

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-15-1284

Appellee

Trial Court No. CR0201502099

v.

Mark Welch

DECISION AND JUDGMENT

Appellant

Decided: May 12, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Rebecca A. Facey, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant Mark Welch guilty of one count of domestic violence in violation of R.C. 2919.25(A) and (D)(4) following trial to a jury. For the reasons that follow, the judgment of the trial court is affirmed as to the conviction but reversed as to appellant's sentence, as discussed below.

{¶ 2} The facts relevant to the issues raised on appeal are as follows. On June 30, 2015, Toledo police responded to an emergency call from the victim, appellant's live-in girlfriend. The victim reported being thrown to the ground by appellant, who then left the residence. The victim was taken to the hospital, where she was treated for a cut on the back of her head, which required five staples, as well as other contusions and abrasions. Thereafter, appellant was indicted on a single count of domestic violence which was elevated to a felony of the third degree due to two prior domestic violence convictions. Following trial on September 28, 2015, appellant was found guilty as charged in the indictment. The case proceeded directly to sentencing. The trial court imposed a prison term of 30 months and ordered appellant to have no contact with the victim.

{¶ 3} Appellant sets forth the following assignments of error:

- 1) Appellant's sentence is contrary to law.
- 2) The State of Ohio failed to present legally sufficient evidence to sustain a conviction for Domestic Violence.
- 3) Appellant's conviction fell against the manifest weight of the evidence.

{¶ 4} In support of his first assignment of error, appellant asserts that the trial court erred when it ordered that appellant have no contact with the victim in addition to a prison sentence. The state concedes that the sentence was contrary to law and requests that the no contact provision of the sentence be overturned. As a general rule, a trial

court cannot impose a prison term and a community-control sanction for the same offense. *See State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.2d 512.

Upon review of the record and the law, we find appellant's first assignment of error well-taken.

{¶ 5} Appellant's second and third assignments of error will be addressed together as both can be resolved by examining the evidence presented at trial. In support of his second assignment of error, appellant asserts that the evidence presented by the state failed to show that he knowingly caused or attempted to cause physical harm to the victim. In support of his third assignment of error, appellant asserts that the evidence presented at trial weighed heavily against conviction.

{¶ 6} Sufficiency of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court must examine "the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 7} In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins, supra*, at 387. In making this determination, the court of appeals sits as a “thirteenth juror” and, after “reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins, supra*, at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 8} The jury in this case heard testimony from the victim, the responding police officer and appellant. The victim testified that after they began to argue and appellant approached her she called 9-1-1. She further testified that, while she was on the phone, appellant grabbed her and threw her to the floor. She believes she lost consciousness briefly and does not recall appellant leaving. The audio recording of the call was played for the jury and entered into evidence. The responding officer testified that when he arrived at the home, he observed the victim had blood “pouring out of her head” and a lump the size of a baseball on her forehead. The injuries appeared to be fresh. The victim stated that appellant had assaulted her and left. Shortly after the victim was transported to the hospital, the officer returned to her house, where he found appellant inside. When appellant failed to leave the house as instructed numerous times, officers entered and saw him walk out of a closet. Appellant ignored repeated instructions of the officers and struggled while being handcuffed.

{¶ 9} Appellant testified that after the victim called for help he pushed her, causing her to fall to the floor. He stated he was angry because there was no reason for her to call the police. He further testified that even though he saw that her head was bleeding he left because he knew the police were on the way and he did not want to go to jail.

{¶ 10} This court has thoroughly considered the entire record of proceedings in the trial court and the testimony as summarized above. We therefore find that the state presented sufficient evidence from which, when viewed in a light most favorable to the prosecution, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of domestic violence in violation of R.C. 2919.25(A) and (D)(4). Further, we cannot say that the jury lost its way or created a manifest miscarriage of justice by finding appellant guilty of domestic violence. Accordingly, we find appellant's second and third assignments of error not well-taken.

{¶ 11} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed as to appellant's conviction and reversed as to the sentence imposed pursuant to our decision. This matter therefore is remanded to the trial court for further proceedings in accordance with this decision. The cost of this appeal is to be shared equally by the parties.

Judgment affirmed, in part,
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE