

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Nos. 11AP-716
	:	and 11AP-766
v.	:	(C.P.C. No. 10CR-7577)
	:	
Terry L. Petty, Jr.,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 29, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Christopher F. Cowan, for appellant.

APPEALS from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶ 1} Defendant-appellant, Terry L. Petty, Jr., appeals from a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to jury verdict, of one count of felonious assault, in violation of R.C. 2903.11. Because: (1) defendant cannot demonstrate plain error from any alleged defect in the jury instructions, (2) defendant was not denied the effective assistance of counsel, and (3) sufficient evidence and the manifest weight of the evidence support defendant's conviction, we affirm.

I. Facts and Procedural History

{¶ 2} On December 30, 2010, a Franklin County Grand Jury indicted defendant on one count of kidnapping in violation of R.C. 2905.01 and one count of felonious assault in violation of R.C. 2903.11. The same indictment charged Malik Chambers with the same

offenses, both with repeat violent offender specifications. The charges arose out of an incident on the evening of December 21, 2010 in which defendant and Chambers allegedly hit, kicked, and choked the female victim inside a hotel room on the west side of Columbus.

{¶ 3} According to the state's evidence, Chambers and the victim earlier in the day had been playing pool and drinking at the bar attached to the Village Inn hotel on South High Street. The two were romantically involved and were staying at the hotel so that Chambers could sell drugs from there. While at the bar, Chambers received a call from defendant, who sold drugs for Chambers in return for crack cocaine. When he completed the call, Chambers told the victim they needed to go to a Knights Inn hotel on the west side of town to drop off more drugs with defendant. By the time they left the Village Inn, the victim had taken heroin, and Chambers had taken painkillers and cocaine, all in addition to their drinking alcohol.

{¶ 4} At the Knights Inn, Chambers and the victim joined defendant in his hotel room. Soon after the couple's arrival, defendant accused the victim of cheating on Chambers. Chambers and defendant hit the victim "at the same time" in "the face and the upper part of the body." (Tr. 19, 125.) After the two men backed her into a corner, punching her in the face, head and body, defendant picked up the victim from where she had collapsed on the ground and put her "in a choke hold with his arm around her throat." (Tr. 125.) Defendant "more than one time put [the victim] to sleep by choking," and she "woke up in the bathtub with [a] cold shower running." (Tr. 16.)

{¶ 5} At trial, the victim recalled being kicked in the face after the running shower, but did not know who kicked her. She passed out again and awoke on the bed, where "they continued to beat" her. (Tr. 16.) After some time, Chambers and defendant decided to rent a new room at the Knights Inn since "[t]hey were scared somebody was going to call the police because [the victim] was screaming." (Tr. 53.) Defendant left and returned with the keys to a room on the other side of the hotel.

{¶ 6} In the new room, Chambers continued to hit the victim and choked her until she passed out again. When the victim regained consciousness, she heard defendant "talking about who was going to go to the motel, the other motel, to get the guns and stuff." (Tr. 21.) Defendant then "went to the bathroom and crept up behind [the victim]

and hit [her] on the side of [her] face." (Tr. 21, 129.) Chambers testified "[s]he got put to sleep that time. She was laying back on the bed shaking." (Tr. 129.) The victim stated that the next thing she remembered was defendant's taking Chambers' car keys and leaving.

{¶ 7} Once defendant was gone, the victim attempted to flee, but Chambers overpowered her; she "eventually gave up and let him drag [her] back in the hotel." (Tr. 17.) She and Chambers lay down on the hotel bed, and eventually Chambers fell asleep. The victim finally escaped the room around 4:00 a.m. and flagged Columbus Police Officer Kevin Singleton in a passing police car he was driving, and he called an ambulance that transported the victim to Mount Carmel West Hospital.

{¶ 8} The victim initially gave police a false name, but Detective Amy Welsh learned her real name after speaking with Chambers. When Detective Welsh confronted her at the hospital, the victim explained she was afraid to give her real name because of an outstanding misdemeanor warrant. Detective Welsh later testified that, except for the false name, the victim "was very forthright with a lot of the information." (Tr. 91.) During their meeting, the victim "immediately" identified both Chambers and defendant as her assailants from two separate photo arrays the detective supplied. (State's exhibit No. 19(a).)

