

SUPREME COURT OF OHIO

State v. Fips

2020-Ohio-1449 (Ohio 2020) · No. 2018-1778 · Decided April 15, 2020

SUMMARY

The Supreme Court of Ohio held that when a reviewing court determines that a criminal conviction is against the manifest weight of the evidence, the proper remedy is a new trial. The court reversed the Eighth District Court of Appeals' reduction of Sharon D. Fips's assault conviction to disorderly conduct and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Fischer, J.; O'Connor, C.J.; French, J.; DeWine, J.; Donnelly, J.; Kennedy, J.; Sadler, J.
JURISDICTION	Ohio
DECIDED	April 15, 2020
DOCKET	2018-1778
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State of Ohio appealed the Eighth District Court of Appeals' decision, which found Fips's assault conviction against the manifest weight of the evidence but modified the judgment to a lesser included offense rather than ordering a new trial. The Supreme Court of Ohio accepted jurisdiction to determine the proper remedy.
STANDARD OF REVIEW	The Supreme Court reviewed the legal remedy selected by the court of appeals after its manifest-weight determination.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	The State of Ohio v. Sharon D. Fips

TOPICS

criminal procedure appellate procedure remedies standard of review

PRACTICE AREAS

criminal law criminal procedure appellate procedure remedies

QUESTIONS PRESENTED

1. When a reviewing court determines that a criminal conviction is against the manifest weight of the evidence, may it reduce the conviction to a lesser included offense, or must it order a new trial?

HOLDINGS

1. A new trial is the appropriate remedy when a reviewing court determines that a criminal conviction is against the manifest weight of the evidence; the reviewing court may not reduce the conviction to a lesser included offense.

KEY QUOTATIONS

*“Where a Court of Appeals has decided that a verdict or finding of guilt[] * * * is against the weight of the evidence * * * such Court of Appeals has no power to modify such verdict or finding by reducing it * * *. Its only power is to order a new trial.” (¶ 8)*

“Accordingly, we once again hold that a new trial is the appropriate remedy when a reviewing court determines that a criminal conviction is against the manifest weight of the evidence.” (¶ 10)

FACTUAL BACKGROUND

In 2016, Sharon D. Fips was charged with assaulting a peace officer under R.C. 2903.13(A) and (C)(5). Following a bench trial, she was found guilty. On appeal, the Eighth District determined that the conviction was against the manifest weight of the evidence but modified the judgment to the lesser included offense of disorderly conduct.

PROCEDURAL HISTORY

Fips was convicted after a bench trial of assaulting a peace officer. The Eighth District reversed on manifest-weight grounds but reduced the conviction to disorderly conduct. After the appellate court denied reconsideration and was evenly divided on en banc review, the State appealed to the Supreme Court of Ohio. The Supreme Court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Eighth District Court of Appeals is reversed, and the matter is remanded for a new trial.

CASES CITED

- State v. Robinson, 162 Ohio St. 486, 124 N.E.2d 148 (1955)
- State v. Geghan, 166 Ohio St. 188, 140 N.E.2d 790 (1957)
- State v. Thompkins, 78 Ohio St. 3d 380, 678 N.E.2d 541 (1997)
- Tibbs v. Florida, 457 U.S. 31, 102 S. Ct. 2211, 72 L. Ed. 2d 652 (1982)

- Eastley v. Volkman, 132 Ohio St. 3d 328, 2012-Ohio-2179, 972 N.E.2d 517 (Ohio 2012)
- Smith v. Klem, 6 Ohio St. 3d 16, 450 N.E.2d 1171 (1983)
- Merrick v. Ditzler, 91 Ohio St. 256, 110 N.E. 493 (1915)

OPINION

State v. Fips (Slip Opinion)

2020 Ohio 1449

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State v. Fips, Slip Opinion No. 2020-Ohio-1449.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2020-OHIO-1449

THE STATE OF OHIO, APPELLANT, v. FIPS, APPELLEE. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State v. Fips, Slip Opinion No. 2020-Ohio-1449.] Criminal law—Remedy for conviction against the manifest weight of the evidence is a new trial—Court of appeals’ judgment reversed and cause remanded for new trial. (No. 2018-1778—Submitted January 29, 2020—Decided April 15, 2020.) APPEAL from the Court of Appeals for Cuyahoga County, No. 105825, 2018-Ohio-2296. _____ FISCHER, J. {¶ 1} Once a reviewing court determines that a criminal conviction is against the manifest weight of the evidence, the remedy is a new trial. Because the Eighth District Court of Appeals ignored this longstanding rule and did otherwise here—deciding instead to reduce the conviction to a lesser included offense—we reverse its judgment.

