

IN THE SUPREME COURT OF OHIO

11-0083

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAMES L. STARKS,

Defendant-Appellant.

Case No. _____

On Appeal from the Summit County
Court of Appeals, Ninth Appellate
District

C.A. NO. 25155

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JAMES L. STARKS**

JAMES STARKS #574833
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030-8000

DEFENDANT-APPELLANT, *PRO SE*

HEAVEN R. DIMARTINO
Assistant Prosecuting Attorney
Summit County, Ohio
53 University Avenue
Akron, OH 44308

COUNSEL FOR APPELLEE: STATE OF OHIO

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TABLE OF CONTENTS

	<u>PAGE</u>
EXPLANATION OF WHY THIS FELONY CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....	5
<u>PROPOSITION OF LAW NO. I:</u>	5
THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT APPELLANT'S CONVICTION OF FELONIOUS ASSAULT.	
<u>PROPOSITION OF LAW NO. II:</u>	8
APPELLANT'S CONVICTION FOR FELONIOUS ASSAULT WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.	
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	9

APPENDIX

State v. Starks (Dec. 8, 2010), 9th Dist. No. 25155, 2010-Ohio-5980

EXPLANATION OF WHY THIS FELONY CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL QUESTION

This case presents two issues for review: (1) there was insufficient evidence to support Appellant's conviction of felonious assault; and (2) Appellant's conviction for felonious assault was contrary to the manifest weight of the evidence.

Resolution of these issues requires the Court to determine whether after reviewing the evidence in the light most favorable to the prosecution, an appellate court must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, *Jackson v. Virginia* (1979), 443 U.S. 307, 318-19; and "sit as a "thirteenth juror" and review the evidence and 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, 340.

In this case, the evidence is all circumstantial. No witness testified that they observed or had actual knowledge that Appellant struck the victim. If the evidence had been uncontroverted that Appellant was standing alone over the victim immediately after he was assaulted, with no other persons nearby, then circumstantial evidence might be enough. But in light of an witness' prior testimony that another person was within 4 to 5 feet of the victim following the hit, then the circumstantial evidence is insufficient to support Appellant's conviction beyond a reasonable doubt.

Furthermore, the victim admitted that he “never saw who hit him” and “did not see the actual punch.” (TR.p.125). He acknowledged that he was talking with Appellant before he was hit, and had walked away from Appellant. (TR.p. 92-93). Just prior to being struck, Appellant was walking towards the victim in a normal gait. (TR.p. 93). In doing so, the victim stated that Appellant appeared calm, not angry; “like he was all right with everything.” (TR.p. 93). If believed, this is not the kind of behavior of someone committing felonious assault, or any other criminal act.

Appellant’s constitutional right to a fair trial was violated in the trial court. Therefore, this Court should accept jurisdiction in this case so the important issues can be fully briefed.

STATEMENT OF CASE AND FACTS

Appellant was indicted by the Summit County Grand Jury on one count of Felonious Assault in violation of R.C. 2903.11(A)(1), a felony of the second degree. Appellant plead not guilty at arraignment. A jury trial was commenced on October 19, 2009. On October 21, 2009, the jury foreperson indicated to the court that they were unable to reach a unanimous decision and further deliberations would be futile. The court dismissed the jury and scheduled a new trial.

A second trial was held on November 19, 2009, and the following testimony was made:

Jason Garrett testified that he is employed by Best Value Auto Sales, a used automobile lot in the City of Akron, Ohio (TR.p. 39, 85-86). On July 11, 2008, he was working at the lot when three people arrived in a white Ford Taurus. (TR.p. 40). Appellant, one of the three, was interested in purchasing a 1973 Buick Regal. (TR.p.

