

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
AARON JOHNSON	:	Case No. 2015CA00003
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2014-CR-1563
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	August 17, 2015
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APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
Prosecuting Attorney

By: RENEE M. WATSON
Assistant Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, OH 44702-1413

For Defendant-Appellant

BRIAN A. SMITH
122 Central Plaza, North
Suite 101
Canton, OH 44702

Baldwin, J.

{¶1} Defendant-appellant Aaron Lecory Johnson appeals his conviction and sentence from the Stark County Court of Common Pleas on one count of felonious assault. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 27, 2014, the Stark County Grand Jury indicted appellant on two counts of felonious assault in violation of R.C. 2903.11(A)(1), felonies of the second degree. At his arraignment on October 31, 2014, appellant pleaded not guilty to the charges.

{¶3} Subsequently, a jury trial commenced on December 9, 2014. The following testimony was adduced at trial.

{¶4} Joane Dabney testified that in August of 2014, appellant, who lived with David Garrett, was her boyfriend. She testified that during the late evening hours of August 15, 2014 into the early morning hours of August 16, 2014, she was at Garrett's residence at 1123 Second Street, Northwest in Canton, Ohio. Dabney, who had walked to Garrett's residence, testified that she was assaulted on her way to appellant's house. According to Dabney:

{¶5} "There is three girls and I think a guy or a girl who looked like a guy, I don't know, and we were walking down the street. They asked me a couple questions. They asked me if they could use paraphernalia to smoke with, and I told them no, and they already had a problem with me before that out on the streets. So they just started beating me up." Trial Transcript at 111.

{¶6} Dabney testified that the beating occurred outside at the top of Second Street and that she provided descriptions of the individuals to law enforcement because she did not know their names.

{¶7} According to Dabney, appellant came outside during the beating and pulled the individuals off of her. She then banged on Garrett's door after banging on Tara Ramer's door and getting no response and Garrett let her inside his house. Dabney testified that she used someone else's phone to call the police and that she was bleeding pretty badly. When questioned, Dabney admitted that she did not give EMS, the police and the hospital her real name, but gave them her sister's name, which was Katrina Dabney, because she thought that there was a warrant out for her. Dabney had injuries to her face and had six or eight stitches on her lip and bruises elsewhere. She testified that appellant was with her at the hospital the whole time.

{¶8} Dabney was questioned about the narrative that she gave to the hospital about what had happened. In the narrative, Dabney indicated that three females had assaulted her but no mention was made about a male being involved. The narrative also stated that Dabney had been robbed. When Dabney was asked if she had been robbed, she testified that they had stolen her "pipe and stuff." Trial Transcript at 126. Dabney denied telling Ems that appellant had assaulted her and denied also telling EMS that she had been assaulted by two females and one male. She testified that the documents from EMS were not correct and that appellant had not assaulted her.

{¶9} Dabney's 911 call was played for the jury. Dabney testified that appellant was with her when she made the call. She admitted that she stated in the call that two girls had assaulted her, but testified that there were three altogether. Dabney testified

that if other individuals testified at trial that she was assaulted in the residence by appellant, they would be lying because appellant had never put his hand on her and had tried to help her.

{¶10} On cross-examination, Dabney testified that she had been dating appellant for about a year but that she did not live with him. She testified that appellant was living with David Garrett and that she stayed overnight at Garrett's house a few times a week. Dabney further testified that she had had contact in the past with the three women and man who had assaulted her and had done drugs with them before. She testified that she was trying to defend herself during the assault and that was why her hand was injured. After the assault, Dabney, who had blood all over her face and clothing, was upset and broke at least one plate. Dabney testified that appellant had never assaulted her and testified that she had never called the police about him assaulting her. She also testified that she did not remember talking to Tara Ramer that night.

{¶11} Dabney also testified that when she was in the hospital, the police came and told her that appellant was in custody for the assault, but that she told them that appellant did not do it and "was the only one that did try to help me." Trial Transcript at 151. She agreed that there was a warrant out for her arrest on the night in question and testified that, for such reason, she used her sister's name.