{¶ 9} Based on the victim's account, Columbus police found Chambers in the second Knights Inn room and arrested him. The victim also informed the officers that defendant left the hotel in Chambers' maroon Chevy Caprice but was supposed to return. Columbus Police Officer Cory Canter drove through the Knights Inn parking lot looking for the Caprice; he located the car "parked deep behind two other cars," with the vehicle's bumper "between the sidewalk like he was hiding between two other cars." (Tr. 86-87.) At first, Officer Canter did not see anyone in the vehicle. As he walked around the back, the officer discovered defendant "leaning over like he would be reaching for something out of the glove box. He was clear down laying on top of the seat." (Tr. 88.) Officer Canter arrested defendant. Police did not find any weapons in the car or in defendant's possession.

{¶ 10} Although the grand jury indicted Chambers and defendant together, Chambers entered into a plea bargain with the state in exchange for testifying against defendant. On June 21, 2011, defendant's jury trial for kidnapping and felonious assault

commenced. After the state concluded its case-in-chief, defendant rested without calling any witnesses and moved for judgment of acquittal pursuant to Crim.R. 29. The trial court denied the motion. The jury returned a verdict on June 23, 2011, finding defendant guilty of felonious assault but not guilty of kidnapping. At sentencing, the court imposed a seven-year term of imprisonment with five years of post-release control.

{¶ 11} Defendant filed a pro se notice of appeal on August 25, 2011 and a second notice of appeal, along with a motion for leave to file delayed appeal, on September 8, 2011, which this court granted.

II. Assignments of Error

{¶ 12} Defendant assigns the following errors:

FIRST ASSIGNMENT OF ERROR:

The trial court committed reversible plain error when it failed to instruct the jury on "cause," an essential element of felonious assault, in violation of Petty's rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 5, 10 and 16 of the Ohio Constitution.

SECOND ASSIGNMENT OF ERROR:

Defense counsel was ineffective in failing to object to the trial court's omission of an instruction to the jury on "cause", an essential element of the offense of felonious assault, in violation of Petty's rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 5, 10 and 16 of the Ohio Constitution.

THIRD ASSIGNMENT OF ERROR

Petty's felonious assault conviction is against the manifest weight of the evidence.

FOURTH ASSIGNMENT OF ERROR

The evidence introduced at trial is legally insufficient to support Petty's felonious assault conviction.

III. First Assignment of Error - Jury Instructions

{¶ 13} Defendant's first assignment of error contends the trial court committed plain error by failing to instruct the jury on "the meaning of the term 'cause', or the fact that the same is an essential element of the offense." (Appellant's brief, at 3.)

{¶ 14} Before closing arguments, the court instructed the jury on the felonious assault charge stating, "[b]efore you can find the defendant guilty of felonious assault, you must find beyond a reasonable doubt * * * the defendant knowingly caused serious physical harm" to the victim. (Tr. 180.) The court further defined "knowingly" and "serious physical harm," neither of which defendant disputes.

{¶ 15} Because defendant did not request an instruction defining "cause" and did not object when the trial court's instructions omitted it, he has waived all but plain error. *State v. Walburg*, 10th Dist. No. 10AP-1087, 2011-Ohio-4762, ¶ 46. Crim.R. 52(B) places "three limits on reviewing courts for correcting plain error: the trial court must have deviated from the legal rule, the deviation must be a plain, or obvious, defect in the proceedings, and the deviation must have affected substantial rights." *State v. Zachery*, 10th Dist. No. 08AP-451, 2009-Ohio-1180, ¶ 8. Courts are to notice plain error "only to prevent a manifest miscarriage of justice." *Id.*, citing *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. The burden of demonstrating plain error is on the party asserting it, and a reversal is warranted only if the party can prove that the outcome "clearly would have been different absent the error." *Id.*, citing *State v. Hill*, 92 Ohio St.3d 191, 203 (2001).