40-41). After some initial discussion, Appellant indicated that he was going to "get his money and he will be back." (TR.p. 42). Appellant returned about ten to fifteen minutes later, along with "three other guys in the Taurus; another car behind them; and a truck behind that one." (TR.p. 42). Garrett acknowledged that everyone got out of the vehicles and were milling about the lot looking at cars. (TR.p. 42-43). Garrett called his boss, Faisal Dabbas, over to talk to Appellant about the Buick Regal. (TR.p. 43). Garrett recalled Appellant offering Dabbas \$3,500.00 for the automobile, before he walked away to assist other customers. (TR.p. 43-44).

While talking to these two customers, Garrett testified that he heard a "crack." (TR.p. 45). When he turned toward the direction of the noise, he observed Dabbas sitting on the ground and Appellant standing over him. (TR.p. 46-47). He immediately went over to assist Dabbas. (TR.p. 49). In doing so, he "pushed the guy that was arguing with Dabbas back" and then grabbed Dabbas to lift him to his feet. (TR.p. 49). While assisting Dabbas, one of the individuals that came with Appellant came running up and tried to kick Dabbas. (TR.p. 49-50).

On direct examination, Garrett stated that when he turned to look in the direction of the "crack" and saw Dabbas sitting on the ground, only Appellant was standing near Dabbas. (TR.p. 47-48). However, on cross-examination Garrett acknowledged that at the first trial he testified that the "closest person to Dabbas and Appellant" was only four or five feet away. (TR.p. 64).

Dabbas testified that he is the Owner of Best In Value Auto Sales, a used car sales lot located on South Arlington Street in Akron, Ohio. (TR.p. 85-86). On July 11, 2008, Appellant, along with six other people arrived at the lot in two separate vehicles. (TR.p. 87-88). Appellant was interested in purchasing the Buick Regal and offered

\$3,500.00. (TR.p. 89). Dabbas did not accept the offer, stating that the purchase price was \$5,700.00. (TR.p. 89). After further discussion, Dabbas tried to end the negotiations by walking away. (TR.p. 90-91). Soon thereafter, Appellant started walking towards Dabbas. (TR.p. 92). Dabbas thought that Appellant wanted to reconsider his offer. (TR.p. 93). As he approached, Dabbas described Appellant as walking regularly (“wasn’t like running fast”), and he wasn’t upset (“seemed like he was all right with everything”). (TR.p. 93). Dabbas recalled looking away for “one second” and as soon as he turned around he got punched in the face. (TR.p. 94).

On cross-examination Dabbas admitted that he “did not see the actual punch” or the person who threw it. (TR.p. 125-128). Further, he acknowledged that Appellant was with seven other people and that there was no way he was able to watch all of them at the same time. (TR.p. 125-126). As a result of the punch Dabbas was “knocked out” and suffered a concussion. (TR.p. 126, 133). After three days Dabbas sought medical attention. (TR.p. 126).

Dr. Nima Patel testified that Dabbas presented himself for treatment with a jaw fracture requiring surgery to “wire his jaw shut.” (TR.p. 125-126).

Ultimately, the second jury convicted Appellant of felonious assault. Whereupon, the trial court imposed a prison term of 5 years.

Appellant filed an appeal to the Ninth District Court of Appeals for Summit County and presented two issues for review:

- I. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT APPELLANT’S CONVICTION OF FELONIOUS ASSAULT.
- II. APPELLANT’S CONVICTION FOR FELONIOUS ASSAULT WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

The Ninth District affirmed Appellant's conviction on December 8, 2010, holding that "the State presented sufficient circumstantial evidence to support [Appellant's] conviction. His second assignment of error is overruled because the conviction is not against the manifest of the evidence." *State v. Starks*, 9th Dist. No. 25155, 2010-Ohio-5980, ¶12.

Appellant contends that there was insufficient evidence to support a conviction that he committed felonious assault. The Ninth District Court of Appeals erred by affirming the judgment of the trial court. In support of his position on these issues, Appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. I:

THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT APPELLANT'S CONVICTION OF FELONIOUS ASSAULT.

