

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-12-028
	:	<u>OPINION</u>
- vs -	:	8/20/2012
	:	
PAUL B. GATEWOOD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 11 CRI 00222

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PIPER, J.

{¶ 1} Defendant-appellant, Paul Gatewood, appeals his convictions and sentence in the Fayette County Court of Common Pleas for robbery and domestic violence.

{¶ 2} According to testimony elicited at trial, Kerri Black, Brett Noel and Shane Langley met at Woody's Bar in Washington Courthouse, Ohio during the late-night hours of September 10, 2011. There, they drank alcohol and socialized with friends. Once the bar

closed, the three decided to return to Black's apartment, where they continued to drink. After drinking "a few more beers," Black went to bed in her bedroom.

{¶ 3} Sometime later, Langley used the restroom upstairs and decided that it was time to go home because Noel had told him that other people were coming to the apartment, and Langley did not feel comfortable with other people coming there. Langley checked his wallet and saw that he had three \$20 bills. He knew that a cab ride home would cost him most of the money he had. Langley then entered Black's bedroom and got into bed with her. Although Black told Langley that it "probably wasn't a good idea" that he was there, she did not ask him to leave. Langley and Black then fell asleep.

{¶ 4} Langley awoke when he felt someone punching his face. Langley identified the person punching him as Gatewood, and stated that Gatewood was screaming and yelling profanities at him. Gatewood asked Langley where his wallet was, and then rolled him over onto his stomach. The jury heard testimony that Gatewood took Langley's wallet from Langley's pocket and that Langley saw Gatewood going through the wallet. Langley also testified that he saw Gatewood begin to assault Black. Black awoke when Gatewood, who is the father of her child, "jerked" her from the bed, and began screaming at her. At that point, Gatewood hit Black in the jaw and drug her across the floor from the bedroom into the hallway.

{¶ 5} Langley left Black's bedroom approximately five minutes after he and Black were assaulted, and went downstairs where he found his wallet with its contents "strewn out" across the floor. However, the \$60 was missing. Langley began asking the other people in the house where his money was, but no one returned the cash. At that point, police officers came into the apartment to investigate the scene.

{¶ 6} Deputy Sheriff Charles Kyle responded to Black's apartment and found Gatewood, Langley, Black, and Noel inside, along with two other people identified as Lance

Tyree and Guy Campbell. Deputy Kyle testified that Langley had blood on his face around his nose, and that Gatewood told him that a person named Mike assaulted everyone and ran out the door. None of the other people in the apartment corroborated Gatewood's statement regarding an assailant named Mike, and no other person was seen leaving the apartment before or after the police arrived. Deputy Kyle also testified that he recovered three \$20 bills from Gatewood's pocket.

{¶ 7} Gatewood was charged with single counts of theft, robbery, assault, and domestic violence. Gatewood pled not guilty, and the matter proceeded to trial. The jury heard testimony from Black, Langley, and Deputy Kyle during the state's case-in-chief. Gatewood presented the testimony of Noel, and testimony from another man who stated that he purchased a moped from Gatewood shortly before the incident. The jury found Gatewood guilty of robbery, assault, and domestic violence, but not guilty of theft. The trial court merged the assault and robbery charges, and sentenced Gatewood to three years imprisonment on the robbery and domestic violence charges, to be served consecutively. Gatewood now appeals his convictions and sentence, raising the following assignments of error.

{¶ 8} Assignment of Error No. 1:

{¶ 9} THE TRIAL COURT VIOLATED THE APPELLANT'S RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF OHIO BY SUSTAINING A CONVICTION THAT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WITHOUT SUFFICIENT EVIDENCE.

{¶ 10} Gatewood argues in his first assignment of error that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence.

{¶ 11} Manifest weight and sufficiency of the evidence are quantitatively and qualitatively different legal concepts. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, 12th Dist. No. CA2006-01-007, 2007-Ohio-2298. "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 (1991), paragraph two of the syllabus, superseded on other grounds.

{¶ 12} While the test for sufficiency requires an appellate court to determine whether the state has met its burden of production at trial, a manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other. *Wilson*, 2007-Ohio-2298.

In determining whether a conviction is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts in the evidence, the trier of fact 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. Cummings, 12th Dist. No. 2006-09-224, 2007-Ohio-4970, ¶ 12.

{¶ 13} While appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, "these issues are primarily matters for the trier of fact to decide since the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence." *State v. Walker*, 12th Dist. No. CA2006-04-085, 2007-Ohio-911, ¶ 26. Therefore, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances to correct a manifest miscarriage of justice, and only when the evidence presented at trial weighs heavily in favor of acquittal. *Thompkins*, 78 Ohio St.3d at 387.

{¶ 14} "Because sufficiency is required to take a case to the jury, a finding that a

conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency. Thus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Wilson*, 2007-Ohio-2298 at ¶ 35, citing *State v. Lombardi*, 9th Dist. No. 22435, 2005-Ohio-4942, fn. 4.

{¶ 15} Gatewood was convicted of robbery in violation of R.C. 2911.02(A)(3), which states that "no person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following: [u]se or threaten the immediate use of force against another." R.C. 2913.02 prohibits theft offenses, and states that "no person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services * * *." According to R.C. 2913.01(C),

(C) "Deprive" means to do any of the following:

(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) Dispose of property so as to make it unlikely that the owner will recover it;

(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

{¶ 16} The jury heard evidence that Langley was familiar with Gatewood prior to the night in question, and positively identified Gatewood as the man who punched him in the face and took his wallet. Gatewood took Langley's wallet and did not return it to him, and instead, disposed of it downstairs after strewing the contents around the floor. Langley, therefore, had to search for the contents of his wallet, and ultimately never recovered the \$60 that was in his wallet.