{¶ 16} "Common words shall be read in context and defined according to common usage." *State v. Mitchell*, 6th Dist. No. L-92-227 (Mar. 31, 1995), citing R.C. 1.42. "Absent some special meaning, no specific definition is necessary in instructions." *Id.* See also *State v. Johnson*, 8th Dist. No. 80436, 2002-Ohio-7057, ¶ 74 (stating "[i]t is well established that terms of common usage need not be defined for the jury"), citing *State v. Gross*, 97 Ohio St.3d 121, 2002-Ohio-5524, ¶ 106. Moreover, "[w]e presume that the jury can understand phrases expressed in plain English or that the jury will inquire as to the meaning of the phrase." *State v. Brooks*, 176 Ohio App.3d 210, 2008-Ohio-1726, ¶ 29 (10th Dist.). Accordingly, if a " 'term is one of common usage and is actually used in that sense, the failure to define the term does not mandate a reversal.' " *Walburg* at ¶ 48, quoting *State v. Watkins*, 10th Dist. No. 01AP-1376, 2002-Ohio-5080, ¶ 39.

{¶ 17} Defendant contends "cause" is a "loaded" term the court should have defined so as to clarify its "peculiar legal significance," but he fails to articulate how the meaning of the word in the felonious assault statute differs from its typical meaning. (Appellant's brief, at 20.) To the contrary, the felonious assault statute employs "cause" in its ordinary sense, with the result that the trial court did not commit plain error. *See State v. Simmons*, 7th Dist. No. 06 JE 4, 2007-Ohio-1570, ¶ 92 (concluding trial court did not err in omitting a definition of cause in its jury instructions setting forth the elements of corrupting another with drugs as "terms of common usage need not be defined for the jury," and the "use of the word cause here is very common"); *State v. Jones*, 7th Dist. No. 05 MA 218, 2007-Ohio-3183, ¶ 40 (holding that when cause is used in the typical manner, it is not a word with "special meaning" so that the trial court's failure to define cause in its jury instruction on attempted murder was not plain error).

{¶ 18} Even if the trial court should have instructed on the definition of cause, the failure only rises to the level of plain error when the defendant can demonstrate the outcome of the trial clearly would have been different but for the allegedly erroneous instruction. *State v. Payne*, 10th Dist. No. 02AP-723, 2003-Ohio-4891, ¶ 95; *Zachary*. Defendant does not explain how the lack of further instruction affected the jury's decision. Although he argues the court's omitting the definition means "[t]here is no reasonable assurance that the jury did not speculate about the extent of [defendant's] responsibility for the actions of his co-defendant," the state presented competent, credible evidence that defendant actively participated, in concert with Chambers and independently of him, in harming the victim. (Appellant's reply brief, at 8.) In light of such evidence, defendant fails to demonstrate that the jury only found him guilty because it harbored some misconception as to the meaning of "cause."

{¶ 19} Accordingly, defendant's first assignment of error is overruled.

IV. Second Assignment of Error - Ineffective Assistance of Counsel

{¶ 20} Defendant's second assignment of error asserts his trial counsel rendered ineffective assistance in failing to object when the trial court omitted the definition of cause from the jury instructions. To prove ineffective assistance of counsel, defendant must demonstrate that his counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Thus, defendant must establish his counsel

made errors so serious that counsel was not functioning as the "counsel" the Sixth Amendment guarantees. *Id.* Defendant also must demonstrate that his counsel's deficient performance prejudiced him, establishing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable. *Id.* Unless defendant demonstrates both, the conviction cannot be said to have resulted from a breakdown in the adversary process that renders the result unreliable. *Id.*

{¶ 21} Here, defendant "recasts one of his substantive propositions of law into an ineffective-assistance claim." *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶ 233. Because the court correctly and adequately instructed the jury, defense counsel's failure to object does not render his assistance ineffective. Moreover, even if the definition of cause had been appropriate, any error in failing to give that instruction did not prejudice defendant to the point that the outcome of the trial likely would have been different. The jury's determination hinged more on the credibility of the witnesses than issues of causation.

{¶ 22} Accordingly, defendant's contention that defense counsel was ineffective in failing to object is unpersuasive. Defendant's second assignment of error is overruled.

V. Third and Fourth Assignments of Error - Sufficiency and Manifest Weight of the Evidence

{¶ 23} Defendant's third and fourth assignments of error challenge the weight and sufficiency of the evidence. A challenge to the sufficiency of the evidence involves the prosecution's burden of production, while a challenge to the weight of the evidence involves the prosecution's burden of persuasion. *State v. Dodson*, 10th Dist. No. 10AP-603, 2011-Ohio-1092, ¶ 17.