{¶12} On redirect, Dabney testified that she did not remember seeing Tara Ramer that night, but that she thought that Ramer's boyfriend gave her Ramer's phone to call 911. Dabney agreed that she had previously testified that no one answered when she knocked on Ramer's door, but testified that she went back later and knocked again.

{¶13} The next witness to testify was David Garrett. Garrett testified that appellant had been staying with him a few weeks when the incident occurred and that appellant had a key to the residence. Appellant and Garrett had had a previous intimate relationship. Garrett testified that on August 16, 2014, he woke up after hearing fighting coming from the living room. He recognized the voices as belonging to Dabney and appellant. According to Garrett, the verbal argument escalated to a physical confrontation. Garrett testified that he observed appellant punch Dabney more than one time and that he hit her in the face, arms and upper body. He stated that Dabney was throwing things at appellant to try to get him to stop. According to Garrett, there was blood throughout his apartment.

{¶14} Garrett also testified that he saw appellant and Dabney when they first came into his apartment and that Dabney was uninjured at the time. He testified that Dabney went and woke up his neighbor, Tara Ramer, after her lip had been busted open and that Ramer then came down. Garrett testified that Dabney called the police from outside on the porch and that Ramer and appellant were with her when she made the call. Garrett testified that he told the police about what he had observed that night and showed them all of the blood in his residence. He also gave a written statement to the police. Garrett admitted that he was a convicted felon and was a registered sex offender. He testified that he never saw any third party hit, punch or attack Dabney other than appellant and that he did not lie to the police or in court.

{¶15} On cross-examination, Garrett testified that he did not talk to Dabney very much because she was not the “type of people that I really hang out with.” Trial Transcript at 187. He agreed that he was not happy about Dabney staying at his place

overnight and did not want her staying at his apartment. He testified that everything in his written statement was correct. While Garrett testified that he did not know how Dabney's lip got busted and that it might have been from a plate, he admitted that he did not see whether or not appellant had punched her in the face or the plate had fallen on her. He testified that he told the police in his written statement that Dabney was on the ground and a plate fell on her face because that was what appellant and Dabney had told him. He testified that he was trying to help Dabney out because appellant was assaulting her.

{¶16} The third witness to testify was Tara Ramer. Ramer testified that on the night of the incident, she awoke to someone banging on her door screaming for help. According to her, Dabney "just said, I told him to stop." Trial Transcript at 228. When she went to the door, she found Dabney leaking blood and her lip was detached. Dabney did not tell her what had happened. Ramer then went outside her apartment and walked into Garrett's apartment. She testified that Dabney called 911 using her own cell phone. Ramer testified that she spoke with appellant and that appellant said that Dabney "did this to herself." Trial Transcript at 233. She testified that appellant's hands were bruised and that he had a cut on his shoulder. Ramer further testified that Garrett's apartment "looked like a blood bath" and that Dabney never had told her that she had been jumped by anyone outside of the residence. Trial Transcript at 234.

{¶17} On cross-examination, Ramer testified that at the time of the incident, she had known appellant and Dabney only for approximately a week and that she had never spent any amount of time with Dabney. She testified that she stayed in touch with Garrett even though she had moved and that the two were friends. While Ramer, in her

written statement to police, stated that she was sleeping and woke up to arguing and fighting going on downstairs, she testified that the statement was “misworded” and that she woke up to the pounding on her door. Trial Transcript at 240.

{¶18} The final witness to testify at trial was Officer Andrew Russ of the Canton Police Department. Officer Russ testified that when he arrived at the scene with Officer Grant, the medics were treating Dabney in the ambulance. He testified that Dabney had told him that she had been jumped by three females and an unknown male and that appellant told him that he ran outside to try to help Dabney. The officer observed that appellant had visible cuts on his knuckles, but no photographs were taken of appellant’s cuts. Officer Russ testified that he observed a significant amount of blood throughout Garrett’s residence as well as broken items in the kitchen. Based on his observations, Officer Russ believed that the assault had occurred inside rather than outside. Appellant was taken into custody after the two witnesses pointed him out.