{¶ 17} After viewing this evidence in a light most favorable to the prosecution, the jury

could have found the essential elements of robbery proven beyond a reasonable doubt. Moreover, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice that Gatewood's conviction for robbery must be reversed and a new trial ordered.

{¶ 18} Gatewood was also convicted of domestic violence in violation of R.C. 2919.25, which states that, "no person shall knowingly cause or attempt to cause physical harm to a family or household member."¹

{¶ 19} According to R.C. 2919.25 (F)(1)(b) a "family member" includes "the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent." The jury heard evidence that Gatewood is the father of Black's child, and thus she constitutes a member of Gatewood's family according to the statute.

{¶ 20} The jury also heard evidence that on the night in question, Gatewood caused physical harm to Black. Gatewood entered Black's bedroom, "jerked" her from the bed and dragged her across the floor. Black also testified that Gatewood punched her on the jaw. Black positively identified Gatewood as her attacker. Langley testified that he was familiar with Gatewood, and that he saw Gatewood dragging Black from the bed and across the floor. The jury saw photographs of Black and her injuries that were taken soon after the incident, in which she had bruises and scratches as a result of being assaulted.

{¶ 21} After viewing this evidence in a light most favorable to the prosecution, the jury could have found the essential elements of domestic violence proven beyond a reasonable doubt. Furthermore, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice that Gatewood's conviction for domestic violence must be

1. The charge was classified as a third-degree felony according to R.C. 2919.25(D)(4) because Gatewood had been convicted of two or more offenses of domestic violence prior to the night in question. During the trial, Gatewood stipulated to his prior convictions for domestic violence.

reversed and a new trial ordered.

{¶ 22} Gatewood also generally challenges the credibility of both Langley and Black, as both admitted to being intoxicated on the night in question. However, both also testified that they were not so intoxicated that they could not appreciate what was happening during the incident. Langley and Black's credibility are primarily matters for the jury to decide, as the jury was in the best position to judge the credibility of the witnesses and the weight to be given the evidence. By nature of the jury's verdict, it found Langley and Black's testimony credible, and we will not disturb the jury's determination where such did not create a manifest miscarriage of justice.

{¶ 23} Having found that Gatewood's convictions for robbery and domestic violence were supported by sufficient evidence and were not otherwise against the manifest weight of the evidence, his first assignment of error is overruled.

{¶ 24} Assignment of Error No. 2:

{¶ 25} THE TRIAL COURT ERRED BY ACCEPTING INCONSISTENT VERDICTS.

{¶ 26} Gatewood argues in his second assignment of error that the jury rendered inconsistent verdicts because it found him guilty of robbery, but not guilty of theft.

{¶ 27} "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. Brown*, 12 Ohio St.3d 147 (1984), syllabus; *see also State v. Davis*, 12th Dist. No. CA2010-06-143, 2011-Ohio-2207, ¶ 37. "Each count in an indictment charges a distinct offense and is independent of all other counts; a jury's decision as to one count is independent of and unaffected by the jury's finding on another count." *State v. Cope*, 12th Dist. No. CA2009-11-285, 2010-Ohio-6430, ¶ 69.

{¶ 28} The Ohio Supreme Court, relying on precedent from the United States

Supreme Court, has found that

a verdict that convicts a defendant of one crime and acquits him of another, when the first crime requires proof of the second, may not be disturbed merely because the two findings are irreconcilable. "Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment." * * * "[I]nconsistent verdicts—even verdicts that acquit on a predicate offense while convicting on the compound offense—should not necessarily be interpreted as a windfall for the Government at the defendant's expense." *Powell*, 469 U.S. at 65, 105 S.Ct. 471, 83 L.Ed.2d 461. As *Powell* notes, "[i]t is equally possible that the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the lesser offense." *Id.* (Some internal citations omitted.)

State v. Gardner, 118 Ohio St.3d 420, 2008-Ohio-2787, ¶ 81.

{¶ 29} While Gatewood is correct in asserting that a robbery requires that the defendant use or threaten force while attempting or committing a theft offense, he incorrectly asserts that the jury's not-guilty verdict on the theft offense precludes a guilty finding on the robbery charge. To the contrary, the indictment charged Gatewood with separate counts of robbery, domestic violence, assault, and theft.

{¶ 30} The robbery charge in the indictment did not include what specific theft offense the jury was to consider when determining whether Gatewood was guilty of robbery. The jury heard evidence that Langley's wallet and \$60 were taken from him, and either could have formed the basis for the theft offense within the robbery charge. The jury found Gatewood not guilty of the theft offense as it related specifically to the \$60, but that finding did not foreclose the jury from finding that Gatewood deprived Langley of his wallet and used force to do so.

{¶ 31} Thus, the jury was not required to first find Gatewood guilty of the separate theft offense as charged in the indictment in order to find him guilty of robbery. Additionally, while we are not privy to the jury's deliberations, a robbery could also have been proven if the jury

believed the evidence was sufficient beyond a reasonable doubt to establish that Gatewood attempted to take Langley's money or wallet.

{¶ 32} Having found that Gatewood's convictions were not inconsistent, Gatewood's second assignment of error is overruled.

{¶ 33} Judgment affirmed.

POWELL, P.J., and HUTZEL, J., concur.