A. Sufficiency of the Evidence

{¶ 24} Defendant's fourth assignment of error contends the evidence that implicates him in the assault and establishes the seriousness of the victim's injury is insufficient.

{¶ 25} Whether evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Sufficiency is a test of adequacy; the evidence is construed in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the offense

proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, superseded by constitutional amendment on other grounds in *State v. Smith*, 80 Ohio St.3d 89 (1997). When reviewing the sufficiency of the evidence, the court does not weigh the credibility of the witnesses. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79.

{¶ 26} R.C. 2903.11(A)(1) governs the offense of felonious assault and states that "[n]o person shall knowingly * * * [c]ause serious physical harm to another." *See, e.g.*, R.C. 2901.22(B). R.C. 2901.01(A)(5), in turn, defines "serious physical harm" to mean, as relevant here, any physical harm that (1) "involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity," (2) "involves some permanent disfigurement or that involves some temporary, serious disfigurement," or (3) "involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain." R.C. 2901.01(A)(5)(c), (d) and (e).

{¶ 27} Defendant first contends the evidence is insufficient to tie him to the assault, as the prosecution presented neither physical evidence, such as "redness, discoloration or swelling" on his hands and knuckles, nor "skin samples from nail filings from [the victim]," evidence that should have been presented were he involved. (Appellant's brief, at 27.) Contrary to defendant's contentions, the state presented sufficient evidence, albeit not of the nature defendant suggests, because the testimony of the state's witnesses implicated defendant as the second assailant.

{¶ 28} The victim told Officer Singleton immediately after the incident that defendant was one of her attackers. She named defendant again in her conversation with Detective Welsh, picked him out of a photo array at the hospital later that day, and identified defendant at trial. In addition, Chambers testified that he and defendant both assaulted the victim. In an offer of circumstantial evidence, Officer Canter testified he came upon defendant lying across the front seat of Chambers' car at the scene "with his head on the passenger's seat," as if attempting to avoid detection. (Tr. 87.) *See State v. Powell*, 2d Dist. No. 19685, 2003-Ohio-4430, ¶ 36 (holding defendant's suspicious behavior both during and after the incident to be indicative of his guilt). Lastly, the absence of physical evidence of the type defendant notes is not unusual, given the testimony relating the circumstances of the attack. At best, the absence of such physical

evidence would raise a credibility issue for the jury in a manifest weight of the evidence argument. Under a sufficiency analysis, the state's evidence here, if believed, is sufficient to implicate defendant in the assault.

{¶ 29} Defendant next argues the state failed to establish the victim suffered serious physical harm, because it offered no medical evidence to document the victim's injuries "or to substantiate that the same were serious." (Appellant's brief, at 27.) The record, however, contradicts defendant.

{¶ 30} According to the evidence, the responding officers called an ambulance that transported the victim to Mount Carmel West Hospital, where doctors x-rayed and scanned her eye, chest and ankle. The victim testified she was informed she had a fractured eye socket and cracked ribs, though she admitted she was supposed to make an appointment for a re-examination and failed to do so. *See State v. Drew*, 10th Dist. No. 07AP-467, 2008-Ohio-2797, ¶ 61, citing *State v. McCoy*, 10th Dist. No. 99AP-1048 (Sept. 7, 2000) (noting that "[w]hen a victim's injuries are serious enough to cause [her] to seek medical treatment, the jury may infer that the victim suffered serious physical harm"); *see also State v. Scott*, 8th Dist. No. 81235, 2003-Ohio-5374, ¶ 7, quoting *State v. Davis*, 8th Dist. No. 81170, 2002-Ohio-7068 (noting "a trial court does not err in finding serious physical harm where the evidence demonstrates the victim sustained injuries necessitating medical treatment").

{¶ 31} The victim further testified that in addition to the injury to her eye socket, her "eye was swollen shut," her "mouth was swollen," she "had a busted lip * * * and two black eyes for weeks." (Tr. 26.) The state supported her testimony with photographs documenting the victim's visible injuries. With the photographs, the victim identified injuries to her right eye that Chambers and defendant caused and a bite mark defendant alone caused.

