

[Cite as *State v. Bollar*, 2020-Ohio-3811.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MARQUIS LESHAN BOLLAR

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Earle E. Wise, Jr., J.

Case No. 2019CA00154

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Canton Municipal Court,
Case No. 2019CRB01318

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 14, 2020

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Marquis Leshan Bollar appeals his conviction and sentence entered by the Canton Municipal Court on one count of domestic violence, following a jury trial. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On March 20, 2019, Officer Andrew Moore of the Canton Police Department filed two complaints in the Canton Municipal Court, charging Appellant with one count of domestic violence, in violation of R.C. 2919.25(A), a misdemeanor of the first degree; and one count of unlawful restraint, in violation of R.C. 2905.03(A), a misdemeanor of the third degree. The charges arose from an incident which occurred during the early morning hours of March 19, 2019, involving Angela Robertson, the mother of Appellant's child. The trial court issued a warrant for Appellant's arrest on March 20, 2019. Appellant was arrested in August, 2019.

{¶3} The matter proceeded to trial on September 10, 2019. The following evidence was adduced at trial.

{¶4} Officer Andrew Moore of the Canton Police Department testified he responded to the area of Kalahari Street, NE, in Canton, after dispatch received multiple 911 calls, including a 911 call hang-up. When Officer Moore arrived, he observed two women exit a vehicle and walk into the apartment at 3108 Kalahari St., NE. Officer Moore subsequently learned one of the women was Appellant's sister. The officer followed the women into the apartment where he discovered Appellant and Robertson in a back room, in the dark. Appellant followed Officer Moore into the kitchen. Appellant told the officer he

and Robertson “had been arguing in a not healthy manner.” Trial Transcript, Vol. I at 79. Officer Moore eventually allowed Appellant to leave the residence with his sister. Officer Moore indicated Appellant’s speech was a little slurred and he seemed intoxicated.

{¶15} After Appellant left, Officer Moore joined his partner who was with Robertson. Robertson was initially composed, but eventually broke down and began to cry. When asked “if she was sticking with her story that she had just fell”, Robertson began to tell the officers what had happened and how she was injured. She revealed Appellant had punched and kicked her. Robertson also indicated Appellant had jabbed her in the shoulder and arm with a knife. Robertson informed the officers she had tried to leave throughout the assault, but Appellant prevented her from doing so. At one point when Robertson was trying to leave, Appellant pulled out her hair. Appellant’s attack ended when his sister and her companion arrived.

{¶16} Officer Moore testified Robertson explained the argument ensued after Appellant became angry upon learning Robertson had allowed another female, with whom Appellant had a previous relationship, to stay at her residence. Appellant arrived at Robertson’s residence to speak with the woman. The woman contacted Robertson, who was not at the residence when Appellant arrived, and advised her Appellant was at the house. When Robertson returned home, she found Appellant, who was drunk, at the top of the stairs. Robertson tried to move past Appellant, but he pushed her onto the floor of their child’s bedroom. Appellant proceeded to pull out Robertson’s hair, then punched and kicked her. He shut the door to the bedroom, holding it closed to prevent Robertson from leaving. When Appellant chased the woman out of the house, Robertson tried to

flee. Appellant met her at the door and pushed her back into the house. Another struggle ensued in the back room of the house.

{¶17} Officer Moore found evidence at the scene which was consistent with Robertson's account of the events of the evening. Officer Moore found a clump of red hair on the floor of the child's bedroom. In addition, the officer observed black scuff marks on a wall about two feet off the ground where Robertson said Appellant had kicked her. Officer Moore noticed items on a coffee table in disarray. Robertson's injuries were also consistent with her account. Robertson had bruising and swelling around her mouth. Robertson also had blood marks on her cheek and left ear. Her left ear was swollen. She had a bruise behind her left ear on the back of her head. Officer Moore photographed the scene and Robertson's injuries. Officer Moore found Robertson's behavior to be consistent with victims of domestic abuse

{¶18} Robertson testified she did not want Appellant charged because she was scared about "him getting charges and him getting out and doing it all over again." Tr., Vol. II at 131. Robertson recalled arriving home on March 19, 2019, after visiting a friend. She walked upstairs to find Appellant waiting. Appellant pushed her into their daughter's room, shoved her against the wall, and pulled her by her hair, ripping out a chunk of her hair. After hitting her in the face and punching her, Appellant left the room.

{¶19} Robertson recalled she ran down the stairs toward the back door. Appellant caught her and pulled her into the living room. Robertson landed on the floor with her back against the wall. Appellant proceeded to kick her in the face and head. He also continued to hit and punch her. Appellant then poked Robertson with a steak knife, telling her he should kill her. Robertson pleaded with him to stop. Appellant kicked Robertson,

causing her to fall over. Appellant grabbed Robertson from behind, pulled her head back, and choked her until she blacked out. The next thing Robertson remembered was Appellant's sister and the police coming into the house.

{¶10} Canton City firefighter paramedic William Bentley testified he was working in his capacity as a paramedic on March 19, 2019, when he was called to 3108 Kalahari Street, NE. Bentley spoke with Robertson who told him she had been assaulted by her boyfriend. Robertson explained to Bentley she and Appellant had an argument, and Appellant began hitting her with his fist. Robertson added Appellant kicked her a few times and eventually choked her. Bentley conducted a body check of Robertson. Robertson had abrasions and scratch marks on her body. Robertson's face was swollen and red, which Bentley concluded was the result of her being hit or struck with a blunt object. Robertson's left ear was swollen and had a bluish color, which is indicative of internal bleeding. Bentley noted Robertson's wounds were "fresh wounds", meaning such were sustained "no more than a couple of hours" earlier. Bentley stated Robertson's injuries were consistent with her story. Robertson was not transported to the hospital.