SUPREME COURT OF OHIO

I. BACKGROUND

{¶ 2} In 2016, appellee, Sharon D. Fips, was charged with assaulting a peace officer in violation of R.C. 2903.13(A) and (C)(5). Following a bench trial, Fips was found guilty. {¶ 3} Fips subsequently appealed her conviction to the Eighth District Court of Appeals, raising a single assignment of error: that her conviction was against the manifest weight of the evidence. {¶ 4} The court agreed with Fips, finding that her conviction was against the manifest weight of the evidence. Rather than order a new trial though, the Eighth District modified the judgment in her case to reduce the conviction to the lesser included offense of disorderly conduct, R.C. 2917.11(A) (1). The court did so even though then Judge Stewart correctly pointed out that “[t]he reversal of a conviction as being against the manifest weight of the evidence results in a new trial,” *id.* at ¶ 21

(Stewart, J., dissenting). {¶ 5} The state asked for reconsideration, which the original panel declined, and for en banc review. The full court considered what the proper remedy is when a court finds that a conviction is against the manifest weight of the evidence (a modified conviction or a new trial), but it was evenly split on the issue. {¶ 6} The state then appealed to this court, and we granted jurisdiction over its appeal to consider the following proposition of law: “A new trial is the appropriate remedy when a reviewing court determines that a criminal conviction is not supported by the manifest weight of the evidence.” See 155 Ohio St. 3d 1405, 2019-Ohio-944, 119 N.E.3d 433.

II. ANALYSIS

{¶ 7} Deciding this case is made easy by the fact that at least 65 years of precedent from this court suggests that, contrary to the decision below, a new trial is the appropriate remedy when a reviewing court determines that a criminal conviction is against the manifest weight of the evidence. 2 January Term, 2020 {¶ 8} In *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955), this court specifically and succinctly resolved this very issue when it held that “[w]here a Court of Appeals has decided that a verdict or finding of guilt[] * * * is against the weight of the evidence * * * such Court of Appeals has no power to modify such verdict or finding by reducing it * * *. Its only power is to order a new trial.” *Id.* at 487. {¶ 9} This court has time and again adhered to this rule. See, e.g., *State v. Geghan*, 166 Ohio St. 188, 189, 140 N.E.2d 790 (1957) (“In such a situation [when the court determines that the verdict is against the weight of the evidence,] it is the sole function of the Court of Appeals to set aside the judgment and remand the cause for a new trial”); *State v. Thompkins*, 78 Ohio St. 3d 380, 388, 678 N.E.2d 541 (1997), quoting *Tibbs v. Florida*, 457 U.S. 31, 42-43, 102 S. Ct. 2211, 72 L. Ed. 2d 652 (1982) (“ ‘A reversal based on the weight of the evidence * * * simply affords the defendant a second opportunity to seek a favorable judgment’ ”); and *Eastley v. Volkman*, 132 Ohio St. 3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 22 (“When a court of appeals determines that a jury verdict is against the weight of the evidence, it should remand the case for a new trial”). It is still the rule today. {¶ 10} Accordingly, we once again hold that a new trial is the appropriate remedy when a reviewing court determines that a criminal conviction is against the manifest weight of the evidence. We also take this opportunity to remind the lower courts in this state that they are required to follow our precedent. See *Smith v. Klem*, 6 Ohio St. 3d 16, 18, 450 N.E.2d 1171 (1983), citing *Merrick v. Ditzler*, 91 Ohio St. 256, 264, 110 N.E. 493 (1915).

III. CONCLUSION

{¶ 11} For the reasons stated in this opinion, we reverse the judgment of the Eighth District Court of Appeals in this case and remand the matter for a new trial. Judgment reversed and cause remanded. 3

SUPREME COURT OF OHIO

O’CONNOR, C.J., and FRENCH, DEWINE, DONNELLY, and SADLER, JJ.,

concur. KENNEDY, J., concurs in judgment only. LISA L. SADLER, J., of the Tenth District

Court of Appeals, sitting for STEWART, J. _____ Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Katherine E. Mullin, Assistant Prosecuting Attorney, for appellant. Mark A. Stanton, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, for appellee. Dave Yost, Ohio Attorney General, and Benjamin M. Flowers, State Solicitor, and Samuel C. Peterson and Shams H. Hirji, Deputy Solicitors, urging reversal for amicus curiae, Ohio Attorney General Dave Yost. _____ 4