It is fundamental that the prosecution must prove every necessary element of the crime charged, beyond a reasonable doubt. *In re Winship* (1970), 397 U.S. 358,364. After reviewing the evidence in the light most favorable to the prosecution, an appellate court must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia* (1979), 443 U.S. 307, 318-19; see, also *State v. Eley* (1978), 56 Ohio St.2d 169, 172; *State v. Jamison* (1990), 49 Ohio St.3d 182, 191.

As a general rule, the reviewing court will show the utmost deference to the trier of fact in assessing the credibility of witness. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus; *State v. Tyler* (1990), 50 Ohio St.3d 24, 32. Further, the appellate court will not substitute its judgment for the jury when the verdict is supported by some competent, credible evidence. *Id.*

Here, Appellant was indicted on one count of felonious assault under R.C. 2903.11 (A)(1), which provided that no person shall knowingly cause serious harm to another person.

In the present case, there is no question that Faisel Dabbas suffered serious physical harm. Further, Appellant does not contest that the act of intentionally punching someone is a “knowing” act. Rather, Appellant, throughout this case, argues the issue of identity, i.e. that the evidence produced by the state failed to establish beyond a reasonable doubt that he is the person that punched Dabbas.

Dabbas admitted that he “never saw who hit (him)” and “did not see the actual punch.” TR.P at 125. He acknowledged that he was talking with before he was hit, and had walked away from Appellant. TR.P at 92-93. Just prior to being struck, Appellant was walking towards Dabbas in a normal gait. (TR.p. 93). In doing so, Appellant appeared calm, not angry; “like he was all right with everything.” (TR.p. 93).

The only person present at car lot that day that testified was Jason Garrett, Dabbas’ employee. He testified he was talking with two other customers when he heard a “crack.” (TR.p. 45). At no time did he actually observe who threw the punch and nowhere does he testify to such knowledge. Importantly, at the first trial Garrett testified that when he turned in the direction of the cracking sound, he observed Dabbas on the ground, with Appellant and at least one other person within four to five feet from

Dabbas. By contrast, at the second trial Garrett testified that “closest person other than (Appellant) to Mr. Dabbas was ten to fifteen feet away.” (TR.p. 64-66). On cross-examination Garrett acknowledged that his change in testimony is “quite a different distance.” (TR.p. 66).

The question presented is whether the above stated evidence supports a finding, beyond a reasonable doubt, that Starks is the person who struck Dabbas. R.C. 2901.05(D) defines “reasonable doubt” as “proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs.”

In *State v. Saah* (1990), 67 Ohio St.3d 86, the court acknowledged that circumstantial evidence may be sufficient to support a conviction beyond any reasonable doubt. However, when the state relies on circumstantial evidence alone, that evidence must be consistent solely with guilt and irreconcilable with any reasonable theory of innocence. *Id.*

In the present case, the evidence is all circumstantial. No witness testified that they observed or had actual knowledge that Appellant struck Dabbas. If the evidence had been uncontroverted that Appellant was standing alone over Dabbas immediately after crack, with no other persons nearby, then circumstantial evidence might be enough. But in light of Garrett’s prior testimony that another person was within 4 to 5 feet of Dabbas following the hit, then the circumstantial evidence is insufficient to support Appellant’s conviction beyond a reasonable doubt.

PROPOSITION OF LAW NO. II:

APPELLANT'S CONVICTION FOR FELONIOUS ASSAULT WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE

An appellate court is empowered to reverse a criminal conviction and order a new trial when the verdict is against the manifest weight of the evidence. *State v. Robinson* (1955), 162 Ohio St. 486, 487. In *Tibbs v. Florida* (1982), 457 U.S. 31, 42, Justice O'Connor explained that the reviewing court sits as a "thirteenth juror" in reviewing the evidence. While deference is to be afforded to the fact-finder, the court must not hesitate in invoking this power when the record weighs heavily against conviction. *State v. Abi-Sarkis* (1988), 41 Ohio App. 3d 333, 339.