{¶ 32} Defendant acknowledges the noted evidence but contends the state failed to "connect the injuries that [the victim] received to any blows that [defendant] may have struck." (Appellant's brief, at 27.) In that regard, the state presented evidence that defendant and Chambers acted in concert to beat the victim. The victim testified the pair hit her "pretty much * * * at the same time" and "both beat [her] up." (Tr. 19, 49.) When asked directly whether she was "positive it was both of them," the victim answered, "Yes."

(Tr. 31.) Under such circumstances, it is "reasonable for the jury to conclude beyond a reasonable doubt that defendant and [a second assailant] were acting in concert with one another and, as such, are fully responsible for any harm caused by the other." *State v. Edwards*, 83 Ohio App.3d 357, 362 (10th Dist.1992). See also *State v. Seals*, 2d Dist. No. 04CA0063, 2005-Ohio-4837, ¶ 18 (holding that, where the victims were struck by multiple defendants and "it [is] virtually impossible to determine which blow delivered by which Defendant had caused the serious physical harm[,] * * * the totality of the blows delivered by these Defendants that resulted in the serious physical harm"); *In re Miller*, 11th Dist. No. 2000-A-0014, 2002-Ohio-3360, ¶ 30 (holding that, where "[i]t is impossible to sort out which blow to the victim's head caused what amount of damage," the assailants "all contributed jointly in the harm the victim suffered").

{¶ 33} Even absent a complicity instruction, however, the state presented testimony that defendant alone caused the victim temporary, substantial incapacity constituting serious physical harm as defined in R.C. 2901.01(A)(5)(c). The victim testified defendant choked her to the point of unconsciousness "more than one time." (Tr. 16.) She recalled that she "woke up in the bathtub" where she had "passed out. That was from Terry." (Tr. 46.) Chambers corroborated the victim's statements that defendant choked her until she passed out. (Tr. 129-30.)

{¶ 34} A loss of consciousness, "irrespective of its duration," satisfies the requirements for a temporary, substantial incapacity. *State v. Sales*, 9th Dist. No. 25036, 2011-Ohio-2505, ¶ 19. See also *State v. Swank*, 10th Dist. No. 81AP-749 (Feb. 23, 1982) (concluding the state presented sufficient evidence of serious physical harm in its credible evidence that the victim was "knocked temporarily unconscious after being struck and choked, and that her face was 'pretty well battered and bleeding and her eye required six stitches' "); *State v. Redwine*, 12th Dist. No. CA2006-08-011, 2007-Ohio-6413, ¶ 32 (concluding that "[l]osing consciousness as a result of an assault constitutes serious physical harm"); *State v. Booker*, 2d Dist. No. 22990, 2009-Ohio-1039, ¶ 16 (concluding "[t]emporary unconsciousness constitutes a temporary substantial incapacity, and therefore serious physical harm").

{¶ 35} The state thus presented sufficient evidence to allow a rational trier of fact to find, beyond a reasonable doubt, that defendant knowingly caused the victim serious physical harm. Accordingly, defendant's fourth assignment of error is overruled.

B. Manifest Weight

{¶ 36} Defendant's third assignment of error claims that the jury's verdict is against the manifest weight of the evidence. Defendant's argument primarily focuses on the victim's and Chambers' credibility as witnesses and the alleged inconsistencies in their testimony.

{¶ 37} A court's function when reviewing the weight of the evidence is to determine whether competent, credible evidence allows a reasonable trier of fact to conclude that the state established all of the essential elements of the offense beyond a reasonable doubt. *Thompkins* at 387; *State v. Getsy*, 84 Ohio St.3d 180, 193-94 (1998). To undertake such a review, the appellate court sits as a "thirteenth juror" and reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses, and determines whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). Under this standard of review, an appellate court's discretionary authority "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶ 38} Although an appellate court considers credibility in a manifest-weight review, the trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶ 58. Consequently, even though an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must also give great deference to the fact finder's determination of the witnesses' credibility. *Id.* To that end, the fact finder is free to believe all, part or none of the testimony of each witness appearing before it. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶

21. Mere disagreement over the credibility of witnesses is not sufficient reason to reverse a judgment. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 24.

