

IN THE ASSOCIATE CIRCUIT COURT  
22<sup>ND</sup> JUDICIAL CIRCUIT  
STATE OF MISSOURI CITY OF SAINT LOUIS

**FILED**  
MAR - 6 2009  
MARIANO V. FAVAZZA  
CLERK, CIRCUIT COURT  
BY \_\_\_\_\_ DEPUTY

STATE OF MISSOURI, )  
)  
Plaintiff. )  
)  
v )  
)  
)  
)  
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)  
Defendant. )

Cause

Division 24

**ENTERED**  
MAR - 9 2009

**JUDGMENT**

Cause called for bench trial on February 20, 2009, the defendant having previously waived his right to jury trial in writing. State appears by Assistant Circuit Attorney John Wright. Defendant appears in person and by counsel Sarah Boyle. Cause called, evidence adduced, credibility determinations made. The Court notes it has reviewed the testimony of each of the witnesses several times before ruling as this case rests solely on credibility.

Defendant was charged by information of one count of Assault in the Third Degree, for attempting to cause physical injury to \_\_\_\_\_ by striking her.

\_\_\_\_\_ testified that on December 9, 2007, at 3514 Michigan Avenue, she was at a neighbor's house (Richard) helping wrap Christmas gifts. She testified that she ran back home to get a pair of scissors. While she was inside her own home a disagreement had started between \_\_\_\_\_ the person she was wrapping presents with regarding child care of Fidelia's niece, \_\_\_\_\_ child.

The victim testified that when she returned outside she did not say anything to anyone and despite the fact that \_\_\_\_\_ arguing about

something that had nothing to do with her, for no reason whatsoever, Fidelia began to attack her and she defended herself. The victim stated that in addition to herself and Fidelia, Richard and [redacted] were outside as well, and [redacted] who was later sent to get the victim's mother.

The victim testified that when she and Fidelia began physically fighting, Richard did nothing but try to keep Heather [redacted] becoming involved. The victim further testified that the defendant came into the fight after she and Fidelia had rolled down a hill fighting, and the defendant began to kick her. She did not testify that any time Richard tried to pull the defendant off of her but rather, Richard stood by and held Heather [redacted] as the defendant began kicking and hitting the victim. Further, that one of the men, Ricky then left the fight and the defendant kicking and hitting the victim, while he went to get her mother's as opposed to pulling the defendant off of her.

The Court takes into account when deciding credibility the same instruction it gives to jurors to use when assessing credibility. The court finds that the victim is not credible. The Court, in using reason and common sense does not find credible that an individual engaged in an argument with someone else, would, in the middle of that argument, stop and attack someone else for no reason. The court also considers any interest bias or prejudice the witness may have. The Court finds clear that the victim does not like Fidelia [redacted] who is the girlfriend of the defendant and to drag the defendant into the fight and a criminal case undoubtedly upset Fidelia [redacted].

The Court then considers the State's next witness, the victim's mother, [redacted] she does not know how the fight began but saw David [redacted] hit her daughter in the eye while she was holding her. She testified that when she got there she saw Stephanie, her daughter on the ground and that she grabbed Stephanie. She testified that Ricky grabbed [redacted] though she also testified that David was on the ground with Fidelia. She also testified that Richard held [redacted] Again, taking into account the same instructions given to juries regarding making credibility determinations, the Court does not find credible that two men would leave a man free to repeatedly hit and/or kick a young woman while they stood by holding off females.

According to the State's evidence, two women [redacted] (Garcia) and the defendant [redacted] were all striking and kicking the victim with

two more men present, Ricky and Richard, standing by doing nothing to help the victim, their friend, from [REDACTED]. The Court, applying reason and common sense finds this not be a credible scenario of what occurred.

The Court has also considered the witnesses manner while testifying and finds both witnesses manner while testifying indicated to the Court that their testimony was not credible.

The Defense called the defendant to testify. [REDACTED] stated he and Fidelia were walking down the street and that Fidelia, his girlfriend, got into an argument with Richard about child care while he was still one-half block away. He testified at that time [REDACTED] was not there. He testified he observed [REDACTED] come across the street while Fidelia and Richard were still arguing, say something, and then Fidelia began exchanging words with Stephanie. He further testified that at some point Fidelia told Stephanie to stay out of it. He testified he believes Stephanie threw the first punch. He testified the two ended up physically fighting and that after rolling down the hill, Stephanie ended up under the bumper of the car, which he believes she hit her head on, causing the injury in the photographs.

At some point while the girls were fighting, he testified that [REDACTED] Fidelia's sister arrived and that Richard began to hold Heather back.

The Court finds this testimony indicative of truth in that the victim testified Heather was there during the whole fight. If Heather was there during the whole fight, then why wasn't Heather arguing about her own child with Richard? Why would Fidelia be arguing with Richard about Heather's child if Heather was standing right there? Common sense and reason would suggest [REDACTED] was not there in the beginning which was the reason [REDACTED] was arguing about child.

When Heather did arrive, to find her sister physically engaged in a fight with Stephanie, common sense and reason would dictate that would upset a person to the point they may need to be constrained. The defendant testified he asked Ricky to go and get Stephanie's mother and the girls continued fighting while Richard held off Heather. He testified further that at some point the victim's mother arrived, the fight was broken up and he and his girlfriend went home, seven blocks away.

testified that she is the girlfriend of the defendant. She testified that she has pleaded guilty to assaulting [redacted] for this incident because she did assault her, not her boyfriend, the defendant.

The court finds both the defendant

Often, if not always, the truth lies somewhere in the middle of what is testified to depending on an individual's characterization of events and how they occurred. In this case, the Court believes the credible evidence shows that Nash got into a physical fight after Fidelia believed [redacted] was inserting herself into an argument that did not involve her. Fidelia has in fact pleaded guilty to this.

The credible evidence shows the two girls fought for at least several minutes and that blows were exchanged and the two at some point ended up on the sidewalk or under the car. The evidence shows that [redacted] ended up with a golf ball sized bruise under her eye and went to the hospital. The credible evidence shows [redacted] does not like [redacted] and that [redacted]

The Court is firmly convinced that the victim and [redacted] fought. The Court is firmly convinced that the victim and [redacted] to this day, do not like each other. The Court, however, is not firmly convinced that the defendant ever struck the victim during the fight; therefore, the Court finds the defendant NOT GUILTY.

SO ORDERED:

  
Elizabeth Byrne Hogan, #48160

Clerk shall mail a copy of the above to both parties of record.