In *State v. Otten* (1986), 33 Ohio App.3d 339, 340, the court set-fourth the proper standard of review:

"In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must 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."

See, also, *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

The discretionary power of the appellate court to reverse a conviction should be invoked only in those extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. *Otten, supra*. at 340; *Martin, supra*, at 175.

Based on the facts as set forth in Proposition of Law One, the jury clearly lost its way in finding Appellant guilty of felonious assault. Given the conflicting testimony of Garrett between the first and second trial (acknowledging that another person was within 4 to 5 feet of Dabbas and Appellant after he heard the cracking noise

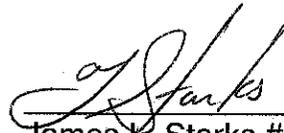
(TR.p. 64-66), it is just as reasonable to find that this unknown individual is the person that threw the punch. Rather, the jury was swayed with the extent of Dabbas' injuries and failed to grasp the importance of the change in Garrett's testimony between the first and second trials.

Accordingly, Appellant's conviction was contrary to the manifest weight of the evidence.

CONCLUSION

Based on the foregoing argument and authorities, Appellant respectfully requests the Court to accept jurisdiction in this case so the important issues can be fully briefed.

Respectfully submitted,



James L. Starks #574833
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030-8000

Defendant-Appellant, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum in Support of Jurisdiction* has been sent by regular U.S. Mail, first-class postage prepaid, to Heaven R. Dimartino, Assistant Prosecuting Attorney, Summit County, Ohio, 53 University Avenue, Akron, OH 44308, on this 11th day of January, 2011.



James L. Starks
Defendant-Appellant, *pro se*

APPENDIX

COURT OF APPEALS
STATE OF OHIO DANIEL M. HERRIGAN
COUNTY OF SUMMIT)ss:
DEC - 8 AM 7:56

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO SUMMIT COUNTY
CLERK OF COURTS
Appellee

C. A. No. 25155

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 06 1984

JAMES L. STARKS

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} A customer punched a used car salesman in the face, breaking his jaw and causing permanent disfigurement. After the first jury hung, a second jury found the customer, James Starks, guilty of felonious assault, a felony of the second degree, and the trial court sentenced him to five years in prison. Mr. Starks has appealed, arguing that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence because nobody saw him punch Faisel Dabbas. This Court affirms the conviction because it is supported by sufficient circumstantial evidence and is not against the manifest weight of the evidence.

BACKGROUND

{¶2} On July 11, 2008, Jason Garrett and Mr. Dabbas were working at the Best N Value Auto Sales lot on South Arlington Street in Akron when Mr. Starks and two other men arrived in a white Ford Taurus. Mr. Starks spoke first with Mr. Garrett and then with Mr.

Dabbas, the lot's owner, about buying a 1973 Buick Regal. Mr. Dabbas testified that, after he had discussed the car with Mr. Starks for at least five to ten minutes, Mr. Starks told him that he was going to go home and get some money to buy the car. Mr. Starks returned to the lot in the Taurus with at least another four men in another vehicle. According to Mr. Dabbas, there were seven men looking at cars in different parts of the lot. Initially, Mr. Garrett stayed near the Regal as Mr. Dabbas and Mr. Starks discussed the purchase. Later, Mr. Garrett stepped over to the next car to assist other potential customers.

{¶3} Mr. Garrett testified that, from his position near the neighboring car, he could not hear what Mr. Dabbas and Mr. Starks were saying, but he looked over at them when the conversation became louder. He had turned his attention back to his customers when he heard a "loud crack" and immediately turned back around. He saw Mr. Dabbas sitting on the ground and Mr. Starks "standing over him." According to Mr. Garrett, there was nobody else standing in the immediate vicinity of Mr. Dabbas and Mr. Starks at that moment.