{¶19} Officer Russ and his partner then went to the hospital to talk to Dabney. While Officer Grant spoke to her, Officer Russ remained in the car with appellant. Because there were two very different versions of the events, Officer Russ’s sergeant advised them to release appellant pending further investigation.

{¶20} Photographs of the victim and the crime scene were admitted into evidence.

{¶21} At the conclusion of the evidence and the end of deliberations, the jury, on December 10, 2014, found appellant guilty of felonious assault. The remaining charge of felonious assault was dismissed. Pursuant to a Journal Entry filed on December 19, 2014, appellant was sentenced to seven years in prison.

{¶22} Appellant now raises the following assignments of error on appeal:

{¶23} APPELLANT’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶24} APPELLANT’S SENTENCE WAS NOT SUPPORTED BY THE RECORD.

I

{¶25} Appellant, in his first assignment of error, argues that his conviction for felonious assault was against the manifest weight of the evidence.

{¶26} 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*, 78 Ohio St.3d 380, 387, 1997–Ohio–52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983).

{¶27} Appellant was convicted of felonious assault in violation of R.C. 2903.11(A)(1), which provides:

{¶28} No person shall knowingly do either of the following:

{¶29} Cause serious physical harm to another or to another's unborn;..

{¶30} Appellant, in arguing that his conviction for felonious assault is against the manifest weight of the evidence, maintains that the testimony of all of the witnesses was not credible and was inconsistent. He further notes that the police failed to investigate Dabney's version of events.

{¶31} However, while there may have been inconsistencies in the testimony of Tara Ramer and David Garrett, the jury, as trier of fact, was in the best position to assess their credibility. The jury clearly found Garrett's testimony that he saw appellant punch Dabney in the face and body more than once and Ramer's testimony that Dabney told her that she told appellant "to stop" credible. In addition, as is stated above, there was testimony that there was blood all throughout Garrett's apartment and there was no sign of blood or struggle outside. Photographs of the apartment were admitted into evidence. Furthermore, Officer Russ testified that he observed cuts on appellant's knuckles. The physical evidence, therefore, was consistent with Garrett's testimony.

{¶32} We also note that Dabney's testimony itself was inconsistent. During her 911 call, Dabney stated that two females had attacked her. The ambulance records indicate that Dabney initially said that appellant had attacked her, but later said that she was assaulted by two females and one male. In her hospital records, no mention was made of a male being involved. Moreover, Dabney told Officer Russ that she did not know her attackers. However, at trial, she indicated that she had done drugs with them before and that they had a problem with her. Clearly, the jury did not find her version of events credible in light of the other evidence.

{¶33} Based on the foregoing, we cannot say that the jury lost its way in convicting appellant of felonious assault.

{¶34} Appellant's first assignment of error is, therefore, overruled.

II

{¶35} Appellant, in his second assignment of error, argues that his seven year sentence was not supported by the record.

{¶36} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, a plurality opinion, the Ohio Supreme Court established a two-step procedure for reviewing a felony sentence. The first step is to “examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Kalish* at ¶ 4. If this first step is satisfied, the second step requires the trial court's decision be reviewed under an abuse-of-discretion standard. *Id.* An abuse of discretion implies that the court's decision is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶37} We note that appellant does not argue that the trial court did not comply with any applicable rule or law. Rather, appellant argues that his sentence was not supported by the record. Appellant notes that there was no weapon involved and that Dabney was released from the hospital the same night and did not require follow-up treatment. He further argues that his criminal record did not justify his near maximum seven year sentence.¹

{¶38} However, as noted by appellee at the sentencing hearing, appellant has a lengthy criminal history dating back to at least 2007. His record includes assault and domestic violence charges along with drug, theft and tampering charges. In addition, appellant expressed no remorse at the sentencing hearing.

¹ The maximum sentence for a felony of the second degree is eight years. R.C. 2929.14(A)((2).

{¶39} Based on the foregoing, we cannot say that the trial court abused its discretion in sentencing appellant to seven years in prison. The trial court's decision was not arbitrary, unconscionable or unreasonable.

{¶40} Appellant's second assignment of error is, therefore, overruled.

{¶41} Accordingly, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Baldwin, J.

Gwin, P.J. and

Farmer, J. concur.