standing on the road near the curb, when Myrick put the car in reverse and hit him. She then drove forward and ran over Williams. Williams was pinned underneath the car on the passenger side between the front and rear tires. Myrick called 911, and rescue workers extricated Williams from underneath the car. Williams suffered from road burn, a fractured pelvis, three broken ribs, and a hematoma on his left thigh. As of the date of trial, Williams still was in pain and walked with a limp.

Myrick's version of the events was somewhat different. She testified that after Williams had entered the car, he became angry with her and began to hit her. She said that Williams hit her in the face and her upper body several times, alternating between an open hand and a closed fist. Further, Myrick testified that he pulled at her clothes, pushed her against the driver's side window and choked her. Myrick testified that Williams was angry with her because she had been visiting matchmaking websites. Myrick testified that it was not until she threatened to call 911 that Williams exited from the vehicle. But after exiting from the vehicle, Myrick testified, Williams walked over to the driver's side door and tried to pull Myrick through the open window so that he could continue to assault her. At some point in this struggle, Myrick said, Williams damaged the driver's side-view mirror. She submitted a photograph, which had been taken by her mother several weeks after the accident, showing the damage to the car. On cross-examination, she acknowledged that it was impossible to tell the make and model of the vehicle in the photograph.

Finally, Myrick testified that her life had been in danger and that she was trying to escape from Williams when she ran over him with the car.

Police officers who responded to the scene testified that they did not recall seeing any injuries on Myrick and did not notice her clothes being disheveled. A videotape of Myrick in the back of a police cruiser was admitted into evidence to show Myrick's calm demeanor the night of the assault.

The trial court found Myrick guilty, noting that Myrick's testimony was not credible given that Myrick appeared calm and uninjured on the night of the assault, and given that Williams was pinned under the passenger side of the car in contravention of Myrick's testimony that Williams had been on the driver's side of the car when she started moving the car.

In her first assignment of error, Myrick contends that because her jury waiver was not acknowledged in open court, the trial court lacked jurisdiction to convict her of the charged offenses. We overrule this assignment of error. The transcript demonstrates that a written jury waiver was executed by Myrick and acknowledged in open court with her attorney present prior to the start of the bench trial.<sup>2</sup> The trial court had Myrick read the waiver and asked Myrick if she understood what it meant "not [to] want a jury trial." After the trial court was convinced that Myrick understood the right she was waiving, the court accepted the waiver.

In her second assignment of error, Myrick argues that her convictions were against the manifest weight of the evidence.

After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse Myrick's convictions and order a new trial.<sup>3</sup> The trial court found Williams's version of the events more credible, as do we. Although Myrick argued that she had only struck

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<sup>2</sup> See *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, 872 N.E.2d 279.

<sup>3</sup> *State v. Thompkins* (1977), 78 Ohio St.3d 380, 387, 678 N.E.2d 541.

Williams because she was trying to escape his abuse, there were no visible injuries on Myrick, and she appeared calm immediately after the assault. Finally, Myrick's testimony that Williams was on the driver's side of the car trying to pull her out when she began to move the car was inconsistent with the fact that Williams was found pinned underneath the passenger side of the car. Myrick's convictions were not against the manifest weight of the evidence. We overrule Myrick's second assignment of error.

In her third assignment of error, Myrick argues that she was deprived of the effective assistance of counsel as a result of counsel's failure to investigate the state's theory of the case and evidence it planned to use against her. Myrick argues that if her counsel had had better photographs taken of the car she had been driving during the assault, she would have been able to demonstrate that the driver's side-view mirror had been damaged and that this would have corroborated her testimony. To prevail on this assignment of error, Myrick must demonstrate that her counsel's performance was deficient and that, absent her counsel's errors, the result of the trial would have been different.<sup>4</sup> Our review of counsel's performance must be "highly deferential."<sup>5</sup>

Even if counsel had introduced photographs of damage to the driver's side-mirror, the result of the trial would not have been different in light of the fact that Williams had been pinned underneath the passenger side of the car, not the driver's side. The third assignment of error is overruled.

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<sup>4</sup> See *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

<sup>5</sup> *Strickland*, supra, at 689.

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In her fourth assignment of error, Myrick contends that the judgment entered by the court is defective because it mistakenly indicates that she had entered a guilty plea. Although Myrick did not enter a guilty plea, but was instead found guilty by the court following a bench trial, we cannot say that the judgment entry is prejudicially defective. A criminal judgment entry constitutes a final appealable order when a “trial court signs and journalizes a document memorializing the sentence and the manner of conviction: a guilty plea, a no contest plea upon which the court has made a finding of guilty, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial.”<sup>6</sup> Here, the journal entry, which included Myrick’s sentence, was signed by the trial court and stated that Myrick “had been found guilty.” Accordingly, the fourth assignment of error is overruled.

We note that the trial court stated in open court at the sentencing hearing that it was merging the sentences for the two charged offenses, but this is not reflected in the judgment entry. Consequently, pursuant to our authority under App.R. 12, we modify the trial court’s judgment to reflect that Myrick stands convicted of one count of felonious assault involving R.C. 2903.11(A)(1) for a total prison term of two years.

The judgment of the trial court is affirmed as modified.

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.

**HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on October 8, 2010

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>6</sup> *State v. Baker*, 119 Ohio St.3d 197, 2007-Ohio-3330, 893 N.E.2d 163, ¶14.