{¶11} At the close of the state's evidence, Appellant made a Crim. R. 29 motion for acquittal, which the trial court denied. Appellant did not call any witnesses on his behalf. After hearing all the evidence and deliberations, the jury found Appellant guilty of domestic violence and not guilty of unlawful restraint. The trial court sentenced Appellant to 180 days in the Stark County Jail with credit for time served. The trial court ordered Appellant's sentence be served concurrently with any sentence imposed in his pending felony case.

{¶12} It is from this conviction and sentence Appellant appeals, raising the following assignment of error:

APPELLANT’S CONVICTION WAS AGAINST THE SUFFICIENCY
AND/OR MANIFEST WEIGHT OF THE EVIDENCE.

I

{¶13} In his sole assignment of error, Appellant challenges his convictions as against the manifest weight and based upon insufficient evidence.

{¶14} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997–Ohio–52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, “An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to 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.

{¶15} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and “in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in 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’.” *State v. Thompkins*, supra at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983).

{¶16} “The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), at paragraph one of the syllabus. The trier of fact is in the best position to judge the credibility of the witnesses. Appellant was found guilty of one count of domestic violence, in violation of R.C. 2919.25(A), which provides: “No person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶17} Appellant submits a review of the testimony of Officer Moore and that of Angela Robertson clearly establishes “the officers did not have the same interpretation of events as presented to them by Ms. Robertson in the early morning hours of March 19, 2019, and as were presented at trial.” Brief of Appellant at 5. Appellant posits, although testimony was presented which weighs against him, “an average mind and rational trier of fact could not conclude guilty of [domestic violence] and not guilty of [unlawful restraint].” *Id.* Appellant explains, if the jury did not believe Robertson was restrained, they could not “rationally believe she was contemporaneously injured.” *Id.*

{¶18} With respect to Appellant’s conviction of domestic violence, the testimony at trial revealed the following. Robertson told Officer Moore she and Appellant had

engaged in an argument because Appellant was angry Robertson had allowed another female, with whom Appellant had a previous relationship, to stay at her residence. Appellant arrived at Robertson's residence to speak with the woman. Robertson was not at home when Appellant arrived. When Robertson returned home, she found Appellant at the top of the stairs. Robertson proceeded to describe to Officer Moore how Appellant pushed her onto the floor of their child's bedroom, pulled out her hair, then punched and kicked her. Robertson tried to flee, but Appellant caught her at the door and pushed her back into the house. Another struggle ensued in the back room of the house. Officer Moore found evidence at the scene which was consistent with Robertson's account of the events of the evening. Officer Moore also found Robertson's behavior to be consistent with victims of domestic abuse.

{¶19} Robertson testified, when she arrived home on March 19, 2019, after visiting a friend, she walked upstairs to find Appellant waiting. Appellant pushed her into their daughter's room, shoved her against the wall, and pulled her by her hair, ripping out a chunk of her hair. Robertson attempted to run out the back door, but Appellant caught her and pulled her into the living room. Appellant proceeded to kick her in the face and head and hit and punch her. Robertson also described how Appellant choked her until she blacked out.

{¶20} In his Brief to this Court, Appellant also questions why the officers would allow Appellant to leave if they had "any reasonable belief" Robertson's story was true. Robertson initially told the officers she had fallen. Robertson only admitted the truth after the officers permitted Appellant to leave the residence. The officers' decision to let

Appellant leave with his sister was made prior to Robertson's revelation; therefore, was not an indication of whether the officers believed Robertson.

{¶21} Upon review of the evidence as set forth in the Statement of the Case and Facts, supra, as well as all of the testimony and evidence presented at trial, we find Appellant's conviction of domestic violence was not against the manifest weight and was based upon sufficient evidence.

{¶22} With respect to the charge of unlawful restraint, we find the jury's acquittal on that offense was not inconsistent with the jury's finding Appellant guilty of domestic violence. It is well settled that seeming inconsistency between verdicts on two different charges is not a basis for reversal. See, *State v. Everett*, 1st Dist. Hamilton No. C-140275, 2015-Ohio-5273, 2015 WL 9258094, ¶ 18. See, also, *State v. Gapen*, 104 Ohio St.3d 358, 2004-Ohio-6548, 819 N.E.2d 1047, ¶ 138. "A verdict responding to a designated count will be construed in the light of the count designated, and no other." *Browning v. State*, 120 Ohio St. 62, 165 N.E. 566 (1929), paragraph four of the syllabus. "The several counts of an indictment containing more than one count are not interdependent and an inconsistency in a verdict does not arise out of inconsistent responses to different counts, but only arises out of inconsistent responses to the same count." *State v. Lovejoy*, 79 Ohio St.3d 440, 683 N.E.2d 1112 (1997), paragraph one of syllabus.

{¶23} We find where, as here, the inconsistent responses are to different counts, they do not create an inconsistency in the verdicts.

{¶24} Appellant's sole assignment of error is overruled.

{¶25} The judgment of the Canton Municipal Court is affirmed.

By: Hoffman, P.J.

Wise, John, J. and

Wise, Earle, J. concur