{¶4} As Mr. Garrett ran toward Mr. Dabbas, he saw one of Mr. Starks's friends, Carlos Miller, running toward the two men from the other direction. Mr. Garrett said that he arrived first, shoved Mr. Starks away, and began to help Mr. Dabbas stand up. Mr. Miller soon began trying to kick Mr. Dabbas. Mr. Garrett heard Mr. Starks say to the driver of the Taurus, "get [me] out of here." Meanwhile, another employee of the car lot called the police while Mr. Miller continued to try to attack Mr. Dabbas until Mr. Dabbas picked up a large metal rod and chased Mr. Miller from the lot. Mr. Dabbas said that he saw Mr. Miller drop his cell phone as he jumped over a low fence around the property. Mr. Dabbas testified that he checked the phone for photographs and found several of Mr. Miller and one group shot that included Mr. Starks.

{¶5} Mr. Dabbas testified that, when the Taurus returned to the car lot that day, he went to speak with Mr. Starks about the Regal. Mr. Starks showed him a quantity of cash and offered \$3500 for the car. Mr. Dabbas told him the price was \$5700, and they began to negotiate. According to Mr. Dabbas, the conversation grew heated when Mr. Dabbas told Mr. Starks to go away and come back when he could afford to buy the car. After that, Mr. Dabbas walked toward the office to smoke a cigarette. He said that he saw Mr. Starks walking toward him, glanced back in the opposite direction for a moment, then was punched just as he began to look back toward Mr. Starks. He said that he lost consciousness briefly, but awoke on the ground with Mr. Starks crouching over him with both fists clenched. Mr. Dabbas testified that, when he saw Mr. Starks approaching him, he was not scared, but thought Mr. Starks wished to continue negotiating. He did not see Mr. Starks throw the punch, but he said that the two friends who had arrived with him in the Taurus stayed near the Regal while Mr. Starks walked toward him. Mr. Dabbas told the jury that he was absolutely certain that it was Mr. Starks who punched him and Mr. Miller who ran over afterwards and later dropped his cell phone.

{¶6} Police tracked down Mr. Miller and Mr. Starks through information gleaned from Mr. Miller's cell phone. The jury listened to an audio-recording of police interviewing Mr. Starks prior to his arrest. The recording revealed that Mr. Starks denied punching Mr. Dabbas and denied ever being at the car lot or even knowing Mr. Miller. The police officer confronted Mr. Starks with the fact that Mr. Miller had Mr. Starks's phone number and photograph in his cell phone, but Mr. Starks continued to claim that he did not know the man. The officer also told Mr. Starks that he had been to Mr. Miller's house and had found mail addressed to Mr. Starks at that address. Still Mr. Starks claimed that he did not know Mr. Miller. Both Mr. Garrett and Mr. Dabbas, on separate occasions, identified photographs of Mr. Starks and Mr. Miller. When both

Mr. Dabbas and Mr. Garrett were cross-examined about the fact that neither had seen Mr. Starks throw the punch, they both testified that they were certain it was Mr. Starks because he was the only person close enough to Mr. Dabbas to have done it.

SUFFICIENCY

{¶7} Mr. Starks's first assignment of error is that his conviction is not supported by sufficient evidence because there was no direct evidence that he was the one who punched Mr. Dabbas. Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. We must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced the average finder of fact of Mr. Starks's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶8} Section 2903.11(A)(1) of the Ohio Revised Code provides that, "[n]o person shall knowingly . . . [c]ause serious physical harm to another" "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B). The evidence showed that Mr. Dabbas suffered serious physical harm. Nima Patel, a plastic surgeon, testified that Mr. Dabbas presented with a broken jaw, requiring multiple surgeries. After the first surgery, he spent weeks drinking through a straw while his jaw was wired shut, then acquired an infection, necessitating additional surgery. At the time of trial, more than a year after the injury, Mr. Dabbas's face remained asymmetrical due to a failure of the bones to heal correctly.