{¶ 39} Defendant argues first that a reasonable juror could not find the victim's and Chambers' testimony credible because they both benefitted from relating a version of events that painted defendant as the principal assailant. According to defendant, Chambers benefitted because he received a plea bargain from the state in exchange for his testimony against defendant; the victim benefitted because she was in a relationship with Chambers.

{¶ 40} Nothing indicates the jury lost its way in assessing those considerations. The state and Chambers acknowledged the plea bargain and Chambers explained to the jury that in exchange for his agreement to testify "fully and truthfully" about the incident, he received a four-year sentence for felonious assault. (Tr. 121.) Likewise, at trial, defendant highlighted the ongoing relationship between the victim and Chambers, arguing to the jury that "by implicating [defendant], [the victim] provided Chambers with the ability to negotiate for a plea agreement and favorable treatment at sentencing." (Appellant's brief, at 30.) Accordingly, the jury knew the potential personal motivations of the witnesses, and the jury members were free to determine whether the witnesses' testimony was credible in light of their romantic ties and the consideration Chambers received for testifying. *See State v. Rankin*, 10th Dist. No. 10AP-1118, 2011-Ohio-5131, ¶ 30 (concluding the jury was free to assess a witness's credibility where the details of the witness's plea agreement were revealed); *see also State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 54-55, *discretionary appeal not allowed*, 125 Ohio St.3d 1416, 2010-Ohio-1893 (deferring to the trier of fact's credibility determinations even though "both witnesses had something personal to gain from their testimony").

{¶ 41} Nor are defendant's contentions persuasive insofar as he suggests the victim and Chambers are unreliable witnesses because of their criminal records and struggles with substance abuse. The jurors heard both witnesses' criminal histories and drug use and listened as the witnesses answered questions about these issues in their direct testimony and on cross-examination. The jury thus could properly weigh the information in determining how much credibility to give their testimony. *See State v. Smith*, 10th Dist. No. 11AP-512, 2011-Ohio-6730, ¶ 23 (concluding the record presented "no reason to

overturn the jury's determination as to [the witness's] credibility" where it "was made aware of [the witness's] prior convictions, probation violations, and drug use").

{¶ 42} Defendant next points to a number of alleged inconsistencies between the victim's and Chambers' testimony. A judgment is not against the manifest weight of the evidence simply because the record contains inconsistent evidence. *State v. Ragland*, 10th Dist. No. 04AP-829, 2005-Ohio-4639, ¶ 35. Although the two witnesses' accounts may have differed on various details, their testimony was substantially consistent on the central issue of defendant's involvement in the assault, as both attested to defendant's repeatedly choking the victim to the point of unconsciousness and his repeatedly hitting and kicking the victim.

{¶ 43} Defendant also argues inconsistencies between the victim's testimony and her previous statements to police detract from her credibility. The jury's responsibility, however, includes determining "'where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.'" *Jennings* at ¶ 56, citing *State v. Haynes*, 10th Dist. No. 03AP-1134, 2005-Ohio-256, ¶ 24, quoting *State v. Lakes*, 120 Ohio App. 213, 217 (1964). In addition, as with the discrepancies between the victim's and Chambers' accounts of events, the alleged inconsistencies in the victim's statements do not pertain to the salient details of the assault itself.

{¶ 44} Although the victim's and Chambers' testimony were not entirely consistent, the jury was charged with the responsibility to determine the credibility and weight of the evidence. A juror reasonably could believe either the victim's or Chambers' testimony and ignore contradictory statements or, alternatively, could have disregarded any internally contradicted testimony and still concluded the evidence proves beyond a reasonable doubt that defendant assaulted the victim based upon the remaining, uncontradicted testimony from Chambers and the victim, the evidence regarding the victim's injuries, and the testimony of Detective Welsh, Officer Singleton, and Officer Canter. The jury was within its province to weigh the testimony as it found appropriate; this is not the exceptional case where the jury lost its way.

{¶ 45} Because competent, credible evidence supports the jury's verdict finding defendant guilty of felonious assault, defendant's third assignment of error is overruled.

VI. Disposition

{¶ 46} Having overruled defendant's four assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