{¶9} Mr. Starks has argued only that this is a case of mistaken identity. He has argued that, without any direct evidence that he punched Mr. Dabbas, the conviction is not supported by sufficient evidence. He has cited the Eighth District decision in *State v. Saah*, 67 Ohio App. 3d 86, 97 (1990), for the proposition that, “when the state relies on circumstantial evidence alone, that evidence must be consistent solely with guilt and irreconcilable with any reasonable theory of innocence.” Just one year after *Saah*, however, the Ohio Supreme Court released its decision in *State v. Jenks*, 61 Ohio St. 3d 259 (1991), overruling *State v. Kulig*, 37 Ohio St. 2d 157 (1974). In *Jenks*, the Court “join[ed] a multitude of other courts, both federal and state, which no longer make th[e] distinction [between circumstantial and direct evidence].” *Id.* at 283. The Supreme Court held that “[c]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. When the state relies on circumstantial evidence to prove an essential element of the offense charged, there is no need for such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction.” *Id.* at paragraph one of the syllabus. Therefore, Mr. Starks’s argument that circumstantial evidence alone was insufficient to support his conviction is incorrect.

{¶10} Viewed in a light most favorable to the prosecution, the evidence the State presented at trial could have convinced the average finder of fact of Mr. Starks’s guilt beyond a reasonable doubt. See *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991). Although Mr. Starks told police that he had never been to the Best N Value Auto Sales lot, the evidence, including two witness identifications, tended to show that he was there with Mr. Miller on July 11, 2008. Although neither eyewitness saw Mr. Starks punch Mr. Dabbas, they both offered circumstantial evidence that he had. Mr. Dabbas said that he was standing alone in the

parking lot when he saw only Mr. Starks approaching him. According to Mr. Dabbas, there was nobody else near him when Mr. Starks approached and Mr. Starks was the last thing he saw before the punch. When he regained consciousness, he saw Mr. Starks standing over him with fists clenched. Mr. Garrett testified that he looked over immediately after hearing a “loud crack” and saw Mr. Starks standing over Mr. Dabbas with nobody else nearby. Thus, the State presented sufficient evidence that Mr. Starks knowingly caused Mr. Dabbas serious physical harm by punching him in the face. Mr. Starks’s first assignment of error is overruled.

MANIFEST WEIGHT OF THE EVIDENCE

{¶11} Mr. Starks’s second assignment of error is that his conviction is against the manifest weight of the evidence. If a defendant argues that his conviction is against the manifest weight of the evidence, this Court “must 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*, 33 Ohio App. 3d 339, 340 (1986).

{¶12} According to the investigating police officer, both Mr. Dabbas and Mr. Garrett identified Mr. Starks from a photo array without any hesitation or doubt. Despite Mr. Starks’s continued denials to the police, there was significant evidence that he was friends with Mr. Miller, who had dropped his cell phone while running from Mr. Dabbas after the attack. Mr. Miller’s cell phone, containing photos of him and Mr. Starks, was admitted at trial. The jury may have reasonably concluded that if Mr. Starks had lied to the police about being friends with Mr. Miller, then he probably also lied about whether he was present at the time of Mr. Dabbas’s injury and whether he had caused it. The jury may have reasonably believed the consistent

testimony of Mr. Dabbas and Mr. Garrett, as supported by that of the police officer who investigated the case, over the claims Mr. Starks had made to the police. The jury did not lose its way and create a manifest miscarriage of justice by finding that Mr. Starks knowingly struck Mr. Dabbas, breaking his jaw. Mr. Starks's second assignment of error is overruled.

CONCLUSION

{¶13} Mr. Starks's first assignment of error is overruled because the State presented sufficient circumstantial evidence to support his conviction. His second assignment of error is overruled because the conviction is not against the manifest weight of the evidence. The judgment of the Summit County Common Pleas Court is affirmed.

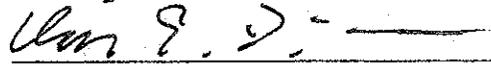
Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.



CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
MOORE, J.
CONCUR

APPEARANCES:

JEFFREY N. JAMES, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN R. DIMARTINO, assistant prosecuting attorney, for appellee.